

**DEPARTMENT OF HUMAN SERVICES  
SENIORS AND PEOPLE WITH DISABILITIES DIVISION  
OREGON ADMINISTRATIVE RULES**

**Chapter 411  
DIVISION 320**

**COMMUNITY DEVELOPMENTAL  
DISABILITY PROGRAM**

**EFFECTIVE AUGUST 3, 2004**

**411-320-0010 Statement of Purpose**

*(Effective 08/03/2004)*

Purpose. These rules prescribe general administrative standards for operation of a Community Developmental Disability Program (CDDP) operated by or on behalf of a Local Mental Health Authority (LMHA).

- (1) All Community Developmental Disability Program (CDDP) contractors providing developmental disability services under a contract with the Department of Human Services are required to meet the basic management, programmatic, health, safety and human rights regulations in the management of the community service system for individuals with developmental disabilities.
- (2) This rule also prescribes the standards by which the Department approves services operated by the CDDP including, but not limited to, case management and crisis/diversion services.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007,  
430.735-430.765

**411-320-0020 Definitions**

*(Effective 08/03/2004)*

- (1) "24-Hour residential program" means a comprehensive residential program licensed by the Department of Human Services under ORS

443.400(7) and (8), to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) "Abuse of a child" is defined in ORS 418.005, 419B.005, 418.015, 418.748 and 418.749 . This includes but is not limited to:

- (A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;
- (B) Any physical injury including, but not limited to, bruises, welts, burns, cuts, broken bones, sprains, bites that are deliberately inflicted;
- (C) Neglect including, but not limited to, failure to provide food, shelter, medicine, to such a degree that a child's health and safety are endangered;
- (D) Sexual abuse and sexual exploitation including, but not limited to, any sexual contact in which a child is used to sexually stimulate another person. This may include anything from rape to fondling to involving a child in pornography;
- (E) Threat of harm including, but not limited to, any action, statement, written or non-verbal message that is serious enough to make a child believe he or she is in danger of being abused;
- (F) Mental injury including, but not limited to, a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or
- (G) Child selling including, but not limited to, buying, selling or trading for legal or physical custody of a child;

(b) Abuse of an adult. Except for those additional circumstances listed in OAR 411-320-0020(2)(c)(A-F) abuse of an adult means one or more of the following:

- (A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;
  - (B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;
  - (C) Willful infliction of physical pain or injury; or
  - (D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult.
  - (E) Neglect that leads to physical harm through withholding of services necessary to maintain health and wellbeing.
- (c) Abuse in other circumstances. When the Department directly operates any licensed 24 Hour Residential Program; or the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:
- (A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes, but is not limited to, the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or tolerating or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.
  - (B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services;

- (C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.
- (D) An inappropriate or unauthorized physical intervention that results in injury.
  - (i) A physical intervention is inappropriate if:
    - (I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or
    - (II) It is used for behaviors not addressed in a behavior support plan; or
    - (III) It uses procedures outside the parameters described in a behavior support plan; or
    - (IV) It does not use procedures consistent with the Oregon Intervention System.
  - (ii) A physical intervention is not authorized if:
    - (I) There is not a written physician's order when intervention is used as a health related protection; or
    - (II) It is applied without ISP Team approval as identified on the ISP or as described in a formal written behavior support plan.
  - (iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.
- (E) Financial exploitation that may include, but is not limited to, an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the

program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or the person's legal representative and notification of the ISP team.

- (F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with program or another individual's funds, or the program becoming guardian or conservator.
  - (G) The definitions of abuse described in OAR 411-320-0020 (2)(b)(A-E) also apply to homes or facilities licensed to provide 24-Hour Residential Services for children with developmental disabilities or to agencies licensed or certified by the Department to provide Proctor Foster Care for children with developmental disabilities.
  - (H) The definitions of abuse described in OAR 411-320-020(2)(c)(A-F) also apply to the staff of the CMHDDP or a Support Services Brokerage.
- (3) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.
  - (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. Examples of accidents include, but are not limited to: incidents involving vehicles, bicycles or other modes of transportation that result in a collision or impact; falls, e.g., on ice, snow, water, stairs, uneven surfaces such as rugs, clutter, uneven ground; or other impact with an object, furniture, sports equipment, etc.
  - (5) "Administrator" means the Assistant Director Department of Human Services and Administrator of Seniors and People with Disabilities, a cluster within the Department, or that person's designee.

- (6) "Adult" means an individual 18 years or older with developmental disabilities.
- (7) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative 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.
- (8) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.
- (9) "Care" means supportive services including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.
- (10) "Chemical restraints" 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.
- (11) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.
- (12) "Choice" means the individual's expression of preference, as well as the opportunity for and an active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated through verbal, sign language, or other communication methods.
- (13) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.
- (14) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental

disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

- (15) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program (CMHDDP) that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under a County Financial Assistance Contract with the Department of Human Services.
- (16) "Complaint" means an allegation of abuse of an individual; a grievance against a CDDP or CDDP subcontractor's contract, policies or procedures; or other significant problem or dissatisfaction with the CDDP or CDDP subcontractor that could impact individual(s) health and safety, or significantly impact community relations with the CDDP or the CDDP subcontractor.
- (17) "Complaint investigation" means an investigation of any allegation that has been made to a proper authority that the program has taken an action that is alleged to be contrary to law, Oregon Administrative Rule or policy that is not covered by an abuse investigation or a grievance procedure.
- (18) "Comprehensive Services" means a package of developmental disability services and supports, that includes one of the following living arrangements regulated by the Department: a 24-hour program, a foster home, a supported living program or comprehensive in-home supports for adults in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services, (with an annual plan for less than \$20,000), or Children's Intensive In-Home Services.
- (19) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS.427 and imminent risk of loss of the community support system

for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

- (20) "Crisis or Diversion Services" means a short-term service(s) for up to 90 days provided to, or on behalf of, an adult to prevent civil court commitment under ORS 427.215 through 427.300 or a child to prevent out-of-home placement through the arrangement for or facilitation of the purchase or provision of goods and services, directly related to resolving a crisis, and provided to or on behalf of individuals eligible to receive such services.
- (21) "Crisis plan" means the CDDP or Regional Crisis Program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under this rule.
- (22) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department, that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.
- (23) "Developmental disability for adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:
  - (a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18; and
  - (b) Has continued, or can be expected to continue, indefinitely; and
  - (c) Constitutes a substantial handicap to the ability of the individual to function in society; and
  - (d) The condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

- (e) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.
- (24) "Developmental disability for children five years and younger" means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely, is always provisional; AND
- (a) There is a standardized test demonstrating significant adaptive impairment, (more than two standard deviations below the norm), in at least two of the following areas of functioning: self-care, receptive and expressive language, learning, mobility and self-direction; OR
  - (b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in OAR 411-320-0020(21).
- (25) "Developmental disability for children six years and older," is always provisional and means:
- (a) There is a diagnosis of mental retardation; OR
  - (b) There is a diagnosis of developmental disability; AND
    - (A) There is a significant adaptive impairment, (more than two standard deviations below the norm), in at least two of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction; AND

- (B) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND
  - (C) The individual is expected to need multiple, specialized supports indefinitely.
- (26) "Entry" means admission to a Department funded developmental disability service provider.
- (27) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.
- (28) "Grievance" means a formal complaint by the individual or a person acting on his or her behalf about any aspect of the program or an employee of the program.
- (29) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.
- (30) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession and includes a health care facility.
- (31) "Health care representative" means:
  - (a) A health care representative as defined in ORS 127.505(12); or
  - (b) A person who has authority to make health care decisions for an individual under the provisions of OAR 309-041-1500 through 309-041-1610.
- (32) "Home" means the actual physical structure in which a child has been living.

- (33) "Imminent Risk" means that within 60 days and without the use of Crisis Services, the adult will be civilly court-committed to the Department of Human Services under ORS 427, or the child will require out-of-home placement.
- (34) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.
- (35) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.
- (36) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator or Support Specialist.
- (37) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for an individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.
- (38) "Individualized Education Plan" or "IEP" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student and a representative of the school district.
- (39) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, agency representatives who provide service to the individual, (if appropriate for in-home supports), the guardian, if any, relatives of the individual, the Services Coordinator and any other persons who are well liked by the individual and requested by the individual to serve on the team.
- (40) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community, resources that are used by and available to other persons in the community, and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with

developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community. (See ORS 427.005.)

- (41) "Legal representative" means the parent, if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person who is authorized by the court to make decisions about services for the individual.
- (42) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health and developmental disability program, the board of directors of a public or private corporation.
- (43) "Long Term Diversion Services" means new or enhanced services provided to an individual who is eligible for crisis/diversion services and is needed on a long-term or on-going basis to resolve the crisis.
- (44) "Majority agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Representatives from service provider(s), families, the CDDP, or advocacy agencies are considered as one member of the ISP team for the purpose of reaching majority agreement.
- (45) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact, while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

- (46) "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.
- (47) "Mechanical restraints" means any mechanical device material, object or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around and restricts freedom of movement or access to the individual's body.
- (48) "Mental Retardation" means significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, prior to 18 years of age.
- (a) Levels of retardation are:
- (A) Mild Mental Retardation, used to describe the degree of retardation when intelligence test scores are 50 or 55 to approximately 70. Individuals with IQ's in the 70-75 range can be considered as having mental retardation if there is significant impairment in adaptive functioning.
  - (B) Moderate Mental Retardation, used to describe the degree of retardation when intelligence test scores are 35 or 40 to 50 or 55.
  - (C) Severe Mental Retardation, used to describe the degree of retardation when intelligence test scores are 20 or 25 to 35 or 40.
  - (D) Profound Mental Retardation, used to describe the degree of retardation when intelligence test scores are below 20 or 25.
- (b) Definitions and classifications must be consistent with the Manual of Terminology and Classification in Mental Retardation, 1977 Revision.
- (49) "Monitoring" means the periodic review of the implementation of services identified in the annual service plan or annual summary, and the quality of services delivered by other organizations.

- (50) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The system is based on a proactive approach that includes methods of effective evasion, deflection and escape from holding.
- (51) "Physical intervention" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.
- (52) "Plan of Care" means the written details of the supports, services and resources provided or accessed to address the needs of the individual. The plan of care is to be developed by the support team, using a person-centered approach.
- (53) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities that is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.
- (54) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts and to safeguard an individual's person, property and funds as possible.
- (55) "Protective services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts and to safeguard an individual's person, property, and funds as soon as possible.
- (56) "Psychotropic medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes but is not limited to, anti-psychotic, antidepressant, anxiolytic, (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.
- (57) "Regional Crisis/Diversion Program" means the regional coordination of the management of crisis/diversion services for a group of designated counties.

- (58) "Respite care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.
- (59) "Restraint" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.
- (60) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. For purposes of this rule the term case manager is synonymous with Services Coordinator.
- (61) "Service provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider" or "program" is synonymous with "service provider."
- (62) "Short Term Crisis Services" means service(s) to address a crisis, provided for up to 90 days, or on a one-time basis, to or on behalf of, an individual eligible to receive crisis services.
- (63) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.
- (64) "Support Specialist" means an employee of a CDDP that performs the essential functions necessary to ensure the proper use of resources for individuals with developmental disabilities served by a

Support Services Brokerage. The term Title XIX specialist may be synonymous with Support Specialist.

- (65) "Support Team" means a group composed of members as determined by an individual receiving services or the individual's legal guardian, to participate in the development of the individual's plan of care.
- (66) "Transfer" means movement of an individual from a service site to another within a county, administered by the same service provider and that has not been addressed within the ISP.
- (67) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include 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 the ISP development.
- (68) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.
- (69) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the CDDP.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0030 Organization and Program Management**

*(Effective 08/03/2004)*

- (1) Organization and internal management. Each provider of community developmental disability services funded by the Department must have written standards governing the operation and management of

the program. Such standards must be up to date, available upon request and include:

- (a) Organization chart. An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and for the components and staff within the agency;
- (b) Position descriptions. Position descriptions for all staff providing community developmental disability services;
- (c) Personnel requirements. Personnel policies and procedures concerning:
  - (A) Recruitment and termination of employees;
  - (B) Employee compensation and benefits;
  - (C) Employee performance appraisals, promotions and merit pay;
  - (D) Staff development and training;
  - (E) Employee conduct, (including the requirement that abuse of an individual by an employee, staff or volunteer of the CDDP is prohibited and is not condoned or tolerated);
  - (F) Reporting of abuse, (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by the Department.
- (2) Management plan. The CDDP must maintain a current plan assigning responsibility for the developmental disabilities program management functions and duties described in this rule. The plan must assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that these functions will be implemented.

