

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

**CHAPTER 411
DIVISION 320**

COMMUNITY DEVELOPMENTAL DISABILITIES PROGRAMS

EFFECTIVE JULY 1, 2022

411-320-0010 Statement of Purpose

(Amended 06/29/2016)

The rules in OAR chapter 411, division 320 prescribe general administrative standards for the operation of a community developmental disabilities program (CDDP).

(1) A CDDP providing developmental disabilities services under a contract with the Department is required to meet the basic management, programmatic, and health, safety, and human rights regulations in the management of the community service system for individuals with intellectual or developmental disabilities.

(2) These rules prescribe the standards by which the Department provides services operated by the CDDP, including but not limited to eligibility determination and adult protective services.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.695

411-320-0020 Definitions and Acronyms

(Amended 11/01/2019)

In addition to the following definitions, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 320. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "ABAS" means "Adaptive Behavior Assessment System".

(2) "ABES" means "Adaptive Behavior Evaluation Scale".

(3) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include, but are not limited to, adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including, but not limited to, walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by normed, standardized tests administered by a licensed clinical psychologist, school psychologist, doctor of medicine, or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities. An assessment of adaptive behavior is used to determine if a person has significant impairment in adaptive behavior as required in eligibility criteria OAR 411-320-0080(3) and (4). Additionally, an assessment of adaptive behavior is used to determine if a person is eligible as a person with an other developmental disability by demonstrating the person requires supports similar to a person with an intellectual disability as described in OAR 411-320-0080(4). Assessments of adaptive behavior include the following:

(A) Adaptive Behavior Assessment System (ABAS);

(B) Adaptive Behavior Evaluation Scale (ABES);

(C) Vineland Adaptive Behavior Scale (VABS); or

(D) Other assessments approved by the Department that are designed to measure adaptive behavior, standardized and normed to a population consistent with people who experience an intellectual or developmental disability.

(b) DOMAIN SCORES. Adaptive behavior domain scores are identified on the following assessments of adaptive behavior:

(A) The ABAS and ABES are:

- (i) Conceptual;
- (ii) Practical; and
- (iii) Social.

(B) The VABS are:

- (i) Socialization;
- (ii) Daily living skills;
- (iii) Communication; and
- (iv) Motor.

(c) **COMPOSITE SCORE.** The adaptive behavior composite score is the overall score which results from summing two or more domain scores on a given assessment of adaptive behavior.

(d) **SKILLED AREAS.** Skilled areas are a particular assessed score. The skilled areas on the ABAS or ABES are the only skilled areas used for the purposes of OAR 411-320-0080 and include scaled scores in:

- (A) Communication;
- (B) Functional academics;
- (C) Self-direction;
- (D) Leisure;
- (E) Social;
- (F) Community use;

(G) Home and school living;

(H) Self-care;

(I) Health and safety; and

(J) Work.

(e) "Significant impairment" in adaptive behavior means:

(A) A composite score of at least two standard deviations below the norm; or

(B) Two or more domain scores, as identified in subsection (b) of this section, are at least two standard deviations below the norm; or

(C) Two or more skilled areas, as identified in subsection (d) of this section, are at least two standard deviations below the norm.

(4) "CAM" means "Centralized Abuse Management".

(5) "CDDP" means "Community Developmental Disabilities Program".

(6) "CIIS" means "Children's Intensive In-Home Services".

(7) "CMS" means "Centers for Medicare and Medicaid Services".

(8) "Completed Application" means an application required by the Department that:

(a) Is filled out accurately based on individual information, signed, and dated. An applicant who is unable to sign may sign with a mark, witnessed by another person; and

(b) Contains documentation required to make an eligibility determination as outlined in OAR 411-320-0080.

(9) "Composite Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".

(10) "County of Origin" means:

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

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

(11) "Current Documentation" means documentation related to the intellectual or developmental disabilities of an individual in regards to the functioning of the individual within three years from the date of application or Notice of Redetermination (form 5101). Current documentation may include, but is not limited to, an ISP, Annual Plan, Positive Behavior Support Plan, required assessments, educational records, medical assessments related to the intellectual or developmental disabilities of an individual, psychological evaluations, and assessments of adaptive behavior.

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

(a) Originates before an individual is 22 years of age;

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

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

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

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

(13) "Domain Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".

(14) "Eligibility Determination" means a decision by the CDDP or by the Department regarding the eligibility of a person for developmental disabilities services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disabilities services.

(15) "Eligibility Specialist" means an employee of the CDDP, or other agency that contracts with the county or Department, that determines eligibility for developmental disabilities services.

(16) "FSIQ" means the full scale intelligence quotient. FSIQ is a broad measure of intelligence achieved through administration of a standardized intelligence test that is accepted by the Department for an eligibility determination. Any standard error of measurement value is not taken into consideration when making an eligibility determination. FSIQs obtained from administration of brief intelligence tests are not considered valid FSIQ scores when making an eligibility determination.

(17) "History" means, for the purposes of an eligibility determination as defined in this rule, necessary evidence of an intellectual disability prior to 18 years of age or an other developmental disability prior to 22 years of age, including previous assessments and medical evaluations prior to the date of eligibility determination for developmental disabilities services.

(18) "IEP" means "Individualized Education Program".

(19) "Indefinitely" means a condition or impairment that is likely to be permanent, as determined by a qualified professional.

(20) "Informal Adaptive Behavior Assessment" means:

(a) Observations of impairment in adaptive behavior recorded in the progress notes for an individual by a services coordinator, personal agent, or a trained eligibility specialist with at least two years of experience working with individuals with intellectual or developmental disabilities; or

(b) A standardized measurement of adaptive behavior, such as a Vineland Adaptive Behavior Scale (VABS) or Adaptive Behavior Assessment System (ABAS), that is administered and scored by a 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 individuals with intellectual or developmental disabilities.

(21) "Intake" means the activity of completing the Request for Eligibility Determination (form 0552) and necessary releases of information prior to the submission of a completed application to the CDDP.

(22) "Intellectual Disability (ID)" means significantly sub average general intellectual functioning defined as full scale intelligence quotients (FSIQs) 70 and under, as measured by a qualified professional, and existing concurrently with significant impairment in adaptive behavior directly related to an intellectual disability as described in OAR 411-320-0080 that manifested prior to an individual's 18th birthday. An individual with a diagnosis of intellectual disability that manifested prior to the individual's 18th birthday and who has a valid FSIQ of 71-75, may be considered to have an intellectual disability if the individual also has significant impairment in adaptive behavior directly related to the intellectual disability as diagnosed and measured by a licensed clinical or school psychologist as described in OAR 411-320-0080.

(23) "Intellectual Functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose of measuring intelligence. For purposes of making eligibility determinations, intelligence tests do not include brief intelligence measurements.

(24) "Intelligence Tests" approved by the Department include:

(a) Wechsler Intelligence Scales;

(b) Stanford-Binet Intelligence Scale;

(c) Woodcock-Johnson Test of Cognitive Abilities; or

(d) Any other intelligence assessment approved by the Department that are designed to measure intelligence quotients, standardized and normed to a population consistent with people who experience an intellectual or developmental disability. Brief measures of intelligence quotients are not accepted, including brief tests such as the Kaufman Brief Intelligence Test (K-BIT), Weschler Abbreviated Scale of Intelligence (WASI), or tests that only administer part of a full assessment.

(25) "IQ" means intelligence quotient.

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

(27) "Learning Disability" means a condition that interferes with development of academic skills. Learning disability includes, but is not limited to, ataxia, communication disorder, dyslexia, dysgraphia, dyscalculia, language disorder, fluency disorder, non-verbal learning disorder, specific auditory or processing disorder, social pragmatic communication disorder, specific learning disorder, and speech sound disorder.

(28) "Licensed Medical Practitioner" means any of the following licensed professionals:

(a) Medical Doctor (MD);

(b) Doctor of Osteopathic Medicine (DO);

(c) Licensed Clinical Psychologist (Ph.D. or Psy.D.);

(d) Nurse Practitioner (NP);

(e) Physician Assistant (PA); or

(f) Naturopathic Doctor (ND).

(29) "LMHA" means "Local Mental Health Authority".

(30) "Management Entity" means the CDDP or private corporation that operates the Regional Program, including acting as the fiscal agent for regional funds and resources.

(31) "Military Service" means service in the Armed Forces of the United States, as defined in ORS 341.496.

(32) "Motor Impairment" means impairment in the ability to move all or parts of an individual's body caused by trauma, disease, or any condition affecting the muscular-skeletal system, spinal cord, or sensory or motor nerves. The disability may interfere with the development or function of the bones, muscles, joints, and central nervous system. Physical characteristics may include paralysis, altered muscle tone, an unsteady gait, loss of or inability to use one or more limbs, difficulty with gross-motor skills such as walking or running, or difficulty with fine-motor skills such as buttoning clothing, printing, or writing. Motor impairment includes, but is not limited to, apraxia, developmental coordination disorder, dyspraxia, motor learning difficulty, muscular dystrophy, and stereotypic movement disorder.

