

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

**CHAPTER 411
DIVISION 317**

GENERAL DEFINITIONS

EFFECTIVE JANUARY 1, 2016

411-317-0000 Definitions for Developmental Disabilities Services
(Temporary Effective 01/01/2016 to 06/28/2016)

This rule, OAR 411-317-0000, defines terms frequently used in OAR chapter 411, divisions 300 to 380 for developmental disabilities services. The rules in OAR chapter 411, divisions 300 to 380 may include definitions specific to the subject matter in that division. If a word or term is defined differently than what is in this rule, the definition in that division applies, when used in that division.

(1) "24-Hour Residential Setting" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide home and community-based services to individuals with intellectual or developmental disabilities.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For a young adult aged 18 to 21 residing in a certified child foster home, "abuse" as defined in OAR 407-045-0260.

(c) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "Activities of Daily Living (ADL)" are the basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring. ADL services include, but are not limited to:

(a) Basic personal hygiene - providing or assisting with needs such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(b) Toileting, bowel, and bladder care - assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(c) Mobility, transfers, and repositioning - assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(d) Eating - assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating; and

(e) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability - helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(6) "Administration of Medication" means the act of placing a medication in or on the body of an individual by a person responsible for the care of the individual and employed by, or under contract to, the individual or as applicable the legal or designated representative of the individual or provider organization.

(7) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(8) "Adult" means an individual who is 18 years of age or older with an intellectual or developmental disability.

(9) "Advocate" means a person other than paid staff who has been selected by an individual or by the legal representative of an individual to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(10) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.

(11) "Alternative Resources" mean possible resources, not including developmental disability services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(12) "Annual Plan" means the written summary a services coordinator or personal agent completes for an individual who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an Individual Support Plan and is not a plan of care for Medicaid purposes.

(13) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances that are necessary to enable an individual to increase the ability of the individual to perform activities of daily living and instrumental activities of daily living or to perceive, control, or communicate with the home and community environment in which the individual lives.

(14) "Assistive Technology" means the devices, aids, controls, supplies, or appliances that are purchased to provide support for an individual and replace the need for direct interventions to enable self-direction of care and maximize independence of the individual.

(15) "Attendant Care" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(16) "Authority" means "Oregon Health Authority".

(17) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(18) "Bedroom" means the personal space and sleeping area of an individual receiving home and community-based services in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

(19) "Behavior Consultant" means a contractor with specialized skills who conducts functional assessments and develops a Behavior Support Plan.

(20) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(21) "Behavior Data Summary" means the document composed by a provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(22) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of an individual and to modify the behavior of the primary caregiver or provider, adjust environment, and teach new skills.

(23) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing activities of daily living, instrumental activities of daily living, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(24) "Brokerage" means "Support Services Brokerage" as defined in this rule.

(25) "Career Development Plan":

(a) Means the part of an ISP that identifies:

(A) The employment goals and objectives for an individual;

(B) The services and supports needed to achieve those goals;

(C) The people, agencies, and providers assigned to assist the individual to attain those goals;

(D) The obstacles to the individual working in an individualized job in a competitive integrated employment setting; and

(E) The services and supports necessary to overcome those obstacles.

(b) A Career Development Plan is based on person-centered planning principles.

(26) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes, but is not limited to, determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(27) "Case Management Contact" means a reciprocal interaction between a services coordinator or personal agent and an individual or the legal or designated representative of the individual (as applicable).

(28) "Centers for Medicare and Medicaid Services (CMS)". The Centers for Medicare and Medicaid Services is the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA) and overseeing Medicaid programs administered by the states through survey and certification.

(29) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(30) "Child" means an individual under the age of 18.

(31) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(32) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities about:

- (a) Case management;
- (b) Service options;
- (c) Service setting options; and
- (d) Provider types.

(33) "Chore Services" mean the services that are needed to restore a hazardous or unsanitary situation in the home to a clean, sanitary, and safe environment.

(34) "Claimant" means the person directly impacted by an action that is the subject of a hearing request.

(35) "Client Processing Monitoring System" means the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(36) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(37) "Community Developmental Disability Program" is the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals who are not enrolled in a Brokerage. A Community Developmental Disability Program operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(38) "Community First Choice (K Plan)" means the state plan amendment for Oregon authorized under section 1915(k) of the Social Security Act.