- (3) Qualified staff. Qualified staff must provide developmental disability services. These staff must maintain and enhance their knowledge and skills, through participation in education and training programs. Staff delivering these services must be organized under the leadership of a designated Developmental Disability Program Manager and receive clerical support services sufficient to perform their required duties. Staff must have an approved Criminal History Record Check in accordance with ORS 181.536 through 181.537.
- (a) Program management for developmental disability services.
- (A) Program Manager. The local mental health authority (LMHA) or the public or private corporation operating the community developmental disability services program must designate a full-time employee who will, on at least a part-time basis, be responsible for management of developmental disability services.
- (B) Program Manager Qualifications. The program manager for developmental disability services must meet the following qualifications for employment:
- (i) Hold at least a bachelor's degree in a behavioral, social, health science, special education, public administration, or human service administration; and have a minimum of four years' experience, with at least two of those in developmental disability services that provided recent experience in program management, fiscal management and staff supervision.
- (ii) On an exceptional basis, the CDDP may hire an individual who does not meet these program manager qualifications if the county and the Department have mutually agreed on a training and technical assistance plan that assures that the individual will quickly acquire all needed skills and experience.
- (iii) When the position of program manager for developmental disability services becomes

vacant, an interim program manager must be appointed to serve until a permanent program manager is appointed. The community mental health and developmental disability services program must request a variance, as provided in these rules, if the individual(s) appointed as interim program manager do not meet the qualifications and the term of the appointment(s) total more than 180 days.

- (C) Management functions. In addition to other duties as may be assigned in the area of developmental disability service, the Community Developmental Disability Program (CDDP) must, at a minimum, assure the following duties are performed:
- (i) Develop and assure implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve people with developmental disabilities;
  - (ii) Develop and assure maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, the Department and other state and local agencies with an interest in developmental disability services;
  - (iii) Develop and assure implementation of programs funded by the Department to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state and federal requirements;
  - (iv) Assure collection and timely reporting of information as may be needed to conduct business with the Department, including but not limited to, information needed to license foster homes, to collect federal funds supporting services and to

investigate complaints related to services or suspected client abuse; and

- (v) Develop and assure use of procedures that attempt to resolve complaints and grievances involving individuals or organizations that are associated with developmental disability services.
- (b) Staff. Each CDDP must provide a qualified Services Coordinator or Support Specialist as required by this rule. These roles may be fulfilled by the same person.
- (A) Qualifications. A person employed as a Services Coordinator or as a Support Specialist must have at least:
    - (i) A bachelor's degree and two years' work experience in human services; or
    - (ii) Five years of equivalent training and work experience; and
    - (iii) Knowledge of the public service system for developmental disability services in Oregon.
  - (B) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in 411-320-0030(4)(b)(A) may perform those functions only with prior approval of a variance by the Department. Prior to employment of an individual not meeting minimum qualifications a Services Coordinator or a Support Specialist the CDDP must submit a written variance request to the Department. The request will include:
    - (i) An acceptable rationale for the need to employ an individual who does not meet the qualifications; and
    - (ii) A proposed alternative plan for education and training to correct the deficiencies.

- (iii) The proposal must specify activities, timelines and responsibility for costs incurred in completing the plan.
  - (iv) A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.
- (C) Services Coordinator responsibilities. The duties specified in the employee's job description must, at a minimum, include the following:
  - (i) Deliver case management services as listed in OAR 411-320-0090(4)(a-u) to individuals with developmental disabilities;
  - (ii) Assist the program manager in monitoring the quality of services delivered within the county; and
  - (iii) Assist the program manager in the identification of existing and insufficient service delivery resources or options.
- (D) Support Specialist responsibilities. The duties specified in the employer's job description will at a minimum, include the following:
  - (i) Authorizing individual support plans of individuals enrolled in Support Services Brokerages for adults with developmental disabilities and
  - (ii) Ensuring that requirements of for Support Services in the Title XIX Waiver are met, including providing notice of hearing rights and completing an annual waiver review;
  - (iii) Determining eligibility for and providing assistance in accessing crisis/diversion services;
  - (iv) Receiving and investigating complaints of abuse or neglect, as well as ensuring the provision of protective services; and

- (iv) Facilitating transfers to another county or into comprehensive services.
- (4) Staff training. Services Coordinators and support service specialists must participate in a basic training sequence. The Department provides training materials, and the provision of training may be conducted by the Department or CDDP staff, depending on available resources. This training is not a substitute for the normal procedural orientation that would occur for a new Services Coordinator or Support Specialist that must be provided by the CDDP.
  - (a) Orientation. New Services Coordinator or support service specialist orientation provided by the CDDP must include:
    - (A) An overview of DD services and related human services within the county;
    - (B) An overview of the Department rule(s) governing the CDDP;
    - (C) An overview of the Department's licensing and certification rules for service providers;
    - (D) An overview of the Client Process Monitoring System (CPMS) or any subsequent replacement system;
    - (E) A review and orientation to Medicaid, Supplemental Security Income (SSI), Social Security Administration (SS), Home and Community Based Waiver Services, the Oregon Health Plan; and
    - (F) A review, (prior to having contact with service recipients), of the Services Coordinator's or Support Specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors and children.
  - (b) Minimum annual training. Each Services Coordinator must be required to participate in a minimum of 20 hours per year of additional Department sponsored or other training in the area of developmental disabilities.

- (c) Mandated training. The DD Program Manager will assure the attendance of the Services Coordinators, Support Specialists or quality assurance staff at Department mandated training.
  - (d) Training documentation. The CDDP must keep documentation of required training in the personnel files of the Services Coordinator, the Support Specialist and in the general files of the CDDP.
- (5) Advisory committee. Each CDDP must have an advisory committee.
  - (a) The committee must meet at least quarterly.
  - (b) The membership of the committee will be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional and consumer interests represented. Membership must include advocates for individuals with mental retardation or other developmental disabilities as well as individuals with disabilities and their families.
  - (c) The Advisory Committee will advise the LMHA, the community mental health and developmental disability program director and the developmental disability program manager on community needs and priorities for services and will assist in planning and in review and evaluation of services.
  - (d) The Advisory Committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the local mental health authority.
- (6) Needs assessment, planning & coordination. Upon request of the Department, the CDDP must assess local needs for services to individuals with mental retardation or other developmental disabilities and must submit planning and assessment information to the Department.
- (7) Contracts.
  - (a) Contract required. If the CDDP, (or any of its component service element, as described in the Department contract with the LMHA), is not operated by the LMHA there must be a

contract between the LMHA and the organization operating the CDDP or the component service elements. The contract must specify the authorities and responsibilities of each party and conform to the requirements of Department rule(s) pertaining to contracts or any contract requirement with regard to operation and delivery of services.

- (b) Provider selection. The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the individual's family or the individual's guardian or legal representative.
  - (A) The service provider selected must also meet Department certification or licensing requirements to provide the type of service to be contracted. This is in keeping with the principles of family support expressed in ORS 417.342 and notwithstanding 430.670(2) or 291.047(3).
  - (B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of Department rule(s) pertaining to contracts or any contract requirement with regard to operation and delivery of services.
- (c) Model contract. When a CDDP contracts with a public agency or private corporation for delivery of developmental disability service element, the CDDP will include in the contract only terms that are substantially similar to model contract terms established by the Department. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the service element(s) being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to procedures contained in OAR 411-320-0170 (2)(a)(A-B) and (b) (A-D). For purposes of this section i.e., 411-320-0030(7)(a-f) (8), the following definitions apply:

- (A) "Model contract terms established by the Department" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by the Department as local options under procedures established in these rules.
  - (B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.
  - (C) "Nonessential to the service element(s) being provided" means requirements that are not substantially similar to model contract terms developed by the Department.
- (d) Local option. The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:
- (A) The CDDP has provided the affected contractors with the text of the proposed local option as it would appear in the contract. It must include the date upon which the local option would become effective and a complete written description of how the local option would improve client independence, productivity, or integration; or how it would improve the protection of client health, safety, or rights;
  - (B) The CDDP has sought input from the affected contractors concerning ways the proposed local option will impact client services;
  - (C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations

and financial status of the contractors if the local option is imposed;

- (D) The CDDP has sent a written request for approval of the proposed local option to the Administrator for SPD or his/her designee that includes:
    - (i) A copy of the information provided to the affected contractors;
    - (ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and
    - (iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.
  - (E) The Department has notified the CDDP that the new requirement is approved as a local option for that program; and
  - (F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.
- (e) Exception to limit on contract requirements for facilities. The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which client care is provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.
  - (f) Contract dispute resolution. The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by the Department and contracted through the CDDP. Procedures implementing this policy must be included in the contract with any such service provider.

(8) Financial Management

- (a) Financial records. There must be up-to-date accounting records for each developmental disability service element accurately reflecting all revenue by source, all expenses by object of expense and all assets, liabilities and equities, consistent with generally accepted accounting principles and conforming to the requirements of OAR 309-013-0020 (Audit Guidelines).
- (b) Fraud & embezzlement. There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.
- (c) Billing for Title XIX. Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service charged by the service element.

(9) Policies and Procedures. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with the Department, OAR 411-320-0010 through 0200 and other applicable standards and rules.

Stat. Auth. ORS 410.070, 409.050

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

**411-320-0040 Community Developmental Disability Program Responsibilities**

*(Effective 08/03/2004)*

The CDDP must ensure the provision of the following services and system supports.

- (1) Access to services:

- (a) Nondiscrimination. In accordance with the Civil Rights Act of 1964, (codified as 42 USC 2000d et seq.), community mental health and developmental disability services must not be denied any person on the basis of race, color, creed, sex, national origin or duration of residence. Community developmental disability contractors must comply with Section 504 of the Rehabilitation Act of 1973, (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4[d]), that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".
  - (b) Acceptance of eligibility. Any individual determined eligible for developmental disability services by a CDDP must also be eligible for other community developmental disability services provided unless admission to the service is subject to diagnostic or disability category or age restrictions based on predetermined criteria or contract limitations.
- (2) Coordination of community services. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the community mental health and developmental disability program, other local and state human service agencies and any other service providers as appropriate for the needs of the individual.
- (3) Case management services. The CDDP must provide case management services to individuals who are eligible for and desire services.
- (a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.
  - (b) Case management may be provided directly by the CDDP or under a contract between the CMHDDP and a provider of case management services.

- (c) If an individual is receiving services in more than one county, the county of residence must be responsible for case management services unless otherwise negotiated.
- (d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring monitoring as well as investigating. Except as allowed under subsection 411-320-0040(3)(e), the case management program will be provided under an organizational structure that separates case management from other direct services for individuals with developmental disabilities. This separation may take one of the following forms:
  - (A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or
  - (B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services, or further subcontract these other direct services through organizations that are not already under contract to provide case management services.
- (e) A CDDP or other organization that provides case management services may also provide other direct services under the following circumstances:
  - (A) When the CDDP coordinates the delivery of Child and Family Support Services for children under 18 years old, living at home with their family or Comprehensive In-Home Supports for adults.
  - (B) When the CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able and no other organization is able or willing to continue operations on 30 days notice.
  - (C) In order to develop new or expanded direct services for geographic areas or populations because other local

organizations are unwilling or unable to provide appropriate services.

- (f) Exception. If a CDDP intends to perform a direct service, a variance must be prior authorized by the Department.
  - (A) It is assumed that the CDDP will provide Child and Family Support Services or Comprehensive In-Home Supports described in OAR 411-320-0050(3)(e)(A) above. If the CDDP does not provide one or both of these services they must propose a variance to the Department for approval describing how those services will be provided.
  - (B) If the circumstance described in OAR 411-320-0050(3)(e)(B) above exist, the CDDP must propose a plan to the Department for review including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.
  - (C) If a CDDP providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e)(C) above exists, the organization must propose a variance to the Department for prior approval including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.
- (g) If an organization providing case management services delivers other services as allowed under OAR 411-320-0040(3)(e), it must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is issued, a copy must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.
- (h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as

described in OAR 411-320-0040(3)(g), the CDDP must submit a written variance for prior approval by the Department that describes how conflict of roles will be managed within the CDDP.

