

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

**CHAPTER 411
DIVISION 304**

**PROFESSIONAL BEHAVIOR SERVICES FOR CHILDREN AND ADULTS
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

EFFECTIVE NOVEMBER 1, 2019

411-304-0110 Statement of Purpose

(Adopted 12/01/2017)

(1) The rules in OAR chapter 411, division 304 establish the standards for behavior professionals and the delivery of professional behavior services to individuals with intellectual or developmental disabilities receiving family support services or positive behavior support services under the Community First Choice state plan.

(2) Professional behavior services are delivered by a behavior professional using a person-centered, problem-solving approach to address an individual's challenging behaviors. A behavior professional also provides consultation and training to the individual's designated person on the least intrusive strategies and supports to mitigate behaviors that may place the individual's health and safety at risk and prevent institutionalization.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-304-0120 Definitions and Acronyms

(Amended 11/01/2019)

In addition to the following definitions, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 304. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "ADL" means "activities of daily living".

(2) "Baseline Behavior" means the standard measurement of an individual's state of behavior prior to behavior supports.

(a) An individual's baseline behavior is measured by the duration, frequency, intensity, and severity of the individual's behavior over an established period of time prior to the implementation of an initial or revised Positive Behavior Support Plan.

(b) An individual's baseline behavior is used as a reference point to identify the effectiveness of behavior supports.

(3) "Behavior Data" means the information gathered for the purposes of recording the following:

(a) Baseline behavior.

(b) Duration, frequency, intensity, and severity of challenging behavior.

(c) Behavior supports.

(d) Other information and observations critical to the analysis of the effectiveness of a Positive Behavior Support Plan and Functional Behavior Assessment.

(4) "Behavior Data Collection System" means the methodology specified within a Positive Behavior Support Plan directing the process for recording observations, interventions, and other support provision information critical to the analysis of the effectiveness of the Positive Behavior Support Plan.

(5) "Behavior Professional" means a behavior consultant who meets the qualifications in OAR 411-304-0170 and delivers the professional behavior services described in OAR 411-304-0140.

(6) "Behavior Supports" means the emergency crisis strategy, proactive strategy, reactive strategy, and recovery strategy, as defined in this rule, included in a Positive Behavior Support Plan or Temporary Emergency

Safety Plan and delivered by a designated person to assist an individual with challenging behavior.

(7) "Challenging Behavior" means a behavior due to an individual's disability preventing the individual from accomplishing ADLs, IADLs, and health-related tasks, or threatening the health and safety of the individual or others.

(8) "Designated Person" means the person who implements the behavior supports identified in an individual's Positive Behavior Support Plan. An individual's designated person may include, but is not limited to, an individual's parent, family member, primary caregiver, or service provider.

(9) "Emergency Crisis Strategy" means the behavior supports used when an individual is in imminent danger of injuring self or others.

(10) "FBA" means "Functional Behavior Assessment".

(11) "Functional Alternative Behavior" means a replacement behavior to an identified challenging behavior that achieves the same outcome as the challenging behavior.

(12) "Functional Behavior Assessment" means the document written by a behavior professional in accordance with OAR 411-304-0150 that describes an individual's challenging behavior and the underlying causes or functions of the challenging behavior.

(13) "HIPAA" means the "Health Insurance Portability and Accountability Act".

(14) "IADL" means "instrumental activities of daily living."

(15) "ISP" means "Individual Support Plan".

(16) "OCCS" means "Office of Client and Community Services".

(17) "ODDS" means "Office of Developmental Disabilities Services".

(18) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(19) "PBSP" means "Positive Behavior Support Plan".

(20) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to or adjacent to an individual's body that the individual cannot remove easily, which restricts freedom of movement or normal access of the individual to the individual's body. Any manual method includes physically restraining an individual by manually holding the individual in place.

(21) "Positive Behavior Support Plan" means the document written by a behavior professional in accordance with OAR 411-304-0150 that describes behavior supports used to reduce the frequency or intensity of an individual's challenging behavior.

