

**FILED**  
12-31-15 4:18 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

**TEMPORARY ADMINISTRATIVE RULES**

A Statement of Need and Justification accompanies this form.

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

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

To become effective 01/01/2016 through 06/28/2016.

**RULE CAPTION**

ODDS: Employment Services for Individuals with Intellectual or Developmental Disabilities

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:**

411-345-0010, 411-345-0020, 411-345-0025, 411-345-0030, 411-345-0085, 411-345-0110, 411-345-0160

**SUSPEND:**

**Statutory Authority:**

ORS 409.050, 430.662

**Other Authority:**

**Statutes Implemented:**

ORS 430.610, 430.662, 430.670

**RULE SUMMARY**

The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 345 for employment services for individuals with intellectual or developmental disabilities.

These rules are being temporarily amended to --

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning;
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services;
- Ensure alignment with Executive Order 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities);
- Align with the terms of the Lane v. Brown proposed settlement agreement; and
- Align provider requirements.

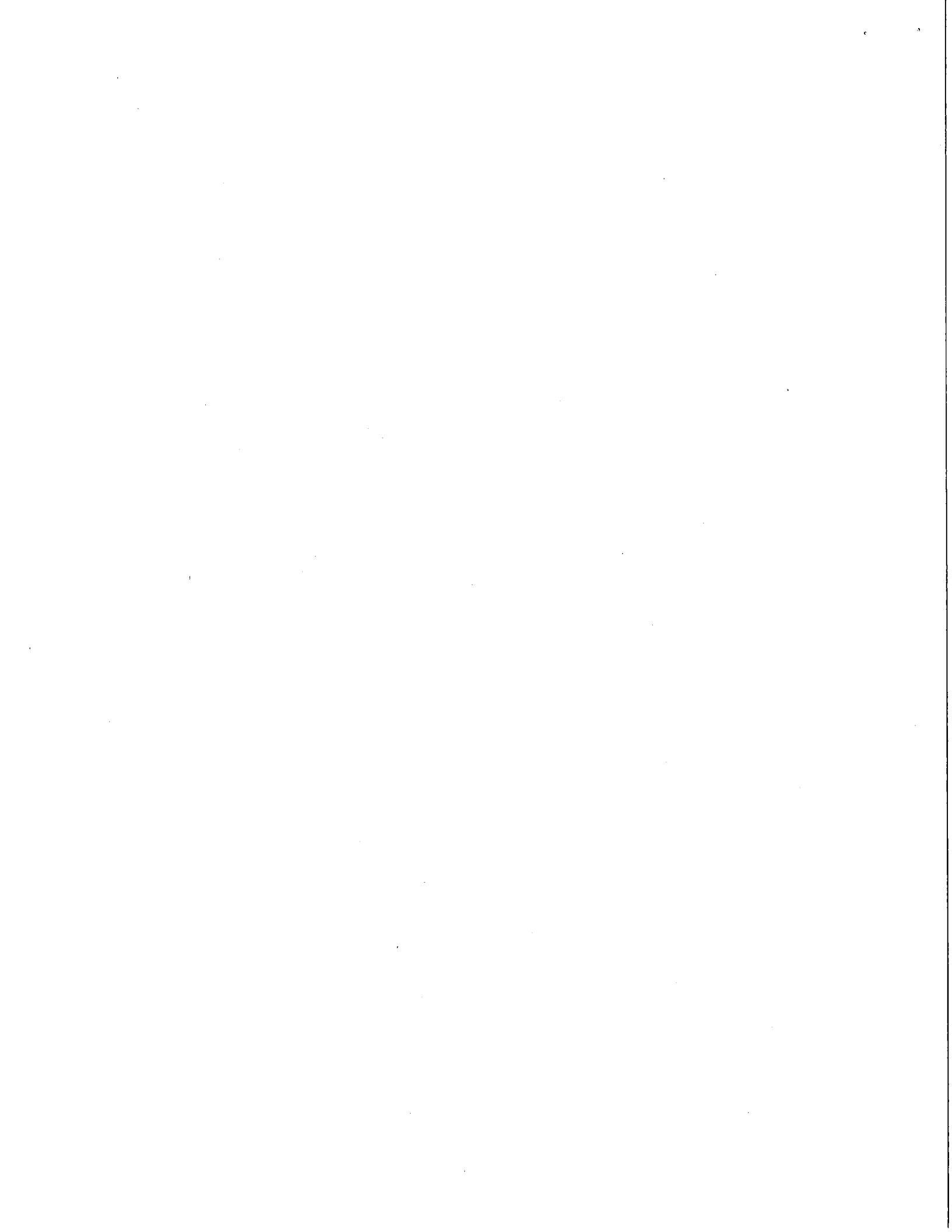
Kimberly Colkitt-Hallman

kimberly.colkitt-hallman@state.or.us

Rules Coordinator Name

Email Address

APD 31-2015(T)



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

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

411

Agency and Division

Administrative Rules Chapter Number

ODDS: Employment Services for Individuals with Intellectual or Developmental Disabilities

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 411-345-0010; 411-345-0020; 411-345-0025; 411-345-0030; 411-345-0085; 411-345-0110; and 411-345-0160 relating to employment services for individuals with intellectual or developmental disabilities.

