

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

**CHAPTER 411  
DIVISION 330**

**COMPREHENSIVE IN-HOME SUPPORT FOR ADULTS WITH  
INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

**EFFECTIVE JULY 1, 2013**

**411-330-0010 Statement of Purpose**

*(Amended 7/1/2010)*

The rules in OAR chapter 411, division 330 prescribe standards, responsibilities, and procedures for community developmental disability programs providing comprehensive services to adults with developmental disabilities required for those adults to remain at home or in their family homes.

Stat. Auth.: ORS 410.070 & 409.050

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

**411-330-0020 Definitions**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 330:

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

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

(3) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being that are essential for health and safety.

(4) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

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

(6) "Alternatives to Employment - Habilitation" means assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that takes place in a non-residential setting, separate from the home in which an individual with an intellectual or developmental disability resides.

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210 (Criminal Records and Abuse Check for Providers).

(8) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a provider to follow, to cause a child's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment, and teach new skills.

(9) "Behavior Support Services" mean the services described in OAR 411-330-0110 that are provided to assist with behavioral challenges due to an individual's intellectual or developmental disability that prevents the individual from accomplishing activities of daily living, instrumental activities of daily living, and health related tasks.

(10) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources and services.

(11) "CDDP" means "Community Developmental Disability Program" as defined in this rule.

(12) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to services received and

from whom, including but not limited to case management, service providers, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(13) "Chore Services" mean the services described in OAR 411-330-0110 needed to maintain a clean, sanitary, and safe environment in an individual's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress. Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(14) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

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

(16) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for the planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(17) "Community First Choice" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

(18) "Community Nursing Services" mean the services described in OAR 411-330-0110 that include nurse delegation and care coordination for an individual living in his or her own home. Community nursing services do not include direct nursing care and are not covered by other Medicaid spending authorities

(19) "Comprehensive Services" mean developmental disability services and supports that include 24-hour residential services provided in a group home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or community inclusion program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a community developmental disability program. Comprehensive services do not include support services for adults with developmental disabilities enrolled in brokerages..

(20) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Seniors and People with Disabilities Division (Division)(SPD)".

(21) "Developmental Disability" means a neurological condition that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(22) "Director" means the Director of the Department's Office of Developmental Disability Services or the Director's designee. The term "Director" is synonymous with "Assistant Director".

(23) "Employer-Related Supports" mean activities that assist an individual and, when applicable, the individual's legal representative or family members, with directing and supervising provision of services described in the individual's In-Home Support Plan. Supports to the employer include but are not limited to:

- (a) Education about employer responsibilities;
- (b) Orientation to basic wage and hour issues;
- (c) Use of common employer-related tools such as job descriptions; and
- (d) Fiscal intermediary services.

(24) "Entry" means admission to a Department-funded developmental disability service.

(25) "Environmental Accessibility Adaptations" mean the physical adaptations as described in OAR 411-330-0110 that are necessary to ensure the health, welfare, and safety of an individual in the home, or that enable the individual to function with greater independence in the home.

(26) "Exit" means termination or discontinuance of --

(a) Services from a service provider; or

(b) Department-funded developmental disability services.

(27) "Family":

(a) Means a unit of two or more persons that includes at least one individual with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the individual with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(iii) Joint responsibility for supporting the individual when the individual with an intellectual or developmental disability is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining an individual's eligibility for in-home support as a resident in the family home;

(B) Identifying persons who may apply, plan, and arrange for individual supports; and

(C) Determining who may receive family training.

(28) "Family Training" means training and counseling services for the family of an individual that increase the family's capacity to care for, support, and maintain the individual in the home as described in OAR 411-330-0110.

Family training includes:

(a) Instruction about treatment regimens and use of equipment specified in an Individual Support Plan;

(b) Information, education, and training about the individual's intellectual or developmental disability, medical, or behavioral conditions; and

(c) Counseling for the family to relieve the stress associated with caring for an individual with an intellectual or developmental disability.

(29) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of an individual according to the individual's In-Home Support Plan. The fiscal intermediary acts as an agent for the individual or the individual's legal representative and performs activities and maintains records related to payroll and payment of employer-related taxes and fees. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

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

(31) "Functional Needs Assessment (FNAT)" means an assessment that documents the level of need, accommodates an individual's participation in service planning, and includes --

- (a) Completing a comprehensive and holistic assessment;
- (b) Surveying physical, mental, and social functioning; and
- (c) Identifying risk factors, choices and preferences, and service needs.

(32) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with in-home support funds that:

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

(33) "Home" means an individual's primary residence that is not under contract with the Department to provide services as a licensed, endorsed, or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(34) "Home and Community Based Waivered Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with Sections 1915(c) and 1115 of the Social Security Act.

(35) "IHS" means In-Home Support as defined in this rule.

(36) "Immediate Family" means for the purpose of determining whether in-home support funds may be used to pay a family member to provide services, the spouse of an adult with an intellectual or developmental disability.

(37) "Incident Report" means the written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(38) "Independence" means the extent to which individuals with intellectual or developmental disabilities exert control and choice over their own lives.

(39) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with in-home support funds to personally provide services to the individual.

(40) "Individual" means an adult with an intellectual or developmental disability applying for or determined eligible for developmental disability services.

(41) "In-Home Support (IHS)" means support that is:

(a) Required for an individual with an intellectual or developmental disability to live in his or her home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an IHS Plan.

(42) "In-Home Support (IHS) Plan" means the written details of the supports, activities, and resources required for an individual to achieve personal outcomes and be supported by the family in the family home. An individual's support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an IHS Plan. The IHS Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. An individual's IHS Plan is the only plan of care required by the Department for an individual receiving in-home supports.

(43) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required to continue independent living.

(44) "Integration" as defined in ORS 427.005 means:



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

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

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with persons in the community.

(45) "Intellectual Disability" has the meaning set forth in OAR 411-320-0020 and described in OAR 411-320-0080.