(33) "Neurological Condition" means a condition that originates in and directly affects the brain, leads to delays in achieving expected milestones, and is likely to cause lifelong impairments of personal, social, academic, or occupational functioning. A condition does not originate in and directly affect the brain if the condition only causes abnormalities or changes of the spinal cord, peripheral nerves, autonomic nervous system, neuromuscular junction, cardiovascular system, or musculoskeletal system. Conditions that do not originate in and directly affect the brain include, but are not limited to, muscular dystrophy, spinal muscular atrophy, and non-shunted spina bifida.

(34) "Notice of Redetermination" means the Redetermination of Eligibility for Developmental Disabilities Services (form 5101).

(35) "OCCS" means the "Oregon Health Authority, Office of Client and Community Services."

(36) "OHP" means "Oregon Health Plan".

(37) "OIS" means "Oregon Intervention System".

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

(39) "OTIS" means the Department's Office of Training, Investigations, and Safety.

(40) "Qualified Professional" means, for the purposes of OAR 411-320-0080, any of the following licensed professionals trained to make a diagnosis of a specific intellectual or developmental disability:

(a) Licensed clinical psychologist (Ph.D., Psy.D.);

(b) Medical doctor (MD);

(c) Doctor of Osteopathic Medicine (DO); or

(d) Nurse Practitioner (NP).

(41) "Quality Management Strategy" means the Department Quality Assurance Plan for meeting the CMS waiver quality assurances as required and defined by 42 CFR 441.301 and 441.302 and State Plan K option quality assurances as required and defined by 42 CFR 441.585.

(42) "Region" means a group of Oregon counties defined by the Department that have a designated management entity to coordinate regional backup services and be the recipient and administration of funds for those services.

(43) "Regional Program" means the regional coordination that the counties comprising the region agree are delivered more effectively or automatically on a regional basis.

(44) "Request for Eligibility Determination" means the Office of Developmental Disabilities Services Request for Eligibility Determination (form 0552).

(45) "Resident" means an individual that meets the residency requirements in OAR 461-120-0010. "Resident" includes an individual that is absent due to military obligation, if he or she intends to return Oregon, and Oregon remains his or her principal establishment, home of record, or permanent home during the absence.

(46) "Service Member" means a person who is in the military service or who has separated from military service in the previous 18 months through retirement, discharge, or other separation.

(47) "School-Age Testing" means any type of standardized test that may be administered for use in school supports or services beginning in Kindergarten.

(48) "Significantly Subaverage" means a score on an intelligence test that is two or more standard deviations below the mean for the test.

(49) "Skilled Areas" means a particular assessed score as described in the definition for "adaptive behavior".

(50) "SSI" means "Supplemental Security Income".

(51) "These Rules" mean the rules in OAR chapter 411, division 320.

(52) "VABS" means "Vineland Adaptive Behavior Scale".

Stat. Auth.: ORS 409.050, 427.104, 427.105, 427.115, 430.662, 430.731
Stats. Implemented: ORS 427.007, 427.104, 427.105, 427.115, 430.215, 430.610, 430.620, 430.662, 430.664, 430.731-430.768

411-320-0030 Organization and Program Management *(Amended 11/01/2019)*

(1) ORGANIZATION AND INTERNAL MANAGEMENT. Each service provider of community developmental disabilities services funded by the Department must have written standards governing the operation and management of the CDDP. Such standards must be up to date, available upon request, and include:

(a) An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and the components and staff within the CDDP;

(b) Position descriptions for all staff providing community developmental disabilities services;

(c) 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; and

(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 management plan assigning responsibility for the program management functions and duties described in this rule. The management plan must:

(a) Consider the unique organizational structure, policies, and procedures of the CDDP;

(b) 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 the functions are implemented; and

(c) Reflect implementation of minimum quality assurance activities described in OAR 411-320-0045 that support the Department's Quality Management Strategy for meeting CMS' waiver quality assurances as required by 42 CFR 441.301 and 441.302.

(3) The CDDP must have and implement written policies and procedures that protect the individual rights described in OAR 411-318-0010.

(4) PROGRAM MANAGEMENT.

(a) Staff delivering developmental disabilities services must be organized under the leadership of a designated CDDP manager and receive clerical services sufficient to perform their required duties.

(b) The LMHA, public entity, or the public or private corporation operating the CDDP must designate a full-time employee who must, on at least a part-time basis, be responsible for management of developmental disabilities services within a specific geographic service area.

(c) In addition to other duties as may be assigned in the area of developmental disabilities services, the CDDP must at a minimum develop and assure:

(A) Implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve individuals;

(B) Maintenance of positive and cooperative working relationships with legal and designated representatives, families, service providers, support services brokerages, the Department, local government, and other state and local agencies with an interest in developmental disabilities services;

(C) 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;

(D) 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, collect federal funds supporting services, and investigate complaints related to services or suspected abuse; and

(E) Use of procedures that attempt to resolve complaints involving individuals or organizations that are associated with developmental disabilities services.

(5) QUALIFIED STAFF. Each CDDP must provide a qualified CDDP manager, services coordinator, eligibility specialist, assessor, and abuse investigator specialist for adults with intellectual or developmental disabilities, or have an agreement with another case management entity to provide a qualified eligibility specialist, assessor, or abuse investigator specialist for adults with intellectual or developmental disabilities.

(a) CDDP MANAGER.

(A) The CDDP manager must have knowledge of the public service system for developmental disabilities services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, health science, special education, public administration, or human service administration and a minimum of four years of experience with at least two of those years of experience in developmental disabilities services that provided recent experience in program management, fiscal management, and staff supervision; or

(ii) Six years of experience with staff supervision; or

(iii) Six years of experience in technical or professional level staff work related to developmental disabilities services.

(B) On an exceptional basis, the CDDP may hire a person who does not meet the qualifications in subsection (A) of this section if the county and the Department have mutually agreed on a training and technical assistance plan that assures that the person quickly acquires all needed skills and experience.

(C) When the position of a CDDP manager becomes vacant, an interim CDDP manager must be appointed to serve until a permanent CDDP manager is appointed. The CDDP must request a variance as described in section (8) of this rule if the person appointed as interim CDDP manager does not meet the qualifications in subsection (A) of this section and the term of the appointment totals more than 180 calendar days.

(b) CDDP SUPERVISOR. The CDDP supervisor (when designated) must have knowledge of the public service system for developmental disabilities services in Oregon and at least:

(A) A bachelor's degree or equivalent course work in a field related to management such as business or public administration, or a field related to developmental disabilities services may be substituted for up to three years required experience; or

(B) Five years of experience in staff supervision or five years of experience in technical or professional level staff work related to developmental disabilities services.

(c) SERVICES COORDINATOR. The services coordinator must meet the qualifications for a case manager described in OAR 411-415-0040.

(d) ELIGIBILITY SPECIALIST. The eligibility specialist must have knowledge of the public service system for developmental disabilities services in Oregon and at least:

(A) A bachelor's degree in behavioral science, social science, or a closely related field;

(B) A bachelor's degree in any field and one year of human services related experience;

(C) An associate's degree in behavioral science, social science, or a closely related field and two years of human services related experience; or

(D) Three years of human services related experience.

(e) ASSESSOR. The assessor must meet the qualifications described in OAR 411-425-0035.

(f) ABUSE INVESTIGATOR SPECIALIST. The abuse investigator specialist must have at least:

(A) A bachelor's degree in human science, social science, behavioral science, or criminal science and two years of human services, law enforcement, or investigative experience; or

(B) An associate's degree in human science, social science, behavioral science, or criminal science and four years of human services, law enforcement, or investigative experience.

(g) FOSTER CARE LICENSING AND CERTIFICATION SPECIALIST. A foster care licensing and certification specialist must have knowledge of the public service system for developmental disabilities services in Oregon and at least:

(A) A master's degree in social work;

(B) A bachelor's degree in behavioral science, social work, social science, or a closely related field;

(C) A bachelor's degree in any field and one year of human services related experience, such as work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing;

(D) An associate's degree in a behavioral science, social science, or a closely related field and two years of human services related experience, such as work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(E) Three years of human services related experience, such as work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing.

(6) EMPLOYMENT APPLICATION. An application for employment at the CDDP must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(7) BACKGROUND CHECKS.

(a) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of the CDDP, who has or shall have contact with a recipient of CDDP services, must have an approved background check in accordance with OAR 407-007-0200 through 407-007-0370 and ORS 181A.200.

(A) The CDDP may not use public funds to support, in whole or in part, any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210, who shall have contact with a recipient of CDDP services and who has been convicted of a disqualifying crime in ORS 443.004.