**Statutory Authority:**

ORS 409.050, 430.662

**Other Authority:**

**Statutes Implemented:**

ORS 430.610, 430.662, 430.670

**Need for the Temporary Rule(s):**

The Department needs to amend the rules in OAR chapter 411, division 345 to --

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Incorporate the adoption of the rules for HCB services and settings and person-centered service planning in OAR chapter 411, division 004;
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services;
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- Align with the terms of the Lane v. Brown proposed settlement agreement; and
- Align provider requirements.

The rules in OAR chapter 411, division 345 are being amended to --

- Remove terms included in OAR 411-317-0000 (General Definitions);
- Incorporate the standards for HCB services and settings and person-centered planning adopted in OAR chapter 411, division 004 by the Department on January 1, 2016. Specifically --
  - o Employment and day services must be provided in a setting that supports access to the greater community and supports opportunities to seek employment and work in competitive integrated employment settings.
  - o Facility based prevocational settings must provide interaction with the general public. Facility based day service settings must facilitate going out into the community.
  - o Individuals must have an option to use services in a non-disability specific setting and the setting options presented must be documented in a person centered service plan.
- Align with Executive Order 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities);
- Align with the terms of the Lane v. Brown proposed settlement agreement. Specifically --
  - o The Department will establish and promote a goal that all individuals who want to work in the community will be afforded an opportunity to pursue competitive employment that allows them to work the maximum number of hours consistent with their preferences and interests.
  - o CDDPs and Brokerages must encourage individuals who use services in sheltered workshop settings to choose community-based options and not sheltered employment.
- Align provider requirements. Specifically, new provider organizations must be certified as agencies under OAR chapter 411, division 323 and endorsed to provide employment services under OAR chapter 411, division 345. Providers certified under OAR chapter 411, division 340 must be certified under OAR chapter 411, division 323 as certification renews.

**Documents Relied Upon, and where they are available:**

Executive Order 15-01 available at:

[http://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_15\\_01.pdf](http://www.oregon.gov/gov/Documents/executive_orders/eo_15_01.pdf)

Lane v. Brown proposed settlement agreement available at:

<https://droregon.org/wp-content/uploads/Lane-Settlement-Agreement.pdf>

**Justification of Temporary Rule(s):**

Failure to act promptly and immediately update the rules in OAR chapter 411, division 345 will result in serious prejudice to --

- Individuals with intellectual or developmental disabilities;

- The parents, guardians, family members, and representatives of individuals with intellectual or developmental disabilities;
- Providers; and
- The Department.

These rules need to be updated promptly to --

- Remove terms included in the general definitions rule, OAR 411-317-0000;
- Align with the new CMS standards relating to HCB services and settings and person-centered service planning adopted by the Department in OAR chapter 411, division 004;
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services;
- Ensure alignment with Executive Order 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities);
- Align with the terms of the Lane v. Brown proposed settlement agreement; and
- Align provider requirements.

Failure to immediately update these rules prevents the Department from --

- Aligning with the rules in OAR chapter 407, division 004 (Integrated Employment Services), OAR chapter 411, division 004 (HCB Services and Settings and Person-Centered Service Planning), OAR 411-317-0000 (Definitions), and OAR 411-318-0010 (Individual Rights);
- Streamlining operations to provide consistency across services;
- Complying with the new CMS standards relating to HCB services and settings and person-centered service planning;
- Incorporating the individual rights in OAR 411-318-0010 for individuals receiving HCB services;
- Aligning with Executive Order 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities);
- Aligning with the terms of the Lane v. Brown proposed settlement agreement; and
- Aligning provider requirements.

Kimberly Colkitt-Hallman

kimberly.colkitt-hallman@state.or.us

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Printed Name

Email Address

**Authorization Page**

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**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

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Adopted on

01/01/2016 thru 06/28/2016

Effective dates

**RULE CAPTION**

ODDS: Employment Services for Individuals with Intellectual or Developmental  
Disabilities

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

**AMEND:**

411-345-0010, 411-345-0020, 411-345-0025, 411-345-0030, 411-345-0085, 411-345-0110, 411-345-01  
60

**SUSPEND:**

Stat. Auth.: ORS 409.050, 430.662

**Other Auth.:**

Stats. Implemented: ORS 430.610, 430.662, 430.670

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- Align with the terms of the Lane v. Brown proposed settlement agreement; and
- Align provider requirements.

### **STATEMENT OF NEED AND JUSTIFICATION**

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In the Matter of

Executive Order 15-01 available at:  
[http://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_15\\_01.pdf](http://www.oregon.gov/gov/Documents/executive_orders/eo_15_01.pdf)

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o Employment and day services must be provided in a setting that supports access to the greater community and supports opportunities to seek employment and work in competitive integrated employment settings.

o Facility based prevocational settings must provide interaction with the general public. Facility based day service settings must facilitate going out into the community.

o Individuals must have an option to use services in a non-disability specific setting and the setting options presented must be documented in a person centered service plan.