(46) "Intervention" means the action the Department or the Department's designee requires when an individual or an individual's representative fails to meet the employer responsibilities described in OAR 411-330-0065. Intervention includes but is not limited to:

(a) A documented review of the employer responsibilities described in OAR 411-330-0065;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of an independent provider filing a complaint with the Department, the Department's designee, or other agency who may receive labor related complaints;

(d) Identifying a representative if an individual is not able to meet the employer responsibilities described in OAR 411-330-0065; or

(e) Identifying another representative if an individual's current representative is not able to meet the employer responsibilities described in OAR 411-330-0065.

(47) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(48) "Level of Care" means an assessment completed by a services coordinator has determined an individual meets institutional level of care. An individual meets institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities if --

(a) The individual has a condition of an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and

(b) The individual has a significant impairment in one or more areas of adaptive functioning. Areas of adaptive functioning include self direction, self care, home living, community use, social, communication, mobility, or health and safety.

(49) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The Board of Directors of a public or private corporation if the county declines to operate a contract for all or part of a community developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Department.

(50) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe

abused an adult with an intellectual or developmental disability. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section of this rule, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(51) "Natural Supports" or "Natural Support System" means the resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community. Services provided by natural supports are resources that are not paid for by the Department.

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

(53) "Nursing Care Plan" means the plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of an individual and how those needs are met. The Nursing Care Plan includes the tasks that are taught, assigned, or delegated to a qualified provider or the individual's family.

(54) "Occupational Therapy" means the services described in OAR 411-330-0110 provided by a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(55) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(56) "OSIP-M" means Oregon Supplemental Income Program-Medical as defined in OAR 461-101-0010. OSIPM is Oregon Medicaid insurance coverage for individuals who meet eligibility criteria as described in OAR chapter 461.

(57) "Person-Centered Planning":

(a) Means a process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

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

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

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

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

(59) "Personal Support Worker":

(a) Means a person --

(A) Who is hired by an individual with an intellectual or developmental disability or the individual's legal representative;

(B) Who receives money from the Department for the purpose of providing personal care services to the individual in the individual's home or community; and

(C) Whose compensation is provided in whole or in part through the Department or community developmental disability program.

(b) This definition of personal support worker is intended to reflect the term as defined in ORS 410.600.

(60) "Physical Therapy" means the services described in OAR 411-330-0110 provided by a professional licensed under ORS 688.020 that are defined under the State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

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

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

(b) Uses the least intervention possible;

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

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

(62) "Prevocational Services" are services that are not job-task oriented that are aimed at preparing an individual with an intellectual or developmental disability for paid or unpaid employment. Prevocational services include teaching such concepts as compliance, attendance, task completion, problem solving, and safety. Prevocational services are provided to individuals not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year.

(63) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(64) "Provider" means a person, organization, or business selected by an individual with an intellectual or developmental disability or the individual's legal representative and paid with in-home support funds to provide support according to the individual's In-Home Support Plan.

(65) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with in-home support funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(66) "Representative" means:

(a) A person selected by an individual or the individual's legal representative to act on the individual's behalf to direct the individual's in-home support plan; and

(b) For the purposes of obtaining in-home support through an independent provider, the person selected by an individual or the individual's legal representative to act on the individual's behalf to provide the employer responsibilities described in OAR 411-330-0065.

(67) "Respite" means intermittent services as described in OAR 411-330-0110 provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, a person normally providing supports to an individual with an intellectual or developmental disability unable to care for him or herself.

(68) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with intellectual or developmental disabilities.

(69) "Skills Training" means activities intended to increase an individual's independence through training, coaching, and prompting the individual to

accomplish activities of daily living, instrumental activities of daily living, and health-related skills.

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

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of intellectual or developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to people with or without disabilities; or

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

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home or in the family home and is either:

(A) Reimbursement for an expense previously authorized in an individual's IHS Plan; or

(B) An advance payment in anticipation of an expense authorized in a previously authorized IHS Plan.

(71) "Specialized Equipment and Supplies" mean devices, aids, controls, supplies, or appliances as described in OAR 411-330-0110 that meet applicable standards of manufacture, design, and installation that enable an individual to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized equipment and supplies do not include items not of direct benefit to an individual.

(72) "Speech, Hearing, and Language Services" mean the services as described in OAR 411-330-0110 provided by a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

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

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

(75) "Supported Employment Services" provides supports for individuals for whom competitive employment is unlikely without ongoing support to perform in a work setting. Supported employment occurs in a variety of settings, particularly work sites in which people without disabilities are employed.

(76) "These Rules" mean the rules in OAR chapter 411, division 330.

(77) "Transition Costs" mean expenses such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for the intellectually disabled to a community-based home setting where the individual resides.

(78) "Transportation" means services as described in OAR 411-330-0110 that allow individuals to gain access to community services, activities, and resources that are not medical in nature.

(79) "Unusual Incident" means any incident involving an individual that includes serious illness or accidents, death, injury or illness requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.



(80) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the community developmental disability program.

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

Stat. Auth.: ORS 409.050 and 410.070

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

### **411-330-0030 Eligibility for In-Home Support Services**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) NON-DISCRIMINATION. An eligible individual may not be denied in-home support services or otherwise discriminated against on the basis of age or of diagnostic or disability category. Access to service may not be restricted due to race, color, creed, national origin, citizenship, age, income, or duration of Oregon residence.

(2) ELIGIBILITY PRIOR TO JULY 1, 2013. Prior to July 1, 2013, an individual is eligible for in-home support services when --

(a) The individual has been determined eligible for developmental disability services by the CDDP of the individual's county of residence; and

(b) The individual is an adult living at home or in the family home whose in-home support services or combined in-home support services and employment and alternatives to employment services regulated by OAR chapter 411, division 345 cost more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments; and

(c) Part or all of the funds to support the individual have been designated by contract with the CDDP because --

(A) The Department has determined the individual is at imminent risk of civil commitment under ORS 427 and the Department is providing diversion services according to the provisions of OAR 411-320-0160; or

(B) Funds previously used to purchase the individual's Department-regulated residential, work, or day habilitation services have been made available within the guidelines published by the Department to purchase in-home services that cost more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments; or

(C) The Department has found the individual eligible for Comprehensive 300 services as defined through the settlement agreement *Staley v. Kitzhaber* (USDC CV00-0078-ST) and has made funds available to purchase in-home services that cost more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments.