(39) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(40) "Community Transportation" means the services that enable an individual to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services.

(41) "Complaint" means an oral or written expression of dissatisfaction with a developmental disability service or provider.

(42) "Complaint Investigation" means the investigation of a complaint that has been made to a proper authority that is not covered by an investigation of abuse.

(43) "Complaint Log" means a list of complaint-related information.

(44) "Comprehensive Services" means a package of services, other than support services for adults, that is provided by or under the direction of a Community Developmental Disabilities Program and that includes at least one of the following living arrangements licensed or regulated by the Department of Human Services:

(a) Twenty-four-hour residential care, including but not limited to a group home, a foster home, or a supported living program.

(b) Assistance provided to maintain an individual in his or her own home or the family home.

(45) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(46) "Confidentiality" means the conditions for use and disclosure of specific information governed by other laws and rules including, but not limited to, OAR 407-014-0000 to 407-014-0070 (Privacy of Protected Information).

(47) "Continuing Services" means the continuation of a developmental disability service following the request for a hearing. Services continue until a Final Order is issued.

(48) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of an individual. Less costly alternatives include other service settings available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(49) "County of Origin" means:

(a) For an adult, the county of residence for the adult; and

(b) For a child, the county where the jurisdiction of guardianship exists.

(50) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(51) "Day" means a calendar day unless otherwise specified.

(52) "DD Administrative Hearing Request" means form SDS 0443DD.

(53) "Denial" means any rejection of a request for a developmental disability service or an increase in a developmental disability service. A denial of a Medicaid service requires a Notification of Planned Action.

(54) "Delegation" is the process by which a registered nurse authorizes a person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(55) "Department" means Department of Human Services.

(56) "Department Hearing Representative" means a person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0500.

(57) "Department Staff" means a person employed by the Department who is knowledgeable in a particular subject matter.

(58) "Designated Representative" means:

(a) A person who is 18 years of age or older, such as a parent, family member, guardian, or advocate, who is:

(A) Chosen by an individual or the legal representative of the individual;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual or, as applicable, the legal representative of the individual to serve as the representative of the individual or, as applicable, the legal representative in connection with the provision of funded supports.

(b) The power to act as a designated representative is valid until an individual modifies the authorization.

(c) An individual or the legal representative of the individual is not required to appoint a designated representative.

(59) "Developmental Disability" means a neurological condition that:

(a) Originates before an individual is 22 years of age or 18 years of age for an intellectual disability;

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely;

(c) Constitutes significant impairment in adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080;

(d) Is not primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD); and

(e) Requires training and support similar to an individual with an intellectual disability as described in OAR 411-320-0080.

(60) "Developmental Disability Service" include the following services and settings:

- (a) OAR chapter 411, division 004 for home and community-based services and settings;
- (b) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;
- (c) OAR chapter 411, division 305 for family support services for children with intellectual or developmental disabilities;
- (d) OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities;
- (e) OAR chapter 411, division 320 for Community Developmental Disability Programs;
- (f) OAR chapter 411, division 323 for agency certification and endorsement to provide services to individuals with intellectual or developmental disabilities in community-based settings;
- (g) OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities;
- (h) OAR chapter 411, division 328 for supported living settings for adults with intellectual or developmental disabilities;
- (i) OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities;
- (j) OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities;
- (k) OAR chapter 411, division 345 for employment services for individuals with intellectual or developmental disabilities;
- (l) OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities;
- (m) OAR chapter 411, division 350 for medically fragile children's services;

(n) OAR chapter 411, division 355 for the Medically Involved Children's Program;

(o) OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities; and

(p) OAR chapter 411, division 380 for direct nursing services for adults with intellectual or developmental disabilities.

(61) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services or Office of Licensing and Regulatory Oversight, or the designee of the Director, which may include Department Staff.

(62) "Employer" means, for the purposes of obtaining home care services through a personal support worker, the common law employer. The common law employer is the individual or a person selected by the individual or the legal representative of the individual to act on the behalf of the individual or the legal representative of the individual to conduct the responsibilities of an employer. An employer may also be a designated representative.