(B) A person does not meet the qualifications described in this rule if the person has been convicted of a disqualifying crime in ORS 443.004.

(C) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210, must self-report any potentially disqualifying crime under OAR 125-007-0270 or potentially disqualifying condition under OAR 407-007-0290. The person must notify the Department or the Department's designee within 24 hours.

(b) Subsections (A) and (B) of section (a) do not apply to employees who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(8) VARIANCE. The CDDP must submit a written variance request to the Department prior to employing a person not meeting the minimum qualifications in section (5) of this rule. A variance request may not be requested for sections (6) and (7) of this rule. The written variance request must include:

(a) An acceptable rationale for the need to employ a person who does not meet the minimum qualifications in section (5) of this rule; and

(b) A proposed alternative plan for education and training to correct the deficiencies.

(A) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(B) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(9) STAFF DUTIES.

(a) SERVICES COORDINATOR DUTIES. The duties of the services coordinator must be specified in the employee's job description and at a minimum include:

(A) The delivery of case management services to individuals as described in OAR chapter 411, division 415;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(b) ELIGIBILITY SPECIALIST DUTIES. The duties of the eligibility specialist must be specified in the employee's job description and at a minimum include:

(A) Completing intake and eligibility determination for individuals applying for developmental disabilities services;

(B) Completing eligibility redetermination for individuals requesting continuing developmental disabilities services; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(c) ASSESSOR DUTIES. The duties of the assessor must be specified in the employee's job description and at a minimum include conducting Oregon Needs Assessments as described in OAR chapter 411, division 425.

(d) ABUSE INVESTIGATOR SPECIALIST DUTIES. The duties of the abuse investigator specialist must be specified in the employee's job description and at a minimum include:

(A) Conducting abuse investigation and protective services for adult individuals with intellectual or developmental disabilities enrolled in, or previously eligible and voluntarily terminated from, developmental disabilities services;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(e) FOSTER CARE LICENSOR AND CERTIFIER DUTIES. The duties of the foster care licensor and certifier must be specified in the employee's job description and at a minimum include:

(A) In coordination with the Department, assist in the initial licensing and certification and renewals of licenses and certifications of local adult foster homes as described in OAR chapter 411, division 360 and children's foster homes as described in OAR chapter 411, division 346.

(i) Assuring completed application forms from applicants are submitted to the Department.

(ii) Completing and submitting inspection reports.

(iii) Completing and submitting background checks, as needed.

(iv) Making test sites available, administering tests provided by the Department, and sending completed tests to the Department for scoring.

(v) Maintaining a link to the Adult Foster Home Training website where the Basic Training Course, self-study manual, and associated information are maintained and distributing information upon request.

(vi) Assisting in completing any other information necessary for licensing or certifying homes.

(B) Complete foster home visits for rule compliance, issue violation citations, and monitor for correction.

(C) Coordinate the recruitment, retention, placement, and training of foster providers.

(f) Staff must appear as a witness on behalf of the Department during an informal conference and hearing when required by the Department. Staff may not act as a representative for the claimant during an informal conference and hearing.

(10) STAFF TRAINING. Qualified staff of the CDDP must maintain and enhance their knowledge and skills through participation in education and training. The Department provides training materials and the provision of training may be conducted by the Department or CDDP staff, depending on available resources.

(a) The CDDP manager and CDDP supervisor (when designated) must complete Core Competencies for case management within the first year of entering into the position.

(b) The CDDP manager and CDDP supervisor (when designated) must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disabilities services and the skills, knowledge, and responsibilities of the staff they supervise.

(A) Each CDDP manager and CDDP supervisor (when designated) must participate in a minimum of 20 hours per year of additional Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(B) Each CDDP manager and CDDP supervisor (when designated) must attend trainings to maintain a working knowledge of system changes in the area the CDDP manager is managing or supervising.

(c) SERVICES COORDINATOR TRAINING. The services coordinator must participate in the case manager training as described in OAR 411-415-0040.

(d) ELIGIBILITY SPECIALIST TRAINING. The eligibility specialist must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new eligibility specialist.

(A) The orientation provided by the CDDP to a new eligibility specialist must include:

(i) An overview of eligibility criteria and the intake process;

(ii) An overview of developmental disabilities services and related human services within the county;

(iii) An overview of the Department's rules governing the CDDP;

(iv) An overview of the Department's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, Social Security Administration, home and community-based waiver and state plan services, and OHP; and

(vii) A review (prior to having contact with individuals) of the eligibility specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(B) The eligibility specialist must attend and complete eligibility core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of eligibility core competency training, or if competency is not demonstrated, the eligibility specialist must consult with another trained eligibility specialist or consult with a Department diagnosis and evaluation coordinator when making eligibility determinations.

(C) The eligibility specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each eligibility specialist must participate in Department-sponsored trainings for eligibility on an annual basis.

(ii) Each eligibility specialist must participate in a minimum of 20 hours per year of Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(e) ASSESSOR TRAINING. The assessor must participate in and complete the training described in OAR 411-425-0035.

(f) ABUSE INVESTIGATOR SPECIALIST TRAINING. The abuse investigator specialist must participate in core competency training. Training materials are provided by OTIS. The core competency training is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new abuse investigator specialist.

(A) The orientation provided by the CDDP to a new abuse investigator specialist must include:

(i) An overview of developmental disabilities services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) A review and orientation of Medicaid, SSI, Social Security Administration, home and community-based waiver and state plan services, OHP, and the individual support planning processes; and

(v) A review (prior to having contact with individuals) of the abuse investigator specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(B) The abuse investigator specialist must attend and pass core competency training within the first six months of entering into the position and demonstrate competency after completion of core competency training. Until completion of core competency training, or if competency is not demonstrated, the abuse investigator specialist must consult with OTIS prior to completing the abuse investigation and protective services report.

(C) The abuse investigator specialist must complete 20 hours of additional training each year to continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position. Each abuse investigator specialist must participate in quarterly meetings held by OTIS.

(g) FOSTER CARE LICENSOR AND CERTIFIER TRAINING. The foster care licensor and certifier must participate in any Department required trainings.

(A) The orientation provided by a CDDP to a new foster care licensor and certifier must include:

(i) An overview of developmental disabilities services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) A review of policy and procedures that address conflict of interests, including the prohibition against licensing or certifying a foster home in the following circumstances:

(I) While also providing case management services to the individuals or children in the home.

(II) By a licensor or certifier who is related by blood, marriage, or adoption to the foster care applicant or current foster provider, or an individual or child to be served in the foster home.

(III) If after a local CDDP assessment of any conflict of interest or appearance of conflict of interest is identified.

(B) A review (prior to having contact with individuals) of the licenser and certifier's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, individuals with physical disabilities, and children.

(h) DOCUMENTATION. The CDDP must keep documentation of required training in the personnel files of the individual employees including the CDDP manager, CDDP supervisor (when designated), services coordinator, eligibility specialist, abuse investigator specialist, and other employees providing services to individuals.

(11) ADVISORY COMMITTEE. Each CDDP must have an advisory committee.

(a) The advisory committee must meet at least quarterly.

(b) The membership of the advisory committee must 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 as well as individuals and the individuals' families.

(c) The advisory committee must advise the LMHA, CDDP director, and CDDP manager on community needs and priorities for services, and assist in planning, reviewing, and evaluating services, functions, duties, and quality assurance activities described in the CDDP's management plan.

(d) When the Department or a private corporation is operating the CDDP, the advisory committee must advise the LMHA, CDDP director, and CDDP manager on community needs and priorities for services, and assist in planning, reviewing, and evaluating services, functions, duties, and quality assurance activities described in the CDDP's management plan.

(e) The advisory committee may function as the disability issues advisory committee as described in ORS 430.631 if so designated by the LMHA.

(12) LOCAL NEEDS ASSESSMENT, PLANNING, AND COORDINATION. Upon the Department's request, the CDDP must assess local needs for services to individuals and must submit planning and assessment information to the Department.

(13) FINANCIAL MANAGEMENT.

(a) There must be up-to-date accounting records for each developmental disabilities service accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities. The accounting records must be consistent with generally accepted accounting principles and conform to the requirements of OAR 309-013-0120 through 309-013-0220.

(b) There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rules pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service.

(14) 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, these rules, and other applicable standards and rules.

(a) The CDDP must have procedures for the ongoing involvement of individuals and their requested family member or other representative in the planning and review of consumer satisfaction with the delivery of case management provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the families of individuals;

(C) Legal or designated representatives (as applicable) and providers of individuals; and

(D) The Department.

Stat. Auth.: ORS 409.050, 427.104, 427.105, 427.115, 430.662, 430.731
Stats. Implemented: ORS 427.007, 427.104, 427.105, 427.115, 430.215, 430.610, 430.620, 430.662, 430.664, 430.731-430.768

411-320-0040 Program Responsibilities

(Amended 11/01/2019)

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

(1) ACCESS TO SERVICES.

