

PRESENTATION

# Aging and People with Disabilities Office of Developmental Disabilities Services

## 2015 Ways and Means Human Services Subcommittee Home and Community Based Services Rules US Department of Labor Regulations

Mike McCormick, Director  
Lilia Teninty, Director

February 16, 2015



# DHS Values Community Living

Oregon's APD and DD programs have a long history of supporting people to live independently in their own homes and communities.

Together, APD and DD serve over 44,000 people in the community through the following programs:

- Foster Care
- Group Homes
- In-Home
- Supported Living
- Assisted Living
- Residential Care
- Employment services
- Day services

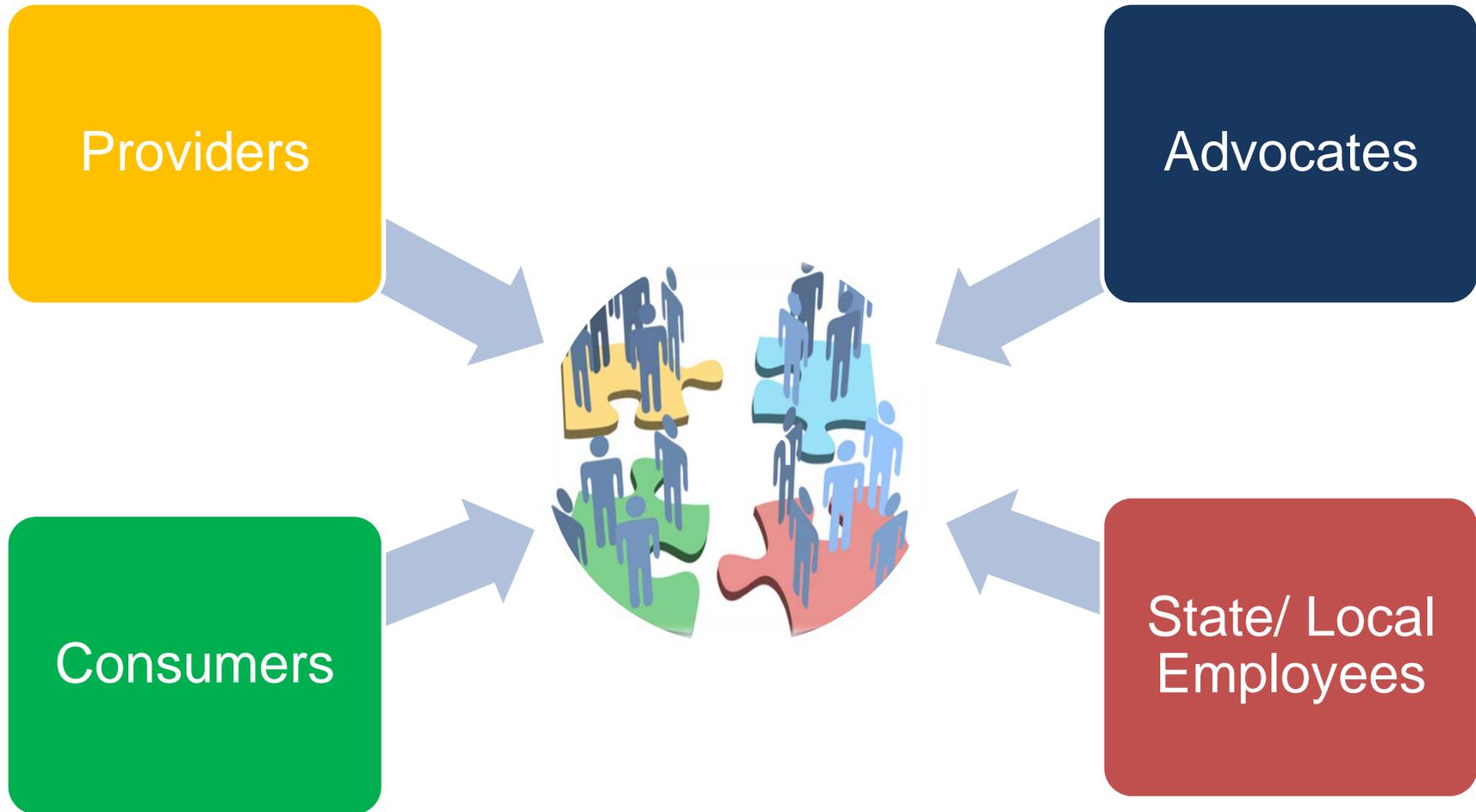
# New Federal Regulations

Centers for Medicare and Medicaid Services (CMS) issued regulations on Home and Community Based Services on January 16, 2014