(63) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the legal or designated representative or family members of the individual, with directing and supervising provision of services described in the ISP for an individual. Employer-related supports may include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as service agreements; and

(d) Fiscal intermediary services.

(64) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency that has met the

qualification criteria outlined in OAR chapter 411, division 323 and the corresponding program rules.

(65) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(66) "Entry" means admission to a Department-funded developmental disability service or setting.

(67) "Environmental Modifications" mean the physical adaptations that are necessary to ensure the health, welfare, and safety of an individual in his or her home, or that are necessary to enable the individual to function with greater independence around his or her home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(68) "Environmental Safety Modifications" mean the physical adaptations that are made to the exterior of the home of an individual as identified in the ISP for an individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around his or her home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(69) "Exit" means termination or discontinuance of a Department-funded developmental disability service or setting.

(70) "Family Member" means spouse, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(71) "Family Training" means the training services that are provided to a family to increase the capacity of the family to care for, support, and maintain an individual in the family home.

(72) "Fiscal Intermediary" means a person or entity that receives and distributes funds on behalf of an employer.

(73) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(74) "Functional Needs Assessment" means the comprehensive assessment or reassessment appropriate to the specific program in which an individual is enrolled that:

- (a) Documents physical, mental, and social functioning;
- (b) Identifies risk factors and support needs; and
- (c) Determines the service level.

(75) "General Business Provider" means an organization or entity selected by an individual or the legal representative of the individual and paid with Department funds that:

- (a) Is primarily in business to provide the service chosen by the parent or guardian to the general public;
- (b) Provides services for the child through employees, contractors, or volunteers; and
- (c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(76) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of Department Staff or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(77) "Guardian" means the parent for an individual under the age of 18 or a person or agency appointed and authorized by a court to make decisions about services for an individual.

(78) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession. Examples of a health care provider include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), chiropractor, respiratory therapist (RT), physical therapist (PT), physician assistant (PA), dentist, or occupational therapist (OT).

(79) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(80) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(81) "Home" means the primary residence for an individual that is not under contract with the Department to provide services as a certified or licensed foster home, residential care facility, assisted living facility, nursing facility, or other residential setting. The home of an individual is not considered a provider owned, controlled, or operated residential setting.

(82) "Home and Community-Based Services" are services provided in the home or community of an individual.

(a) Home and community-based services are authorized under the following Medicaid authorities:

(A) 1915(c) - HCBS Waivers;

(B) 1915(i) - State Plan HCBS; or

(C) 1915(k) - Community First Choice (K State Plan Option).

(b) Home and community-based services are delivered through the following program areas:

(A) Department of Human Services, Aging and People with Disabilities;

(B) Department of Human Services, Office of Developmental Disabilities Services; and

(C) Oregon Health Authority.

(c) Home and community-based services may include alternative resources specifically authorized as home and community-based by the Department or Authority.

(83) "Home and Community-Based Setting" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives home and community-based services.

(84) "Imminent Danger" means there is reasonable cause to believe the life or physical, emotional, or financial well-being of an individual is in danger if no intervention is immediately initiated.

(85) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(86) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(87) "Independent Provider" means a person selected by an individual, or the legal or designated representative of the individual, and paid with Department funds to directly provide services to the individual.

(88) "Individual" means a child, young adult, or an adult applying for, or determined eligible for, Department-funded developmental disability services.

(89) "Individual-Directed Goods and Services" mean the services, equipment, or supplies, not otherwise provided through other waiver or state plan services, that address an identified need in the ISP for a child. Individual-directed goods and services may include services, equipment, or supplies that improve and maintain the full membership of a child in the community.

(90) "Individualized Education Program" is the written plan of instructional goals and objectives developed in conference with an individual, the parent or legal representative of an individual (as applicable), teacher, and a representative of the public school district.