(a) In accordance with the Civil Rights Act of 1964 (codified as 42 USC 2000d et seq.), any person may not be denied community developmental disabilities services on the basis of race, color, creed, gender, national origin, or duration of residence. CDDP 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) 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) The CDDP must ensure that eligibility for developmental disabilities services is determined as described in OAR 411-320-0080 by an eligibility specialist trained in accordance with OAR 411-320-0030.

(c) Any individual determined eligible for developmental disabilities services by the CDDP must also be eligible for any developmental

disabilities services subject to eligibility requirements described in the OAR associated with the service.

(2) COORDINATION OF SERVICES.

(a) COMMUNITY SERVICES. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the CDDP, other local and state human service agencies, and any other providers as appropriate for the needs of the individual.

(b) NONRESIDENT CHILDREN.

(A) The CDDP must compile and maintain a list of local providers who are qualified to provide home and community-based services in their service area. CDDPs shall assist a parent in obtaining home and community-based services for the parent's child if:

(i) The parent resides in Oregon;

(ii) The parent has a child who does not reside in Oregon but who visits the parent in Oregon for at least six weeks each year; and

(iii) The child qualifies for home and community-based services in the child's state of residence.

(B) CDDP ASSISTANCE. CDDPs shall:

(i) Provide the parent with a list of local providers;

(ii) Contact the state Medicaid agency in the child's state of residence to facilitate payment for the home and community-based services;

(iii) Assist the parent in providing any documentation required by the child's state of residence; and

(iv) Notify the Department of the individual seeking services.

(3) PAYMENT AND REPORTING SYSTEM.

(a) ENROLLMENT. The CDDP must ensure all individuals determined to be eligible for developmental disabilities services are enrolled in the Department payment and reporting systems. The county of origin must enroll the individual into the Department payment and reporting systems for all developmental disabilities service except in the following circumstances:

(A) The Department completes the enrollment or termination for children entering or leaving a licensed 24-hour residential setting that is directly contracted with the Department.

(B) The Department completes the enrollment, termination, and billing forms for children entering or leaving CIIS.

(C) When an individual is enrolled in a Brokerage and the individual moves from one CDDP geographic service area to another CDDP geographic service area, the new CDDP must enroll the individual in the Department payment and reporting systems.

(b) The CDDP must terminate an individual in the Department payment and reporting systems when an individual exits all developmental disabilities services.

(c) The CDDP retains responsibility for maintaining enrollment in the Department payment and reporting systems for individuals enrolled in support services until the individual exits support services.

(4) CASE MANAGEMENT SERVICES.

(a) The CDDP must deliver case management, as described in OAR chapter 411, division 415, to individuals who are eligible for and desire case management from the CDDP. A 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) For an individual newly determined eligible for developmental disabilities services, the CDDP must assure that the individual and legal representative are provided a description of case management and other service delivery options. This information must include:

(A) A description of processes involved in using developmental disabilities services, including person-centered planning, evaluation, and how to raise and resolve concerns about developmental disabilities services;

(B) Clarification of CDDP employee responsibilities as mandatory abuse reporters; and

(C) Disclosure of any potential affiliation between the CDDP and providers available to the individual.

(5) ABUSE INVESTIGATIONS.

(a) The CDDP must assure that abuse investigations for adults with intellectual or developmental disabilities are appropriately reported and conducted by trained staff according to statute and administrative rules, including the investigation of complaints of abuse, writing investigation reports, and monitoring the implementation of report recommendations. When there is reason to believe a crime has been committed, the CDDP must report to law enforcement.

(b) The CDDP must report any suspected or observed abuse of a child directly to the Department or local law enforcement.

(6) PROTECTIVE SERVICES. When a CDDP or OTIS abuse investigator determines that a CDDP must take a protective services action following a report of abuse, the CDDP must implement the action. If unable to implement the action, the CDDP must immediately notify the abuse investigator.

(a) Any protective services must be provided in a manner that is least intrusive to adult individuals and provide for the greatest degree of independence available within existing resources.

(b) The CDDP must report the outcome of protective services to the abuse investigator upon completion.

(7) RECOMMENDED ACTIONS. When a CDDP receives a recommended action included in an Abuse Investigation and Protective Services Report, as described in OAR 407-045-0320, the CDDP must:

(a) Implement the recommended actions within specified timelines and report back to the abuse investigator that the recommended actions were completed; or

(b) With prior agreement from the abuse investigator, implement alternative actions and report back to the abuse investigator that the actions were completed.

(8) FOSTER HOMES. When there is need for additional foster care providers, the CDDP must recruit applicants to operate foster homes and maintain forms and procedures necessary to license or certify foster homes. The CDDP must maintain copies of the following records:

(a) Initial and renewal applications for a foster home;

(b) All inspection reports completed by the CDDP, including required annual renewal inspection and any other inspections;

(c) General information about the foster home;

(d) Documentation of references, classification information, credit check (if necessary), background check, and training for providers and substitute caregivers;

(e) Documentation of foster care exams for adult foster home providers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denials, or revocations (if any); and

(k) Copies of the annual license or certificate for the foster home.

(9) 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.

(10) 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 emergency procedure and disaster plan must be immediately available to the CDDP manager and employees. The emergency procedure and disaster plan must:

(a) Be integrated with the county emergency preparedness plan, where appropriate;

(b) Include provisions on coordination with all developmental disabilities service provider agencies in the county and any Department offices, as appropriate;

(c) Include provisions for identifying individuals most vulnerable; and

(d) Include any plans for health and safety checks, emergency assistance, and any other plans that are specific to the type of emergency.

(11) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(12) The CDDP must forward a signed variance request form submitted by a developmental disabilities service provider to the Department within 30 calendar days from the receipt of the request indicating the position of the CDDP on the proposed variance.

Stat. Auth.: ORS 409.050, 427.104, 427.105, 427.115, 430.662, 430.731
Stats. Implemented: ORS 427.007, 427.104, 427.105, 427.115, 430.215,
430.610, 430.620, 430.662, 430.664, 430.731-430.768

411-320-0045 Quality Assurance Responsibilities

(Amended 11/01/2019)

(1) Each CDDP must draft a local CDDP management plan as described in OAR 411-320-0030 that supports the Department's Quality Management Strategy for meeting CMS' six waiver quality assurances, as required and defined by 42 CFR 441.301 and 441.302. CMS' six waiver assurances are:

- (a) Administrative authority;
- (b) Level of care;
- (c) Qualified service providers;
- (d) Service plans;
- (e) Health and welfare; and
- (f) Financial accountability.

(2) Each CDDP must implement, maintain, and monitor minimum quality assurance activities, as required by the Department and set forth in section (3) of this rule. CDDPs may conduct additional quality assurance activities that consider local community needs and priorities for services and the unique organizational structure, policies, and procedures of the CDDP.

(3) The CDDP must conduct, monitor, and report the outcomes and any remediation as a result of the following Department required activities:

- (a) Individual case file reviews;
- (b) Customer satisfaction surveys administered at least every two years;
- (c) Service provider file reviews;

(d) Until a CDDP is certified as a CAM user by the Department, analysis of SERT (Serious Event Review Team) system data which may include:

- (A) Review by service provider, location, reason, status, outcome, and follow-up;
- (B) Identification of trends;
- (C) Review of timely reporting of abuse allegations; and
- (D) Coordination of delivery of information requested by the Department, such as the Serious Event Review Team (SERT).

Stat. Auth.: ORS 409.050, 427.104, 427.105, 427.115, 430.662, 430.731
Stats. Implemented: ORS 427.007, 427.104, 427.105, 427.115, 430.215, 430.610, 430.620, 430.662, 430.664, 430.731-430.768

411-320-0050 Management of Regional Services

(Repealed 11/01/2019)

411-320-0060 Individual Rights

(Repealed 06/29/2016 - See OAR chapter 411, division 318)

411-320-0070 Service Records

(Amended 06/29/2016)

(1) CONFIDENTIALITY. The service record for an individual must be kept confidential in accordance with ORS 179.505, 192.515, 192.517, 192.553, and any Department 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 CDDP must be made available to other CDDPs responsible for the services of the individual, consistent with state statutes and federal laws and regulations concerning confidentiality and privacy.

(3) RECORD REQUIREMENTS. In order to meet Department and federal record documentation requirements, the CDDP, through the employees of

the CDDP, must maintain a service record for each individual who receives services from the CDDP. Information contained in the service record must include:

- (a) Documentation of any initial referral to the CDDP for services;
- (b) The application for developmental disabilities services. The application for developmental disabilities services must be completed prior to an eligibility determination and must be on the application form required by the Department or transferred onto CDDP letterhead;
- (c) Sufficient documentation to conform to Department eligibility requirements, including notices of eligibility determination;
- (d) Documentation of the initial intake interview or home assessment, as well as any subsequent social service summaries;
- (e) Documentation of the request for support services and the selection of an available Brokerage within the geographic service area of the CDDP;
- (f) For individuals receiving case management services from the CDDP, the service record must contain the records requirements identified in OAR 411-415-0110.