(22) "Positive Behavior Support Services" mean the professional behavior services and behavior supports, provided to assist an individual with challenging behaviors. Positive behavior support services are available through the Community First Choice state plan.

(23) "Positive Behavior Theory and Practice" means a proactive approach to behavior supports that:

(a) Is evidence-based and emphasizes the development of functional alternative behaviors.

(b) Uses the least intrusive intervention possible.

(c) Includes safeguards to ensure abusive, punishing, or demeaning behavior supports are never used.

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

(24) "Proactive Strategy" means the behavior supports used to prevent a challenging behavior from occurring.

(25) "Professional Behavior Services" mean the positive behavior support services delivered by a behavior professional as described in OAR 411-304-0140.

(26) "Reactive Strategy" means the behavior supports used to respond to an individual's escalating behavior, including changes in the duration, frequency, intensity, and severity of the behavior. A reactive strategy redirects, problem solves, and otherwise diminishes the escalation of behavior that requires an emergency crisis strategy.

(27) "Recovery Strategy" means the behavior supports used to assist an individual to reintegrate into their daily routine after the use of an emergency crisis strategy. The term "recovery strategy" is also referred to as "post-crisis" or "stabilization strategies".

(28) "Safeguarding Equipment" means a device that meets the definition of a "physical restraint" in this rule, requires an individually-based limitation consistent with OAR 411-415-0070, and is used to:

- (a) Maintain body position;
- (b) Provide proper balance; or
- (c) Protect an individual from injury, symptoms of a medical condition, or harm from a challenging behavior.

(29) "Safeguarding Intervention" means a manual physical restraint, applied by a designated person certified to use the safeguarding intervention according to OAR 411-304-0160, that:

- (a) Has been authored by a behavior professional as an emergency crisis strategy within a Positive Behavior Support Plan;
- (b) Has been consented to through the individually-based limitation process consistent with OAR 411-415-0070; and
- (c) Is used as an emergency crisis strategy to protect an individual from:
 - (A) Harming themselves;
 - (B) Harming others; or

(C) When the individual's behavior is likely to lead to intervention by law enforcement.

(30) "Telecommunications Technology" means secure, two-way, real time interactive communication strategies that may substitute for face-to-face interactions only during the delivery of professional behavior services as described in OAR 411-304-0140.

(31) "Temporary Emergency Safety Plan" means a document outlining the behavior supports and environment thought by a behavior professional to be necessary to support an individual exhibiting challenging behavior prior to the completion of a Functional Behavior Assessment and Positive Behavior Support Plan.

(32) "TESP" means "Temporary Emergency Safety Plan".

(33) "These Rules" mean the rules in OAR chapter 411, division 304.

(34) "Training" means the direction, guidance, and instruction provided by a behavior professional to a designated person including, but not limited to, the following:

(a) Demonstrating behavior supports.

(b) Observing the delivery of a specific behavior support or safeguarding intervention strategy.

(c) Providing structured examples and scenarios.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 427.104, 430.610, 430.620, 430.662, 430.664

411-304-0130 Eligibility for Professional Behavior Services

(Adopted 12/01/2017)

(1) An individual may not be denied professional behavior services or otherwise discriminated against on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, source of

income, duration of Oregon residence, or other protected classes under federal and Oregon Civil Rights laws.

(2) To be eligible for professional behavior services, an individual must meet the following requirements:

(a) Be determined eligible for developmental disabilities services by a Community Developmental Disabilities Program in the county of origin as described in OAR 411-320-0080 or receive children's intensive in-home services as described in OAR chapter 411, division 300.

(b) Be receiving one of the following:

(A) Family support services as described in OAR chapter 411, division 305.

(B) A Medicaid Title XIX benefit package through OSIPM or the OCCS Medical Program. Individuals receiving Medicaid Title XIX under OCCS medical coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if they were requesting these services under OSIPM, including the rules regarding the following:

(i) The transfer of assets as set forth in OAR 461-140-0210 through 461-140-0300.