(91) "Individually-Based Limitations" means any limitation to the qualities outlined in OAR 411-004-0020(2)(c) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(92) "Individual Support Plan (ISP)" An ISP includes the written details of the supports, activities, and resources required for a child to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects services and supports that are important to meet the needs of the child identified through a functional needs assessment as well as the preferences for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(93) "Instrumental Activities of Daily Living (IADL)" are the activities other than activities of daily living required to continue independent living. IADL services include, but are not limited to:

(a) Light housekeeping tasks necessary to maintain an individual in a healthy and safe environment - cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(b) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(c) Meal preparation and special diets;

(d) Support with participation in the community:

(A) Support with community participation - assisting an individual in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses, and improving self-awareness and self-control; and

(B) Support with communication - assisting an individual in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language, social responsiveness, social amenities, and interpersonal skills, and the functional application of acquired reading and writing skills.

(94) "Intake" means the activity of completing the DD Intake Form (SDS 0552) and necessary releases of information prior to the submission of a completed application to the Community Developmental Disability Program.

(95) "Integration" consistent with ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(96) "Intellectual Disability" means significantly subaverage general intellectual functioning defined as full scale intelligence quotients (IQs) 70

and under as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior directly related to an intellectual disability as described in OAR 411-320-0080 that is manifested during the developmental period prior to 18 years of age. Individuals with a valid full scale IQ of 71-75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior as diagnosed and measured by a licensed clinical or school psychologist as described in OAR 411-320-0080.

(97) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(98) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(99) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator or personal agent, and others chosen by the individual, or as applicable the legal representative of the individual, such as providers and family members.

(100) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by a court or other agreement. A legal representative acting outside of his or her authority or scope must meet the definition of designated representative.

(a) For an individual under the age of 18, the legal representative is the parent, unless a court appoints another person or agency to act as the guardian; and

(b) For an individual 18 years of age or older, the legal representative is the guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provides authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used.

(101) "Licensed Independent Practitioner" means a health care professional authorized by the state of Oregon to independently diagnose and treat.

(102) "Local Mental Health Authority" is:

- (a) The county court or board of county commissioners of one or more counties that operate a CDDP;
- (b) The tribal council in the case of a Native American reservation;
- (c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a CDDP; or
- (d) The advisory committee for the CDDP covering a geographic service area when managed by the Department.

(103) "Mandatory Reporter":

(a) Means --

(A) Any public or private official as defined in ORS 419B.005 who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official;

(B) Any public or private official as defined in ORS 430.735 who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult;

(C) Any public or private official as defined in ORS 124.050 who comes in contact with an older adult, age 65 and older, and has reasonable cause to believe the older adult has suffered abuse,

or comes in contact with any person whom the public or private official has reasonable cause to believe abused the older adult; and

(D) Any public or private official as defined in ORS 441.630 who comes in contact with a resident of a nursing facility and has reasonable cause to believe the resident has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the resident.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(104) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual. Mechanical restraint is not:

(a) The use of acceptable infant safety products;

(b) The use of car safety systems, consistent with applicable state law for people without disabilities; or

(c) Safeguarding equipment when ordered by a physician or health care provider and approved by the ISP team.

(105) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(106) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan or Annual Plan and the quality of services delivered by other organizations.

(107) "Natural Support" means:

(a) For a child, the parental responsibilities for the child and the voluntary resources available to the child from the relatives, friends, neighbors, and the community of the child that are not paid for by the Department.

(b) For an adult, the voluntary resources available to an adult from the relatives, friends, significant others, neighbors, roommates, and the community of the adult that are not paid for by the Department.

(108) "Notice of Involuntary Reduction, Transfer, or Exit" means form SDS 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.

(109) "Notification of Planned Action" means form SDS 0947. The Notification of Planned Action is the written decision notice issued to an individual in the event that a developmental disability service is denied, reduced, suspended, or terminated.

(110) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(111) "Nursing Service Plan" means the written guidelines developed by a registered nurse that identifies the specific needs of an individual and the intervention or regimen to assist the individual to achieve optimal health potential. Developing the Nursing Service Plan includes establishing individual and nursing goals and determining nursing interventions to meet care objectives.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and all direct nursing service needs.

(b) The Nursing Service Plan is separate from the Individual Support Plan as well as any service plans developed by other health professionals.

(112) "Nursing Tasks" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks may be delegated.

(113) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(114) "Older Adult" means an adult at least 65 years of age.