US Department of Labor issued regulations on the Fair Labor Standards Act on October 1, 2013

Impact on APD and DD Home and Community Based Service Systems

# Stakeholder Engagement



# HCBS Settings Regulations



# HCBS Settings Regulations

## Defines and Describes Home and Community Based Service Settings

- Impacts all HCBS
  - APD, DD, AMH
- Sets timelines for implementation
- Creates new protections for people served
- Establishes requirements for Community Based Care Providers

# HCBS Settings Regulations

## Settings that are NOT Community-Based

Hospitals

Nursing Facilities

Institutions for  
mental diseases  
(IMD)

## Settings that Must be Reviewed to Determine level of Compliance

Provider and State Controlled Homes

Foster Care Homes

Employment Service Settings

Day Service Settings

# Improvements for Individuals

Consistent with the goals of APD and DD, the State must ensure:

- That a person lives, works and spends the day in settings that are integrated in and support full access to the greater community
- The setting is selected by the individual from among all available options
- The rights of privacy, dignity and respect are upheld and individual is free from coercion and restraint
- The individual has the autonomy and independence in making life decisions
- The individual has choice regarding services and who provides them

# Improvements for Individuals

## For people who live in provider owned or controlled settings

- The individual will have a lease or other legally enforceable agreement providing tenant protections
- The individual has privacy in his/her unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit
- The individual controls his/her own schedule including access to food at any time
- The individual can have visitors at any time
- The setting is physically accessible

# HCBS Transition Plan

## Current Status

- Five year implementation timeline from effective date of the rule (March 17, 2019)
- Engaged HCBS Stakeholder Group
- Oregon submitted the first Draft of the Statewide Transition Plan October 2014
  - Awaiting further feedback from CMS.



# HCBS Transition Plan

## **Key Proposed Activities (pending CMS approval):**

- Develop website/ educational materials – *now and ongoing*
- Consumer and Provider surveys - *November 2015*
- Provider plans - *April 2016*
- New Oregon Administrative rules - *January 2017*
- Consumer and provider survey - *November 2017*
- Work with providers to reach compliance - *2016-2018*
- Full compliance - *January 2019*

# Department of Labor

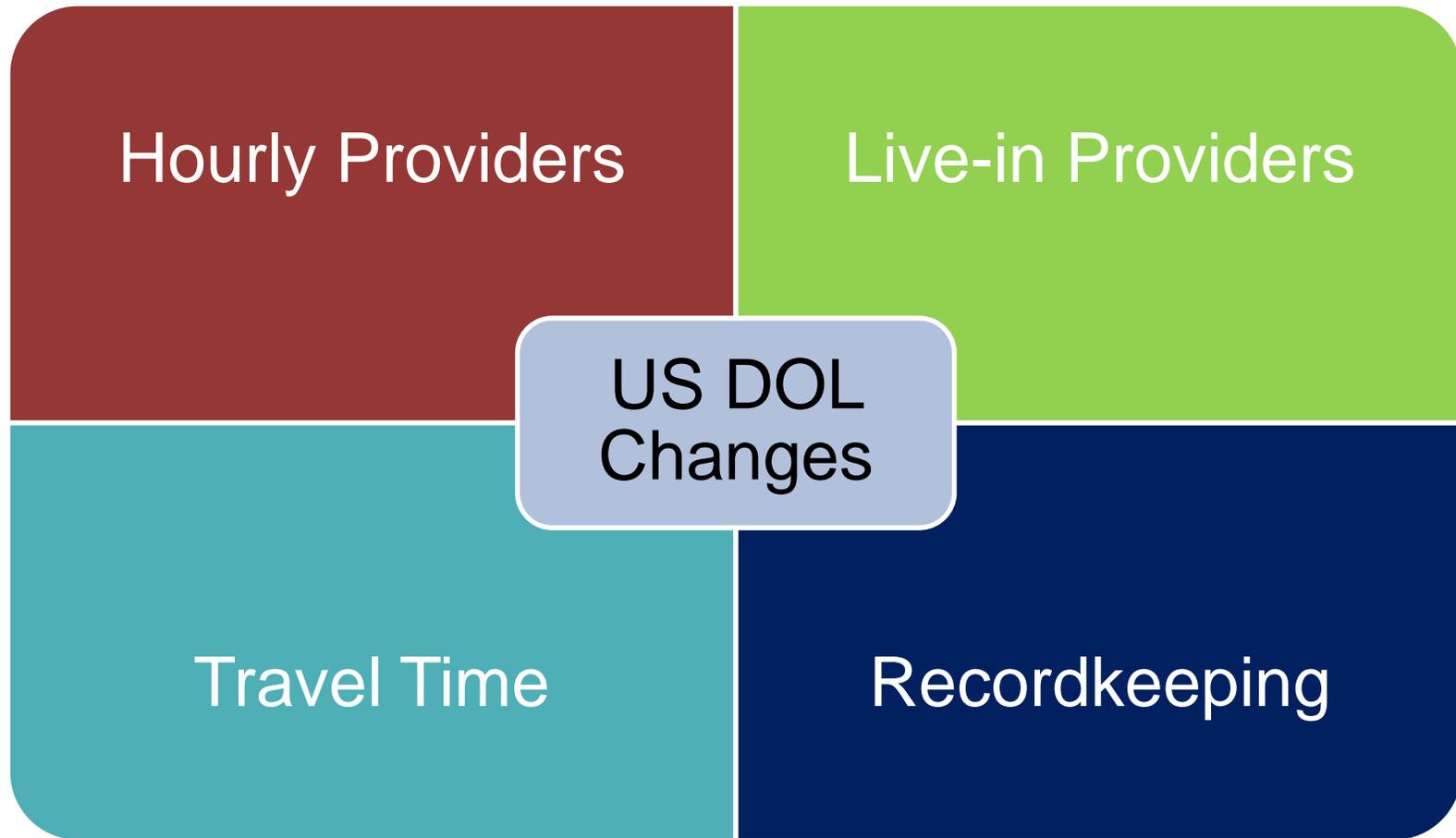
## Changes to the Fair Labor Standards Act