(ii) The equity value of a home which exceeds the limits as set forth in OAR 461 145-0220.

(c) Be determined to meet the level of care as defined in OAR 411-317-0000 and enrolled in Community First Choice state plan services, except for individuals receiving family support services as described in OAR chapter 411, division 305.

(d) For individuals with excess income, contribute to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620, except for individuals receiving family support services as described in OAR chapter 411, division 305.

(e) A functional needs assessment, a similar assessment used for family support services, or an individual's ISP team identifies a challenging behavior that may benefit from professional behavior services and the individual's ISP or Annual Plan indicates the individual may benefit from professional behavior services.

(3) Additional service limitations are described in OAR 411-304-0140.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-304-0140 Professional Behavior Services and Limitations

(Adopted 12/01/2017)

(1) PROFESSIONAL BEHAVIOR SERVICES.

(a) Professional behavior services include:

(A) Gathering and analyzing data and information for the development of an FBA and PBSP.

(B) Creating an FBA and PBSP.

(C) Initial instruction to an individual on the functional alternative behavior based on the individual's FBA and PBSP.

(D) Initial training to an individual's designated person on the behavior supports included in the individual's PBSP.

(E) Analyzing and updating the behavior supports developed as part of a PBSP.

(F) Modifying and revising a PBSP, as needed, including when determined necessary by an individual's ISP team.

(G) Maintenance of the PBSP.

(b) Professional behavior services must be authorized in an individual's ISP consistent with OAR 411-415-0070.

(c) Professional behavior services must meet the conditions for ancillary services described in OAR 411-435-0040.

(2) TELECOMMUNICATIONS TECHNOLOGY. Professional behavior services may be delivered using secure, two-way, real time interactive telecommunications technology when all of the following conditions are met:

(a) An individual's ISP team approves the use of telecommunications technology and the approval is documented in the individual's ISP, or for family support services, documented in the individual's Annual Plan.

(b) An individual or their legal or designated representative approves the use of telecommunications technology and provided written permission. An individual or their legal or designated representative may revoke their permission to use telecommunications technology at any time.

(c) Each person participating in telecommunications technology provided written permission, including acknowledgement the information received is analyzed by the behavior professional for the purposes of delivering professional behavior services.

(3) LIMITATIONS.

(a) Professional behavior services do not include the following:

(A) Assessing and identifying behavior supports solely to meet the needs of an individual at school and educational services for school-age individuals, such as consultation and training classroom staff.

(B) Community living supports as described in OAR chapter 411, division 450.

(C) Dance or movement therapy.

- (D) Family therapy or sibling interaction counseling.
- (E) Hippotherapy (equine therapy).
- (F) Rehabilitation or treatment of mental health conditions, such as therapy or counseling.
- (G) Money or resource management.
- (H) Music therapy.
- (I) General parent education or parenting classes.
- (J) Services or supports available under Medicaid Title XIX, private insurance, or alternative resources.
- (K) Sex offender treatment.
- (L) Speech and language pathology.
- (M) Modifications to a medical order directing the use of safeguarding equipment or a safeguarding intervention.
- (N) Communication or activities not directly related to the development, implementation, or maintenance of an individual's PBSP.
- (O) Vocational rehabilitation services.

(b) Professional behavior services may not be provided when Department-funded services are suspended or where delivery of services is prohibited including, but not limited to, the following settings:

- (A) Jail or juvenile or adult correctional facility.
- (B) Medical or psychiatric hospital.
- (C) Nursing facility.

(D) Education related settings where special education and related services are available to an individual through a local educational agency.

(E) Sub-acute facility.

(c) The amount of professional behavior services an individual may receive are established in the Expenditure Guidelines. The Department shall consider a request to exceed the amount if an individual is unable to have their support needs related to ADL, IADL, and health-related tasks met because of one of the following:

(A) The individual requires behavior supports to address their challenging behaviors in multiple service settings.