(115) "Oregon Intervention System" is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes approved protective physical intervention techniques that are used in an emergency to maintain health and safety.

(116) "Oregon Supplemental Income Program-Medical" is Oregon Medicaid insurance coverage as described in OAR 461-001-0030 for individuals who meet the eligibility criteria described in OAR chapter 461.

(117) "Parent" means the biological parent, adoptive parent, or stepparent of a child.

(118) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and enables the individual to make informed choices and decisions consistent with 42 CFR 441.301 and 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(119) "Personal Agent" means a person who:

(a) Is a case manager for the provision of case management services;

(b) Is the person-centered plan coordinator for an individual as defined in the Community First Choice state plan amendment;

(c) Works directly with individuals and, if applicable, the legal or designated representatives and families of individuals to provide or arrange for support services as described in OAR chapter 411, division 340;

(d) Meets the qualifications set forth in OAR 411-340-0150(5); and

(e) Is a trained employee of a brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(120) "Personal Support Worker" as defined in OAR 411-375-0010 --

(a) Means a person:

(A) Who has an active or inactive provider number;

(B) Who is hired by an individual with an intellectual or developmental disability or the representative of the individual;

(C) Who receives money from the Department for the purpose of providing home care services to an individual in the home or community of the individual; and

(D) Whose compensation for providing home care services is provided in whole or in part through the Department, CDDP, CIIS, or Support Services Brokerage.

(b) This definition of personal support worker is intended to be interpreted consistently with ORS 410.600.

(121) "Plan Year" means 12 consecutive months from the start date specified on an authorized ISP or Annual Plan.

(122) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

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

(123) "Prescription Medication" means any medication that requires a prescription from a physician before the medication may be obtained from a pharmacist.

(124) "Primary Caregiver" means:

(a) For a child, the parent, guardian, relative, or other non-paid parental figure of a child that provides direct care at the times that a paid provider is not available. In this context, the term parent or guardian may include a designated representative.

(b) For an adult, the person identified in an Individual Support Plan as providing the majority of services and support for an individual in the home of the individual.

(125) "Primary Care Provider" means the health care provider who delivers day-to-day comprehensive health care. Typically, the primary care provider acts as the first contact and principal point of continuing care for an individual within the health care system and coordinates other specialist care that the individual may need.

(126) "PRN (pro re nata)" means the administration of a medication to an individual on an 'as needed' basis.

(127) "Productivity" consistent with ORS 427.005, means regular engagement in income-producing work, preferable competitive integrated employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(128) "Progress Note" means a written record of an action taken by provider in the delivery of a service to support an individual. A progress note may also be a recording of information related to services, support needs, or circumstances of the individual which is necessary for the effective delivery of services.

(129) "Protection" means the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(130) "Protective Physical Intervention" is a safety intervention used in an emergency, which may or may not include physical contact with the individual.

(131) "Protective Services" mean the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(132) "Provider" means a person, agency, organization, or business selected by an individual or legal representative that provides recognized Department-funded services and is approved by the Department or other

appropriate agency to provide Department-funded services. The provider for a child may not also be the primary caregiver of the child.

(133) "Provider Organization" means an entity selected by an individual or the representative of the individual and paid with service funds that:

- (a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;
- (b) Provides supports for the individual through employees, contractors, or volunteers; and
- (c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(134) "Provider Owned, Controlled, or Operated Residential Setting" means:

- (a) The residential provider is responsible for delivering home and community-based services to individuals in the setting and the provider:
 - (A) Owns the setting;
 - (B) Leases or co-leases the residential setting; or
 - (C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.
- (b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.
- (c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(135) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior

including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(136) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(137) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

(138) "Residency Agreement" means the written and legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual when the individual is receiving home and community-based services in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider and provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(139) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(140) "Review" means a request for reconsideration of a decision.

(141) "Safeguarding Equipment" means a device used to provide support to an individual for the purpose of achieving and maintaining functional body position, proper balance, and protecting the individual from injury or symptoms of existing medical conditions.

(142) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(143) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in

an Individual Support Plan and relating to the activities of daily living, instrumental activities of daily living, and health-related tasks of the individual as discussed by the individual, homeowner, services coordinator or personal agent, and ISP team.