# Fair Labor Standards Act Changes

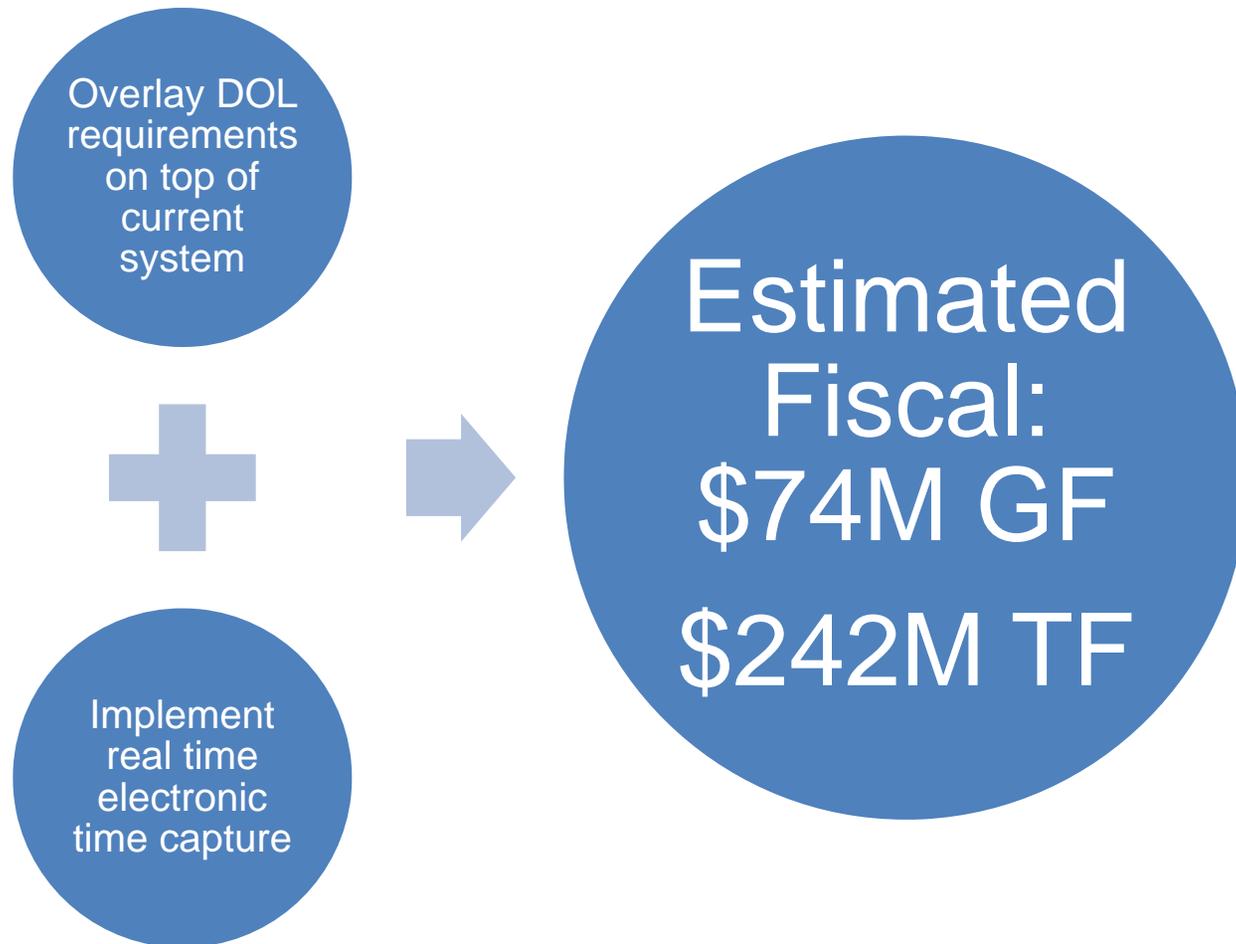
- On October 1<sup>st</sup>, 2013, the US Department of Labor (DOL) issued final rules that extended minimum wage and overtime protections.
- Rules affect Home Care Workers (HCWs) and Personal Support Workers (PSWs) paid in APD and DD systems
- *Minimal impact to OHA*