(B) The individual exhibits exceptionally complex behavior that actively poses a health and safety threat to self or others.

(C) Translation or interpretation services are required to overcome a language barrier between the individual and their behavior professional.

(D) The individual currently exhibits fluctuating challenging behaviors or has a relevant history of frequently changing challenging behaviors.

(E) The designated person delivering supports to the individual changes frequently.

(F) The individual resides or receives services in a frequently changing or unstable environment.

(G) Other circumstances are present that the Department determines require additional support.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-304-0150 Professional Behavior Service Planning
(Adopted 12/01/2017)

(1) The service planning standards described in this rule apply to all professional behavior services delivered after December 31, 2017.

(2) A behavior professional develops and implements the following:

(a) A TESP as described in section (4) of this rule.

(b) An FBA as described in section (5) of this rule.

(c) A PBSP as described in section (6) of this rule.

(d) Maintenance of the PBSP as described in section (7) of this rule.

(3) A behavior professional must review the documents described in section (2) of this rule with an individual and their case manager and designated person.

(4) TESP.

(a) A behavior professional must deliver a TESP to an individual and their case manager and designated person within 15 days after the behavior professional agrees in writing to deliver professional behavior services, unless otherwise agreed to by the individual or the individual's legal or designated representative.

(b) The TESP must include all of the following:

(A) An explanation supporting the need for a TESP including, but not limited to, identifying all of the following:

(i) The challenging behavior.

(ii) Environments or environmental factors likely to be associated with, or to trigger, the challenging behavior.

(iii) Conditions that impact an individual's physical functioning.

(iv) Any known or suspected medical or mental health conditions.

(v) Medical and behavior supports currently being used.

(vi) The ADLs, IADLs, and health-related tasks where assistance and supports are needed.

(vii) The presence of an established individually-based limitation as required by OAR 411-415-0070.

(B) An expiration date, not to exceed 90 days, and a timeline for completion of the FBA and PBSP. The date may be extended up to an additional 90 days with approval from the individual and the individual's case manager as described in OAR 411-415-0070.

(C) The behavior professional's recommended behavior supports.

(D) Direction for a designated person to notify the individual's case manager within 24 hours of the occurrence of a challenging behavior resulting in the application of an emergency crisis strategy or any physical restraint.

(5) FBA. A behavior professional must complete an FBA including, but not limited to, all of the following:

(a) A record of interviews, observations, and a file review of relevant, existing, and available behavior data.

(b) Justification of the need to develop behavior supports.

(c) An individual's preferences for the delivery of behavior supports.

(d) Consideration that the function of a challenging behavior is for one or more of the following reasons:

(A) An effort to communicate.

- (B) The result of a medical or mental health condition.
 - (C) A response to trauma.
 - (D) An effort to control the environment.
- (e) A description of the context in which a challenging behavior occurs, including the situations where the challenging behavior is most likely and least likely to occur.
- (f) An assessment of all of the following:
- (A) An individual's behavior in all environments in which the individual commonly engages, or an explanation as to why an assessment is not available for a specific environment.
 - (B) An individual's current ability to accomplish ADL, IADL, and health-related tasks that are relevant to the development of the FBA and PBSP.
 - (C) Communication, assistive devices or technology, safeguarding equipment, environmental modifications, and specialized supports, currently in place.
- (g) A summary of other behavior intervention or treatment plans, including any mental health or educational plans, or a statement that no other behavior intervention or treatment plans exist.
- (h) A measurable description of each challenging behavior including the duration, frequency, intensity, and severity, or an explanation as to why the data or information is unavailable.
- (i) Documentation of an understanding of what the ISP team believes are important challenging behaviors to be addressed.
- (j) Factors that may impact the success of the PBSP.

(k) A statement of professional judgment by the behavior professional regarding the underlying cause or the functions of a challenging behavior.

(l) Statement by the behavior professional supporting the need for a PBSP or an explanation as to why a PBSP is not indicated.