- Align with Executive Order 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities);

- Align with the terms of the Lane v. Brown proposed settlement agreement. Specifically --

o The Department will establish and promote a goal that all individuals who want to work in the community will be afforded an opportunity to pursue competitive employment that allows them to work the maximum number of hours consistent with their preferences and interests.

o CDDPs and Brokerages must encourage individuals who use services in sheltered workshop settings to choose community-based options and not sheltered employment.

- Align provider requirements. Specifically, new provider organizations must be certified as agencies under OAR chapter 411, division 323 and endorsed to provide employment services under OAR chapter 411, division 345. Providers certified under OAR chapter 411, division 340 must be certified under OAR chapter 411, division 323 as certification renews.

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Need for the Temporary Rule(s)

Failure to act promptly and immediately update the rules in OAR chapter 411, division 345 will result in serious prejudice to --

- Individuals with intellectual or developmental disabilities;
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- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services;
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- Align with the terms of the Lane v. Brown proposed settlement agreement; and

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- Streamlining operations to provide consistency across services;
- Complying with the new CMS standards relating to HCB services and settings and person-centered service planning;
- Incorporating the individual rights in OAR 411-318-0010 for individuals receiving HCB services;
- Aligning with Executive Order 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities);
- Aligning with the terms of the Lane v. Brown proposed settlement agreement; and
- Aligning provider requirements.

---

Justification of Temporary Rules

*Anna S. Lansky*

Authorized Signer

Anna S. Lansky

Printed Name

12/29/2015

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 345

### EMPLOYMENT SERVICES FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

#### 411-345-0010

##### Statement of Purpose

- (1) The rules in OAR chapter 411, division 345, effectuate Oregon's Employment First policy under which the employment of individuals with intellectual or developmental disabilities in competitive integrated employment is the highest priority over unemployment, segregated employment, or other non-work day activities.
- (2) For individuals who successfully achieve the goal of competitive integrated employment, future person-centered service planning focuses on maintaining employment, maximizing the number of hours an individual works consistent with his or her preferences and interests, and considering additional career or advancement opportunities.
- (3) Employment services are considered and provided on an individualized basis using a person-centered approach based on informed choice and consistent with the philosophy of self-determination.
- (4) These rules prescribe service standards and requirements for providers of home and community-based services in settings where employment services and other non-residential services are provided.
- (5) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.
- (6) These rules prescribe qualifications and eligibility requirements for individuals with intellectual or developmental disabilities to receive employment services and other non-residential services.
- (7) Employment services are provided in accordance with these rules and Oregon's Employment First policy as described in the State of Oregon Executive Order No. 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities).

Stat. Auth.: ORS 409.050, 427.007, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

#### 411-345-0020

##### 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 345:

- (1) "ADL" means "activities of daily living".
- (2) "Agency Service Provider" means a public or private community agency or organization certified and endorsed by the Department to provide services under these rules and the rules in OAR chapter 411, division 323.
- (3) "Career Development Plan":
  - (a) Means the part of an ISP that identifies:
    - (A) The employment goals and objectives for an individual;
    - (B) The services and supports needed to achieve those goals;
    - (C) The people, agencies, and providers assigned to assist the individual to attain those goals;
    - (D) The obstacles to the individual working in an individualized job in a competitive integrated employment setting; and
    - (E) The services and supports necessary to overcome those obstacles.
  - (b) A Career Development Plan is based on person-centered planning principles.
- (4) "CDDP" means "Community Developmental Disability Program".
- (5) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions.
- (6) "Competitive Integrated Employment" means work that is performed on a full-time or part-time basis (including self-employment):
  - (a) For which an individual:
    - (A) Is compensated at a rate that:
      - (i) Is not less than the higher of the rate specified in federal, state, or local minimum wage law, and also is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or
      - (ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
    - (B) Is eligible for the level of benefits provided to other employees.