(4) RETENTION OF RECORDS. The CDDP must have a record retention plan for all records relating to the provision of, and contracts for, CDDP services that is consistent with this rule and OAR 166-150-0055. The record retention plan must be made available to the public or the Department upon request.

- (a) Financial records, supporting documents, and statistical records must be retained for at least 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 must be kept for seven years after the date of the death of an individual, if known. If the case is closed,

inactive, or the date of death is unknown, the individual service record must be kept for 70 years.

(c) Copies of annual ISPs must be kept for 10 years.

(5) TRANSFER OF RECORDS. In the event an individual moves from one county to another county in Oregon, the complete service record for an individual as described in section (3) of this rule must be transferred to the receiving CDDP within 30 days of transfer. The sending CDDP must ensure that the service record required by this rule is maintained in permanent record and transferred to the CDDP having jurisdiction for the services for the individual. The sending CDDP must retain the following information to document that services were provided to the individual while enrolled in CDDP services:

(a) Documentation of eligibility for developmental disabilities services received while enrolled in services through the CDDP, including waiver or state plan eligibility;

(b) Service enrollment and termination forms;

(c) CDDP progress 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 Department.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.695

411-320-0080 Application and Eligibility Determination

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

(1) EMERGENCY COVID-19 PRESUMED ELIGIBILITY. The provisions for presumed eligibility in this section are retroactively effective as of March 25, 2020.

(a) An individual who meets all eligibility criteria of this rule, except documentation is over three years old, may be found presumed eligible.

(b) An individual who has a valid FSIQ of 75 or less, but an adaptive assessment is required, may be found presumed eligible.

(c) An individual who has a qualifying developmental disability, but an adaptive assessment is required, may be found presumed eligible.

(d) Documentation of significant impairment in adaptive behavior must be attempted. If an individual is unable to attend an administrative examination due to COVID-19, an eligibility specialist must attempt to obtain a physician's statement identifying areas of adaptive behavior in OAR 411-320-0020(3) that are most likely significantly impaired by the qualifying condition.

(e) All individuals determined presumed eligible must be redetermined eligible to meet sections (4) or (5) of this rule by the earliest of the below dates:

(A) Within 12 months of the eligibility notice date; or

(B) Within 12 months from the end of the Federal Declaration of Emergency.

(2) APPLICATION.

(a) To apply for developmental disabilities services:

(A) An applicant, or the legal representative of the applicant, must submit a completed application to the CDDP in the county of origin.

(B) The CDDP must receive all documentation required to make an eligibility determination. Documentation includes, but is not limited to:

(i) School psychological or comprehensive evaluations since entry into school;

(ii) Medical assessments related to a disability, mental health condition, or physical impairment;

(iii) Psychological evaluations or comprehensive evaluations through private health insurance or other programs;

(iv) Neurological evaluations completed through any entity;

(v) Records from all residential or psychiatric facilities;

(vi) Records completed through application process for other governmental benefits; and

(vii) Administrative medical examinations and reports, as defined in OAR 410-120-0000, determined necessary and authorized by an eligibility specialist.

(C) The applicant or if the applicant is less than 18 years of age, the applicant and the legal representative of the applicant, must meet the Oregon residency requirements in OAR 461-120-0010.

(b) The CDDP may stop the intake process if a Request for Eligibility Determination (form 0552) is voluntarily withdrawn or the documents listed in subsection (a)(B) of this section are not submitted within 90 calendar days from the date the CDDP received the signed and dated request. If the CDDP stops the intake process, written notice of the information needed to determine eligibility or a letter confirming voluntary withdrawal must be sent to the person identified on the request form as the person seeking services and the legal representative of the person seeking services.

(c) The CDDP must consider an application complete if the criteria in subsection (a) of this section are met. In order to make timely decisions, an application and related documents must be reviewed within 30 calendar days of receipt to evaluate completeness. If the criteria in subsection (a) of this section are not met, the CDDP shall

deny the application by sending a Notification of Planned Action (form 0947).

(d) Within 10 business days from the receipt of a completed application, the CDDP must provide an applicant the following:

(A) The Department required Notification of Rights (form 0948).

(B) The Department's "Choosing Developmental Disabilities Services for Children and Adults" (form 0338).

(C) For an adult applicant, the identities and contact information for each case management entity operating in the county of origin using materials provided by each case management entity when the materials are made available to the CDDP.

(e) A new application may not be required if the following criteria are met:

(A) The file for an individual has been closed for less than 12 months following a closure, denial (from the date the Request for Eligibility Determination (form 0552) was signed), or termination; and

(B) The individual meets all of the criteria in subsection (a) of this section.

(f) The CDDP must identify whether an applicant receives any income.

(A) The CDDP must refer all applicants not currently receiving a Medicaid Title XIX benefit package through OSIPM or the HSD Medical Programs or a benefit package through the Healthier Oregon Program to the local Medicaid office for application and benefit determination.

(B) The CDDP must refer an applicant less than 18 years of age to Social Security if the CDDP identifies the applicant may qualify for Social Security benefits.

(g) REINSTATEMENT OF ELIGIBILITY FOR CHILDREN OF SERVICE MEMBERS.

(A) WAIVER OF APPLICATION. A previously eligible child of a service member, who temporarily left Oregon due to a parent's or guardian's military service obligation outside of Oregon, does not need to submit a new application for developmental disabilities services upon return. Upon return to Oregon and a request to the CDDP in the county of origin, the CDDP in the county of origin shall assign a services coordinator to the child within 10 business days from the request for services.

(B) COORDINATION OF SERVICES. The services coordinator must assist the child in establishing eligibility for OSIPM or the HSD Medical Programs and meet face-to-face with the child and their parent or guardian, within 45 calendar days from the request for services, to provide choice advising and to review the child's rights to a fair hearing and the service planning steps in OAR 411-415-0070.

(C) REDETERMINATION. The CDDP must follow sections (6) and (7) of this rule regarding a redetermination of eligibility. As with all redeterminations, prior to a termination of developmental disabilities services, the CDDP must send a Notice of Redetermination (form 5101), afford the child's parent or guardian the opportunity to provide documentation that supports eligibility, and schedule a diagnostic evaluation for the child, if appropriate. Upon the child's reentry to services, the CDDP in the county of origin shall initiate a redetermination if:

(i) The criteria used to determine eligibility for developmental disabilities services changed during the child's absence;

(ii) There are new records related to the eligibility criteria for developmental disabilities services, including medical, psychological, or school records related to an intellectual or developmental disability; or

(iii) The documents used to establish the child's original eligibility are more than three years old and medical, educational, or psychological records created during the child's absence do not support the child's eligibility for developmental disabilities services.

(3) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist to act as a designee of the Department for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for determining eligibility for developmental disabilities services as described in OAR 411-320-0030.

(4) INTELLECTUAL DISABILITY. A history of an intellectual disability and significant impairment in adaptive behavior must be evident prior to the 18th birthday of an individual for the individual to be eligible for developmental disabilities services.

(a) Diagnosing an intellectual disability is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a licensed clinical or school psychologist with specific training and experience in test interpretation of intellectual functioning and adaptive behavior scales for individuals with intellectual disabilities. FSIQ requirements are as follows. A Specific Index IQ result must be used in place of an FSIQ score to determine eligibility if a licensed clinical psychologist determines the Specific Index IQ is a more valid measure of overall intelligence when compared to the FSIQ.

(A) For an individual who has consistent and valid FSIQ results of 65 or less, significant impairment in adaptive behavior is implied and no assessment of adaptive behavior may be needed if current documentation of impairment supports eligibility. If an individual has an assessment of adaptive behavior and results do not support eligibility, then the assessment of adaptive behavior must be considered.

(B) For an individual who has a valid FSIQ or equivalent composite score results of 66-70, verification of an intellectual disability requires an assessment of adaptive behavior. The

individual must have significant impairment in adaptive behavior.

(C) For an individual who has a valid FSIQ or equivalent composite score results of 71-75, verification of an intellectual disability requires an assessment of adaptive behavior and diagnosis of intellectual disability from a licensed clinical psychologist.

(i) The individual must have significant impairment in adaptive behavior.

(ii) The individual must have a diagnosis of intellectual disability from a qualified professional.

(iii) The individual must meet the full criteria for the diagnosis of the intellectual disability. Individuals with a "borderline", "provisional", "partial", "rule-out", or "un-specified" diagnosis do not meet the full criteria.