# Rule Change Topics



# Fiscal Impact of Implementation without Program Changes



## DOL Rationale

- Consistent interpretations of Fair Labor Standards Act regulations
- Minimum wage protections
- Workforce demand in changing market
- Workforce participation profile
  - *(90% women/ 50% minority)*
- Industry practices



# HCW / PSW Compensation in Oregon

- Collective Bargaining
- Hourly Wage: \$13.75-\$14.75
  - (\$6.88 standby for Live-in providers)
- Insurance (Medical/ Dental/ Vision)
- Paid Time Off
- Training
- Worker's Compensation Coverage
- Unemployment Coverage

# Joint Employer Relationship

State of Oregon = Joint Employer



Consumer Employers



Home Care Workers/ Personal Support Workers

# Regulation Impacts: Hourly Providers



15  
hours a  
week



15  
hours a  
week



15  
hours  
a week

Consumers determine the amount of hours their selected HCWs/ PSWs work in a week.

**Existing regulations:** Overtime is not required.

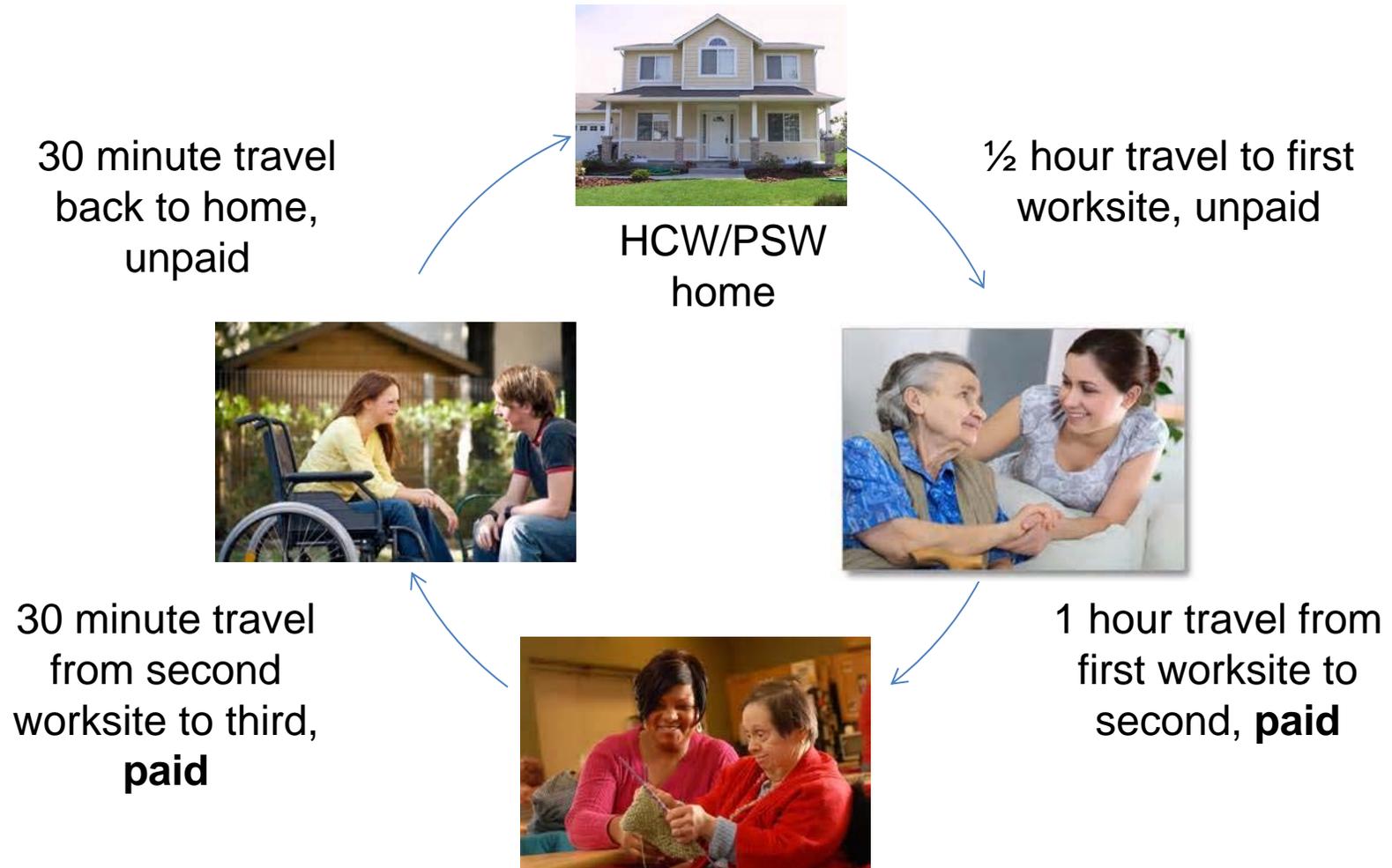
**Proposed regulations:** 5 hours Overtime.