- (4) Family support. The CDDP must ensure the availability of a program for Child and Family Support Services in accordance with OAR 309-041-2000 through 2180 or any successor rules.
- (5) Title XIX administration. The CDDP must ensure the availability of staff to provide the required administrative review of program services funded by the Medicaid waiver(s). This must include the availability of Support Specialists as described in OAR 411-320-0030(3)(b)(A-B)&(D).
  - (a) If an individual is receiving services in more than one county, the county of residence must provide the services of a Support Specialist unless otherwise negotiated.
  - (b) If a CDDP also operates a Support Services Brokerage the CDDP must submit a variance in writing for prior approval to the Department including the mechanism for addressing potential conflicts of interest.
- (6) Abuse and protective services. The CDDP must assure that abuse investigations for adults are appropriately reported and conducted according to statute and administrative rules by trained staff. When there is reason to believe a crime has been committed there must be a report to law enforcement. Any suspected or observed abuse of children should be reported directly to the Child Welfare child protective services unit or local law enforcement, when appropriate.
- (7) Foster homes. The CDDP will recruit foster home applicants and maintain forms and procedures necessary to license or certify homes. This will include copies of the following records:
  - (a) Initial and renewal applications to be a foster home;
  - (b) All inspection reports completed by the CDDP (including required annual renewal inspection and any other inspections);

- (c) General facility information;
  - (d) Documentation of references, classification information, credit check, if necessary, criminal history clearance and training for provider and substitute caregivers.
  - (e) Documentation of foster care exams for adult foster home caregivers;
  - (f) Correspondence;
  - (g) Any meeting notes;
  - (h) Financial records;
  - (i) Annual agreement or contract;
  - (j) Legal notices and final orders for rule violations, conditions, denial or revocation (if any); and
  - (k) Copies of the annual license or certificate.
- (8) Contract monitoring. The CDDP will monitor all community developmental disability subcontractors to assure that:
- (a) Service element services are provided as specified in the contract with the Department; and
  - (b) Service elements are in compliance with these rules and other applicable Department administrative rules.
- (9) Local quality assurance program. Each CDDP must implement and maintain a local quality assurance system in accordance with these rules.
- (a) QA system purpose and scope. The local quality assurance system will:
    - (A) Ensure the development and implementation of a quality assurance system by:
      - (i) Providing direct support to DHS in implementation of its quality assurance (QA) plan; and

- (ii) Generally improving the quality of services by evaluating service delivery and outcomes and adjusting local planning and performance where needed.
  - (B) Include all Department funded developmental disability services provided within the county, including services that are operated or subcontracted by the CDDP, state operated community programs for developmental disabilities; and those developmental disability services operating under a direct contract with the Department; and
  - (C) Include, at a minimum, the quality indicators and all activities that are to be carried out at the local level according to the most recent edition of the Department's Quality Assurance Plan for Developmental Disability Services (Department's QA Plan).
- (b) Quality assurance activities. The CDDP will perform quality assurance activities that include, but are not limited to, the following:
- (A) Develop and maintain a local QA plan that describes the major activities to be performed by the CDDP, including the timelines for each of those activities.
    - (i) These activities must include all activities that are to be carried out at the local level according to the most current edition of the Department's QA plan.
    - (ii) The local QA plan must be updated whenever changes are made, but at least annually.
  - (B) Develop CDDP policies and procedures needed to implement the local QA plan.
  - (C) Implement the activities defined in the local QA plan, including the timely delivery of data and information to the Department as required in the Department's QA plan.

- (D) Maintain data and information that has been gathered through implementation of the local QA plan.
- (E) Maintain a record of conclusions and recommendations that have been drawn from analysis of the information gathered.
- (F) Take management actions as needed to improve service quality or to correct deficiencies; and
- (G) Maintain records that document:
  - (i) The CDDP's performance of the activities described in the local QA plan.
  - (ii) The CDDP's performance measured against statewide performance requirements as specified in the Department's QA Plan.
  - (iii) The CDDP's findings, corrective actions and the impact of its corrective actions that have been reviewed at a policy level within the CDDP's department structure within the County; and
  - (iv) The timely submission of information to the Department, as required in the Department's QA Plan.
- (c) Performance requirements. The CDDP will meet or exceed the minimum performance requirements established for all CDDP's in the Department's QA Plan.
- (A) The CDDP will collect and analyze information concerning performance of the activities represented in OAR 411-0320-0040(9)(a)(A), in the manner specified in the Department's QA Plan.
- (B) Data concerning the CDDP's performance will be sent to the Department in the format and within the timelines established by the Department.

- (C) The CDDP must cooperate in all reviews, by the Department or its designee, of CDDP performance in accordance with these rules.
  - (D) Records that document the CDDP's performance will be maintained and be made available to the Department or its designee, for audit purposes, upon request.
- (d) Corrective actions. The CDDP will act to correct deficiencies and poor performance through management actions.
- (A) Deficiencies and substandard performance found in services that are operated or subcontracted by the county will be resolved through direct action by the CDDP.
  - (B) Deficiencies and substandard performance found in services that are operated by the state or through direct state contracts will be resolved through collaboration with the Department.
  - (C) Deficiencies and substandard performance found in services provided through a Region will be resolved through collaboration between the regional management entity and the affected CDDPs.
- (e) Local quality assurance committee. The CDDP will utilize a committee of stakeholders to assist in the development and review of local quality assurance plans and activities.
- (A) Committee membership will include persons representing self-advocates, service providers, advocates, family members of individuals with developmental disabilities and Services Coordinators.
  - (B) Activities of the committee will include:
    - (i) Providing review and comment on CDDP plans for local QA plan activities;
    - (ii) Providing review and comment on data gathering instruments and methods; and

- (iii) Providing review and comment on the results of information gathered by the CDDP and the effectiveness of corrective actions.
- (f) Quality assurance resources. The CDDP must allocate resources to implement the local QA plan.
  - (A) Individuals employed to carry out implementation activities will have the training and education, as well as the rank or classification within the organization that is appropriate for the tasks assigned.
  - (B) One position within the CDDP will be designated as the QA Coordinator. The minimum requirements must include:
    - (i) The QA Coordinator must be a full time CDDP employee, unless prior approval of an alternative plan has been obtained from the Department;
    - (ii) At a minimum the position must meet the qualifications for a Services Coordinator for individual with developmental disabilities as described in OAR 411-320-0030(3)(b)(A)(i-iv);
    - (iii) The purpose of the QA Coordinator is to facilitate the CDDP's quality assurance process through activities such as the following:
      - (I) Participate in Department sponsored activities such as planning and training that are intended to assist in development and implementation of Department's QA plan requirements, compliance monitoring procedures, corrective action plans and other similar activities.
      - (II) Draft local quality assurance plans and procedures that both meet QA requirements established by the Department and consider the unique organizational structure, policies and procedures of the CDDP.

- (III) Keep CDDP administrative staff informed concerning new or changing requirements being considered by the Department.
  - (IV) Coordinate activities within the CDDP such as preparation of materials and training of county staff as needed to implement the local QA plan.
  - (V) Monitor the implementation of the local QA plan to determine the level of county compliance with Department requirements. Keep CDDP administrative staff informed about compliance issues and need for corrective actions.
  - (VI) Coordinate delivery of information requested by the Department, such as the Serious Event Review Team (SERT).
  - (VII) Assure record systems to store information and document activities are established and maintained.
  - (VIII) Perform abuse investigations, if approved by the Department as part of the CDDP's QA plan.
- (10) Information and referral. The CDDP must provide information and referral services to individuals, their families and interested others.
- (11) Agency coordination. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.
- (12) Maintenance of centralized waiting list. The CDDP must maintain a current unduplicated central waiting list of eligible individuals appropriate for admission to Comprehensive Services for adults living within the geographical area of the CDDP. Individuals will be placed on a waiting list after written determination of their specific service and support needs, and such information must be provided to the Department upon request. The CDDP must assure that

individuals are admitted to programs from the waiting list consistent with Department policies using a fair and equitable process that considers the individual's preferences, circumstances and needs.

- (13) Service delivery grievances. The CDDP must implement procedures to address individual or family grievances regarding service delivery that have not been resolved using the CDDP subcontractor's grievance procedures, (informal or formal). Such procedures must be consistent with requirements outlined in OAR 411-320-0170.
- (14) Comprehensive in-home supports. The CDDP must ensure the availability of Comprehensive In-Home Supports for those individuals with developmental disabilities for whom the Department has funded such services. These services must be in compliance with OAR 411-330-0010 through 0170 and any successor rules as may be developed in the future.
- (15) Emergency planning. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The plan must be immediately available to the program manager and employees. The plan must:
  - (a) Be integrated with the County emergency preparedness plan where appropriate.
  - (b) Include provisions on coordination with all developmental disability service provider agencies in the county and any DHS agencies, as appropriate.
  - (c) Include provisions for identifying individuals most vulnerable and any plans for health and safety checks; and emergency assistance;
  - (d) Other plans that are specific to the type of emergency.

[Publications: Publications referenced are available from the agency.]

Stat. Auth. ORS 410.070, 409.050

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

## **411-0320-0050 Management of Regional Services**

*(Effective 08/03/2004)*

- (1) Intergovernmental agreement. A CDDP that acts as the management entity for a group of counties to deliver long-term crisis/diversion, community training, quality assurance activities, or other services must have an intergovernmental agreement with each affiliated local mental health authority.
- (2) Regional plan. The CDDP, acting as the management entity for the region, must prepare in conjunction with affiliated CDDP's, a plan detailing the services that will be administered regionally. The plan must be updated when needed and submitted to the Department for approval and must include:
  - (a) A description of how services will be administered;
  - (b) An organizational chart and staffing plan;
  - (c) A detailed budget, on forms provided by the Department.
- (3) Implement plan. The CDDP, acting as the management entity for the region, must work in conjunction with its affiliated CDDP's to implement the Regional plan as approved by the Department, within available resources.
- (4) Management standards. The region, through the CDDP management entity and its CDDP partners, must maintain compliance with management standards outlined in OAR 411-320-0030 and 0050.

Stat. Auth. ORS 410.070, 409.050

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

## **411-320-0060 Rights of the Individual Receiving Developmental Disability Services**

*(Effective 08/03/2004)*

- (1) Civil rights. The rights described in this section are in addition to and do not limit any other statutory and constitutional rights that are afforded all citizens, including but not limited to, the right to vote,

marry, have or not have children, own and dispose of property, enter into contracts and execute documents unless specifically prohibited by law in the case of children under 18 years of age.

- (2) Rights of individuals receiving services. Each agency providing any community developmental disability service must have written policies and procedures to provide for and assure individuals the following rights while receiving services:
  - (a) Protections and well being. A humane service environment that affords reasonable protection from harm and affords reasonable privacy. This includes provisions ensuring that individuals:
    - (A) Must not be abused or neglected, nor must abuse or neglect be tolerated by any employee, staff or volunteer of the program;
    - (B) Are free to report any incident of abuse without being subject to retaliation;
    - (C) Have the freedom to choose whether or not to participate in religious activity and for children, according to parent or guardian preference;
    - (D) Have contact and visits with family members, friends, advocates, (except where prohibited by court order), and visits with legal and medical professionals;
    - (E) Have access to and communicate privately with any public or private rights protection program rights advocate, Services Coordinator, or CDDP representative;
    - (F) Be free from unauthorized mechanical restraint or physical restraint; and
    - (G) Must not be subject to any chemical restraint and assured that medication is administered only for the person's individual clinical needs as prescribed by a physician.

- (b) Choice. Individuals must be able to choose from available services those that are appropriate and consistent with the plan, developed in accordance with OAR 411-320-0060(2)(c) and (d) of this rule. Services will promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult. They must be provided in a setting and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual and that provide for decision-making and control of personal affairs appropriate to age.
- (c) A plan. Have a written and individualized service plan with services delivered according to the plan and having periodic review and reassessment of service needs.
- (d) Participation. Have an ongoing opportunity to participate in planning of services in a manner appropriate to the individual's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (c) of this subsection, and the right to be provided with a reasonable explanation of all service considerations.
- (e) Informed consent. Have informed voluntary written consent prior to receiving services except in a medical emergency or as otherwise permitted by law.
- (f) Written prior consent for experimental programs. Have informed voluntary written consent prior to participating in any experimental programs.
- (g) Notice and grievances. Prior notice of any involuntary termination or transfer from services and notification of available sources of necessary continued services and exercise of a grievance procedure.
- (h) Compensation. Reasonable and lawful compensation for performance of labor, except personal housekeeping duties.
- (i) Due process in civil commitment. Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department.