(D) If an individual is not able to participate in an intelligence test due to intellectual disability, a statement of intellectual disability must be documented by a qualified professional and an assessment of adaptive behavior must be completed and demonstrate a composite score of at least two standard deviations below the mean.

(b) Significant impairment in adaptive behavior must be directly related to an intellectual disability and cannot be primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition and significant impairment must continue, or be expected to continue, indefinitely.

(5) OTHER DEVELOPMENTAL DISABILITY. A history of an other developmental disability and significant impairment in adaptive behavior must be evident prior to the 22nd birthday of an individual for the individual to be eligible for developmental disabilities services.

(a) Diagnosing an other developmental disability requires a medical or clinical diagnosis of a developmental disability by a qualified professional and significant impairment in adaptive behavior as assessed by standardized tests administered by a licensed clinical psychologist, school psychologist, doctor of medicine, or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities. The individual must meet the full criteria for the diagnosis of the developmental disability. Individuals with a "provisional", "partial", "rule-out", or "un-specified" diagnosis do not meet the full criteria.

(A) Other developmental disabilities include, but are not limited to, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that originate in and directly affect the brain.

(B) The individual must have significant impairment in adaptive behavior which requires that the individual have one composite score two standard deviations below the mean, two domain scores two standard deviations below the mean, or two skilled areas on the ABAS or ABES two standard deviations below the mean on an approved adaptive assessment.

(C) The individual must require training and support similar to that required by an individual with an intellectual disability, which means the individual has a composite or domain score that is at least two standard deviations below the mean, as measured on a standardized assessment of adaptive behavior administered by a licensed clinical psychologist, school psychologist, doctor of medicine, or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities.

(b) To meet the requirements of significant impairment in adaptive behavior and qualify as a person who requires training and support similar to that required by an individual with an intellectual disability, an individual who has two skilled areas on the ABAS or ABES two

standard deviations below the mean must also have at least one composite or domain score two standard deviations below the mean.

(c) Significant impairment in adaptive behavior must be directly related to the diagnosed developmental disability and cannot be primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(d) The condition and significant impairment must continue, or be expected to continue, indefinitely.

(6) ELIGIBILITY FOR EARLY CHILDHOOD.

(a) Eligibility determinations for early childhood (children less than 7 years of age) must be based on documentation that is no more than one year from the date of the Request for Eligibility Determination (form 0552).

(A) The documentation must include:

(i) A valid standardized and normed early childhood assessment, completed by a professional with at least a master's degree and training to administer early childhood assessments, which demonstrates the functioning of the child is at least two standard deviations below the mean in two or more areas of the adaptive behavior described in paragraph (B) of this subsection; or

(ii) When a standardized and normed early childhood assessment is not available or not completed within one year from the date of the Request for Eligibility Determination (form 0552), a medical statement by a licensed medical practitioner that confirms the presence of an other developmental disability that is a neurological condition or syndrome that originates in and directly affects the brain and causes or is likely to cause impairment in at least two or more areas of the adaptive behavior described in paragraph (B) of this subsection is required.

(B) Areas of adaptive behavior include:

- (i) Adaptive, self-care, or self-direction;
- (ii) Receptive and expressive language or communication;
- (iii) Learning or cognition;
- (iv) Gross and fine motor; or
- (v) Social.

(C) The impairment, condition, or syndrome cannot be primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(D) The condition and impairment must continue, or be expected to continue, indefinitely.

(b) REDETERMINATION OF ELIGIBILITY.

(A) Eligibility for early childhood is always provisional.

(i) Redetermination for school aged eligibility for a child who was originally determined using a standardized and normed early childhood assessment as described in subsection (b)(A)(i) of this section must be completed no later than the child's 9th year birthdate.

(ii) Redetermination for school aged eligibility for a child who was originally determined using a medical statement by a licensed medical practitioner as described in subsection (b)(A)(ii) of this section must be completed no later than the child's 7th year birthdate.

(B) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the

Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(C) The CDDP must notify a child and the legal representative of the child any time that a redetermination of eligibility is needed. The Notice of Redetermination (form 5101), including the reason for the review of eligibility, must be sent prior to the eligibility redetermination date.

(7) ELIGIBILITY FOR SCHOOL AGED CHILDREN. Eligibility for school aged children is always provisional.

(a) Eligibility determinations for school aged children must be completed on children who are at least 5 years of age and who have had school aged testing completed.

(b) Eligibility determinations for school aged children may be completed:

(A) Up to age 18 for school aged children who are provisionally eligible based on a condition of an intellectual disability; and

(B) Up to age 22 for school aged children who are provisionally eligible based on a diagnosed condition of an other developmental disability.

(c) Eligibility determinations for school aged children must include:

(A) Documentation of an intellectual disability and significant impairment in adaptive behavior as described in section (4) of this rule; or

(B) A diagnosis and documentation of an other developmental disability and significant impairment in adaptive behavior as described in section (5) of this rule.

(d) Eligibility determinations for school aged children must be based on documentation that is no more than three years old from the date of the Request for Eligibility Determination (form 0552).

(e) REDETERMINATION OF ELIGIBILITY.

(A) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(B) The CDDP must notify a school aged child and the legal representative of the child any time that a redetermination of eligibility is needed. The Notice of Redetermination (form 5101), including the reason for the review of eligibility, must be sent prior to the eligibility redetermination date.

(f) REDETERMINATION OF SCHOOL AGED CHILDREN FOR ADULT ELIGIBILITY.

(A) Redetermination of school aged children for adult eligibility must be completed:

(i) Between the ages of 16 and 18 if school aged eligibility was determined based on an intellectual disability as described in section (4) of this rule; or

(ii) Between the ages of 17 and 22 if school aged eligibility was determined based on an other developmental disability as described in section (5) of this rule.

(B) The documentation of an intellectual disability or an other developmental disability must include information no more than three years old from the date of the Notice of Redetermination (form 5101), for individuals less than 22 years of age.

(C) If school aged eligibility was determined based on an intellectual disability as described in section (4) of this rule the following criteria may be applied:

(i) An adult intelligence test may be used to determine adult eligibility. An intelligence test completed within the last three years from the date of the Notice of Redetermination (form 5101) is not needed if the school aged child has:

(I) More than one, and the most recent intelligence test FSIQ score is 65 or less as described in section (4)(a)(A) of this rule;

(II) Significant impairment in adaptive behavior as identified in section (4) of this rule; and

(III) Current documentation that supports eligibility.

(ii) An informal adaptive behavior may be completed if all of the following apply:

(I) An assessment of adaptive behavior is required to redetermine eligibility;

(II) An assessment of adaptive behavior has already been completed by a licensed school or clinical psychologist; and

(III) The school aged child has obvious significant impairment in adaptive behavior.

(D) If school aged eligibility was determined based on an other developmental disability as described in section (5) of this rule, the following criteria must be met:

(i) A current medical or clinical diagnosis of an other developmental disability is required unless all of the following are met:

(I) Documentation of an other developmental disability by a qualified professional as described in section (5) of this rule;

(II) Significant impairment in adaptive behavior that continues to be directly related to the other developmental disability;

(III) Current documentation that continues to support eligibility; and

(IV) No other medical, mental, emotional, motor, or learning disorders.

(ii) If an individual has additional medical, mental, or emotional disorders, a new assessment may be required.

(iii) An informal adaptive behavior may be completed if all of the following apply:

(I) An assessment of adaptive behavior is required to redetermine eligibility;

(II) An assessment of adaptive behavior has already been completed by a licensed school or clinical psychologist; and

(III) The school aged child has obvious significant impairment in adaptive behavior.

(8) ELIGIBILITY FOR ADULTS.

(a) Eligibility for adults must include:

(A) Documentation of an intellectual disability and significant impairment in adaptive behavior as described in section (4) of this rule; or

(B) Documentation of an other developmental disability and significant impairment in adaptive behavior as described in section (5) of this rule.

(b) Documentation for an adult eligibility determination must include:

(A) Information no more than three years old from the date of the Request for Eligibility Determination (form 0552) for individuals less than 22 years of age; or

(B) Information obtained after the 17th birthday of an individual for individuals 22 years of age and older.

(c) INTELLIGENCE TEST.

(A) An intelligence test completed on or after the age of 16 may be used to determine adult eligibility.

(B) An intelligence test may not be needed if an individual has:

(i) More than one intelligence test verifying intellectual disability and the most recent FSIQ score is 65 or less as described in section (4)(a)(A) of this rule; and

(ii) Significant impairment in adaptive behavior as identified in section (4) of this rule.

(C) An intelligence test may not be needed if an individual has a diagnosis and documentation of an other developmental disability as described in section (5) of this rule.

(d) REDETERMINATION OF ELIGIBILITY.