(3) ELIGIBILITY ON OR AFTER JULY 1, 2013. An individual who enters in-home support services on or after July 1, 2013, is subject to eligibility as described in this section.

(a) To be eligible for home and community-based waived services or Community First Choice state plan services, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OSIP-M;

(C) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080; and

(D) After completion of an assessment, meet the level of care defined in OAR 411-330-0020.

(b) To be eligible for in-home support services, an individual must:

(A) Be an Oregon resident;

(B) Be determined eligible for developmental disability services by the CDDP of the individual's county of residence as described in OAR 411-320-0080;

(C) Be an adult who is living in his or her own home or the family home who is not receiving other Department-funded in-home or community living support;

(D) Choose to use a CDDP for assistance with design and management of in-home support services; and

(E) Be eligible for home and community-based waived services or Community First Choice state plan services as described in subsection (a) of this section; or

(F) Be determined to meet crisis eligibility as defined in OAR 411-320-0160; or

(G) Up to an individual's 18th birthday, be enrolled in the Children's Intensive In-home Services (CIIS) Program as described in OAR chapter 411, division 300 or Long Term Supports as described in OAR chapter 411, division 308.

(4) **CONCURRENT ELIGIBILITY.** An individual may not be found eligible for in-home support services by more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007 and 430.610 to 430.670

#### **411-330-0040 In-Home Support Service Entry and Exit**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) The CDDP must make accurate, up-to-date written information about in-home support services available to eligible individuals and the individual's representative that includes --

(a) Criteria for entry, conditions for exit, and how the limits of assistance with purchasing supports are determined;

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

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

(d) A brief description of individual and legal representative responsibility for use of public funds; and

(e) An explanation of individual rights to select and direct providers of services authorized through the individual's IHS Plan and purchased with IHS funds from among those qualified according to OAR 411-330-0070, 411-330-0080, or 411-330-0090.

(2) The CDDP must make information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to individual needs and abilities.

(3) ENTRY. An individual enters in-home support services when funds are made available through a Department contract with the CDDP specifically to support the individual.

(4) DURATION. An eligible individual who has entered a CDDP's in-home support service may continue to receive in-home support services as long as the Department continues to provide funds specifically for that individual through contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(5) EXIT. An individual must exit in-home support services:

(a) At the end of a service period agreed upon by all parties and specified in the individual's IHS Plan;

(b) No less than 30 days after the CDDP has served an individual or the individual's legal representative written notice of intent to terminate services when the individual has been determined to no longer meet eligibility for in-home support services as described in OAR 411-330-0030, except when the individual appeals notice of

intent to terminate services and requests continuing services in accordance with ORS 183;

(c) At the written request of an individual or the individual's legal representative to end the service relationship;

(d) When an individual moves from a CDDP's service area, unless services are part of a time-limited plan for transition to a new county of residence;

(e) When funds to support an individual are no longer provided through the Department contract to the CDDP of the individual's county of residence;

(f) When a CDDP has sufficient evidence to believe that an individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the IHS Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services; or

(g) No less than 30 days after a CDDP has served written notice of intent to terminate services, when an individual or the individual's legal representative either cannot be located or has not responded to repeated attempts by CDDP staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

### **411-330-0050 Required In-Home Support Services**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) Each CDDP must provide or arrange for the following services as required to meet the support needs of eligible individuals:

(a) Assistance to determine needs and plan supports;

(b) Assistance to find and arrange resources and supports;

(c) Education and technical assistance to make informed decisions about support needs and direct support providers;

(d) Fiscal intermediary services;

(e) Employer-related supports; and

(f) Assistance to monitor and improve the quality of personal supports.

(2) A CDDP must complete an FNAT using a person-centered planning approach to assist an individual and the individual's legal representative to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process must address the individual's basic health and safety needs and supports, including informed decisions by the individual or the individual's legal representative regarding any identified risks.

(3) IN-HOME SUPPORT PLAN. An individual's services coordinator must write an initial IHS Plan that addresses the individual's needs identified in the FNAT. The IHS Plan must be signed by the individual (or the individual's representative) prior to services beginning. The IHS Plan and attached documents must include:

(a) The individual's name and, if applicable, the name of the individual's legal representative;

(b) The purpose of IHS Plan activities, addressing one or more of the following:

(A) Independence, i.e. the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration, i.e. the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity, i.e. the employment or other contributing roles an individual hopes to achieve or maintain; or

(D) Developing or maintaining the capacity of an individual's family to continue to provide services for the individual in the family home.

(c) A description of the supports required to accomplish the purpose, with a brief statement of the nature of the individual's disability that makes the support necessary. For an initial or annual IHS Plan that is authorized on or after October 1, 2013, the description must be consistent with the FNAT;

(d) Projected dates of when specific supports are to begin and end, as well as the end date, if any, of the period of service covered by the IHS Plan;

(e) For an initial or annual IHS Plan that is authorized prior to October 1, 2013, projected costs, with sufficient detail to support estimates;

(f) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waived or state plan services, state general funds, or natural supports.

(g) For an initial or annual IHS Plan that is authorized prior to October 1, 2013, final IHS fund costs;

(h) Schedule of plan reviews; and

(i) For an initial or annual IHS Plan that is authorized after October 1, 2013, the IHS Plan must reflect any changes in support needs identified on a FNAT.

(4) NURSING CARE PLAN. A Nursing Care Plan must be included in the IHS planning when IHS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(5) REVIEW. An individual's services coordinator must conduct and document reviews of the individual's IHS Plan and resources with the individual and the individual's legal representative as follows:

(a) At least quarterly, to review and reconcile receipts and records related to purchases of supports with IHS funds;

(b) At least annually and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the IHS Plan;

(B) Note effectiveness of purchases based on the services coordinator's observation as well as the individual's or the individual's legal representative's satisfaction; and

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of IHS funds to purchase supports.