- (j) Be informed. Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedures for reporting abuse; and to have these rights and procedures prominently posted in a location readily accessible to the individual and made available to the individual's guardian and any representative designated by the individual.
  - (k) Grievance. Be informed of and have the opportunity to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure.
  - (l) Free from reprisal. Have the freedom to exercise all rights described in this section without any form of reprisal or punishment.
- (3) Assert rights. The rights described in this section may be asserted and exercised by the individual, the individual's guardian and any legal representative designated by the individual.
  - (4) Children. Nothing in this section should be construed to alter any legal rights and responsibilities between parent and child.
  - (5) Adults with guardians. Guardians are appointed for an adult only as is necessary to promote and protect the well being of the protected person. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations. An adult protected person for whom a guardian has been appointed is not presumed to be incompetent. A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300)

Stat. Auth. ORS 410.070, 409.050

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

## **411-0320-0070 Records of Service**

*(Effective 08/03/2004)*

- (1) Confidentiality of individual service records. Records of services to individuals with developmental disabilities must be kept confidential in accordance with ORS 179.505, 192.515-517, 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA) and 42 CFR Part 2 HIPAA and any Department administrative rules or policies pertaining to individual service records.
- (2) Information sharing. Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the agency must be available to other community mental health and developmental disability service agencies responsible for the individual's services, consistent with state statutes and federal laws and regulations concerning confidentiality and privacy.
- (3) Record requirement. In order to meet Department and federal record documentation requirements, the CDDP through its employees must maintain a record for each individual who receives services from the CDDP.
  - (a) Information contained in the record for all individuals receiving services from a Services Coordinator or a Support Specialist must include:
    - (A) Documentation of any initial referral to the CDDP for services.
    - (B) An application for developmental disability services must be completed prior to an eligibility determination;
    - (C) The application will be on the form required by the Department or it may be transferred onto CDDP letterhead;
    - (D) Sufficient documentation to conform to Department eligibility requirements including letter(s) of determination;

- (E) Documentation of an initial intake interview or home assessment, as well as any subsequent social service summaries;
  - (F) Referral information or documentation of referral materials sent to a developmental disability service provider or another CDDP,
  - (G) Case notes written by a Services Coordinator or a Support Specialist;
  - (H) Medical information, as appropriate;
  - (I) Admission and exit meeting documentation into any comprehensive service including any transition plans, crisis/diversion or other plans developed as a result of the meeting;
  - (J) Individual service plans, (ISP), or child and family support plans, (CFSP), documenting that the plan is authorized by a Services Coordinator or a Support Specialist;
  - (K) Copies of any incident reports initiated by a CDDP representative for any incident that occurred at the CDDP or in the presence of the CDDP representative.
  - (L) Documentation of a review of unusual incidents received from service providers either in case notes or by electronically entering review of the information into the SERT system and referencing in case notes or placing a copy in the file;
  - (M) Initial and annual review of Title XIX waiver forms;
  - (N) Documentation of Medicaid eligibility, if applicable and
  - (O) Legal records, such as guardianship papers, civil commitment records, court orders, probation and parole information as is appropriate to the individual in question.
- (b) An information sheet or reasonable alternative must be kept current and reviewed at least annually, for each individual

enrolled in comprehensive services, child and family support services, or living with family or independently and not enrolled in a support services brokerage and receiving case management services from the program. Information will include:

- (A) The individual's name, current address, date of entry into the program, date of birth, sex, marital status, (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number where applicable, guardianship status; and
- (B) The names, addresses and telephone numbers of:
  - (i) The individual's guardian or other legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, education surrogate, if applicable;
  - (ii) The individual's physician and clinic;
  - (iii) The individual's dentist;
  - (iv) The individual's school, day program, or employer, if applicable; and
  - (v) Other agency representatives providing services to the individual.
  - (vi) Any court ordered or guardian authorized contacts or limitations from contact for anyone living in a foster home, supported living program, or 24-hour residential program.
- (c) A current information sheet or reasonable alternative must be maintained for each individual enrolled in a support services brokerage and assigned to a Support Specialist from the program. The current information will include information listed in OAR 411-320-0070 (3)(b)(A) and (B)(i) of this rule.

- (4) Case notes. Documentation of the delivery of service by a Services Coordinator or Support Specialist through case notes sufficient to support each case service provided. Case notes must be recorded chronologically and documented consistent with CDDP policies and procedures. All late entries must be appropriately documented. This documentation, at a minimum, must consist of material in individual files that includes:
  - (a) The month, day and year the services were rendered and the month, day and year the entry was made if different from the date service was rendered;
  - (b) The name of the person receiving service;
  - (c) The name of the CDDP, the person providing the service, (i.e., the Services Coordinator's or Support Specialist's signature and title), and the date the entry was recorded and signed;
  - (d) The specific services provided and actions taken or planned, if any;
  - (e) Place of service. This means the county where the CDDP or agency providing case management services is located, including the address. This may be a standard heading on each page of the progress notes; and
  - (f) The names of other participants, including titles and agency representation, if any, in notes pertaining to meetings with or discussions about the service recipient.
- (5) Retention of records. The CDDP must have a record retention plan for all records relating to the CDDP's provision of and contracts for services that is consistent with this rule and rules promulgated by the State Archivist, (OAR 116-113-0010 or any subsequent revisions). This plan must be made available upon request of the public or the Department.
  - (a) Financial records, supporting documents, statistical records, must be retained for a minimum of three years after the close of the contract period, or until the conclusion of the financial settlement process with the Department, whichever is longer.

- (b) Individual service records will be kept for 7 years after date of death, if known. If case is closed, inactive, or death date is unknown, 70 years. Copies of annual ISPs must be kept for 10 years.
- (6) Transfer of records. In the event an individual moves from one county to another county in Oregon, the complete case record as described in OAR 411-0320-0070(3) must be transferred to the receiving CDDP. The sending CDDP will ensure that the original records required by this rule will be maintained in permanent record transferred to the CDDP having jurisdiction for services. The sending CDDP will retain copies of information necessary to document that services were provided to the individual while enrolled in CDDP services. This includes:
- (a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP including Waiver eligibility;
  - (b) Service enrollment and termination forms;
  - (c) CDDP case notes;
  - (d) Documentation of services provided to the individual by the CDDP; and
  - (e) Any required documentation necessary to complete the financial settlement with the state.

[Publications: Publications referenced are available from the agency.]

Stat. Auth. ORS 410.070, 409.050, 192.515-518

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

### **411-320-0080 Initial Diagnosis and Eligibility Determination**

*(Effective 08/03/2004)*

- (1) Qualified professional diagnosis. Diagnosis and evaluation information must be completed by professionals qualified to make a diagnosis of developmental disabilities in accordance with OAR 309-042-0050 or any successor rules.

- (2) Eligibility for Mental Retardation. Diagnosing mental retardation is done by measuring intellectual functioning as assessed by standardized intelligence tests and assessing adaptive behavior and must be administered by qualified professionals per OAR 309-042-0050. Mental retardation is clearly defined as IQ's under 70, however, individuals with an IQ pattern of 70 to 75 with significant adaptive impairments can be considered as having mental retardation. A history demonstrating mental retardation must be in place by the 18<sup>th</sup> birth date. In cases where two scores disagree, (i.e. 65 and 73), a third is required to show the pattern. The adaptive impairments cannot be primarily related to: mental/emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability or Attention Deficit Hyperactivity Disorder.
  
- (3) Eligibility for Other Developmental Disabilities. A history of the presence of a developmental disability must be in place prior to the 22<sup>nd</sup> birth date. There must be a medical or clinical diagnosis of a developmental disability (other than mental retardation) with significant adaptive impairments related to the diagnosis. A formal adaptive assessment is required for an initial determination of eligibility. Individuals who have been diagnosed with a developmental disability, who are obviously adaptively impaired and for whom an adaptive assessment is needed to redetermine eligibility, must have an adaptive assessment such as:
  - (a) A Vineland Adaptive Behavior Scale or other acceptable measurement of adaptive behavior may be administered and scored by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration and test interpretation of adaptive behavior scales for persons with developmental disabilities; or
  
  - (b) In the event an adaptive assessment cannot be obtained; a Services Coordinator with at least two years of experience working with people with developmental disabilities can record their observations of the adaptive impairments in client progress notes;

- (c) When making a diagnosis of developmental disability the adaptive impairment cannot be primarily related to any of the following conditions: mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or attention deficit, hyperactivity disorder.
- (4) Children under 5 years of age. Eligibility documentation for children 5 years old or under must include:
  - (a) Testing that demonstrates significant adaptive impairments; or
  - (b) A medical statement of a condition or syndrome that causes or is likely to cause significant impairments in adaptive skills or behavior.
- (5) Current evaluation. Evaluation information used in determining eligibility for individuals under age 21 must be no more than three years old. An eligibility determination for an individual age 21 or older must be based on the information obtained after the individual's 17th birthday. At or after age 18, adult evaluation instruments must be used.
- (6) Absence of data in developmental years. In the absence of sufficient data during the developmental years, current data may be used if there is no evidence of head trauma, mental or emotional disorder or substance abuse after the developmental years to contribute to the assessment results. In the event head trauma, mental or emotional disorder or substance abuse is a factor for denying eligibility, a clinical impression should be obtained to determine if the assessment results are related to the developmental disability.
- (7) Review of eligibility. Eligibility for children under 18 years of age is always provisional. Eligibility for young children should be reviewed at least at ages 6 or no later than age 7 and between ages 16 and 18 for mental retardation and by age 22 for developmental disabilities other than mental retardation.
- (8) Securing evaluations. In the event that the Services Coordinator has exhausted all local resources to secure the necessary evaluations for eligibility determination, the Department's Diagnosis and Evaluation Coordinator will assist in determining if evaluations are necessary.

- (9) Notice. Individuals and their legal representative, family members, or advocates must receive an eligibility statement and written notice, on forms prescribed by the Department, of the eligibility determination or redetermination. Such notice must include:
- (a) The rationale for the decision, including what reports, documents or other information that were relied upon in making the eligibility determination;
  - (b) Notice that the documents relied upon may be reviewed by the individual or his or her legal representative or advocate; and
  - (c) Notice of the right to file a grievance to appeal a denial of eligibility, including the timeline for filing a grievance, where to file a grievance and that assistance is available in filing grievances.
- (10) Processing eligibility determination. The CDDP of residency of an adult applying for services must process the application and make the determination of eligibility for developmental disability services. In the case of an application for services for a child, the CDDP where the parent(s) resides or alternately the county court having jurisdiction for the child, must be responsible for making the eligibility determination. The CDDP must process the application for developmental disability services in a timely manner.
- (a) Within ten working days after receiving an application for services from an individual, his or her guardian or legal representative, the CDDP will begin the process to determine eligibility.
  - (b) A determination of eligibility must be made within 15 working days of receipt of information from which eligibility can be established.
  - (c) Grievances of a denial of eligibility must be conducted in accordance with OAR 411-320-0170(2)(c)(B).
- (11) Financial status. The Services Coordinator must verify the financial status of individuals during the eligibility or intake process. All sources of income are to be identified. Adults with no unearned income benefits must be referred to Social Security for a

determination of financial eligibility. Children or their custodial parent or legal guardian, (if not a State agency), should be referred to the appropriate resources if it appears that they or their parent may be eligible for financial assistance.