(A) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(B) The CDDP must notify an individual, and if applicable the legal representative of the individual, any time that a redetermination of eligibility is needed. The Notice of Redetermination (form 5101), including the reason for the review of eligibility, must be sent prior to the eligibility redetermination date.

(C) In the event the eligibility of an adult requires a redetermination, the redetermination must be completed as described in subsections (a), (b), and (c) of this section.

(9) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

(a) In the absence of sufficient data during the developmental years, current data may be used if:

(A) There is no evidence of head trauma;

(B) There is no evidence or history of significant mental or emotional disorder; or

(C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the functioning of the individual may be impacted by the identified condition must be obtained in order to determine if the significant impairment in adaptive behavior is directly related to an intellectual or developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(10) SECURING EVALUATIONS. In the event that an eligibility specialist has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the Department or the designee of the Department shall assist in obtaining additional testing if required to complete the eligibility determination.

(11) PROCESSING ELIGIBILITY DETERMINATIONS. The CDDP, in the county of origin, is responsible for making the eligibility determination.

(a) The CDDP must work in collaboration with the individual or the legal representative of the individual to gather historical records related to the intellectual or an other developmental disability of an individual during intake in order to complete an application for services.

(b) The CDDP must review documents and complete necessary actions relating to eligibility within 30 calendar days upon receipt of a record to determine if a completed application exists.

(c) During intake, the CDDP must gather enough documentation in order to accept a completed application for developmental disabilities services within 90 calendar days of the date of intake, except in the following circumstances:

(A) The CDDP is unable to obtain a complete application because the individual or the legal representative of the individual does not collaborate with the eligibility specialist or fails to execute an action necessary to obtain a completed application;

(B) There is an emergency beyond the control of the CDDP; or

(C) More time is needed to obtain additional records by the CDDP, the individual, or the legal representative of the individual.

(d) Upon receipt of the completed application, the CDDP must make an eligibility determination unless the following applies and is documented in the progress notes for an individual:

(A) The individual or the legal representative of the individual voluntarily withdraws the application for the individual;

(B) The individual dies; or

(C) The individual cannot be located.

(e) The CDDP may not use the time frames established in subsection (c) of this section as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(12) PROGRESS NOTES. An eligibility specialist must document progress notes of the intake process including, but not limited to, the following:

- (a) Date of interaction.
- (b) Referral source to the CDDP.
- (c) Intake.
- (d) Rationale for ordering administrative exams.
- (e) Rationale for eligibility determination or redetermination, including specific age category and description criteria evidenced on record that meets sections (4) or (5) of this rule.
- (f) Information on when and how the decision notice was sent to an individual and their legal representative and the effective date.
- (g) Information regarding an administrative hearing including, but not limited to, the date a request for hearing was made and date the hearing request was submitted to the Department.
- (h) Review of county to county eligibility and reason for continuing eligibility or redetermination, as applicable.

(13) NOTICE OF ELIGIBILITY DETERMINATION. Within 10 business days from the receipt of a completed application, the CDDP must send or hand deliver a written notification (notice) of the eligibility determination to the individual or their legal representative. The notice must be on the following forms prescribed by the Department:

- (a) The Notice of Eligibility Determination (form 5103); or
- (b) The Notification of Planned Action (form 0947).

(14) REQUESTING A HEARING. An individual or the legal representative of an individual may request a hearing as described in OAR 411-318-0025 if the individual or the legal representative of the individual disagrees with the eligibility determination or redetermination made by the CDDP.

(15) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another within Oregon.

(a) The receiving CDDP must notify the individual, and if applicable the legal representative of the individual, on forms prescribed by the Department that a transfer of services to a new CDDP has taken place within 10 business days of the enrollment date identified on the Developmental Disabilities Eligibility and Enrollment Form (form 0337).

(b) The receiving CDDP must continue services for the individual as soon as it is determined that the individual is residing in the county of the receiving CDDP.

(c) The receiving CDDP must obtain and retain copies of the following documents:

(A) Statement of an eligibility determination.

(B) Notification of eligibility determination.

(C) Evaluations and assessments supporting eligibility.

(d) In the event that the items in subsection (c) of this section cannot be located, written documentation from the sending CDDP verifying eligibility and enrollment in developmental disabilities services may be used. Written verification may include documentation from the Department's electronic payment and reporting system.

(e) If the receiving CDDP receives information that suggests the individual is not eligible for developmental disabilities services, the receiving CDDP may complete a redetermination. The CDDP that determined the individual was eligible for developmental disabilities services may be responsible for the services authorized on the basis of their eligibility determination.

(f) If an individual submits an application for developmental disabilities services and discloses that they previously received developmental disabilities services in another CDDP and the

termination of case management services as described in OAR 411-415-0030 occurred within the past 12 months, the eligibility determination from the other CDDP shall transfer as outlined in this section.

Stat. Auth.: ORS 409.050, 427.104, 427.105, 427.115, 430.662
Stats. Implemented: ORS 409.010, 427.007, 427.104, 427.105, 427.115, 430.215, 430.610, 430.620, 430.662, 430.664

411-320-0090 Case Management Program Responsibilities

(Repealed 06/29/2016 - See OAR 411-320-0040)

411-320-0100 Coordination of Services

(Repealed 06/29/2016 - See OAR 411-320-0040)

411-320-0110 Entry and Exit Requirements

(Repealed 06/29/2016 - See OAR chapter 411, division 415)

411-320-0120 Service Planning

(Repealed 06/29/2016 - See OAR chapter 411, division 415)

411-320-0130 Case Management Contact, Site Visits, and Monitoring of Services

(Repealed 06/29/2016 - See OAR chapter 411, division 415)

411-320-0140 Abuse Investigations and Protective Services

(Amended 11/01/2019)

(1) GENERAL DUTIES.

(a) 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 and when applicable, Brokerages.

(A) Investigations must be done in accordance with OAR 407-045-0250 through 407-045-0370.

(B) If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse or the Department may conduct an investigation in addition to the investigation by the CDDP. Under such circumstances, the CDDP must receive authorization from the Department before conducting any separate investigation.

(b) Unless otherwise directed by the Department, the CDDP must investigate allegations of abuse of individuals with intellectual or developmental disabilities who are:

(A) Adults 18 years of age or older, unless an adult is under 21 years of age and residing in a certified child foster home setting; and

(B) Receiving case management services; or

(C) Receiving any Department-funded services for individuals; or

(D) Previously determined eligible for developmental disabilities services and voluntarily terminated from services in accordance with OAR 411-415-0030.

(2) ABUSE INVESTIGATIONS. The CDDP must have and implement written protocols that describe the conduct of an abuse investigation, a risk assessment, implementation of any actions, and the report writing process.

(3) 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.

(4) INITIAL COMPLAINTS OF ABUSE.

(a) Until certified by the Department as a CAM user, initial complaints of abuse must immediately be submitted electronically using the Department's system for reporting serious events.

(b) Once certified by the Department as a CAM user, initial complaints of abuse must be submitted electronically using CAM, within one business day of receiving the complaint. An entry of a report of suspected abuse does not fulfill the requirement of a mandatory reporter to report suspected abuse.

(5) CONFLICT OF INTEREST. The CDDP may not investigate allegations of abuse made against employees of the CDDP. Abuse investigations of CDDP staff are conducted by the Department or a CDDP not subject to an actual or potential conflict of interest.

(6) NOTIFICATION. Upon the initiation and completion of an abuse investigation, the CDDP must comply with the notification requirements described in OAR 407-045-0285, 407-045-0291, and OAR 407-045-0325.

(7) REPORTS. The CDDP must complete and maintain an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. A copy of the final Abuse Investigation and Protective Services Report must be provided to the Department within five business days of the report's completion and approval by OTIS.

(8) DISCLOSURE. The CDDP must disclose an Abuse Investigation and Protective Services Report and related documents as described in OAR 407-045-0330.

Stat. Auth.: ORS 409.050, 427.104, 427.105, 427.115, 430.662, 430.731
Stats. Implemented: ORS 427.007, 427.104, 427.105, 427.115, 430.215, 430.610, 430.620, 430.662, 430.664, 430.731-430.768

411-320-0150 Specialized Services in a Nursing Facility
(Repealed 06/29/2016 - See OAR chapter 411, division 415)

411-320-0160 Crisis Diversion Services
(Repealed 06/29/2016)

411-320-0170 Contracts and Contractor Disputes
(Amended 06/29/2016)

(1) CONTRACTS.

(a) If the CDDP, or any of the CDDPs services as described in the Department's contract with the county, is not operated by the county, there must be a contract between the county and the organization operating the CDDP or the services, or a contract between the Department and the operating CDDP. The contract must specify the authorities and responsibilities of each party and conform to the requirements of the rules of the Department pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) The CDDP may purchase certain services that are necessary for the CDDP to carry out its operations from a contractor without first providing an opportunity for competition among other contractors.

(A) The contractor selected must also meet Department certification or licensing requirements to provide the type of service to be contracted.