(6) TRANSITION. For an individual moving to another service area within Oregon, the CDDP must collaborate with the receiving CDDP to transfer IHS funds designated for the individual to continue the individual's IHS Plan for supports.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

### **411-330-0060 In-Home Support Fund Assistance with Purchasing Supports**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) A CDDP must only use IHS funds to assist an individual and the individual's legal representative to purchase supports when the individual's services coordinator has developed a written and approved IHS Plan that meets requirements for development and content as described in OAR 411-330-0050 and:

(a) For plans authorized for implementation on or after October 1, 2013, an FNAT has identified supports that are necessary for the individual to live in the individual's own home or in the family home;



(b) The IHS Plan specifies cost-effective arrangements for obtaining the required supports and applying public, private, formal, and informal resources available to the eligible individual;

(c) The IHS Plan identifies the resources needed to purchase the remainder of necessary supports; and

(d) The IHS Plan is the most cost-effective plan that safely meets the goals of the IHS Plan.

(2) Goods and services purchased with IHS funds must be provided only as a social benefit as defined in OAR 411-330-0020.

(3) The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and the individual's legal representative, if any. The CDDP is specifically prohibited from:

(a) Reimbursement of an individual or the individual's legal representative or family for expenses related to services; and

(b) Advancing funds to an individual or the individual's legal representative or family to obtain services.

(4) Supports purchased for an individual with IHS funds are limited to those described in OAR 411-330-0110. The CDDP must arrange for these supports to be provided:

(a) In settings and under contractual conditions that provide the individual or the individual's legal representative the choice to receive supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-330-0020;

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(d) In accordance with applicable state or local building codes, in the case of environmental accessibility adaptations to the home; and

(e) According to the Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify an individual's legal representative and family (if services are provided to an individual in the family home) and the CDDP of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being, or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) IHS fund payments for the agreed-upon services must be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's legal representative, or the individual's family, or any other source.

(B) The provider must bill all third party resources before using IHS funds unless another arrangement is agreed upon by the CDDP in the IHS Plan.

(6) USE OF IHS FUNDS PROHIBITED.

(a) Effective July 28, 2009, IHS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (6)(a) of this rule does not apply to employees of the individual or the individual's legal representative, or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) IHS funds shall not pay for:

(A) Services, materials, or activities that are illegal;

(B) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 411-330-0020;

(C) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies;

(D) Individual or family vehicles;

(E) Health and medical costs that the general public normally must pay including but not limited to:

(i) Medications;

(ii) Health insurance co-payments;

(iii) Mental health evaluation and treatment;

(iv) Dental treatments and appliances;

(v) Medical treatments;

(vi) Dietary supplements; or

(vii) Treatment supplies not related to nutrition, incontinence, or infection control;

(F) Basic or specialized food or nutrition essential to sustain the individual including but not limited to high caloric supplements, gluten-free supplements, diabetic, ketogenic, or other metabolic supplements.

(G) Ambulance services;

(H) Legal fees including but not limited to costs of representation in educational negotiations, establishing trusts, or creating guardianships;

(I) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community-based settings;

(J) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(K) Rate enhancements to an individual's existing employment and alternative to employment services for individuals with developmental disabilities under OAR chapter 411, division 345;

(L) Employee wages or contractor payments for services when the individual is not present or available to receive services (e.g. employee paid time off, hourly "no-show" charges, and contractor preparation hours);

(M) Services, activities, materials, or equipment that are not necessary or cost-effective, and do not meet the definition of in-home supports, supports, and social benefits, as defined in OAR 411-330-0020;

(N) Educational services for school-age adults, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(O) Services, activities, materials, or equipment that may be obtained by the individual or the individual's legal representative through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(P) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(Q) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the individual's legal representative, family, or service provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the IHS Plan, refused to cooperate with record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with IHS services.

(7) The CDDP must inform an individual and the individual's legal representative in writing of records and procedures required in OAR 411-330-0140 regarding expenditure of IHS funds for direct assistance. During development of the IHS Plan, the individual's services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must include delineations of responsibility for maintenance of records in the IHS Plan and any other written service agreements.

Stat. Auth.: ORS 409.050 and 410.070

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

### **411-330-0065 Standards for Employers**

*(Adopted 1/4/2013)*

(1) EMPLOYEE - EMPLOYER RELATIONSHIP. The relationship between an independent provider and an individual or the individual's representative is that of employee and employer.

(2) JOB DESCRIPTION. As an employer, it is the responsibility of the individual or the individual's representative to create and maintain a job description for potential independent providers that is in coordination with the services authorized by the individual's services coordinator.

(3) PERSONAL SUPPORT WORKER BENEFITS. The only benefits available to independent providers are for those who are personal support workers and negotiated in the collective bargaining agreement and provided in Oregon Revised Statute. The collective bargaining agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Independent providers, including personal support workers, are not state or CDDP employees.

#### (4) EMPLOYER RESPONSIBILITIES.

(a) For an individual to be eligible for in-home support provided by an independent provider, an individual or an individual's representative must demonstrate the ability to:

- (A) Locate, screen, and hire a qualified independent provider;
- (B) Supervise and train the independent provider;
- (C) Schedule work, leave, and coverage;
- (D) Track the hours worked and verify the authorized hours completed by the independent provider;
- (E) Recognize, discuss, and attempt to correct, with the independent provider, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and
- (F) Discharge an unsatisfactory independent provider.

(b) Indicators that an individual or an individual's representative may not be meeting the employer responsibilities described in subsection (4)(a) of this section include but are not limited to:

- (A) Independent provider complaints;
- (B) Multiple complaints from an independent provider requiring intervention from the Department or CDDP;
- (C) Frequent errors on time sheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department or CDDP;
- (D) Complaints to Medicaid Fraud involving the individual or the individual's representative; or

(E) Documented observation by the CDDP of services not being delivered as identified in the individual's In-Home Support Plan.

(c) The Department or the CDDP may require intervention as defined in OAR 411-330-0020 when an individual or an individual's representative has demonstrated difficulty meeting the employer responsibilities described in subsection (4)(a) of this section.

(d) After appropriate intervention and assistance, an individual unable to meet the employer responsibilities described in subsection (4)(a) of this section may be determined ineligible for in home support provided by an independent provider.

(A) An individual determined ineligible to be an employer of an independent provider and unable to designate a representative, may not request in-home support provided by an independent provider until the individual's next annual ISP. Improvements in health and cognitive functioning may be factors in demonstrating the individual's ability to meet the employer responsibilities described in section (4)(a) of this rule. If an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the next annual ISP, the individual may request the waiting period be shortened.