- (b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and
- (c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.
- (7) "Customized Employment" means competitive integrated employment for an individual with a disability that is based on an individualized determination of the strengths, needs, and interests of the individual, is designed to meet the specific abilities of the individual and the business needs of the employer.
- (8) "Department" means the Department of Human Services.
- (9) "Discovery" is a time-limited comprehensive, person-centered, and community-based employment planning support service to better inform an individual seeking an individualized job in a competitive integrated employment setting and to create a Discovery Profile. Discovery includes a series of work or volunteer related activities to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as identify the conditions and employment settings in which the individual will be successful. Discovery is also an opportunity for the individual to begin active pursuit of competitive integrated employment.
- (10) "Discovery Profile" is a comprehensive and person-centered report produced as an outcome of discovery, representing an individual and providing information to better inform employment service planning and job development activities. The Discovery Profile includes information about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as information about conditions and employment settings for the success of the individual.
- (11) "Employment Path Services" means services to provide learning and work experiences, including volunteer opportunities, for an individual to develop general, non-job-task-specific, strengths and skills that contribute to employability in an individual job in a competitive integrated employment setting in the general workforce.
- (12) "Employment Service" means a home and community-based service that supports the primary objective of exploring, obtaining, maintaining, or advancing in an individual job in a competitive integrated employment setting in the general workforce.
- (a) Employment services under these rules include:
- (A) Supported Employment.
- (i) Individual Employment Support.
- (I) Job Coaching.
- (II) Job Development.
- (ii) Small Group Employment Support.
- (B) Discovery; and
- (C) Employment Path Services.
- (b) Employment services do not include vocational assessments in sheltered workshop settings or facility-based settings. Employment services do not include new participants in sheltered workshop settings.
- (13) "Employment Professional" means an employee of an agency service provider, an independent provider, or an employee of an independent provider who has the qualifications and training to provide employment services under these rules, including individual employment support, small group employment support, discovery, or employment path services.
- (14) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency service provider that has met the qualification criteria outlined in these rules, the corresponding program rules, and the rules in OAR chapter 411, division 323.
- (15) "Evidence-Based Practices" means well-defined best practices, which have been demonstrated to be effective by multiple peer-reviewed research studies that are specific to the relevant population or subset of that population.
- (16) "Executive Director" means the person designated by a board of directors or corporate owner of an agency service provider who is responsible for the administration of agency provided employment services, attendant care, and skills training.
- (17) "Facility-Based" means a service that is operated at a fixed site owned, operated, or controlled by a service provider where an individual has few or no opportunities to interact with people who do not have a disability except for paid staff.
- (18) "Functional Needs Assessment":
- (a) Means the comprehensive assessment or re-assessment that:
- (A) Documents physical, mental, and social functioning;
- (B) Identifies risk factors and support needs; and
- (C) Determines the service level.
- (b) The functional needs assessment may be the Adult Needs Assessment (ANA), Child Needs Assessment, Support Needs Assessment Profile (SNAP), or Supports Intensity Scale (SIS).
- (A) The Department incorporates Version C of the ANA and CNA into these rules by this reference. The ANA and CNA is maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/cm>.

- (B) 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 Department incorporates the SIS into these rules by this reference.
- (c) A printed copy of a blank functional needs assessment may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.
- (19) "IADL" means "instrumental activities of daily living".
- (20) "Independent Provider" means a qualified person who is contracted or employed by an individual to provide employment services based on the ISP for the individual.
- (21) "Individual Employment Support" means job coaching or job development services to obtain or maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.
- (22) "Integrated Employment Setting" means employment at a location where an employee interacts with other people who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.
- (23) "ISP" means "Individual Support Plan".
- (24) "Job Coaching" means support for an individual to maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.
- (25) "Job Development" means support for an individual to obtain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.
- (26) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.
- (27) "OIS" means "Oregon Intervention System".
- (28) "OSIPM" means "Oregon Supplemental Income Program-Medical".
- (29) "PRN" means the administration of medication to an individual on an 'as needed' basis (pro re nata).
- (30) "Productivity" consistent with ORS 427.005, means regular engagement in income producing work, preferable competitive integrated employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement, or engagement by an individual with an intellectual or developmental disability in work contributing to a household or community.
- (31) "Service Provider" means:
- An agency service provider as defined in this rule;
  - An independent provider, as defined in this rule, qualified to provide services under these rules; or
  - A personal support worker as defined in OAR 411-375-0010, qualified to provide services under these rules.
- (32) "Sheltered Workshop" means a facility in which individuals with intellectual and developmental disabilities are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A sheltered workshop primarily employs individuals with intellectual and developmental disabilities and other disabilities, with the exception of service support staff. A sheltered workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with people who do not have disabilities, not including paid support staff.
- (33) "Small Group Employment Support" means services and training activities provided in regular business, industry, and community settings for groups of two to eight individuals with disabilities. Small group employment support is provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces.
- (34) "These Rules" mean the rules in OAR chapter 411, division 345.
- (35) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by an agency service provider.
- (36) "Vocational Assessment" means an assessment administered to provide employment related information essential to the development of, or revision of, the employment related planning documents for an individual.

Stat. Auth.: ORS 409.050 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

#### **411-345-0025**

##### **Services Provided**

- (1) The delivery of employment services provided under these rules presumes all individuals eligible for services are capable of working in an integrated employment setting and earning minimum wage or better.
- (2) Employment is the preferred activity for individuals receiving services under these rules. Competitive integrated employment is the highest priority over unemployment, segregated or sheltered employment, small group employment support, or non-work day activities.

