

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

**CHAPTER 411
DIVISION 304**

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

EFFECTIVE JULY 1, 2022

411-304-0110 Statement of Purpose

(Amended 07/01/2022)

(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 behavior. A behavior professional also provides consultation and training to the individual's designated person on the least intrusive strategies to mitigate behaviors that may place the individual's health and safety at risk.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0120 Definitions and Acronyms

(Amended 07/01/2022)

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 an individual's typical behavior pattern, prior to the implementation of a new or revised Positive Behavior Support Plan, including both challenging and non-challenging behaviors used to meet an identified need.
- (3) "Behavior Data Collection System" means the methodology specified within a Positive Behavior Support Plan or Temporary Emergency Safety Plan for recording observations, interventions, and other information to analyze the effectiveness of behavior supports.
- (4) "FBA" means "Functional Behavior Assessment".
- (5) "HSD" means Health Systems Division, Medical Assistance Programs under the Oregon Health Authority.
- (6) "IADL" means "instrumental activities of daily living."
- (7) "ISP" means "Individual Support Plan".
- (8) "Measurable Description" means a description of the challenging behavior, including all of the following:
 - (a) The duration of the challenging behavior.
 - (b) The frequency of the challenging behavior.
 - (c) The intensity of the challenging behavior.
 - (d) The severity of the challenging behavior, including the effect of the behavior on the individual, others, or the environment.
- (9) "ODDS" means "Office of Developmental Disabilities Services".
- (10) "OSIPM" means "Oregon Supplemental Income Program-Medical".
- (11) "PBSP" means "Positive Behavior Support Plan".

(12) "Proactive Strategy" means interventions used on an ongoing basis to reduce the likelihood of the occurrence of a challenging behavior.

(13) "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.

(14) "Recovery Strategy" means the behavior supports used to reintegrate an individual into their daily routine after the use of an emergency crisis strategy. Recovery strategies are intended to assist the individual to return to a comfortable state.

(15) "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.

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

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

(18) "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 and correcting 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 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0130 Eligibility for Professional Behavior Services

(Temporary Effective 07/01/2022 - 12/27/2022)

(1) An individual considered for Department-funded services may not be denied professional behavior services or otherwise discriminated against on the basis of race, color, religion, sex, gender identity, 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 the Community Developmental Disabilities Program of the county of origin as described in OAR 411-320-0080, except for those enrolled in the Medically Involved Children's Waiver or the Medically Fragile Children's Program as described in OAR chapter 411, division 300.

(A) A child enrolled in the Medically Involved Children's Waiver must be determined eligible for the waiver as described in OAR 411-300-0120(7).

(B) A child enrolled in the Medically Fragile Children's Program must meet the eligibility requirements described in OAR 411-300-0120(5).

(b) Be an Oregon resident who meets the residency requirements in OAR 461-120-0010.

(c) 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 HSD Medical Programs. Individuals receiving Medicaid Title XIX under the HSD Medical Programs 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) A benefit package through the Healthier Oregon Program.

(d) 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.

(e) For individuals with excess income, contribute to the cost of service according 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.

(f) 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 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0140 Professional Behavior Services and Limitations
(Amended 07/01/2022)

(1) PROFESSIONAL BEHAVIOR SERVICES.

(a) Professional behavior services include:

- (A) Gathering and analyzing data and information for the development of the TESP, FBA, and PBSP.
- (B) Creating the TESP, FBA, and PBSP.
- (C) Orientation for an individual on the findings of the FBA and behavior supports included in the individual's TESP and PBSP.
- (D) Initial training to an individual's designated person on the findings of the FBA and behavior supports included in the individual's TESP and 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.

(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 or their legal or designated representative approves the use of telecommunications technology and the approval is documented in the individual's ISP or Annual Plan. An individual or their legal or designated representative may revoke their permission to use telecommunications technology at any time.
- (b) An individual must be provided appropriate support to access telecommunications technology.

(c) An individual must be provided the opportunity for in-person services in lieu of services performed through telecommunications technology.