(B) An individual determined ineligible to be an employer of an independent provider shall be offered other available service options that meet the individual's service needs, including in-home support through a contracted qualified provider organization or general business provider when available. As an alternative to in-home support, the Department or the Department's designee may offer other available services in the Home and Community Based Services Waiver.

## (5) DESIGNATION OF EMPLOYER RESPONSIBILITIES.

(a) An individual not able to meet all of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate a representative in order to receive or continue to receive in home support; or

(B) Select other available services.

(b) An individual able to demonstrate the ability to meet some of the employer responsibilities described in section (4)(a) of this rule must:

(A) Designate a representative to fulfill the responsibilities the individual is not able to meet to receive or continue to receive in home support; and

(B) On a Department approved form, document the specific employer responsibilities performed by the individual and the employer responsibilities performed by the individual's representative.

(c) When an individual's representative is not able to meet the employer responsibilities described in section (4)(a) or the qualifications in section (6)(c) of this rule, an individual must:

(A) Designate a different representative to receive or continue to receive in home support; or

(B) Select other available services.

## (6) REPRESENTATIVE.

(a) An individual or an individual's legal representative may designate a representative to act on their behalf to meet the employer responsibilities described in section (4)(a) of this rule. An individual's legal representative may be designated as the individual's representative.

(b) A representative who is also an individual's independent provider of in-home support must seek an alternate representative for purposes of the independent provider's employment. The alternate representative must:



(A) Track the hours worked and verify the authorized hours completed by the independent provider; and

(B) Document the specific employer responsibilities performed by the individual and the individual's representative on a Department approved form.

(c) The Department or the CDDP may suspend, terminate, or deny an individual's request for a representative if the designated representative has:

(A) A history of substantiated abuse of an adult as described in OAR 411-045-0250 to 411-045-0370;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (4)(a) or (6)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4)(a) or (6)(b).

(d) An individual shall be given the option to select another representative if the Department or CDDP suspends, terminates, or denies an individual's request for a representative for the reasons described in subsection (6)(c) of this section.

## (7) APPEALS.

(a) The Department or the CDDP, respectively, shall mail a notice identifying the individual, the individual's representative, and if applicable the individual's legal representative when:

(A) The Department or the CDDP denies, suspends, or terminates an individual or an individual's representative from performing the employer responsibilities described in sections (4)(a) or (6)(b) of this rule; and

(B) The Department or the CDDP denies, suspends, or terminates an individual's representative from performing the employer responsibilities described in section (4)(a) or (6)(b) of this rule because the individual's representative does not meet the qualifications in section (6)(c) of this rule.

(b) CDDP ISSUED NOTICES. An individual receiving in-home support, the individual's legal representative, or the individual's representative may appeal a notice issued by the CDDP by requesting a review by the CDDP's Director.

(A) For an appeal regarding denial, suspension, or termination of an individual, the individual's legal representative, or the individual's representative to be valid, written notice of the appeal and request for review must be received by the CDDP within 45 calendar days of the date of the notice.

(B) The CDDP Director shall complete a review and issue a decision within 30 calendar days of the date the written appeal was received by the CDDP.

(C) If an individual, individual's legal representative, or the individual's representative is dissatisfied with the CDDP Director's decision, the individual or the individual's representative may request an administrative review by the Department's Director or the Department's designee.

(D) For an appeal of the CDDP's decision to be valid, written notice of the appeal and request for an administrative review must be received by the Department within 15 calendar days of the date of the CDDP's decision.

(E) The Department's Director or the Department's designee shall complete an administrative review within 30 calendar days of the date the written appeal was received by the Department.

(F) The Department's decision of an administrative review is considered final.

(c) DEPARTMENT ISSUED NOTICES. An individual receiving in-home support, the individual's legal representative, or the individual's representative may appeal a notice issued by the Department by requesting an administrative review by the Department's Director or the Department's designee.

(A) For an appeal regarding denial, suspension, or termination of an individual, and individual's legal representative, or the individual's representative to be valid, written notice of the appeal and request for an administrative review must be received by the Department within 45 calendar days of the date of the notice.

(B) The Department's Director or Department's designee shall complete an administrative review and issue a decision within 30 calendar days of the date the written appeal was received by the Department.

(C) The Department's decision of an administrative review is considered final.

(d) An individual has appeal rights as described in OAR 411-330-0130 when the denial, suspension, or termination of the individual or the individual's representative results in the Department or CDDP denying, suspending, or terminating an individual from comprehensive in-home supports.

Stat. Auth.: ORS 409.050 & 410.070

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

### **411-330-0070 Standards for Independent Providers Paid with In-Home Support Funds**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor, a self-employed person, or an employee of an individual or the individual's representative must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0210. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275:

(d) Be legally eligible to work in the United States;

(e) Not be the spouse of the individual receiving services;

(f) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the individual's IHS Plan, with such demonstration confirmed in writing by the employing individual or the individual's representative, family, or designated advocate including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(g) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training, and skill;

(h) Understand requirements of maintaining confidentiality and safeguarding individual information;

(i) Not be on the Office of Inspector General's list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>);

(j) In the case of an agency, hold any license or certificate required by the state of Oregon or federal law or regulation to provide the services purchased by or for the individual; and

(k) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certificate that may be required under state and local law, depending on the nature and scope of the transportation service.

(2) Section (1)(c) of this rule does not apply to employees of an individual or the individual's legal representative or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the Department's designee within 24 hours.

(4) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in OIS and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(5) NURSE. A nurse providing community nursing services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with developmental disabilities.

(6) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

**411-330-0080 Standards for Provider Organizations Paid with In-Home Support Services Funds**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) A provider organization licensed under OAR chapter 411, division 325 for 24-hour residential services or OAR chapter 411, division 360 for adult foster homes or certified under OAR chapter 411, division 345 for employment and alternatives to employment services, , OAR chapter 411, division 328 for supported living services, or OAR chapter 411, division 340 for support services do not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, emergent services, or support services.