(144) "Self-Administration of Medication" means an individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(145) "Self-Determination" means a philosophy and process by which individuals with intellectual or developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

- (a) Freedom. The ability for an individual, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;
- (b) Authority. The ability for an individual, with the help of a social support network if needed, to control resources in order to purchase support services;
- (c) Autonomy. The arranging of resources and personnel, both formal and informal, that assists an individual to live a life in the community rich in community affiliations; and
- (d) Responsibility. The acceptance of a valued role of an individual in the community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(146) "Self-Direction" means that an individual, or as applicable the legal or designated representative of the individual, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(147) "Sensory Impairment" means loss or impairment of sight or hearing from any cause, including involvement of the brain.

(148) "Service Agreement":

(a) Is the written agreement consistent with an Individual Support Plan that describes at a minimum:

(A) Supports to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community.

(b) For employed personal support workers, the service agreement serves as the written job description.

(149) "Service Element" means a funding stream to fund programs or services including, but not limited to, foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive supports, or family support.

(150) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(151) "Service Record" means the combined information related to an individual.

(152) "Services" include, but are not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, or transportation. Services also include being aware of the general whereabouts of an individual at all times and monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(153) "Services Coordinator" means an employee of the Department, Community Developmental Disability Program, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services. A services coordinator acts as the proponent for individuals with intellectual or developmental disabilities and is the person-centered plan coordinator for the individual as defined in the Community First Choice state plan amendment.

(154) "Significant Other" means a person selected by an individual to be the friend of the individual.

(155) "Skills Training" means the activities intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related skills.

(156) "Social Benefit" means the service or financial assistance solely intended to assist an individual with an intellectual or developmental disability to function in society on a level comparable to that of a person who does not have a disability. Social benefits are pre-authorized by a services coordinator or personal agent and provided according to the description and limits written in an Individual Support Plan.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of disability;

(B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without a disability;
or

(D) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an Individual Support Plan or prior payment in anticipation of an expense authorized in a previously authorized Individual Support Plan.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the home of the individual.

(157) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.

(158) "Specialized Medical Supplies" mean medical and ancillary supplies, such as:

(a) Necessary medical supplies specified in an ISP that are not available through state plan or alternative resources;

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(159) "Staff" means paid employees who are responsible for providing services and supports to individuals and whose wages are paid in part or in full with funds sub-contracted with a community developmental disability program, support services brokerage, or contracted directly through the Department.

(160) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(161) "Supplant" means take the place of.

(162) "Support" means:

(a) For a child, the assistance that a child and a family requires, solely because of the effects of an intellectual or developmental disability of the child, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

(b) For an adult, the assistance that an adult individual requires, solely because of the effects of an intellectual or developmental disability of the adult, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(163) "Support Services" mean the services of a Brokerage listed in OAR 411-340-0120 as well as the uniquely determined activities and purchases arranged through the Brokerage that:

(a) Complement the existing formal and informal supports that exist for an individual living in her or her own home or the family home;

(b) Are designed, selected, and managed by an individual;

(c) Are provided in accordance with the Individual Support Plan for an individual; and

(d) May include purchase of supports as a social benefit required for an individual to live in his or her own home or the family home.

(164) "Support Services Brokerage" means an entity or distinct operating unit within an existing entity that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(165) "Transfer" means movement of an individual from one service setting to a different service setting administered or operated by the same provider.

(166) "Transition Costs" mean the expenses required for an individual to make the transition from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities to a community-based home setting where the individual resides.

(167) "Transition Plan" means the Individual Support Plan describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator or personal agent and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

(168) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004;

(b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(169) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(170) "Variance" means the temporary exception from a regulation or provision of the rules in OAR chapter 411 that may be granted by the Department upon written application.

(171) "Vehicle Modifications" mean the adaptations or alterations that are made to the vehicle that is the primary means of transportation for an individual in order to accommodate the service needs of the individual.

(172) "Volunteer" means any person assisting a provider without pay to support the services and supports provided to an individual.

(173) "Workday" means 12:00 AM through 11:59 PM.

(174) "Work Week" means 12:00 AM Sunday through 11:59 PM Saturday.

(175) "Young Adult" means a young individual aged 18 through 20.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050