(m) Identification of the sources used as references for the FBA.

(6) PBSP.

(a) A behavior professional must develop and write a PBSP based on an FBA. The PBSP must include, at a minimum, all of the following:

(A) A description of the challenging behavior.

(B) A description of the baseline behavior.

(C) The triggers for the challenging behavior.

(D) Behavior supports meant to reduce duration, frequency, intensity, or severity of the challenging behavior.

(E) An individual's preferences for the delivery of behavior supports.

(F) Established individually-based limitations.

(G) Strategies to help a designated person understand, de-escalate, redirect, or reduce an individual's challenging behavior including, but not limited to, all of the following:

(i) Proactive strategy.

(ii) Reactive strategy or an explanation when not needed.

(iii) Emergency crisis strategy or an explanation when not needed.

(iv) Recovery strategy or an explanation when not needed.

(H) Evidence the behavior supports address medical, biological, environmental, psychological, social, historical, trauma, and other factors that influence an individual's behavior.

(I) Person-centered planning including, at a minimum, identification of all of the following:

(i) The supports available to an individual to support a functional alternative behavior.

(ii) The circumstances that prevent an individual from accomplishing ADLs, IADLs, and health-related tasks.

(J) The behavior data collection system.

(K) Indicators for a review and revision of the PBSP, including who is responsible for the review.

(L) A plan to phase out professional behavior services.

(M) Identification of the sources used as references for the PBSP.

(b) Behavior supports must be consistent with these rules and positive behavior theory and practice. Behavior supports must include a proactive strategy that achieves all of the following:

(A) Functional alternative behaviors that are safe.

(B) A decrease in challenging behaviors and need for behavior supports.

(C) An increase in autonomy and community participation and inclusion.

(c) Safeguarding interventions may be included when necessary and must adhere to OAR 411-304-0160.

(d) Safeguarding equipment may be included when necessary.

(A) A behavior professional must acknowledge that prior to the use of safeguarding equipment, an individual must have an individually-based limitation for restraint in accordance with OAR 411-415-0070.

(B) The PBSP may only indicate the use of safeguarding equipment to address a challenging behavior.

(C) The PBSP must document all of the following:

(i) The specific challenging behavior for which the safeguarding equipment is to be used.

(ii) The specific device to be applied.

(iii) Identification of the necessary qualifications or training of the designated person applying the safeguarding equipment.

(iv) Situations for when to employ the use of safeguarding equipment.

(v) The length of time the safeguarding equipment may be applied in any instance.

(e) A behavior professional must --

(A) Review the information outlined in a PBSP with the individual and their legal or designated representative and designated person.

(B) Demonstrate the behavior supports written in a PBSP to the individual and their legal or designated representative and designated person.

(C) Provide initial training to an individual's designated person on the behavior supports identified in the individual's PBSP.

(D) With consent from an individual or their legal or designated representative, observe the individual's designated person implementing the PBSP, or role-playing portions of the PBSP.

(E) Gather feedback from an individual's designated person to inform modifications to the PBSP prior to finalizing the PBSP.

(7) MAINTENANCE OF THE PBSP. A behavior professional must maintain and update an individual's PBSP as necessary. Maintenance of the PBSP includes, but is not limited to, providing written documentation of all of the following elements:

(a) Developing, training, implementing, and maintaining a behavior data collection system to be utilized by an individual's designated person.

(b) Gathering, evaluating, and revising behavior data and data tracking on the effectiveness of the behavior supports outlined in an individual's PBSP.

(c) Conducting observations, evaluating, and re-evaluating an individual's response to the behavior supports outlined in their PBSP and delivered by their designated person.

(d) Providing training to an individual's designated person on any updates made to the PBSP.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-304-0160 Safeguarding Interventions

(Adopted 12/01/2017)

(1) A behavior professional may only include a safeguarding intervention in a PBSP when all of the following conditions are met:

(a) The safeguarding intervention is directed for use only --

(A) As an emergency crisis strategy.