(2) Current license or certification is considered sufficient demonstration of ability to:

- (a) Recruit, hire, supervise, and train qualified staff;
- (b) Provide services according to IHS Plans; and
- (c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) All persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with IHS funds must meet standards for qualification of independent providers outlined in OAR 411-330-0070.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

#### **411-330-0090 Standards for General Business Providers**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) General business providers providing services to individuals and paid with IHS funds must hold any current license appropriate to function required by the State of Oregon or federal law or regulation, including but not limited to:

- (a) For a home health agency, a license under ORS 443.015;
- (b) For an in-home care agency, a license under ORS 443.315;
- (c) For providers of environmental accessibility adaptations involving building modifications or new construction, a current license and bond as a building contractor as required by OAR chapter 812 (Construction Contractor's Board) and OAR chapter 808 (Landscape Contractors);
- (d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812 including

experience evaluating homes, assessing the needs of an individual, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, the established standards and for private transportation providers, a business license and drivers licensed to drive in Oregon; and

(f) For vendors and medical supply companies providing specialized medical equipment and supplies, a current retail business license including enrollment as Medicaid providers through the Oregon Health Authority's Division of Medical Assistance Programs if vending medical equipment.

(2) Services provided and paid for with IHS funds are limited to the services within the scope of the general business provider's license.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

**411-330-0100 Sanctions for Independent Providers, Provider Organizations, and General Business Providers**  
*(Amended 7/1/2010)*

(1) Sanctions may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with IHS funds, the provider has:

(a) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service;

(b) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Had his or her professional license suspended, revoked, or otherwise limited, or surrendered his or her license;

(d) Notwithstanding abuse as defined in OAR 407-045-0260, failed to safely and adequately provide the services authorized;



- (e) Had a founded report of child abuse or substantiated abuse;
- (f) Failed to cooperate with the Department or CDDP investigation or grant access to or furnish, as requested, records or documentation;
- (g) Billed excessive or fraudulent charges or been convicted of fraud;
- (h) Made false statement concerning conviction of crime or substantiation of abuse;
- (i) Falsified required documentation;
- (j) Not adhered to the provisions of OAR 411-330-0060(6) and OAR 411-330-0070; or
- (k) Been suspended or terminated as a provider by another division within the Department.

(2) The following sanctions may be imposed on a provider:

- (a) The provider may no longer be paid with IHS funds;
- (b) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or Division, as applicable; or
- (c) The CDDP may withhold payments to the provider.

(3) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 calendar days of the notice. The provider must appeal separately from any appeal of audit findings and overpayments.

(4) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Division's Assistant Director.

(5) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Division within 30 calendar days of the date the sanction notice was mailed to the provider.

(6) At the discretion of the Division, providers who have previously been terminated or suspended by any division within the Department may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

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

#### **411-330-0110 Supports Purchased with In-Home Funds**

*(Temporary Effective 7/1/2013 - 12/28/2013)*

(1) For IHS Plans authorized prior to July 1, 2013, when the conditions of purchase in OAR 411-330-0060 are met, IHS funds may be used to purchase:

(a) Behavior Consultation. Behavior consultation consists of: assessment of the individual, the needs of the family and the environment; development of positive behavior support strategies including a behavior support plan if needed; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family, development of visual communication systems as behavior support strategies, and communicating as authorized by the individual or their legal representative with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

(A) Providers may include, but are not limited to, licensed psychologists, behavioral specialists, autism specialists, or other communication specialists who meet the requirements in OAR 411-330-0070(1)(a) through (j) and (2)(a) through (c).

(B) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the individual at school, assessment in the school setting, or any service identified by the school as required to carry out the person's Individual Education Plan.

(b) Community inclusion services. Community inclusion services assist an individual to acquire, retain or improve physical or mental skills, which enhance integration, independence and/or productivity and take place separate from the home in which the individual lives and occur on a regularly scheduled basis. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for an individual to participate in activities to facilitate independence and promote community inclusion in settings chosen by the individual and the individual's legal representative.

(A) Community inclusion services include, but are not limited to: assistance in use of community resources (e.g. shopping, transportation systems; personal assistance to attend local interest clubs, gym or sports events; assistance to build relationships with non-disabled individuals in community settings capable of providing natural support; opportunities for activities and socialization with other people with disabilities; and/or assistance with eating, toileting, mobility during recreational activities); and the cost of daily care and supervision.

(B) Examples of what community inclusion services do not provide include, but are not limited to: fees for attending local clubs, gyms or sporting events; secondary and post-secondary education services; tuition to private schools; services provided by a spouse of the individual; illegal activities; legal fees; vacation costs that would normally be incurred by anyone on vacation regardless of disability; supports that have not been arranged according to applicable state and federal wage and hour regulations; services that are not necessary or cost-effective; and services or activities carried out in a manner that constitutes abuse of an adult.

(c) Supported employment services. Supported employment services assist an individual to choose, get and keep a paid job in an integrated community business setting.

(A) Supported employment services include job development, training and on-going supervision to obtain paid employment.

Training may focus on the individual worker and co-workers without disabilities capable of providing natural support.

(B) Examples of what supported employment services do not provide include, but are not limited to the following: support provided by someone who does not meet the minimum independent provider qualifications as specified in OAR 411-330-0070; illegal activities; legal fees; services or activities carried out in a manner that constitutes abuse of an adult; care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations; rate enhancements to an individual's existing employment/community inclusion service under OAR 309-047-0000 through 309-047-0140; payment for the supervisory activities rendered as a normal part of the business setting; incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program; payments for vocational training that is not directly related to an individual's supported employment program; and services that are not necessary or cost-effective. For purposes of this rule:

(i) Supported employment services must not replace services available under a program funded under the Rehabilitation Act of 1973, or P.L. 94-142.

(ii) Supported employment services under this rule must not replace or duplicate services that the individual currently receives through the Department-contracted Employment and Alternative to Employment Services governed by OAR 411-345-0010 through 411-345-0310.

(d) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to an individual's home, which are necessary to ensure the health, welfare, and safety of the individual in the home, or which enable the individual to function with greater independence around the home.