# Regulation Impacts: Live-in Providers

- HCWs/PSWs must be paid at least minimum wage for all hours worked.
- Additional pay for availability time.
- Overtime liability after 40 hours.



# Regulation Impacts: Travel Time



# Regulation Impacts: Recordkeeping Requirements

- Consumers/ HCWs/ PSWs must report the number of hours and schedule for each worked day.
- State must capture and aggregate information across different delivery systems (APD/DD/AMH)

**WEEKLY TIME SHEET** NO PERSON TO WORK OVERTIME WITHOUT SPECIAL AUTHORIZATION!  
THIS TIME SHEET MUST BE PERSONALLY FILLED OUT AND SIGNED BY EMPLOYEE.

NAME OF EMPLOYEE		FOR WEEK ENDING						
DEPARTMENT		EXEMPTIONS						
DAY OF WEEK	MORNING		AFTERNOON		OVERTIME		FOR OFFICE USE ONLY	
	IN	OUT	IN	OUT	IN	OUT	REGULAR HOURS	OVERTIME HOURS
MONDAY								
TUESDAY								
WEDNESDAY								
THURSDAY								
FRIDAY								
SATURDAY								
SUNDAY								
<b>TOTAL</b>								

AUTHORIZATION OF OVERTIME \_\_\_\_\_ SIGNATURE \_\_\_\_\_  
eScribe 9507

# Governor's Budget: \$35M GF Investment



Hourly Providers: Limit the number of hours a HCW/PSW may work in a week.



Live-in Program: Narrow eligibility to only consumers with the most significant need.



Travel Time: Limit the amount of compensation attributable to travel.



Recordkeeping: Implement as required by rule.

# Current Litigation: Step 1

December 22, 2014: Federal District Judge Leon **vacated** the new definition of Third Party Employer.

January 14, 2015: Judge Leon **vacated** the new definition of “companionship services”.



## Current Litigation: Step 2

The Department of Labor has appealed the District Court's decision to the Court of Appeals for the District of Columbia.

Briefings are scheduled to conclude by early April, with oral arguments scheduled afterward. Decision expected late summer/early fall.



# Next Steps

Engage Legislature on contingency planning.

Seek additional feedback from Stakeholders.



# Contact

---

- **Mike McCormick, Director**  
Department of Human Services  
Aging and People with Disabilities Program  
Phone: 503-945-6229  
Email: [mike.r.mccormick@state.or.us](mailto:mike.r.mccormick@state.or.us)
- **Lilia Teninty, Director**  
Department of Human Services  
Intellectual and Developmental Disabilities Program  
Phone: 503-945-6918  
Email: [Llila.teninty@state.or.us](mailto:Llila.teninty@state.or.us)

# Department of Human Services

[www.oregon.gov/dhs](http://www.oregon.gov/dhs)

***Safety, Health and Independence for all Oregonians***

***For more Department of labor information see***

<http://www.dol.gov/whd/homecare/>

***For more on Home and Community-Based Rule changes  
information see***

[http://www.oregon.gov/dhs/dhsnews/Pages/hcbs-  
transitionplan.aspx](http://www.oregon.gov/dhs/dhsnews/Pages/hcbs-transitionplan.aspx)