- (3) Employment services must be individually planned based on person-centered planning principles. Consistent with the person-centered approach to these services, individuals accessing employment services under these rules must be encouraged, on an ongoing basis, to explore their interests, strengths, and abilities relating to employment or career advancement.
- (4) All employment services have an optimal and expected outcome of sustained paid employment at the maximum number of hours, consistent with individual preferences, and work experience leading to further career development, maximizing hours, and competitive integrated employment for which an individual is compensated at or above minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.
- (5) Effective January 1, 2016, for agency service providers initially certified and endorsed on or after January 1, 2016, and effective no later than September 1, 2018, for agency service providers initially certified and endorsed before January 1, 2016, all employment services and non-residential day services must be provided in a setting that meets the home and community-based service requirements described in OAR chapter 411, division 004.
- (6) Employment services are provided under these rules in accordance with the State of Oregon Executive Order No. 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities).
- (7) Employment services must be evidence-based where evidence-based practices have been identified.
- (8) Employment services must be:
- (a) Offered to eligible individuals in accordance with the exit, entry, and transfer requirements described in OAR 411-345-0140;
  - (b) Provided to eligible individuals under the authorization of an ISP and Career Development Plan in accordance with OAR 411-345-0160;
  - (c) Offered in accordance with these rules when services are provided by a certified provider organization;
  - (d) Provided in a non-residential setting, unless an individual is operating a home-based business;
  - (e) Provided in the most integrated employment setting appropriate to the needs of an individual, and consistent with the choice of the individual regarding services, providers, and goals; and
  - (f) Designed to:
    - (A) Increase independence, integration, and productivity;
    - (B) Promote integration into the workforce and workplace;
    - (C) Promote interaction with people without disabilities; and
    - (D) Support successful employment outcomes consistent with personal and career goals.
- (9) Employment services do not include:
- (a) Services available to an individual under Vocational Rehabilitation and Other Services, 29 U.S.C. § 701-7961, as amended;
  - (b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended;
  - (c) Vocational assessments in a sheltered workshop; or
  - (d) Services used for support to work in a sheltered workshop setting for individuals who did not use services for support in a sheltered workshop setting on or before June 30, 2015.
- (10) Employment services include the following:
- (a) **SUPPORTED EMPLOYMENT.**
  - (A) **INDIVIDUAL EMPLOYMENT SUPPORT:**
    - (i) **JOB COACHING** - Support to assist an individual to maintain an individualized job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.
      - (I) Personal care or attendant care provided as an incidental part of job coaching is considered a component part of the employment service.
      - (II) Job coaching does not include support in volunteer work.
      - (III) Individuals utilizing job coaching must be compensated at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.
      - (IV) Job coaching must be provided, at minimum, for the number of hours identified in an ISP. (V) Transportation provided within the course of job coaching is a component part of the employment service.
    - (ii) Support to maintain self-employment also requires the following:
      - (I) Ongoing assistance, counseling, and guidance after a business has been launched.
      - (II) Self-employment support may not be provided to defray the operational expenses of the business.
      - (III) The self-employment must yield an income that is comparable to the income received by other people who are not individuals with disabilities, and who are self-employed in similar occupations or in similar tasks and who have similar training, experience, and skills.
      - (IV) Evidence of the self-employment must be documented and reviewed by the services coordinator or personal agent on an annual basis. Documentation may include, but is not limited to, tax records submitted to the Internal Revenue Service and an annual business plan.

- (iii) **JOB DEVELOPMENT** - Support to assist an individual to obtain an individualized job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.
- (I) Personal care or attendant care provided as an incidental part of job development is considered a component part of the employment service.
- (II) The job developed must provide compensation at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.
- (III) The job developed must meet criteria established in a Career Development Plan including, but not limited to, criteria regarding the number of hours the individual shall work in the job. The Career Development Plan must also include a goal relating to working a maximum number of hours consistent with individual preferences.
- (IV) Job development may be authorized in the limited circumstances where the service is not available through Vocational Rehabilitation and the Department has approved authorization.
- (V) Transportation provided within the course of job development is a component part of the employment service.
- (B) **SMALL GROUP EMPLOYMENT SUPPORT** - To provide services and training activities in regular business, industry, and community settings.
  - (i) Small group employment support may be provided in groups of two to eight individuals.
  - (ii) Small group employment support must be provided in a manner that promotes integration into the work place and interaction with people without disabilities in those work places.
  - (iii) Small group employment support does not include vocational services provided in a provider owned, operated, or controlled setting, or a facility-based work setting.
  - (iv) Small group employment support does not include support in volunteer work.
  - (v) Individuals utilizing small group employment support must be compensated at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.
  - (vi) Personal care or attendant care provided as an incidental part of small group employment support is considered a component part of the employment service.
  - (vii) Transportation provided within the course of small group employment support is a component part of the employment service.
- (b) **DISCOVERY** - A comprehensive and person-centered employment planning support service to better inform an individual seeking competitive integrated employment in the general workforce and develop a Discovery Profile.
  - (A) Discovery must include a series of work or volunteer related activities, completed in competitive integrated employment settings, to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual. Discovery must include analyzing detailed information from novel and past experiences in order to identify the conditions or integrated employment settings in which the individual shall be most successful.
  - (B) Discovery may include job and task analysis activities, assessment for use of assistive technology, job shadowing, informational interviewing, employment preparation, resume development, and volunteerism to identify transferable skills and job or career interests.
  - (C) Discovery must be completed within a three month period. A three month extension may be authorized if the individual and the services coordinator or personal agent determines there is a legitimate reason. Legitimate reasons may include, but are not limited to:
    - (i) The individual has a medical event that delayed completing discovery;
    - (ii) The individual had a medical event that significantly changed his or her strengths, interests, and abilities; or
    - (iii) An opportunity to participate in particular work trials or volunteer positions may only be scheduled outside of the three month period.
  - (D) Discovery must have an outcome of a Discovery Profile. The Discovery Profile must meet requirements established by the Department.
  - (E) Discovery results in a referral to vocational rehabilitation services.
  - (F) Personal care or attendant care provided as an incidental part of discovery is considered a component part of the employment service.
  - (G) Transportation provided within the course of discovery is a component part of the employment service.
- (c) **EMPLOYMENT PATH SERVICES** - Support to obtain experience and develop general skills that contribute to employability in competitive integrated employment settings in the general workforce.
  - (A) Personal care provided as an incidental part of employment path services is considered a component part of the employment service.
  - (B) Producing goods or services may be incidental to employment path services but the primary purpose must be to develop general employment skills that may be used in an individual integrated job.