(A) Examples of environmental accessibility adaptations include, but are not limited to: environmental modification

consultation to determine the appropriate type of adaptation; installation of ramps and grab-bars; removing or widening of doorways; handrails; electric door openers; adaptations of kitchen cabinet/sinks; modifications of bathroom facilities; hardening the environment; protective fencing; individual room air conditioners to maintain stable temperature as required by the individual's medical condition; overhead track systems to assist with lifting or transferring of individuals; installation of specialized electric and plumbing systems which are necessary to accommodate medical equipment; and supplies necessary for the welfare of the individual.

(B) Examples of what environmental accessibility supports do not provide include, but are not limited to: generic fire safety equipment; generic household maintenance and repair; adaptations or improvements to the home which are of general utility, and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, adaptations or improvements to the home which add to the total square footage of the home; adaptations and modifications not constructed in accordance with applicable State or local codes; adaptations and improvements not necessary or cost-effective; and materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies.

(C) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(D) Providers of environmental accessibility adaptation involving building modifications or new construction must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(e) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for the individual. These services are fiscal intermediary services to pay vendors and to carry out payroll and

reporting functions when providers are domestic employees of the family.

(f) Family Training. Family training services are training and counseling services provided to the family of an individual with developmental disabilities to increase their capabilities to care for, support and maintain the individual in the home.

(A) Family training services include, but are not limited to: instruction about treatment regimens and use of equipment specified in the In-Home Support Plan; information, education and training about the individual's disability, medical, and behavioral conditions. Family training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under 677.100 or nursing under 678.040; social workers licensed under 675.530; counselors licensed under 675.715; organized conferences and workshops specifically related to the individual's disability, identified support needs, or specialized medical or behavioral support needs.

(B) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; training for paid caregivers; legal fees; training for families to carry out educational activities in lieu of school; vocational training for family members; and paying for training to carry out activities that constitute abuse of an adult.

(C) Prior authorization by the CDDP is required for attendance by family members at organized conferences and workshops funded with In-Home Support Services funds.

(g) In-Home Support. In-Home Support services are care, training, supervision and protection provided based on the needs of the individual that must be met for the individual to live in the family home.

(A) In-Home Support services include, but are not limited to: providers who come into the family home and assist the

individual with: activities of daily living; medical and physical health care including performance or delegation of nursing tasks; behavior management; maintenance of expressive and receptive skills in verbal and non-verbal language; functional application of acquired reading and writing skills; training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(B) Examples of what In-Home Support services do not provide include, but are not limited to: services provided by the spouse of the individual; services available through private insurance or health plan; services provided by someone who does not meet the minimum provider qualifications of this rule; behavior management not based on positive behavioral theory and practice; legal fees; care, training or supervision that has not been arranged according to applicable state and federal wage and hour regulations; health and medical costs that the general public normally must pay; educational services for school-age individuals; and replacing support normally provided to the individual by a family member. For individuals who live in the family home, family members are expected to provide a minimum of 8 hours of support daily with the exception of respite.

(h) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(A) Occupational therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified occupational therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(B) Occupational therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(i) Physical Therapy. Physical therapy services are the services of a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(A) Physical therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified physical therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(B) Physical therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(j) Respite Care. Respite care services are short-term care provided on an hourly or daily basis because of the absence, or need for relief of, persons normally providing the care to an individual with developmental disabilities.

(A) Temporary or overnight respite services may be provided in a variety of settings, including, but not limited to: the home of the individual; a licensed group home or foster home; a



licensed day care center; or a community care facility that is not a private residence.

(B) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the individual's family to attend school or work; vacation travel and lodging expenses; cost of the individual's meals unless part of a short-term stay in a licensed facility, group home or foster home.

(k) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, controls, or appliances specified in the In-Home Support Plan, which enable an individual to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment permitted under the Medicaid State Plan after the scope and limits of the State Medicaid Plan have been reached.

(A) Examples of specialized equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; continuous positioning airway pressure, apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; latex gloves and similar supplies used in personal care; and equipment such as plates, bowls, utensils, glasses, trays that allow an individual to eat independently or with minimum assistance

(B) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: work-related clothing; generic household furnishings; personal clothing for the individual or family, and other purchases made because of financial need; any equipment or supplies that can be purchased by the individual through the Oregon Health Plan or

private insurance, or obtained through other resources; illegal substances or materials; materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies; items which are needed solely to allow an individual to participate in school; items not of direct medical or remedial benefit to the individual; and equipment that is not necessary or cost-effective, experimental, not generally-accepted, or absolutely prohibited by the Oregon Health Plan.

(l) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope specified in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(A) Speech, hearing, and language services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified speech therapy professional when there is written proof that the Oregon Health Plan service limits have been reached.

(B) Speech, hearing, and language services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools. Educational services for school age individuals, such as: professional instruction, formal training, and tutoring in communication, socialization, and academic skills are not allowable expenses covered by In-Home Support Services funds.

(m) Transportation services. Transportation services are services that provide training or support in public or private transportation required for the individual to attend recreation, day programs, appointments, and related services according to an In-Home Support Plan.

(A) Transportation services include, but are not limited to: transportation provided by common carriers, taxicab or bus in accordance with standards established for these entities; reimbursement on a per-mile basis for transporting an individual in a rural area into the nearest town once a week for shopping and recreational opportunities; assistance with purchase of a bus pass; and reimbursement of operational expenses of agency/staff vehicles used for transporting individuals not to exceed established rates.

(B) Transportation services do not include: medical transportation; purchase of individual or family vehicles; routine vehicle maintenance and repair; ambulance services; payment to a spouse of an individual recipient of In-Home Support services; costs for transporting someone other than the individual with disabilities.

(2) For an initial or annual IHS Plan that is authorized on or after July 1, 2013, IHS funds may be used to purchase the following when the conditions of purchase in OAR 411-330-0060 are met:

(a) Community First Choice state plan services:

(A) Community nursing services as described in section (3) of this rule;

(B) Chore services as described in section (4) of this rule;

(C) Personal care as described in section (5) of this rule;

(D) Skills training as described in section (6) of this rule;

(E) Transportation as described in section (7) of this rule;

(F) Specialized medical equipment and supplies as described in section (8) of this rule;

(G) Respite as described in section (9) of this rule;

(H) Behavior support services as described in section (10) of this rule;

(I) Environmental accessibility adaptations as described in section (11) of this rule; and

(J) Transition costs as described in section (12) of this rule.