(3) LIMITATIONS.

(a) Professional behavior services and behavior supports must not include any of the following characteristics:

- (A) Abusive.
- (B) Aversive.
- (C) Coercive.
- (D) For convenience.
- (E) Disciplinary.
- (F) Demeaning.
- (G) Pain compliance.
- (H) Punishment.
- (I) Retaliatory.

(b) Professional behavior services do not include any of 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.

(c) 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, any of 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.

(d) 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 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0150 Professional Behavior Service Planning
(Amended 07/01/2022)

- (1) A behavior professional develops and implements the following:
- (a) A TESP as described in section (3) of this rule.
 - (b) An FBA as described in section (4) of this rule.
 - (c) A PBSP as described in section (5) of this rule.
 - (d) Maintenance of the PBSP as described in section (6) of this rule.
- (2) A behavior professional must review the documents described in section (1) of this rule with an individual and their case manager and designated person.

(3) 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 or reference all of the following:

(A) An explanation of the need for a TESP, including all of the following:

(i) A measurable description of the challenging behavior addressed in the TESP.

(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, substance use, or medication interactions that may impact the challenging behavior.

(v) Medical and behavior supports currently being used.

(vi) A summary of the ADL, IADL, and health-related tasks for which supports are needed by the individual from their designated person, including a description of how the ADL, IADL, and health-related tasks may be impacted by the challenging behavior.

(vii) The presence of any relevant, existing individually-based limitation. A TESP may not establish any new individually-based limitations.

(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 recommended behavior supports and adjustments to the environment and guidelines for the designated person.

(D) A strategy for training the designated person. The training must only be completed by either of the following:

(i) The author of the TESP or, when the TESP includes a safeguarding intervention, a behavior professional certified in an ODDS-approved behavior intervention curriculum to train the intervention in the TESP.

(ii) A designated person delivering behavior supports identified by the author of the TESP who is certified in an ODDS-approved behavior intervention curriculum to train the intervention in the TESP.

(E) 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 any physical restraint.

(F) If any information required by this subsection is unavailable, the TESP must include documentation explaining why the information is unavailable.

(c) The behavior professional must identify who provided the training and the names of each known designated person who received the training in the individual's service record according to OAR 411-304-0190.

(d) A TESP may only include a safeguarding intervention when:

(A) The individual is entering a new service setting or a new challenging behavior becomes known; and

(B) The TESP includes documentation requirements for the use of a safeguarding intervention.

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

(a) A record of interviews, observations, and relevant, existing data. The FBA must document interviews with the individual, and, as applicable, family members, designated persons, and others who contributed to the development of the FBA.

(b) A summary of the individual's history, including a history of the individual's challenging behaviors.

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

(d) Documentation of the individual's intellectual or developmental disability diagnosis and how the diagnosis impacts the function of the challenging behavior.

- (e) An individual's preferences for the delivery of behavior supports.
- (f) Consideration that the function of a challenging behavior is one or more of the following:
 - (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.
- (g) 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.
- (h) 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) Assistive devices or technology, safeguarding equipment, and environmental modifications in place at the time the FBA is developed that are relevant to the development of the FBA and PBSP.
- (i) 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.
- (j) A measurable description of the challenging behavior.
- (k) Factors that may impact the success of the PBSP.

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

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

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

(o) If applicable, a recommendation for obtaining an individually-based limitation for strategies such as a safeguarding intervention.

(p) If any information required by this subsection is unavailable, the FBA must include documentation explaining why the information is unavailable.

(5) PBSP.

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

(A) A measurable description of each challenging behavior.

(B) A narrative describing the baseline behavior.

(C) A description of the functional alternative behavior.

(D) The triggers or setting events for the challenging behavior.

(E) A description of the common settings for the individual.

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

(G) Documentation of an individual's preferences for the delivery of behavior supports.

(H) The circumstances that are preventing the individual from accomplishing ADL, IADL, and health-related tasks and an explanation of what prevents the individual from being able to accomplish the ADL, IADL, or health-related task more independently.