(B) For as long as the situation presents imminent danger to the health or safety of the individual or others.

(C) As a measure of last resort.

(b) The behavior professional has weighed the potential risk of harm to an individual from the safeguarding intervention against the potential risk of harm from the behavior.

(c) The safeguarding intervention is in accordance with an ODDS-approved behavior intervention curriculum or the behavior professional has secured written authorization from the curriculum's oversight body to modify the safeguarding intervention. A copy of the authorization to modify a safeguarding intervention must be attached to the PBSP.

(d) The behavior professional acknowledges that prior to the implementation of any safeguarding intervention, an individual must have an individually-based limitation for restraint in accordance with OAR 411-415-0070.

(2) The Department does not authorize a safeguarding intervention that includes, but is not limited to, any of the following characteristics:

(a) Abusive.

(b) Aversive.

(c) Coercive.

(d) For convenience.

(e) Disciplinary.

(f) Demeaning.

(g) Mechanical.

(h) Prone or supine restraint.

(i) Pain compliance.

(j) Punishment.

(k) Retaliatory.

(3) When a PBSP is newly developed or revised and includes a safeguarding intervention, the PBSP must include a summary of all of the following:

(a) The nature and severity of imminent danger requiring a safeguarding intervention.

(b) A history of unsafe or challenging behaviors exhibited by the individual.

(c) A description of the training and characteristics required for the designated person applying the safeguarding intervention.

(d) Less intrusive measures determined to be ineffective or inappropriate for the individual.

(4) A behavior professional and designated person applying safeguarding interventions must be trained on the use of safeguarding interventions by a person who is appropriately certified in an ODDS-approved behavior intervention curriculum.

(5) A behavior professional must only use safeguarding interventions the behavior professional is certified to use.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-304-0170 Qualifications and Standards for Behavior Professionals
(Adopted 12/01/2017)

(1) A person who is hired, promoted, or enrolled to deliver professional behavior services must meet at least one of the following requirements:

(a) Possess a Board-Certified Behavior Analyst® (BCBA®) graduate-level certification in behavior analysis and one year of experience using positive behavior support services with individuals who experience intellectual or developmental disabilities.

(b) Possess a Master of Arts or Master of Science in psychology, sociology, human services, education, social work, or the equivalent as evidenced by providing transcripts indicating applicable coursework, and one year of experience using positive behavior support services with individuals who experience intellectual or developmental disabilities.

(c) Possess a Bachelor of Arts or Bachelor of Science in psychology, sociology, human services, education, social work, or the equivalent as evidenced by providing transcripts indicating applicable coursework, and three years of experience using positive behavior support services with individuals who experience intellectual or developmental disabilities.

(d) A minimum of six years of experience performing professional behavior services using positive behavior support services prior to January 1, 2021.

(2) A behavior professional must meet all of the following requirements:

(a) Be proficient in the English language.

(b) Maintain a current approved criminal background check specific to their role as a behavior professional as described in OAR 407-007-0200 through 407-007-0370.

(c) Complete a minimum of 12 hours each enrollment period of ongoing education in the field of positive behavior support services, adaptive behaviors, behavior management, or a related topic.

(d) Maintain certification in an ODDS-approved behavior intervention curriculum.

(3) An independent provider of professional behavior services must submit all of the following information to the Department upon the renewal of their provider enrollment agreement or upon request:

(a) Redacted copies of an FBA, PBSP, or both, and the corresponding invoice.

(b) Proof of ongoing education.

(c) Current certification from an ODDS-approved behavior intervention curriculum.

(d) Current approved criminal background check specific to their role as a behavior professional as described in OAR 407-007-0200 through 407-007-0370.

(4) An agency provider of professional behavior services must maintain all of the following information for each behavior professional within their agency and make available to the Department upon request:

(a) Redacted copies of an FBA, PBSP, or both, and the corresponding invoice.

(b) Proof of ongoing education.

(c) Current certification from an ODDS-approved behavior intervention curriculum.