(C) Employment path services are expected to occur over a defined period of time with specific outcomes to be achieved, as determined by the individual and his or her service and supports planning team through an ongoing person-centered planning process.

(D) Employment path services require that an individual have an employment-related goal in his or her ISP. General habilitation activities accessed through employment path services must be designed to support such employment goals.

(E) Transportation provided within the course of employment path services is a component part of the employment service.

(F) Consistent with setting requirements for home and community-based services, employment path services must be provided in a setting where individuals using these services gain experience working with the general public.

(i) Providers initially certified or endorsed by the Department on or after January 1, 2016 must provide this service in settings that meet this requirement.

(ii) Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a Department approved transition plan, and be in full compliance with this requirement by September 1, 2018.

(G) Employment path services are a facility-based service if delivered at a fixed site where the supported individual has few or no opportunities to interact with people who do not have a disability except for paid staff. Facility-based employment services under this definition are permissible until September 1, 2018.

(H) Employment path services are the only service that may be used for support in a sheltered workshop setting. Effective July 1, 2015, no service may be authorized in a sheltered workshop setting for any individual who has not already used services for support to work in a sheltered workshop.

(I) The services coordinator or personal agent:

(i) Must always offer employment path services in the most integrated setting based on the preferences and interests of the individual;

(ii) Must encourage individuals who use employment path services in sheltered workshop settings to choose a community-based employment service option and not a sheltered workshop setting option;

(iii) Must offer an option to use employment services in a non-disability specific setting, meaning a setting that is not owned, operated, or controlled by a provider of home and community-based services, or a setting designed specifically to hire people who have disabilities. The services coordinator or personal agent must document the non-disability specific setting options presented in the ISP and Career Development Plan; and

(iv) Must offer a non-disability specific setting option, at least annually, during career development planning, and more frequently upon request.

(11) Attendant care and skills training must be:

(a) Provided to eligible individuals under the authorization of an ISP; and

(b) Offered in accordance with these rules, when services are provided by an agency service provider.

(12) Attendant care and skills training do not include:

(a) Services available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. § 701-7961, as amended; or

(b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended.

(13) Agency service providers operating under these rules may provide attendant care or skills training or both attendant care and skills training.

(a) ATTENDANT CARE SERVICES.

(A) Attendant care services include assistance with ADL, IADL, and health-related tasks in the home of the individual or community. ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual.

(B) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding.

(i) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(ii) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(iii) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(iv) "Reassurance" means to offer an individual encouragement and support.

(v) "Redirection" means to divert an individual to another more appropriate activity.

(vi) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(vii) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(b) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

- (A) Skills training may be applied to the use and care of assistive devices and technologies.
- (B) Skills training is authorized when:
  - (i) The anticipated outcome of the skills training, as documented in the ISP, is measurable;
  - (ii) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and
  - (iii) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator or personal agent no less frequently than every six months, based on the start date of the initiation of the skills training.
- (C) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator or personal agent must reassess or redefine the use of skills training with the individual for that particular goal.
- (c) Attendant care and skills training must, at minimum, facilitate going out into the broader community.
- (A) Providers initially certified or endorsed by the Department on or after January 1, 2016, must provide this service in settings that meet this requirement.
- (B) Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a Department approved transition plan, and be in full compliance with this requirement by September 1, 2018.
- (d) Attendant care and skills training is a facility-based service if delivered at a fixed site operated, owned, or controlled by a service provider.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630, 430.670