(I) Any individually-based limitations in place at the time the PBSP is developed.

(J) 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.

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

(L) 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.

(M) The behavior data collection system.

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

(O) A plan to phase out professional behavior services. This may include the assignment of ongoing training.

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

(Q) If any information required by this subsection is unavailable or not applicable, the PBSP must include documentation explaining why the information is unavailable.

(b) Behavior supports must be consistent with these rules and positive behavior theory and practice. Behavior supports must include a proactive strategy to achieve 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 according to 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 or assign training on implementing the PBSP to an individual's designated person. The training may only be completed by:

(i) The author of the PBSP or when a PBSP includes a safeguarding intervention, a behavior professional certified in an ODDS-approved behavior intervention curriculum to train the intervention in the PBSP.

(ii) A person delivering behavior supports designated by the author of the PBSP who is certified in an ODDS-approved behavior intervention curriculum to train the interventions in the PBSP.

(D) Identify who provided the training and the names of each known designated person who received the training in the individual's service record according to OAR 411-304-0190.

(E) 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.

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

(6) 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) Updating the FBA.

(b) Developing, training, implementing, and updating a behavior data collection system.

(c) Reviewing data collected from the behavior data collection system.

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

(e) Training and retraining, as applicable, an individual's designated person on updates made to the PBSP.

(f) Participating in meetings when the meeting may result in an update to the PBSP.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0160 Safeguarding Interventions

(Amended 07/01/2022)

(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 according to OAR 411-415-0070.

(2) The following safeguarding interventions are prohibited:

(a) A safeguarding intervention with any of the following characteristics:

(A) Abusive.

(B) Aversive.

- (C) Coercive.
- (D) Demeaning.
- (E) Disciplinary.
- (F) For convenience.
- (G) Punishment.
- (H) Retaliatory.

- (b) Chemical restraint.
- (c) Mechanical restraint.
- (d) Prone restraint.
- (e) Supine restraint
- (f) Lateral floor restraint.

(3) When a PBSP 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 certified to train 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 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0170 Qualifications and Standards for Behavior Professionals (Amended 07/01/2022)

(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 other social or behavioral sciences, or the equivalent, and one year of experience using positive behavior support services with individuals who experience intellectual or developmental disabilities or other related conditions.

(c) Possess a Bachelor of Arts or Bachelor of Science in psychology, sociology, human services, education, social work, social sciences, behavioral sciences, or the equivalent as evidenced by transcripts indicating a minimum of six courses in these fields, and two years of experience using positive behavior support services with individuals who experience intellectual or developmental disabilities, or other related conditions.

(d) A minimum of six years of experience providing professional behavior services with individuals who experience intellectual or developmental disabilities prior to January 1, 2023.

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

(a) 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.

(b) 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.

(c) 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) 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, has 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) 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.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0180 Provider Types and Agency Endorsement

(Amended 07/01/2022)

(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 according to 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.

(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 according to OAR chapter 411, division 323.

(B) A Medicaid Agency Identification Number assigned by the Department according to OAR chapter 411, division 370.

(b) An agency must allow and comply with inspections and investigations according to 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.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 409.010, 427.007, 427.104, 430.610, 430.662

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

(Amended 07/01/2022)

(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 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 according to 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 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 409.010, 427.007, 427.104, 430.610, 430.662

411-304-0200 Claim Reimbursement Requirements for Independent and Agency Providers of Professional Behavior Services

(Amended 07/01/2022)

(1) Claim reimbursement is required for all professional behavior services delivered to an individual.

(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 409.010, 427.007, 427.104, 430.610, 430.662

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

(Amended 07/01/2022)

(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 according to OAR 411-318-0015.

(a) Individual complaints by, or on behalf of, an individual must be addressed according to 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 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 are addressed according to ORS chapter 183 and OAR 411-318-0025.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 409.010, 427.007, 427.104, 430.610, 430.662