(d) Current approved criminal background check specific to their role as a behavior professional as described in OAR 407-007-0200 through 407-007-0370.

(5) Effective October 31, 2018, a behavior professional may not deliver professional behavior services to an individual in a dual capacity. A dual capacity relationship includes a situation where an individual is receiving professional behavior services from a behavior professional who concurrently, or within one year, has or had a different provider role for the same individual including, but not limited to, any of the following:

- (a) Personal support worker.
- (b) Therapist.
- (c) Counselor.
- (d) Case manager.
- (e) Life coach.
- (f) Employment and community inclusion service provider.
- (g) Speech and language pathologist.
- (h) Occupational therapist.
- (i) Nurse.

(6) A behavior professional must adhere to the confidentiality standards as described in the following:

- (a) The behavior professional's provider enrollment agreement.
- (b) Federal HIPAA standards for any written, verbal, digital, video, or electronic information.
- (c) The Department's rules for privacy and confidentiality in OAR chapter 407, division 014.

(7) A behavior professional must make reports of suspected abuse consistent with the following:

- (a) ORS 419B.010 and 419B.015 for abuse of a child.
- (b) ORS 124.060 and 124.065 for abuse of an older adult 65 years of age or older.
- (c) ORS 430.737 and 430.743 for abuse of an adult with an intellectual or developmental disability or mental illness.

(d) ORS 441.640 and 441.645 for abuse of a resident.

(8) A behavior professional must inform an individual's case management entity --

(a) Immediately upon any reasonable suspicion that an individual is the victim of abuse.

(b) Within five business days upon identifying a challenging behavior that may be the result of an individual experiencing a medical issue, medication interaction, or mental health issue.

(c) Within 24-hours of any injury or unusual incident involving an individual.

(9) Failure to adhere to the requirements of these rules may result in restrictions to, or termination of, a behavior professional's Medicaid provider number, certificate, or endorsement.

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411-304-0180 Provider Types and Agency Endorsement

(Adopted 12/01/2017)

(1) Delivery of professional behavior services is limited to the following provider types:

(a) An independent provider meeting the standards in OAR chapter 411, division 375 and the qualifications in OAR 411-304-0170.

(b) An agency certified in accordance with OAR chapter 411, division 323 and endorsed to these rules, when the employee of the agency delivering the service meets the qualifications in OAR 411-304-0170.

(c) An agency certified in accordance with OAR chapter 411, division 323 and endorsed to OAR chapter 411 division 325 or division 328, when the employee of the agency delivering the service meets the qualifications in OAR 411-304-0170.

(d) The following provider types until their certification is renewed as described in OAR 411-323-0030, when the employee delivering the service meets the qualifications in OAR 411-304-0170:

(A) A provider organization certified under OAR chapter 411, division 340.

(B) An agency certified under OAR chapter 411, division 323 and endorsed to OAR 411-340-0170.

(C) An agency certified under OAR chapter 411, division 323 and endorsed to OAR chapter 411, division 450 for community living supports.

(D) An agency certified under OAR chapter 411, division 323 and endorsed to OAR chapter 411, division 325 for 24-hour residential programs or to OAR chapter 411, division 328 for supported living programs.

(2) AGENCY ENDORSEMENT.

(a) To be endorsed for professional behavior services, an agency must have the following:

(A) Certification and endorsement for professional behavior services in accordance with OAR chapter 411, division 323.

(B) A Medicaid Agency Identification Number assigned by the Department in accordance with OAR chapter 411, division 370.

(b) An agency must allow and comply with inspections and investigations in accordance with OAR 411-323-0040.

(c) An agency must comply with the management and personnel practices described in OAR 411-323-0050 and these rules.

(3) An individual may select any qualified, available provider of professional behavior services, regardless of the setting in which the individual resides.