#### **411-345-0030**

##### **Service Provider Requirements**

- (1) Providers of employment services must be:
  - (a) A provider certified and endorsed under OAR chapter 411, division 323 (Agency Certification and Endorsement);
  - (b) A provider organization certified under OAR 411-340-0170 (Standards for Provider Organizations) prior to January 1, 2016; or
  - (c) A qualified independent provider. Independent providers who are employed by the individual may only provide job coaching.
- (2) EMPLOYMENT SERVICE PROVIDER REQUIREMENTS:
  - (a) EMPLOYMENT PROFESSIONALS. All employment professionals who provide employment services must:
    - (A) Provide services designed to support successful employment outcomes consistent with the personal and career goals of an individual, including goals identified in the ISP and Career Development Plan for the individual;
    - (B) Ensure all records are confidential as described in OAR 411-323-0060 (Policies and Procedures);
    - (C) Perform the duties as a mandatory reporter when appropriate and as required by law; and
    - (D) Have a service agreement or job description with clearly stated job responsibilities. The service agreement must be current, signed by the employment professional, and dated. The service agreement must also include duties specific to the area of specialization, including job coach, job developer, discovery provider, or employment path services provider.
  - (b) INDEPENDENT PROVIDERS. All qualified independent providers must:
    - (A) Be at least 18 years of age;
    - (B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 (Criminal History Checks). Additionally:
      - (i) A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role; and
      - (ii) The Background Check Request form must be completed by the subject individual to show intent to work statewide;
    - (C) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 (Convictions Under ORS 443.0045), unless hired or contracted with prior to July 28, 2009, remaining in the current position for which the independent provider was hired;
    - (D) Be legally eligible to work in the United States;
    - (E) Not be the spouse of the supported individual;
    - (F) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;
    - (G) Understand requirements of maintaining confidentiality and safeguarding individual information;
    - (H) Not be on the list of excluded or debarred providers maintained by the Office of Inspector General (<http://exclusions.oig.hhs.gov/>);
    - (I) If providing transportation, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation service;
    - (J) Meet the required qualifications for the employment service provided including those required for an employment professional; and
    - (K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.
  - (c) AGENCY SERVICE PROVIDERS.

(A) **INSPECTIONS AND INVESTIGATIONS.** The agency service provider must allow inspections and investigations as described in OAR 411-323-0040 (Inspections and Investigations).

(B) **AGENCY MANAGEMENT AND PERSONNEL PRACTICES.** The agency service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050 (Agency Management and Personnel Practices).

(C) **PERSONNEL FILES AND QUALIFICATION RECORDS.** The agency service provider must maintain written documentation of six hours of pre-service training prior to staff providing services or supports to individuals, including mandatory abuse reporting training, training to work with individuals with intellectual or developmental disabilities, and training on the support needs of the individual to whom they shall provide support;

(D) **STAFFING REQUIREMENTS:**

(i) Each agency service provider must provide direct service staff appropriate to the number and level of individuals served, to ensure individual rights, basic health, and safety are met;

(ii) Staff must have approval to work based on current Department policy and procedures for background checks in OAR 411-323-0050 (Agency Management and Personnel Practices);

(iii) When individuals are present at an agency site, the service provider must provide and document there are staff trained in the following areas:

(I) At least one staff member on duty with CPR certification at all-times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical needs as determined through ISP processes; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

(3) **EMPLOYMENT PROVIDER QUALIFICATIONS:**

(a) **EMPLOYMENT PROFESSIONAL.** Each employment professional must possess and demonstrate the following qualifications:

(A) Knowledge of developmental disability services;

(B) Knowledge of the rules governing employment services;

(C) Ability to provide skills training for individuals to increase employability;

(D) Ability to support individuals to maintain and be successful in employment; and

(E) Demonstrate by background, education, references, skills, and abilities that the employment professional is capable of safely and adequately performing the tasks to support the ISP and Career Development Plan for an individual, with such demonstration confirmed in writing by the individual, including:

(i) Ability and sufficient education to follow oral and written instructions and keep any records required;

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the individual; and

(iv) Training of a nature and type sufficient to ensure that the employment professional has knowledge of emergency procedures specific to the individual receiving services.

(b) Qualifications for specific types of employment professionals --

(A) **JOB DEVELOPERS.** A provider of job development services must also possess and demonstrate the following qualifications:

(i) Possess knowledge of best practice methodologies for job development; and

(ii) Be able to demonstrate the core competencies of a job developer within one year of employment, including those pertaining to skills assessment, job matching, job customization, job carving, community building, mapping and networking, analyzing labor trends, identifying patterns in job markets, identifying incentives for businesses, and mentoring job seekers. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(B) **JOB COACHES.** A provider of job coaching services must also possess and demonstrate the following qualifications:

(i) Knowledge of best practice methodologies for job coaching; and

(ii) Be able to demonstrate the core competencies of a job coach within one year of employment, including skills to recognize and adapt supports to individual learning styles and needs, conduct task design and accommodations, train instructional and schedule procedures, and collaborate with employee, employer, co-workers, and support team. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(C) **DISCOVERY PROVIDER.**

(i) A provider of discovery services must also possess and demonstrate the following qualifications:

(I) Knowledge of best practice methodologies for conducting discovery; and

(II) Be able to demonstrate the core competencies of a discovery provider within one year of employment, including skills to facilitate the discovery process, apply person-centered planning techniques, develop an employment portfolio, identify the strengths, interests, and talents of the job seeker, and integrate all pertinent information required by the Department into a Discovery Profile.

Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(ii) A discovery provider must be qualified as a vendor of Vocational Rehabilitation job placement in order to provide the discovery service.

(D) EMPLOYMENT PATH SERVICE PROVIDERS. A provider of employment path services must also possess and demonstrate the following qualifications:

- (i) Knowledge of best practice methodologies for providing employment path services; and
- (ii) Be able to demonstrate the core competencies of an employment path service provider within one year of employment, including skills to provide learning and work experiences to teach general, non-job-task-specific strengths and skills. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(4) EMPLOYMENT PROVIDER TRAINING:

(a) An employment professional employed by an agency service provider must complete the following training:

(A) A review of these rules;

(B) CPR and First Aid by a recognized training agency within 90 calendar days of hire;

(C) Six hours of pre-service training, including:

(i) Mandatory abuse reporting training;

(ii) Training to work with individuals with intellectual or developmental disabilities; and

(iii) Training on the employment service and support needs of the individual to whom they will provide support.