(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 the rules of the Department pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) When a CDDP contracts with a public agency or private corporation for services, the CDDP must 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 services being provided under the contract. The CDDP must specify in contracts that disputes arising from these limitations must be resolved according to the complaint procedures contained in section (3) of this rule. For purposes of this rule, 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 contractor 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 services being provided" means requirements that are not substantially similar to model contract terms developed by the Department.

(d) As a local option, the CDDP may impose a requirement on a public agency or private corporation delivering developmental disabilities services under a contract with the CDDP 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 is to appear in the contract. The proposed local option must include:

(i) The date upon which the local option is to become effective; and

(ii) A complete written description of how the local option is to improve individual independence, productivity, or integration or the protection of individual health, safety, or rights.

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option impacts individual 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 Director of the Department 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 is to appear in contracts with service providers, including the proposed date upon which the requirement is to 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) The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which individual services are provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) 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 the dispute resolution policy must be included in the contract with any such service provider.

(2) CONTRACT MONITORING. The CDDP must monitor all community developmental disabilities subcontractors to assure that:

(a) Services are provided as specified in the contract between the CDDP and the Department; and

(b) Services are in compliance with these rules and other applicable Department rules.

(3) When a dispute exists between a CDDP and a subcontracted provider regarding the terms of the contract or the interpretation of administrative rule and local dispute resolution efforts have been unsuccessful, either party may request assistance from the Department in mediating the dispute.

(a) 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:

(A) The party requesting mediation must send a written request to the Director of the Department, the CDDP Director, and the Executive Director of the provider, unless other people are named as official contact people 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.

(B) Department staff shall arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting shall include:

(i) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement shall be made on arrangements for obtaining these services;

(ii) Development of rules and procedures that shall be followed by all parties during the mediation; and

(iii) Agreement on a date by which mediation shall be completed, unless extended by mutual agreement.

(C) Unless otherwise agreed to by all parties:

(i) Each party shall 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. shall be shared equally by all parties.

(b) 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 shall prepare the final report. A final report on each mediation must be retained on file at the Department.

(4) A provider may appeal the imposition of a disputed term or condition in the contract if the 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 the model contract. The appeal of the imposition of the disputed terms or conditions must be in writing and sent to the Director of the Department within 30 days after the effective date of the contract requirement.

(a) A copy of the notice of appeal must be sent to the CDDP. The notice of appeal must include:

(A) A copy of the contract and any pertinent contract amendments;

(B) Identification of the specific terms that are in dispute; and

(C) A complete written explanation of the dissimilarity between terms.

(b) Upon receipt of the notice of appeal, the CDDP must suspend enforcement of compliance with any contract requirement under appeal by the provider until the appeal process is concluded.

(c) The Director of the Department must offer to mediate a solution in accordance with the procedure outlined in sections (3)(a) and (3)(b) of this rule.

(A) If a solution cannot be mediated, the Director of the Department shall 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 provider organization.

(B) The panel must meet with the parties, consider the respective arguments, and send written recommendations to the Director of the Department within 45 business days after an impasse is declared, unless the Director of the Department grants an extension.

(C) If an appeal requiring panel consideration has been received from more than one contractor, the Department may organize materials and discussion in any manner deemed necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(D) The Director of the Department must notify all parties of his or her decision within 15 business days from the receipt of the recommendations of the panel. The decision of the Department is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(d) Notwithstanding subsection (c) of this section, the Director of the Department has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the Director of the Department finds that the contract language being contested is

identical to the current language in the county financial assistance agreement with the Department.

(e) 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.

(A) The request must be made in writing to the Director of the Department. The request must describe the potential harm and level of risk that shall be incurred by following the appeal process.

(B) The Department must notify all parties of the decision to approve an expedited appeal process within two business days.

(C) If an expedited process is approved, the Department shall notify all parties of the decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process shall 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.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.695

411-320-0175 Individual Complaints, Notification of Planned Action, and Hearings

(Amended 12/28/2014)

(1) INDIVIDUAL COMPLAINTS.

(a) The CDDP must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(b) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(c) Upon entry into case management and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(2) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(3) HEARINGS.

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

(b) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination of a developmental disability service or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry into case management and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695

411-320-0180 Inspections and Investigations

(Amended 06/29/2016)

(1) All services covered by these rules 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) The Department or the designee of the Department, the Oregon Health Authority, or proper authority must perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

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

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.695

411-320-0190 Program Review

(Amended 12/28/2018)

(1) The Department and Oregon Health Authority may review the CDDP implementation of these rules as provided in OAR 411-320-0180 at least every two years or more frequently as needed to ensure compliance.

(2) Following a Department review, the Department shall issue a report to the CDDP identifying areas of compliance and areas in need of improvement.

(3) If, following a review, the CDDP is not in substantial compliance with these rules, the CDDP must respond to a plan of improvement within 45 calendar days from the receipt of the plan of improvement or in the time specified by the Department. The Department may conduct additional reviews as necessary to ensure improvement measures have been achieved. The Department may offer, or the CDDP may request, technical assistance or training.

Stat. Auth.: ORS 409.050, 427.104, 427.105, 427.115, 430.662

Stats. Implemented: ORS 427.007, 427.104, 427.105, 427.115, 430.215, 430.610, 430.620, 430.662, 430.664

411-320-0200 Variances

(Amended 12/28/2014)

(1) A variance that does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws may be granted to the CDDP if there is a lack of resources to meet the standards required in these rules and the alternative services, methods, concepts, or procedures proposed shall result in services or systems that meet or exceed the standards in these rules. All variances must be submitted to the Department and approved by the Department prior to implementation.

(2) The CDDP requesting a variance must submit a written 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 shall 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) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the CDDP within 45 days from the receipt of the variance request by the Department.

(4) The CDDP may request an administrator review of the denial of a variance request by sending a written request for review to the Director. The decision of the Director is the final response from the Department.

(5) The Department determines the duration of the variance.

(6) 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 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695

411-320-0210 Civil Penalties

(Adopted 05/20/2021)

(1) COVID-19.

(a) A CDDP must implement all directives related to staffing and operation of the CDDP to reduce the spread of the Coronavirus (COVID-19) issued through any of the following:

(A) Governor's Executive Order.

(B) Written guidance to the CDDP from the Local Public Health Authority, Tribe, or the Oregon Health Authority Public Health Division.

(C) Department transmittals.

(b) If paragraphs (A), (B), or (C) of subsection (a) are in conflict, (A) takes precedence over (B) or (C) and (B) takes precedence over (C).

(2) The Department may impose a civil penalty under ORS 427.900 on a CDDP for a violation of section (1) of this rule.

(3) In considering whether to impose a civil penalty and the size of the civil penalty, the Department shall consider all of the following:

(a) The past history of the CDDP incurring a civil penalty in taking all reasonable steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes or rules pertaining to the CDDP.

(c) The immediacy and extent to which a violation threatens or threatened the health, safety, and welfare of individuals.

(4) Unless otherwise specified in rule, the amount of a civil penalty may not exceed \$500 for each violation.

(5) When a CDDP receives notification from the Department of a violation for which a civil penalty or other liability may be imposed, the CDDP must take action to immediately eliminate the violation.

(6) The Department shall provide the Program Manager of the CDDP written notice of the imposition of a civil penalty consistent with ORS 183.415 including all of the following:

(a) A statement of the CDDP's right to a hearing, with a description of the procedure and timeframe to request a hearing, or a statement of the time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A reference to the specific sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted or charged.

(e) A statement indicating whether and under what circumstances an order by default may be entered.

(f) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

(7) The Program Manager, or their designee, has 20 calendar days from the receipt of the notice of civil penalty in which to make a written application for a hearing before the Department.

(8) If the CDDP fails to request a hearing within 20 calendar days, a final order may be entered by the Department assessing a civil penalty.

(9) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(10) If, after a hearing, the CDDP is found to be in violation of section (1) of this rule, an order may be entered by the Department assessing a civil penalty.

(11) If the order is not appealed, the amount of the civil penalty is payable within 10 calendar days after the order is entered. If the order is appealed and is sustained, the amount of the civil penalty is payable within 10 calendar days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) Judicial review of civil penalties imposed under ORS 427.900 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the civil penalty.

(13) Unless otherwise directed by statute, all civil penalties recovered under ORS 427.900 are paid into the State Treasury and shall be deposited to the Department of Human Services Account established under ORS 409.060 and may be used by the division of the Department that provides developmental disabilities services for system improvements and the implementation of policies.

Stat. Auth. ORS 409.050, 427.104, 427.105, 427.115, 427.900, 430.662
Stats. Implemented: ORS 183.745, 409.010, 427.007, 427.104, 427.105, 427.115, 427.900, 430.215, 430.610, 430.620, 430.662, 430.664