

Office of Developmental Disabilities Services

A message from Lilia Teninty, Director



To: All ODDS Staff and Stakeholders

Many of you may have heard about the Home and Community-Based Services (HCBS) rule that was filed on January 1, 2016, which impacts the Office of Developmental Disabilities Services (ODDS) system. The rule is OAR [411-004](#) and all of our individual ODDS program rules now refer back to this HCBS rule for compliance.

The proposed rules ensure that individuals receive HCBS in settings that are integrated and support the same degree of access to the greater community as people not receiving Home and Community-Based Services.

One of the new requirements for residential providers (24-hour and foster care) is that the provider has a residency agreement with each individual who lives in the home. After consultation with our legal experts, it was determined that **ODDS will be able to provide our residential providers with templates to use as a resource for Residency Agreements.** For the providers who choose to create their own residency agreements, ODDS will have guidance available which will identify what is and is not permitted in a residency agreement. These residency agreements are available on the [ODDS website](#) and will be available on the [HCBS website](#).

Another expectation and requirement in the HCBS rule is that people are free from restraints and involuntary seclusion. ODDS is in the process of making additional changes to the definitions to ensure alignment with the HCBS rule and The Centers for Medicare & Medicaid (CMS) requirements, as well as to clarify the difference between a restraint and protective physical interventions (PPIs). During the past few weeks, ODDS has heard many concerns related to the new definitions. While ODDS does not endorse or allow restraints of a person, ODDS does support the interventions specifically referred to as 'protective physical

interventions' (PPIs). These interventions are designed to keep people free from harm while also teaching and encouraging appropriate behavior in a safe environment. There also have been concerns regarding potential changes to the manner in which interventions may be delivered and that these changes may begin as soon as July 2016. ODDS is committed to the implementation of a solid system to track and manage behavior interventions before any changes are implemented or approved by ODDS and will not be implementing new interventions without this solid foundation.

ODDS is holding workgroups to get input about the rule on behavior interventions and consultation. The rule will be a temporary emergency rule filed in July. There will be an opportunity for participation in a rule advisory committee later in the summer.

I would like to take a moment to address several questions that have come my way regarding the new behavior intervention rule:

Q. Will Oregon's Intervention System (OIS) be going away?

A. No, OIS is a valued behavior intervention model that works for many people. During the past 20 years, Oregonians have benefited from this structure. Having a rule to structure services is an elemental next-step in order to effectively regulate the manner in which behavior interventions are delivered and monitored.

Q. Why are restraints not allowed?

A. CMS and ODDS administrative rules do not allow people to be restrained as part of their natural rights of freedom. ODDS does recognize that there are a myriad of positive interventions that can be implemented in a manner designed around health and safety and our rules reflect this.

Q. Will I have an opportunity for input on the rules that are going to govern behavior interventions?

A. Yes, our rules will go through the regular rule making process and also be available for public comment before becoming permanent. Conversations started more than a year ago with several workgroups. Additionally, there have been multiple work sessions held with providers and partners in an effort to gather information to inform the rule making process.

Q. I've heard that the behavior intervention rule and ODDS is going to allow multiple behavior intervention systems. Right now it is only OIS that is allowed as of July 2016, is this true?

A. Rather than identifying any single behavior intervention system, the rule will be written to provide clarity around the underlying principles. The rule also will include an actual application of any behavior intervention model ODDS may approve and will ensure that it falls within the values and tenants of Positive Behavior Supports. Before any behavior intervention model is approved by ODDS, there will be processes developed to address issues around behavior interventions and a system developed to track the different interventions; the number of PPIs; and the separate positive behavior interventions that are being used to support people in being productive members of their communities.

Q. The new Definitions Rule ([OAR 411-317](#)) has a definition of "crisis" that doesn't work with OIS's definition of "crisis".

A. This definition was moved from the Community Developmental Disability rule (OAR 411- 320) to the definition rule (OAR 411-3217) and is not a new definition for ODDS in general. This definition will not be included in the permanent OAR 411-317 rule.

Q. Is it true that PPIs will not be permitted in the new Behavior Rule?

A. No, this is not true. The conceptual framework of Protective Physical Interventions will be clearly defined in the new Behavior Rule.

Transmittal for the weeks of February 14 - 21

- Action Request for Review of Employment Services and Non Residential Day Services with change form (this AR going to Providers, CDDPs and Brokerages for SCs and PAs)

To read all the transmittals:

<http://www.dhs.state.or.us/policy/spd/transmit/transmit.htm>.

Thank you for all of your hard work,

Lilia
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Director of the Office of Developmental Disabilities Services

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