(b) An agency service provider must keep documentation of required training in the personnel files of the employment professional.

(c) All employment specialists must complete a competency based employment training as follows:

(A) Job coaches must complete at least one Department approved training for job coaching within 90 days of providing job coaching.

(B) Job developers must complete at least one Department approved training for job developers within 90 days of providing job development.

(C) Discovery providers must complete at least one Department approved training for discovery before being authorized to provide discovery.

(D) Employment path providers must complete at least one Department approved training for employment path providers within 90 days of providing employment path services.

(d) Documentation that the employment professionals have completed this training requirement must be maintained in the personnel file.

(e) Effective July 1, 2016, agency service providers of employment services must have at least one employee in a supervisory position who has the Department approved credentialing. Effective July 1, 2016, providers independently contracted to provide an employment service must have the Department approved credentialing.

(5) DISQUALIFICATION. Employment professionals must self-report any potentially disqualifying condition as described in OAR 407-007-0280 (Potentially Disqualifying Conditions) and OAR 407-007-0290 (Other Potentially Disqualifying Conditions). The employment professionals must notify the Department or the designee of the Department within 24 hours.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.662, 430.670

**411-345-0085**

**Reports and Recordkeeping**

(1) PROGRESS NOTES.

(a) Providers must maintain --

(A) Regular progress notes regarding the employment service provided. The progress note must include, at minimum, the following information regarding the service rendered:

(i) Date and time the service was provided;

(ii) Information regarding progress towards achieving the intended employment goal for which the employment services was purchased; and

(iii) Documentation of the number of hours the supported individual works.

(B) At minimum, monthly documentation of the wages and level of benefits the supported individual receives.

(b) Progress notes must be made available upon request.

(2) For each individual supported, service providers being paid for job development services must report activity at least monthly to the services coordinator or personal agent for the individual.

(3) For each individual supported, service providers being paid for discovery services must complete a Discovery Profile and submit the Discovery Profile to the services coordinator or personal agent for the individual.

(4) All documentation required by these rules, unless stated otherwise, 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 five years.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

#### **411-345-0110**

##### **Individuals Rights**

- (1) An agency service provider must have and implement written policies and procedures that protect the rights of individuals described in OAR 411-318-0010 (Individual Rights) and encourage and assist individuals to understand and exercise these rights.
- (2) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 (Individual Rights) must be provided to an individual and the legal or designated representative of the individual.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

#### **411-345-0160**

##### **Individual Support Plan**

- (1) An individual has the right to participate in his or her ISP meeting and must be afforded every opportunity to develop and direct his or her ISP and Career Development Plan.
- (2) In order to receive employment services, an individual must have an employment related goal in his or her ISP and Career Development Plan.
- (3) All individuals utilizing services under these rules must participate in career development planning as a part of the annual ISP.
- (4) A Career Development Plan must be developed and implemented with the ISP as follows. The Career Development Plan must --
  - (a) Focus on the strengths of the individual;
  - (b) Prioritize employment in integrated settings;
  - (c) Be based on person-centered planning principles;
  - (d) Be completed with the goal of maximizing the number of hours spent working consistent with the interests, abilities, and choices of the individual; and
  - (e) Document all employment service options presented, including an option to use employment services in a non-disability setting.
- (5) For services provided by an agency service provider, the ISP and Career Development Plan must be implemented, and a copy of the sections of the ISP and Career Development Plan for each individual that are necessary to deliver the employment services must be available for the employment service provider prior to the start of services and at least annually or as changes occur.
- (6) Agency service providers must:
  - (a) Assign a staff member to participate as a team member in the development of the ISP and Career Development Plan when invited by the individual;
  - (b) Follow any required process and format as described in this rule;
  - (c) Train staff to understand the ISP, Career Development Plan, and supporting documents for each individual and to provide individual services; and
  - (d) Comply with Department rules and policies regarding the ISP and Career Development Plan.
- (7) Agency service providers must participate in a face-to-face meeting annually with the ISP team of an individual. An exception is made when:
  - (a) The individual chooses not to participate in the meeting or the legal representative of the individual objects to the participation of the individual in the face-to-face meeting. The individual must receive a copy of the ISP and Career Development Plan related to the necessary delivery of services; or
  - (b) The individual objects to the participation of an agency service provider during the face-to-face meeting.
- (8) In preparation for the ISP meeting, the agency service provider must:
  - (a) Gather person-centered information regarding preferences, interests, and desires of the individual supported;
  - (b) Review the current ISP and Career Development Plan of the individual to determine the ongoing appropriateness and adequacy of the services and supports identified in the ISP and Career Development Plan; and
  - (c) Share all materials drafted in preparation for the ISP meeting with the ISP team one week prior to the ISP meeting.
- (9) The agency service provider must receive a copy of the ISP and Career Development Plan, or at least portions thereof, related to the necessary delivery of services.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670