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411-304-0190 Documentation and Records for Professional Behavior Services

(Amended 05/01/2019)

(1) A behavior professional must maintain documentation of all delivered professional behavior services and furnish the documentation to the Department, Oregon Health Authority, or case management entity, upon request. A behavior professional employed by a 24-hour residential or supported living agency is exempt from this requirement when providing professional behavior services to an individual within that setting. A behavior professional must document all of the following:

- (a) Date of service.
- (b) Who provided the service.
- (c) Location of where and method of how the service was provided.
- (d) Length of time required for the service, including start and end times.
- (e) Description of the service delivered.
- (f) People present when the service was delivered.

(2) The documents generated by a behavior professional during the delivery of professional behavior services belong to the individual.

(3) Unless stated otherwise, all documentation required by these rules must be:

- (a) Prepared at the time of, or immediately following, the event being recorded.
- (b) Accurate and contain no willful falsifications.

(c) Legible, dated, and signed by the behavior professional.

(4) A behavior professional must maintain a release of information in accordance with OAR chapter 407 division 014, for each individual receiving professional behavior services from the behavior professional.

(5) A behavior professional must maintain their records for professional behavior services until the behavior professional no longer provides services to the individual, at which time, the behavior professional must provide a copy of any part of the record that was not previously provided to the case management entity. The behavior professional must retain an individual's service record, following HIPAA practices, for a period of seven years. Financial records, supporting documents, statistical records, and all other records, other than an individual's service record, must be retained for at least three years after services have ended.

(6) Access to records by the Department and Oregon Health Authority including, but not limited to, medical, nursing, behavior, psychiatric, or financial records, does not require authorization or release by the individual or the individual's legal representative.

(7) A behavior professional must furnish requested documentation immediately upon the written or electronic request from the Department, Oregon Health Authority, Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, or within the timeframe specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payment.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-304-0200 Claim Reimbursement Requirements for Independent and Agency Providers of Professional Behavior Services
(Statutory Minor Correction 02/21/2018)

(1) Claim reimbursement is required for all professional behavior services delivered to an individual, unless the individual resides in a 24-hour or supported living program and the professional behavior services are

delivered by a qualified behavior professional who is employed or contracted by the 24-hour or supported living program.

(2) A behavior professional must maintain true and accurate information for claims, including the written documents and an invoice attesting the hours were delivered as billed. All invoices must be made available upon request by the case management entity, the Department, or their designees. An invoice for professional behavior services already delivered is required to be submitted to the Department accompanying any request for an exception to the Expenditure Guidelines.

(3) Payment for periodic or ongoing maintenance of the PBSP must --

(a) Meet the delivery of service requirements contained in these rules;

(b) Be prior authorized by the case management entity;

(c) Have the need for maintenance identified in an individual's ISP, or Annual Plan for family support services, and the ongoing maintenance is identified as a chosen service; and

(d) Only be paid when a progress note for the maintenance has been submitted by the behavior professional to the case management entity. The progress note must identify progress toward, or reason for regress from, the desired outcomes as identified in an individual's ISP, Annual Plan for family support services, or Service Agreement, as applicable. The progress note must include all of the following for each service delivered:

(A) Date of service.

(B) Who provided the service.

(C) Location of where the service was provided.

(D) Length of time required for the service, including start and end times.

(E) Description of the service delivered.

(F) People present when the service was delivered.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-304-0210 Individual Rights, Complaints, Notification of Planned Action, and Hearings

(Adopted 12/01/2017)

(1) Behavior professionals must have and implement written policies and procedures protecting the individual rights described in OAR 411-318-0010 and encourage and assist individuals to understand and exercise their rights related to the delivery of professional behavior services.

(2) Behavior professionals must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(a) Individual complaints by, or on behalf of, an individual must be addressed in accordance with OAR 411-318-0015.

(b) The behavior professional's policy and procedures for individual complaints must be explained and provided to an individual and their legal or designated representative at the start of professional behavior services.

(3) In the event professional behavior services are denied, reduced, suspended, or terminated or voluntarily reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(a) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination.

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

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-
430.670