- (12) Transfer between CDDP's. The eligibility determination by a CDDP must be accepted by other CDDP's when an individual moves from one county to another. If the receiving county has reason to question the determination and cannot resolve it between the two CDDPs, the receiving CDDP will promptly refer the matter for a review and further determination by the Department's Diagnosis and Evaluation Coordinator. The receiving county will continue services for the individual while the review is occurring. If an adult transfers to another CDDP and is subsequently found to be not eligible the CDDP responsible for making the determination may be responsible for the services authorized on the basis of that determination.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0090 Developmental Disabilities Case Management Program Responsibilities**

*(Effective 08/03/2004)*

- (1) Availability of Services Coordinator(s). The CDDP must assure the availability of either a Services Coordinator and or Support Specialist as required by these rules to meet the service need(s) of the individual and any emergencies or crisis. This assignment must be appropriately documented in individual service records and accurately report enrollment in CPMS.
- (2) Policies and procedures. The CDDP must adopt written procedures to assure that the delivery services meets the standards set forth in 411-320-0090(4)(a) through (u) of this rule.
  - (a) Involvement in planning and review of services. The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP;

- (b) Available for review. Copies of the procedures for planning and review of case management services, consumer satisfaction and grievances, must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department;
- (3) Notice of Services. Individuals, family member(s), legal representatives and advocates must be informed of minimum case management services that are set out in 411-320-0090(4)(b) through (u) of this rule.
- (4) Minimum standards for case management services. The following are the minimum standards for case management services for individuals with developmental disabilities:
  - (a) Eligibility. The CDDP must ensure that eligibility for services is determined in accordance with OAR 411-320-0080 by a qualified Services Coordinator;
  - (b) Plans and annual summaries. An annual plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1);
    - (A) The Services Coordinator must assure that there is an annual plan. He or she must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehensive services. The Services Coordinator is responsible for the development of the plan for children receiving family support services in coordination with the child and the family.
    - (B) An annual summary must be completed for each individual that is not enrolled in any Department funded service other than case management.
    - (C) Support Specialists will review ISP's of individuals enrolled in Support Service Brokerages as part of service authorization in OAR 411-320-0120(3).

- (c) Service authorization. Program services must be authorized in accordance with OAR 411-320-0120(3);
- (d) Monitoring. Services Coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130. Support Specialists may participate in monitoring a brokerage service to an individual as part of the CDDP quality assurance plan as approved by the Department;
- (e) Entry, exit, or transfer. Entry, exit and transfers from comprehensive program services must be in accordance with OAR 411-320-0110;
- (f) Crisis services. Crisis services must be assessed, identified, planned, monitored and evaluated by the Services Coordinator in accordance with OAR 411-320-0160;
- (g) Investigations and protective services. Abuse investigations and provision of protective services for adults must be provided as described in OAR 309-040-0220 through 309-040-0290, (Abuse Reporting and Protective Services in Community Programs and Community Facilities). This includes investigation of complaints of abuse, writing investigation reports and monitoring for implementation of report recommendations;
- (h) Civil commitment. Civil commitment services must be provided in accordance with ORS 427.215 through 427.306 and 427.205(4);
- (i) Information and referral. The Services Coordinator must provide information and timely referral for individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county;
- (j) Access. The Services Coordinator must assist individuals and their families in accessing services and resources;
- (k) Child welfare cases. Services Coordinators must coordinate services with the Child Welfare, (CW), caseworker assigned to

a child to ensure the provision of required supports from the CDDP, the Department and CW, according to guidelines published by the Department;

- (l) Services Coordinator role for children in school. Services Coordinators may attend IEP planning meetings for children when the Services Coordinator is invited by the family or guardian to participate;
  - (A) The Services Coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.
  - (B) Upon request and to the extent possible the Services Coordinator may act as a proponent for the child or family at IEP meetings.
  - (C) The Services Coordinator will participate in transition planning by attending Individualized Education Program, (IEP), meetings of students 16 years of age or older to discuss the individual's transition to adult living and work situations unless such attendance is refused by the parent or legal guardian.
  
- (m) Enrollment on CPMS. The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in CPMS. The county of residence must enroll the individual on CPMS for all developmental disability service providers except in the following circumstances:
  - (A) The Department's children's residential Services Coordinator will complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with the state; or
  - (B) Department Services Coordinators must complete the CPMS enrollment, termination, and billing forms for children entering or leaving the Children's In-home Intensive Services Program (CIIS); or as part of an

interagency agreement for purposes of billing for crisis/diversion services by a region.

- (n) Nursing home services. Services Coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043;
- (o) Specialized services. The Services Coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150;
- (p) Adult case management only. If an adult is not enrolled in services other than case management and requires more than occasional services, or requires services that are available through a support services brokerage, the individual must be referred to a brokerage, unless the individual refuses. Referrals to the support services brokerage must be in accordance with the most current published guidelines for access to brokerage services;
- (q) Serious events. The Services Coordinator or Support Specialist must ensure that all serious events related to an individual are reported to the Department in accordance with the most recent Department Serious Event Review Team (SERT) Manual. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends;
- (r) Medicaid waiver(s). Except for children being served by CIIS or in a Department direct contracted 24-hour residential home, the Services Coordinator or Support Specialist will ensure that Medicaid eligible individuals are offered the choice of home and community based waiver services, provided a notice of fair hearing rights and have a completed Title XIX Waiver form that is reviewed annually or at anytime there is a significant change;
- (s) Health care representative. Participate in the appointment of a Health Care Representative per OAR 309-041-1500 through 309-041-1610 or any successor rules;

- (t) Interagency coordination. Coordinate with other state, public and private agencies regarding services to individuals with developmental disabilities;
- (u) In-home services. The CDDP must ensure that a Services Coordinator is available to provide or arrange for Comprehensive In-Home Supports for Adults or Child and Family Supports, as required, to meet the support needs of eligible individuals. This includes:
  - (A) Assistance in determining needs and plan supports,
  - (B) Assistance in finding and arranging resources and supports,
  - (C) Education and TA to make informed decisions about support need and direct support providers,
  - (D) Arranging fiscal intermediary services,
  - (E) Employer-related supports, and
  - (F) Assistance with monitoring and improving the quality of supports.
- (5) Service priorities. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval for a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request. The variance request must document the reason the service prioritization is necessary (including any alternatives considered) detail the specific service priorities being proposed and provide assurances that the basic health and safety of individuals will continue to be addressed and monitored.

Stat. Auth. ORS 410.070, 409.050

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

## **411-320-0100 Assignment of Services Coordinator or a Support Specialist**

*(Effective 08/03/2004)*

- (1) Initial designation of Services Coordinator or Support Specialist. For individuals determined eligible for developmental disability services, a Services Coordinator must be designated within ten working days after eligibility determination. In the instance of an adult moving into the county with an existing eligibility determination, a Services Coordinator should be assigned within ten (10) days of application or, if already enrolled in a support services brokerage, a Support Specialist must be assigned. A written notice that includes the name, telephone number and location of the Services Coordinator or Support Specialist must be sent to the individual requesting services and the individual's legal representative. Notice will be sent to the family or advocate if the adult does not object.
- (2) Change of Services Coordinator. The CDDP should keep changes of Services Coordinator(s) to a minimum.
  - (a) Changes in assignment. If the CDDP changes Services Coordinator assignments or transfers the individual to a Support Specialist there should be timely notification, (within 10 working days of the designation), to the individual, the individual's legal representative and all current service providers. This notification must be in writing and include of the name, telephone number and address of the new Services Coordinator.
  - (b) Requests for a change. The individual receiving services or the individual's legal guardian may request a new Services Coordinator or Support Specialist within the same county. The CDDP must develop standards and procedures for evaluating and acting upon requests for change of Services Coordinator or Support Specialist. If another Services Coordinator or Support Specialist is assigned by the CDDP, (as the result of a request by the individual or his or her legal representative), the individual, the individual's legal representative and all current service providers must be notified within 10 working days of the change. This notification must be in writing and

include the name, telephone number and address of the new Services Coordinator or Support Specialist.

- (3) Termination of case management services. A Services Coordinator or Support Specialist retains responsibility for providing case management services to the individual until the responsibility is terminated in accordance with OAR 411-320-0100(3)(a) through (e) of this rule, or until another Services Coordinator is designated. The CDDP must terminate case management or Support Specialist services when:
  - (a) The individual or the individual's legal representative delivers a signed written request that case management or Support Specialist services be terminated or such a request by telephone is documented in the individual's file. An adult, his or her legal guardian, the parent or legal guardian of a child in Department-funded services can refuse contact by a Services Coordinator or a Support Specialist, as well as the involvement of a services at the ISP meeting.
  - (b) The individual dies; or
  - (c) The individual is determined to be ineligible for services based on an assessment by a licensed psychologist, certified educational psychologist or psychiatrist in accordance with OAR 411-320-0080; or
  - (d) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management or Support Specialist services are to be referred and transferred to the new county. Except in the case of a child moving into a foster home or 24-hour residential home wherein the county of parental residency or court jurisdiction must retain case management responsibility,
  - (e) An individual cannot be located after repeated attempts by letter and telephone.
- (4) Mandatory services necessary. An individual in Department-funded services must accept the following case management services: protective service investigations, Services Coordinator presence at Department-funded program entry, exit, or transfer meetings,

monitoring of provider program(s) and Services Coordinator or Support Specialist access to individual files.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0110 Entry and Exit Requirements**

*(Effective 08/03/2004)*

- (1) Admission to Department funded developmental disability program.
  - (a) Department staff must authorize entry into children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs and state training centers. The Services Coordinator will make referrals for admission and participate in all entry meetings for these programs.
  - (b) The Services Coordinator must ensure that individuals are appropriately referred to a support services brokerage and must participate in the entry of individuals to a support service brokerage according to guidelines established by the Department.
  - (c) Admissions to all other Department funded programs for persons with developmental disabilities must be coordinated and authorized by the CDDP Services Coordinator in accordance with these rules.
- (2) Written information required. The Services Coordinator or his or her designee must provide written information to providers of comprehensive services prior to admission.
  - (a) If the person is being admitted from his or her family home and entry information is not available (due to a crisis) the Services Coordinator will ensure that the provider assesses the individual upon entry for issues of immediate health or safety and the Services Coordinator will document a plan to secure the information listed in OAR 411-320-0110(2)(b)(A-J), no later than thirty (30) days after admission. This will include a written documentation as to why the information is not available. A

copy of the information and plan will be given to the provider at the time of entry.

- (b) If the person is being admitted from comprehensive service the information must be made available prior to the admission. This written information must be provided in a timely manner and include:
  - (A) A copy of the individual's eligibility determination document;
  - (B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and the ability to adjust water temperature for bathing and washing;
  - (C) A brief written history of any behavioral challenges including supervision and support needs;
  - (D) A medical history and information on health care supports that includes, where available:
    - (i) The results of a physical exam, if any, made within 90 days prior to the entry;
    - (ii) Results of any dental evaluation;
    - (iii) A record of immunizations;
    - (iv) A record of known communicable diseases and allergies; and
    - (v) A record of major illnesses and hospitalizations.
  - (E) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;
  - (F) Copies of protocols, the Risk Tracking Record, and any support documentation.
  - (G) Copies of documents relating to guardianship, conservatorship, health care representative, power of

attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

- (H) Written documentation why preferences or choices of the person cannot be honored at that time;
  - (I) Written documentation that the individual is participating in out-of-residence activities including school enrollment for individuals under the age of 21; and
  - (J) A copy of the most recent functional assessment, behavior support plan, individual support plan, and individual educational plan, if applicable.
- (3) Entry meeting. Prior to an individual's date of entry into a Department funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The team participants will be determined according to OAR 411-320-0120(1)(b). The findings of the meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the meeting must include at a minimum:
- (a) The name of the individual proposed for services;
  - (b) The date of the meeting and the date determined to be the date of entry;
  - (c) The names and role of the participants at the meeting;
  - (d) Documentation of the pre-entry information required by OAR 411-320-0110(2)(b);
  - (e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and
  - (f) If the decision was made to enter the individual a written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days after admission;
  - (g) Record the signatures of all participants;

- (4) Crisis services. For a period not to exceed 30 days, OAR 411-320-0110(3)(d) of this rule does not apply if an individual is temporarily admitted to a program for crisis services.
- (5) Exit from Department funded programs. All exits from Department funded developmental disability services must be authorized by the CDDP. All exits from Department direct-contracted service for children's 24 hour residential and from state-operated community programs, must be authorized by Department staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The team participants must be determined according to OAR 411-320-0120(1)(b).
- (6) Exit staffing. The exit plan must be distributed to all ISP team members. The exit plan must include:
  - (a) The name of the individual considered for exit;
  - (b) The date of the meeting;
  - (c) Documentation of the participants included in the meeting;
  - (d) Documentation of the circumstances leading to the proposed exit;
  - (e) Documentation of the discussion of the strategies to prevent an exit from service, (unless the individual, his or her legal guardian or, for a child, the parent or guardian, is requesting the exit);
  - (f) Documentation of the decision regarding exit including verification of majority agreement of the meeting participants regarding the decision; and
  - (g) The written plan for services to the individual after exit.
- (7) Transfer meeting. All transfers within a county between service site by a comprehensive service provider agency must be authorized by the CDDP, except as follows: All transfers between Department direct contracted services for children in a 24-hour residential programs and in state operated community programs must be

coordinated by Department staff. A meeting of the ISP team must precede any decision to transfer an individual. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

- (a) The name of the individual considered for transfer;
  - (b) The date of the meeting;
  - (c) Documentation of the participants included in the meeting;
  - (d) Documentation of the circumstances leading to the proposed transfer;
  - (e) Documentation of the alternatives considered instead of transfer;
  - (f) Documentation of the reason(s) any preferences of the individual, the individual's legal representative or family members cannot be honored;
  - (g) Documentation of majority agreement of the participants with the decision; and
  - (h) The written plan for services to the individual after transfer.
- (8) Entry to Support Services.
- (a) Referral. Referrals of eligible individuals to a Support Services Brokerage should be made in accordance with OAR 411-340-0110 (2)(a-b). Referrals must be made using the Department mandated application and referral form in accordance with current Department guidelines.
  - (b) Eligibility. The CDDP of an individual's county of residence must find the individual eligible for services from a support services brokerage when:
    - (A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

- (B) The individual is an adult living in his or her own home or family home and not receiving other Department-paid in-home or community living support other than State Medicaid Plan services;
  - (C) The individual is not enrolled in Comprehensive Services;
  - (D) At the time of initial proposed enrollment in the Brokerage, the individual is not receiving short-term services from the Department because she or he is eligible for, and at imminent risk of, civil commitment under ORS Chapter 427; and
  - (E) The individual or the individual's legal representative has chosen to use a Support Service Brokerage for assistance with design and management of personal supports.
- (c) Required information. The Services Coordinator will communicate with the support services brokerage staff and provide all relevant information upon request. At a minimum this must include:
- (A) A current application or referral on the Department mandated application or referral form;
  - (B) A completed Title XIX Waiver form;
  - (C) A copy of the eligibility statement for developmental disability services;
  - (D) Copies of financial eligibility information;
  - (E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;
  - (F) Copies of relevant case notes; and
  - (G) A copy of any current plan(s).

Stat. Auth. ORS 410.070, 409.050

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

## **411-320-0120 Service Planning**

*(Effective 08/03/2004)*

- (1) Principles for planning. These rules prescribe standards for the development and implementation of plans for individuals with developmental disabilities. As such, plans for individuals must be developed in a manner that address issues of independence, integration and productivity, enhance the quality of life of the person with developmental disabilities and are consistent with the following principles:
  - (a) Personal control and family participation. While the service system reflects the value of family member(s) participation in the planning process, adults have the right to make informed choices about the level of participation by family members. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.
  - (b) Choice and preferences. The process is critical in determining the individual's and the family's preferences for services and supports. The preferences of the individual and family must serve to guide the team. The individual's active participation and input must be facilitated throughout the planning process.
  - (c) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve the individual's and family's preferences, identify the barriers to providing those preferred services and develop strategies for reducing the barriers.
  - (d) Health and Safety. The process should also identify strategies to assist the individual in the exercise of his or her rights. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the individual's exercise

of rights while being equally sensitive to protecting the individual's health and safety.

- (e) Children in alternate living situations. When planning for children in 24-hour residential or foster care services, maintaining family connections is an important consideration. The following should apply:
  - (A) Unless contraindicated there should be a goal for family reunification;
  - (B) The number of moves or transfers should be kept to a minimum;
  - (C) If the placement is distant from the family the Services Coordinator should continue to seek a placement that would bring the child closer to the family.
  
- (2) Responsibility for annual ISP, CFSP or annual summary. Individuals enrolled in Department funded services must have an annual ISP or CFSP. Plans will be developed, implemented and authorized as follows:
  - (a) Persons in foster care, 24-hour residential services and related employment or alternatives to employment services. A Services Coordinator or his or her qualified designee must attend and assure that an annual ISP meeting is held. The Services Coordinator or his or her qualified designee must participate in the development of the ISP for individuals enrolled in comprehensive services. ISP's for children in Department direct contracted children's 24 hour residential must be coordinated by Department staff.
    - (A) The Services Coordinator must ensure that the plan for persons in foster care or 24-hour residential services is developed and updated in accordance with current published state guidelines, tracks the plan timelines and coordinates the resolution of grievances and conflicts arising from ISP discussions.
    - (B) ISP Team. At a minimum the ISP team for an individual in services described in OAR 411-320-0120(2)(a)(A)

above includes, the individual, the individual's guardian, representatives from the residential program, a representative from the employment or alternatives to employment program, if any, the Services Coordinator, any person requested by the individual and any treatment professional requested by the person or the team on behalf of the person.

- (b) Supported living services. The Services Coordinator for an adult in supported living services and any associated employment or alternative to employment program must ensure the development of an annual individual support plan. The Services Coordinator must attend such ISP meetings and participate in the development of an ISP in conformance with the ISP content described in OAR 411-320-0120(3).
- (c) Family support. The Services Coordinator will coordinate with the family or the legal guardian the development of the annual child and family service plan, (CFSP), for a child receiving child and family support services. The CFSP must be in accordance with OAR 411-305-0010 through 0180, (Child and Family Support Rule).
- (d) Comprehensive in-home supports. The Services Coordinator must coordinate with the individual, his or her family or legal guardian, the development of the annual In-Home Support Plan for the individual enrolled in Comprehensive In-Home Supports in accordance with OAR 411-330-0050(3) or any successor rules.
- (e) Support services for adults. The Support Specialist must review and authorize the ISP developed by the individual, his or her legal guardian and the personal agent, in accordance with OAR 411-340-0010 through 0180.
- (f) Annual summary. For individuals not enrolled in any other Department funded developmental disability service the Services Coordinator must ensure the completion of an annual summary. The annual summary must be completed within 60 days of intake and annually thereafter. The written summary

must be documented in the individual's record as a CDDP plan or as a comprehensive case note and consist of:

- (A) A review of the individual's current living situation;
  - (B) A review of any personal health, safety or behavioral concerns;
  - (C) A summary of support needs of the individual; and
  - (D) Actions to be taken by the Services Coordinator and others.
- (3) Plan content. The Services Coordinator or Support Specialist, (as is appropriate), will ensure that individual plans or the annual summary conforms to the requirements of this rule.
- (a) The Services Coordinator must ensure that a plan for an individual in Department funded comprehensive services is developed and documents a person centered process that identifies what is important to and for an individual, and also identifies the supports necessary to address issues of health, behavior, safety and financial supports. There must be documentation of an action plan or discussion record resulting from the team's discussion addressing issues of conflict between personal preferences and issues of health and safety.
  - (b) The Services Coordinator must ensure that a plan developed for a child in Department funded child and family support services conforms to requirements of OAR 411-305-0010 through 0180 rules for Child and Family Support Services.
  - (c) The Services Coordinator must ensure that an In-Home Support Plan conforms to the requirements describes in OAR 411-330-0050(3).
  - (d) The Support Specialist must receive a copy of the ISP developed for an individual enrolled in support services for adults that conforms to OAR 411-340-0120 rules for support services for adults.

- (4) Plan authorization. The Services Coordinator or the Support Specialist must review and authorize plans for the expenditure of Department funds. The plan must be signed within 5 working days by the Services Coordinator or the support services specialist and be authorized using the following standards:
  - (a) The plan addresses the needs of the individual as defined in OAR 411-320-0120(3);
  - (b) The plan identifies type, amount, frequency, duration and provider of services;
  - (c) The plan is signed by the individual and his or her guardian, (if any), and other team members where applicable,
  - (d) Plans for individuals residing in foster care or residential care licensed by other licensing authorities may be authorized without using the state-mandated formats described in OAR 411-320-0120(5).
- (5) Plan formats. The ISP, CFSP, or In-Home Support Plan developed at the annual or update meeting must be conducted in a manner specified by and on forms required by the Department. In the absence of a Department mandated form, the CDDP with the affected service providers may develop an ISP format that conforms to the licensing or certification service provider rule and provides for an integrated plan across the funded developmental disability service settings.
- (6) Plan updates. Plans for individuals must be kept current.
  - (a) Services Coordinator responsibility. The Services Coordinator or the Department Residential Services Coordinator for Children in Department directed contracted 24-hr residential services must ensure that a current plan for individuals enrolled in comprehensive services, self-directed supports or in family support services for children is authorized in accordance with OAR 411-320-0120(4) and maintained.
    - (A) The plan must be kept in the individual's record.

- (B) Plan updates must occur as required by this rule and any rules governing the operation of the service element.
    - (C) When there is a significant change the plan must be updated.
  - (b) Support Specialist responsibility. Anytime there is a significant change in the individual or his or her circumstances the plan must be updated by the personal agent. An updated plan must be submitted to the Support Specialist at the CDDP for authorization in conformance with OAR 411-320-0120 (4). The Support Specialist must maintain a copy of the current ISP for individuals enrolled in support services for adults.
- (7) Team process in comprehensive services. Except in Comprehensive In-Home Supports or Child and Family Supports the following applies to ISPs developed for persons in comprehensive services:
- (a) ISPs must be developed by an ISP Team. The ISP team assigns responsibility for obtaining or providing services to meet the identified needs.
    - (A) Membership on ISP teams must, at a minimum, conform to this rule and any relevant service provider rules.
    - (B) Unless refused by the adult, family participation should be encouraged.
    - (C) The individual may also suggest additional participants, friends or significant others.
    - (D) The individual may raise an objection to a particular person. When an individual raises objections to a person the team must attempt to accommodate the objection while allowing participation by agency representatives.
  - (b) Plans developed by an ISP Team must utilize a team approach and work toward consensus for a meaningful plan for the individual.

- (A) No one member of the team has the authority to make decisions for the team except as agreed to on the ISP.
- (B) When consensus cannot be achieved, majority agreement will prevail. For purposes of the team process and for the reaching majority agreement, representatives from each service provider agency, the family, the CDDP or advocacy agencies will be considered as one member.
- (C) The individual or the individual's legal representative retains the right to consent to treatment and training or to note any specific areas of the plan that they object to and wish to file a grievance.
- (D) The ISP Team members must keep the team informed whenever there are significant needs or changes, or there is a crisis or potential for a crisis. The Services Coordinator must be notified in all such instances.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0130 Monitoring of Services.**

*(Effective 08/03/2004)*

- (1) Visits to residential provider sites. The CDDP will ensure that regular visits responding to Department questions are conducted at each child or adult foster home and each 24 hour residential program site licensed or certified by the Department to serve individuals with developmental disabilities. Visits will review areas of service and support to individuals with specific focus on areas addressing health, safety, behavior support or financial services to individuals.
  - (a) In January of each year the CDDP will establish a review schedule based on the number of individuals served in each home. Visits will be scheduled to occur as follows:
    - (A) Homes or sites licensed or certified for one or two individuals will be visited at least quarterly;

- (B) Homes or sites licensed or certified for three or more individuals will be visited at least ten months each year.
  - (i) The CDDP will develop a procedure for the conduct of the visits to these homes; and
  - (ii) There should never be two consecutive months when a residential site is not visited.
  - (iii) In the months the home is not visited, the CDDP may conduct a visit to an employment site or attend a school IEP meeting as a substitute for an employment visit for children who are still in school.
  - (iv) If there are no Department funded individuals with developmental disabilities residing in the home, a visit by the CDDP is not required.
- (b) When the service provider is a Department contracted and licensed 24 hour residential program for children or is child foster proctor agency and a Department children's residential Services Coordinator is assigned to monitor services the Department's residential Services Coordinator and CDDP staff shall coordinate who will visit the home. If the visit is made by Department staff, the staff will provide the results of the monitoring to the local Services Coordinator.
- (c) The CDDP will document visits to the residential service and provide information concerning such visits to the Department upon request.
- (2) Service delivery. The Services Coordinator must monitor the delivery of services individuals enrolled in case management services at least annually.
  - (a) Case Management Only. Every individual enrolled in case management services and not enrolled in any other funded developmental disability service must have at least an annual contact with a Services Coordinator. Whenever possible this contact will be made in person. If contact is not made in person the case note must document how contact was achieved. The

Services Coordinator must document this contact in an annual summary in accordance with OAR 411-320-0120(1)(f). If the individual has any identified high-risk medical issue, including but not limited to, risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the Services Coordinator will maintain contact in accordance with planned actions described in the annual summary. Any follow-up must be documented in case notes. The Services Coordinator may, to the extent resources are available, monitor the annual summary of other individuals.

- (b) Service monitoring. The Services Coordinator will monitor services for individuals enrolled in Department-funded comprehensive services or for children enrolled in Child and Family Support Services. For persons residing in 24-hour residential programs or foster care, this monitoring maybe combined with the monthly visits as described in 411-320-0120(1) above. The Services Coordinator will determine if services are in accordance with the ISP or CFSP and take appropriate actions to ensure services.
- (A) Content of a review. The review of plans for individuals must include the following:
  - (i) Consideration of any serious events and unusual incident reports and the results of any monthly monitoring visits conducted in residential programs;
  - (ii) A semi-annual review of the process by which an individual accesses and utilizes funds according to standards specified in OAR 411-325-0380, 24-hour residential services or 309-040-0052(4)(c), adult foster care. The Services Coordinator must report any misuse of funds to the CDDP and the Department. The Department will determine whether a referral to the Medicaid Fraud Control Unit is warranted;
  - (iii) Review of the ISP document to determine if the goals and objectives or actions to be taken by the

provider, the Services Coordinator or others are implemented. This should include a discussion of the following:

- (I) Are services being provided as described in the plan document; and do they result in the achievement of the identified action plans;
  - (II) Are the personal, civil, and legal rights of the individual protected in accordance with this rule;
  - (III) Are the personal desires of the individual; the individual's legal representative or family addressed;
  - (IV) Do the services provided for in the plan continue to meet what is important to and for the individual;
- (B) Frequency of ISP reviews. The frequency of the monitoring will be determined by the needs of the individual. At a minimum the results of the ISP for individuals enrolled in comprehensive services must be reviewed at least once within the first 6 months of the plan year and again in preparation for the annual ISP process. The frequency with which individuals presenting with serious health, safety or behavioral risks are monitored should be based on ISP team decisions and CDDP policy.
- (C) In monitoring the plan, the Services Coordinator will document his or her findings and any resulting actions in the individual's CDDP record.
- (3) Monitoring follow-up. The Services Coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in a Department direct contract 24-hr residential service when a Department staff may conduct the follow-up.
- (a) If the Services Coordinator determines that comprehensive services are not being delivered as agreed in the plan, or that an individual's service needs have changed since the last

review, the Services Coordinator should initiate action to update the plan.

- (b) If there are concerns regarding the service provider ability to provide services, the CDDP, in consultation with the Services Coordinator, will determine the need for technical assistance or other follow-up activities. This may include coordination or provision of technical assistance, referral to the DD program manager for consultation or corrective action, requesting assistance from the Department for licensing unit or other administrative support, or meetings with the provider executive director or board of directors. In addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when:
  - (A) A service provider demonstrates substantial failure to comply with any applicable licensing or certification rules for Department-funded programs;
  - (B) The CDDP finds a serious and current threat endangering to the health, safety or welfare of individuals in a program for which an immediate action by the Department is required; or
  - (C) Any individual receiving Department funded developmental disability services dies. Notification must be made to the Department's Medical Director or his or her designee within one working day of the death.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0140 Abuse Investigations and Protective Services**

*(Effective 08/03/2004)*

- (1) General duties of the CDDP. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of the Department. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs. If determined necessary or appropriate, the Department may conduct

an investigation itself rather than allow the CDDP to investigate the alleged abuse. Under such circumstances, the CDDP must receive authorization from the Department before conducting a separate investigation.

- (2) Eligibility for protective services. Unless otherwise directed by the Department, the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are:
  - (a) Eighteen years of age or older, and
  - (b) Receiving case management services, or
  - (c) Receiving any Department funded services for individuals with developmental disabilities.
- (3) Abuse investigations. The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions and the report writing process. Investigations must be conducted in accordance with OAR 309-040-0200 through 309-040-0290.
- (4) Coordination with other agencies. The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.
- (5) Initial complaints. Initial complaints must immediately be submitted electronically, using the Department's system for reporting serious events.
- (6) Conflict of interest. The CDDP must develop and implement procedures to ensure a thorough and unbiased investigation that is timely and avoids actual or potential conflicts of interest where a Services Coordinator or CDDP employee may fall within the scope of the investigation or the perception of bias on the part of the investigator or CDDP.
- (7) Notification. Upon the initiation of an investigation of an alleged abuse, the CDDP must assure the immediate notification of the individual and the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified

unless the individual requests the parent, next of kin or other significant person not be notified about the investigation or protective services, unless specifically prohibited by rule or statute.

- (8) Reports. The Department or its designee must complete an abuse investigation and protective service report according to OAR 309-040-0260(1). Abuse investigations and protective service reports must be maintained by the CDDP. The sections of a report that are not exempt from disclosure under the public record's law or subject to confidentiality laws will be provided to any service provider organization involved in the allegation. The CDDP must ensure that any actions to prevent further abuse listed in the report are implemented within the deadlines listed.

Stat. Auth. ORS 410.070, 409.050

Stats. Implemented: ORS 430.610 -430.670, 427.005 - 427.007, 430.735-430.765

#### **411-320-0150 Specialized Services in a Nursing Home**

*(Effective 08/03/2004)*

- (1) Plan for specialized services in a nursing home. Individuals residing in nursing homes and determined to require specialized services as defined in OAR 411-070-0043 must have an annual plan for specialized services incorporated with the plan of care by the nursing home.
  - (a) The Services Coordinator must coordinate with the individual, his or her legal guardian, the staff of the nursing facility and other service providers, as appropriate, to provide or arrange the specialized services. The plan for specialized services must include:
    - (A) The name of the provider of services;
    - (B) A description of the specialized services to be provided;
    - (C) The number of hours of service per month;
    - (D) A description of how the services will be tracked; and

- (E) A description of the process of communication between the specialized service provider and the nursing facility in the event of unusual incidents, illness, absence and emergencies.
- (2) Review of plan. The Services Coordinator must complete an annual review of the plan for specialized services or when there has been a significant change in the individual's level of functioning. The review will conform to OAR 411-320-0130(2)(b).

Stat. Auth. ORS 410.070, 409.050

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

### **411-320-0160 Crisis/Diversion Services**

*(Effective 08/03/2004)*

- (1) Crisis/Diversion services. The CDDP will, in conjunction with its regional partners, provide crisis/diversion services for adults who are at imminent risk for civil commitment to Department of Human Services, (DHS), under ORS 427, and for children with developmental disabilities who are at imminent risk of out-of-home placement.
- (2) Crisis risk factors. An individual is in crisis when one or more of the following risk factors are present:
  - (a) An individual eligible for crisis services is not receiving necessary supports to address life-threatening safety skill deficits; or
  - (b) An individual eligible for crisis services is experiencing life-threatening health and safety issues resulting from complex behavioral or medical conditions; or
  - (c) An individual eligible for crisis services undergoes loss of caregiver due to caregiver illness or disability, or a protective service action that results in loss of home; or
  - (d) An individual eligible for crisis services presents the following significant safety risks to others in the home:
    - (A) Physical aggression toward vulnerable people; or

- (B) Fire-setting behaviors; or
  - (C) Sexually aggressive behaviors; or
  - (D) An individual eligible for crisis services currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention.
- (3) Eligibility for crisis/diversion services. The CDDP must ensure the determination of the eligibility of individuals to receive crisis services, and must ensure eligibility information is made available to support team members upon request, and to regional crisis programs upon each referral. An individual is eligible for crisis/diversion services when:
- (a) An individual is court committed to the Department under ORS 427, or an adult with a Full Scale Intelligence Quotient (FSIQ) pattern of 75 or less with significant deficits in adaptive functioning due to mental retardation and is at imminent risk of civil court commitment to the Department under ORS 427; and
  - (b) With no alternative resources available; and
  - (c) For whom a crisis exists as defined in (2)(a)-(d) above; or
  - (d) A child with developmental disabilities who is at imminent risk of out of home placement; and
  - (e) With no alternative resources available; and
  - (f) For whom a crisis exists as defined in (2)(a)-(d) above.
- (4) Funds for crisis services.
- (a) Must not supplant existing funding.
  - (b) Purchased goods or services must only be those necessary to divert an adult from civil court commitment under ORS.427, or a child from out-of-home placement.
  - (c) Crisis services must only be used when no appropriate alternative resources are available to resolve the crisis

situation. Funded residential program vacancies represent existing available and alternative resources.

- (5) Allowable expenditures. Allowable short term Crisis Services include, but are not limited to:
  - (a) Professional consultation, assessment, or evaluation;
  - (b) Adaptive equipment;
  - (c) Respite care;
  - (d) Adaptations to the eligible individual's residence to increase accessibility or security;
  - (e) Short-term residential or vocational services; or
  - (f) Added staff supervision.
  - (g) Wages for direct care staff, respite providers and professional consultants must be paid within the current wage and rate guidelines published by the Department.
- (6) Service limitations. The following must not be purchased with crisis services funds:
  - (a) Household appliances;
  - (b) Services covered under existing provider contracts with the CDDP or Department;
  - (c) Health care services covered by Medicaid, Medicare, or private medical insurance; and
  - (d) Services provided by the parent of a child, or the spouse of an adult.
- (7) Service authorization. The CDDP or Regional Crisis Program must authorize the utilization of crisis services.
  - (a) To assure that Crisis services are utilized only when no appropriate alternative resources are available, the CDDP or the Regional Crisis Program must document the individual's eligibility for crisis services, the alternative resources

considered, and why those resources were not appropriate or available, prior to initiating any crisis services.

- (b) For services that exceed \$3,000 per individual case, or 90 days duration, authorization must be made by the CDDP or the Regional Crisis Program, and must be documented, in writing, within the individual's case file; or
  - (c) For services that exceed \$5,000 for adaptation or alteration of fixed property, authorization must be made by the Department based upon the recommendation of the CDDP or the Regional Crisis Program.
  - (d) The Department may, at its discretion, exercise authority under ORS 427.300 to direct any court-committed mentally retarded person to the facility best able to treat and train the person. The Department must consult with any CDDP, the Regional Crisis Program or service provider affected by this decision, prior to placement of the individual or child.
- (8) Administration of short term crisis services. The CDDP and the Regional Crisis Program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:
- (a) Identification of persons or positions within the organization authorized to approve expenditures;
  - (b) Description of limits on those authorities and procedures for management reviews; and
  - (c) Description of procedures to disburse and account for funds.
  - (d) The CDDP or the Regional Crisis/Diversion Program must have the capacity to make service payments within 48 hours.
- (9) Monitoring of short term crisis services.
- (a) The CDDP must monitor the delivery of crisis services as specified in the crisis plan and the individual's plan of care. This should be done through contact with the individual, any

service providers and the family. This must be documented in the individual's case file.

- (b) The CDDP must coordinate with service providers or other support team members to evaluate the impact of crisis services upon the individual, and will ensure needed changes are recommended to the individual's support team.
  - (c) The Department may monitor crisis services through reports received pursuant to OAR 411-320-0160(10) and (11), Record Keeping and Reporting Procedures and OAR 411-320-0180, On-site Inspections.
- (10) Record keeping and reporting procedures.
- (a) The CDDP or the Regional Crisis Program must ensure the crisis plan is developed in partnership with the individual's support team, and the following written information is maintained within the crisis plan:
    - (A) Identifying information about the individual including name, address, age, and name of parent or guardian;
    - (B) Description of the circumstances for which crisis services were requested, to clearly specify how the individual is eligible to receive crisis services;
    - (C) Description of resources used or alternatives considered prior to the request for crisis funds, and why the resources or alternatives were not appropriate or were not available in meeting the individual's needs in addressing the crisis;
    - (D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, to include:
      - (i) The frequency of the provision or purchase of goods or services; and
      - (ii) The duration of the provision or purchase of goods or services; and

- (iii) The costs of the goods or services to be provided or purchased.
- (E) Description of the outcome to be achieved to resolve the crisis through the provision or purchase of the goods and services; and
  - (b) The CDDP must ensure the documentation of the support team approved modifications to the individual's plan of care, that outline how the crisis is to be addressed through the use of crisis services.
  - (c) The CCDP must maintain a current copy of the Title XIX waiver form, when the individual eligible for crisis services is receiving a Home and Community Based Waiver Services, or as otherwise instructed by the Department.
- (11) Reporting requirements. The CDDP or Region must report, using the accepted Department reporting systems, the following information to the Department by the tenth working day the month following each month in which crisis services were provided:
  - (a) Individuals for whom crisis services were provided;
  - (b) Individual services provided; and
  - (c) Total cost by type of service.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0170 Complaints, Grievance and Appeals**

*(Effective 08/03/2004)*

- (1) Complaint and grievance log. The CDDP will maintain a log of all complaints and grievances received regarding the CDDP or any subcontract agency providing services to individuals.
  - (a) The log must, at a minimum, include the following: the date the complaint or grievance was received, the person taking the complaint, the nature of the complaint or grievance, the name of the person making the complaint or grievance, if known; and the disposition of the complaint.

- (b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint and grievance log.
- (2) Grievances. The CDDP must address all grievances by individuals or subcontractors in accordance with CDDP policies, procedures and these rules. Copies of the procedures for resolving grievances must be maintained on file at the CDDP offices. They must be available to county employees who work with individuals with developmental disabilities, individuals who are receiving services from the county and their families, their legal representatives, advocates, service providers and the Department.
  - (a) Subcontractor grievances. When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of an administrative rule of the Department relating to developmental disability services, and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.
    - (A) Procedure. The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:
      - (i) Request. The party requesting mediation must send a written request to the Administrator or designee, the CDDP program director, and the provider agency director, unless other persons are named as official contact persons in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.
      - (ii) Arrangements. Department staff must arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting should include:

- (I) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement should be made on arrangements for obtaining these services.
    - (II) Development of rules and procedures that will be followed by all parties during the mediation;
    - (III) Agreement on a date by which mediation will be completed, unless extended by mutual agreement.
  - (iii) Cost. Unless otherwise agreed to by all parties:
    - (I) Each party will be responsible for the compensation and expenses of their own employees and representatives; and
    - (II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. will be shared equally by all parties.
- (B) Final report. A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, the Department will prepare the final report. A final report on each mediation must be retained on file at the Department.
- (b) Contract not substantially similar. A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by the Department in its model contract. The service provider's appeal of the

imposition of the disputed terms or conditions must be in writing and sent to the Administrator or designee within 30 calendar days after the effective date of the contract requirement.

- (A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:
  - (i) A copy of the contract and any pertinent contract amendments;
  - (ii) Identification of the specific term(s) that are in dispute; and
  - (iii) A complete written explanation of the dissimilarity between terms.
- (B) Upon receipt of this notice, the CDDP will suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.
- (C) Process. The Administrator or designee, must offer to mediate a solution in accordance with the procedure outlined in OAR 411-320-0170 (2)(a) (A) and (B).
  - (i) If a solution cannot be mediated, the Administrator for or designee will declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:
    - (I) A representative from the Department,
    - (II) A representative from another CDDP, and
    - (III) A representative from another service provider organization.
  - (ii) The panel must meet with the parties, consider their respective arguments and send written recommendations to the Administrator within 45

business days after an impasse is declared, unless the Administrator grants an extension.

- (iii) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.
  - (iv) The Administrator or designee must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.
  - (v) Notwithstanding OAR 411-320-0170(2)(b)(C)(i-iv) listed above, the Administrator has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Administrator or his or her designee finds that the contract language being contested is identical to the current language in the county financial assistance agreement with the Department.
- (D) Expedited appeal process. The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.
- (i) The request must be made in writing to the Administrator or designee. It must describe the potential harm and level of risk that will be incurred by following the appeal process.

- (ii) SPD must notify all parties of its decision to approve an expedited appeal process within two business days.
  - (iii) If an expedited process is approved, the Department's designee must notify all parties of his or her decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process will be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.
- (c) Grievances by or on behalf of individuals. An Individual, his or her guardian or other legal representative, a family member, or advocate may file a grievance with the CDDP under the following conditions:
  - (A) Informal procedures. Grievances or appeals submitted to the CDDP may be resolved at any time through the use of informal procedures such as meetings or mediation. However, the person submitting the grievance or appeal may elect not to use informal procedures. Any agreement to resolve the grievance or appeal must be reduced to writing and must be specifically approved by the grievant or appellant. The grievant or appellant must be provided with a copy of such agreement.
  - (B) Eligibility grievance. A grievance of a denial of an initial determination of eligibility for developmental disability services or an eligibility redetermination must be submitted to the CDDP, in writing, within 30 days of receipt of notice of the eligibility determination required in OAR 411-320-0080. The CDDP, upon request, must assist individuals requiring assistance in preparing a written grievance.
    - (i) CDDP review of grievance. When a grievance includes new information relative to making an eligibility determination, the CDDP has up to 30

days from the date received to review their original decision of denial, consider the new eligibility documentation, respond to the grievant in writing with a decision and, if necessary, to forward it for an administrative review. If there is no new information submitted with the grievance the CDDP must refer the grievance to the Diagnosis and Evaluation Coordinator within 5 working days from the receipt of the grievance.

- (ii) Extension of process. The process described in 0170 (2)(c)(B)(i) can be extended by mutual agreement between the parties. A written confirmation of the agreement to extend the time for resolution shall be sent to the grievant.
- (iii) Administrative review. Within 30 days of receipt of the grievance, the Diagnosis and Evaluation Coordinator must, based upon a review of the documentation used to deny eligibility, inform the grievant and the CDDP in writing of his or her decision regarding eligibility. The notice must state the reasons for the decision.
- (iv) Decision by the D&E Coordinator. If the Diagnosis and Evaluation Coordinator's decision upholds the CDDP denial of eligibility and if resolutions have not been reached, the individual, his or her family member, legal representative, or advocate may petition the Department for a review by the Department's Eligibility Grievance Review Committee within 15 days of receipt of the notice from the D&E Coordinator. (v) Department eligibility grievance review committee. The Administrator or designee will appoint a grievance review committee to review all grievances of eligibility determinations that fail to be resolved at the local level or by the D & E Coordinator.
  - (I) The committee must be composed of at least a Department representative, a local service

provider program representative and a county case management representative. The Administrator shall appoint the Committee and name the Chairperson.

- (II) In case of a conflict of interest the Administrator will temporarily appoint an alternative representative to the committee.
- (vi) Upon receipt of the request for formal review the Department must:
- (I) Schedule a grievance committee review meeting within 30 days of written request by the requesting party for a formal review of the decision;
  - (II) Notify in writing, each party involved in the disagreement of the date, time and location of the committee review meeting, allowing at least 15 days from the meeting notification to the scheduled meeting time; and
  - (III) Record the review committee meeting.
- (vii) Individual rights. The Grievance Review Committee must afford individuals the following rights:
- (I) The opportunity to review documents and other evidence relied upon in reaching the decision being appealed;
  - (II) The opportunity to be heard in person and to be represented; and
  - (III) The opportunity to present witnesses or documents to support their position and to question witnesses presented by other parties.

- (viii) Within 15 days after the conclusion of the meeting, the grievance review committee must provide written recommendations to the Administrator.
  - (ix) The Administrator must make a decision and send written notification of the recommendations and implementation process to all grievance review meeting participants within 15 days of receipt of the recommendations.
  - (x) The decision of the Administrator is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.
- (C) Dispute with service provider or CDDP services. A grievance may be filed regarding an inability to resolve a dispute concerning the appropriateness of services described in the service plan provided by a CDDP subcontractor or regarding dissatisfaction with services provided by the CDDP.
- (i) The CDDP must follow its policies and procedures regarding receipt and resolution of a grievance.
  - (ii) The CMHDDP Director or his or her designee must provide to the grievant or appellant a written decision regarding the grievance or appeal within 30 days of receipt of the grievance or appeal.
    - (I) The written decision regarding the grievance or appeal must contain the rationale for the decision and must list the reports, documents, or other information relied upon in making the decision.
    - (II) Along with the written decision, the grievant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the grievance or appeal; and

- (III) Be provided a notice that the grievant has the right to request a review of the decision by the Department. Such notice, must be written in clear, simple language and, at a minimum, explain how and when to request such a review and when a final decision must be rendered by the Administrator.
  - (iii) Department review. Following a decision by the CMHDDP Director or his or her designee regarding a grievance or appeal, the grievant may request a review by the Administrator.
    - (I) The grievant or appellant must submit a request for review within 15 days from the date of the decision by the CMHDDP Director or his or her designee.
    - (II) The Administrator or his or her designee must complete a review and provide a written decision to the grievant or appellant within 45 days of receipt of the request for review. The written decision must contain the rationale for the decision.
    - (III) The decision of the Administrator or his or her designee is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court.
- (3) Appeals. Individuals, their guardian, or legal representative may appeal specific decisions by the CDDP, a service provider or a state training center as follows:
  - (a) Residential. Appeals of entry, exit or transfer decisions within residential services may only be initiated according to the "24-Hour Residential Services" (OAR 411-325-0010 to 0480) and the "Supported Living (OAR 309-041-0550) rules or any successor rules as they may be revised from time to time;

- (b) Employment. Appeals of entry, exit or transfer decisions within employment services or community inclusion services may only be initiated according to the "Employment and Alternatives to Employment Services" (OAR 411-345-0150) rule or any successor rules as they may be revised from time to time;
- (c) Medicaid. Appeals of Medicaid eligibility decisions may only be initiated according to the "Fair Hearings", (OAR 410-120-0760 to 410-120-1060, Medical Assistance Programs), rule or any successor rules as they may be revised from time to time; and
- (d) Eastern Oregon Training Center. Appeals of State Training Center decisions may only be initiated according to OAR 309-118-0000, Grievance Procedure for Use in State Institutions or any successor rules as they may be revised from time to time.

Stat. Auth. ORS 410.070, 409.050

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

### **411-320-0180 Inspections and Investigations**

*(Effective 01/01/2004)*

- (1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:
  - (a) Quality assurance, certification and on-site inspections;
  - (b) Complaint investigations; and
  - (c) Abuse investigations.
- (2) Conduct of inspections or investigations. The Department, its designee, or proper authority must perform all inspections and investigations.
- (3) Unannounced. Any inspection or investigation may be unannounced.

- (4) Plan of correction. A plan of correction must be submitted to the Department for any non-compliance found during an inspection under this rule.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0190 Program Review and Certification**

*(Effective 08/03/2004)*

- (1) Department review of CDDP. The Department may review the CDDP implementation of these rules as provided for in OAR 411-320-0180.
- (2) Certificate of compliance. If, following a Department review, the CDDP is in substantial compliance with these rules the Department will issue a Certificate of Compliance to the CDDP.
- (3) Department follow-up. If, following a review, the CDDP or case management provider is not in substantial compliance with these rules the Department may offer technical assistance or request corrective action. The CDDP will perform the necessary corrective measures required by and in the time specified by the Department. The Department may conduct such reviews as necessary to insure corrective action has been achieved.

Stat. Auth. ORS 410.070, 409.050

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

#### **411-320-0200 Variances**

*(Effective 08/03/2004)*

- (1) Criteria for a variance. Variances that do not jeopardize individuals' health or safety may be granted to a CDDP if there is a lack of resources to meet the standards required in this rule and the alternative services, methods, concepts or procedures proposed would result in services or systems that meet or exceed the standards. All variances must be submitted to and approved by the Department prior to implementation.

- (2) Variance application. The CDDP requesting a variance must submit, in writing, an application to the Department that contains the following:
  - (a) The section of the rule from which the variance is sought;
  - (b) The reason for the proposed variance;
  - (c) A description of the alternative practice, service, method, concept or procedure proposed, including how the health and safety of individuals receiving services will be protected to the extent required by these rules;
  - (d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and
  - (e) Signed documentation from the CDDP reflecting the justification for the proposed variance.
- (3) Department review. The Administrator must approve or deny the request for a variance.
- (4) Notification. The Department will notify the CDDP of the decision. This notice must be given to the CDDP within forty-five (45) days of the receipt of the request by the CPPD.
- (5) Appeal of variance denial. Appeal of the denial of a variance request must be made in writing to the Administrator whose decision is final.
- (6) Written approval. The CDDP may implement a variance only after written approval from the Department. The Intergovernmental Agreement is amended to the extent that the variance changes a term in that agreement.

Stat. Auth. ORS 410.070, 409.050

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