(b) Home and Community Based Waiver Services:

(A) Alternatives to employment - habilitation as described in section (13) of this rule;

(B) Pre-vocational services as described in section (14) of this rule;

(C) Supported employment as described in section (15) of this rule;

(D) Family training as described in section (16) of this rule;

(E) Occupational therapy as described in section (17) of this rule;

(F) Physical therapy as described in section (18) of this rule; and

(G) Speech, hearing, and language services as described in section (19) of this rule.

(3) COMMUNITY NURSING SERVICES. Community nursing services includes:

(a) Evaluation and identification of supports that minimize health risks while promoting an individual's autonomy and self-management of healthcare;

(b) Medication reviews;

(c) Collateral contact with a services coordinator regarding an individual's community health status to assist in monitoring safety and well-being and to address needed changes to the person-centered Individual Support Plan; and

(d) Delegation of nursing tasks to an individual's provider so the provider may safely perform health related tasks.

(4) CHORE SERVICES. Chore services may be provided only in situations where no one else in the home is capable of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer, agency, or third-party payer is capable of, or responsible for, providing these services;

(5) PERSONAL CARE SERVICES (ADL/IADL).

(a) Personal care services include but are not limited to:

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

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

(C) Mobility, transfers, and repositioning -- assisting an individual with ambulation or transfers with or without assistive devices, turning the individual or adjusting padding for physical

comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition -- preparing meals and special diets, assisting an individual with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Medication and oxygen management -- assisting with ordering, organizing, and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring an individual for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply;

(F) Delegated nursing tasks;

(G) Housekeeping -- tasks necessary to maintain an individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and gathering and washing soiled clothing and linens.

(H) Arranging for necessary medical appointments including help scheduling appointments and arranging medical transportation services, assistance with mobility, and transfers or cognition in getting to and from appointments;

(I) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate persons;

(J) First aid and handling emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements where assistance is needed by another person, or responding to an individual's call

for help during an emergent situation or for unscheduled needs requiring immediate response ; and

(K) Cognitive assistance or emotional support provided to an individual by another person due to developmental disability. This support includes helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive symptoms.

(b) Personal care assistance means an individual requires help from another person with ADLs. Assistance may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may also require verbal reminding to complete one of the tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if intervention is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task should the individual be unable to complete the task independently.

(6) SKILLS TRAINING. Skills training are specifically tied to the FNAT and IHS Plan and are a means to increase independence, preserve functioning, and reduce dependency of an individual.

(7) TRANSPORTATION.

(a) Transportation services include but are not limited to --

(A) Transportation provided by common carriers, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual in a rural area into the nearest town once a week for shopping and recreational opportunities;

(C) Assistance with the purchase of a bus pass; and

(D) Reimbursement of operational expenses of agency or staff vehicles used for transporting individuals not to exceed established rates.

(b) Transportation services do not include medical transportation, purchase of individual or family vehicles, routine vehicle maintenance and repair, ambulance services, payment to the spouse of an individual receiving IHS services, and costs for transporting a person other than the individual.

(8) SPECIALIZED EQUIPMENT AND SUPPLIES. When specialized equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized equipment and supplies with IHS funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Specialized equipment and supplies may include devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform and support activities of daily living or to perceive, control, or communicate with the environment in which the individual lives.



(b) Specialized equipment and supplies may be purchased with IHS funds when an individual's intellectual or developmental disability otherwise prevents or limits the individual's independence in the areas described in section (5) of this rule

(c) Specialized equipment and supplies that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual and include:

(A) Supplies needed to assist with incontinence care such as gloves, pads, wipes, or incontinence garments;

(B) Electronic devices to secure assistance in an emergency in the community and other reminders such as medication minders and alert systems for ADL or IADL supports, or mobile electronic devices;

(C) Assistive technology to provide additional security and replace the need for direct interventions to allow self direction of care and maximize independence such as motion/sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinent and fall sensors, or other electronic backup systems;

(i) Limit of \$5000 per year without Department approval.

(ii) Any single device or assistance costing more than \$500 in a plan year must be approved by the Department.

(D) Assistive devices. Examples include durable medical equipment, mechanical apparatus, electrical appliance or information technology device to assist and enhance an individual's independence in performing ADL/IADLs, not covered by other Medicaid programs.

(i) Limit of \$5000 per year without Department approval.

(ii) Any single device or assistance costing more than \$500 must be approved by the department.

(9) RESPITE.

(a) Respite may be provided in an individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence.

(b) Respite includes two types of care, neither of which may be characterized as eight-hours-a-day, five-days-a-week services or provided to allow an individual's provider to attend school or work.

(c) Temporary respite must be provided on less than a 24-hour basis.

(d) Twenty-four hour overnight services must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from the Department.

(10) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessment of an individual or the needs of the individual's family and the environment;

(B) Development of positive behavior support strategies including a Behavior Support Plan if needed;

(C) Implementation of a positive Behavior Support Plan with the provider or family; and

(D) Revision and monitoring of the plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family;

(B) Development of visual communication systems as behavior support strategies; and

(C) Communicating as authorized by the individual or their legal representative with school, medical, or other professionals

about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services does not include:

- (A) Mental health therapy or counseling;
- (B) Health or mental health plan coverage;
- (C) Educational services, including, but not limited to, consultation and training for classroom staff;
- (D) Adaptations to meet needs of the individual at school; or
- (E) Assessment in the school setting.

#### (11) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations include but are not limited to:

- (A) An environmental modification consultation to determine the appropriate type of adaptation;
- (B) Installation of shatter-proof windows;
- (C) Hardening of walls or doors;
- (D) Specialized, hardened, waterproof, or padded flooring;
- (E) An alarm system for doors or windows;
- (F) Protective covering for smoke detectors, light fixtures, and appliances;
- (G) Sound and visual monitoring systems;
- (H) Fencing;
- (I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual;

(R) Modifications for the primary vehicle used by the individual that are necessary to meet the unique needs of the individual (lift or interior alterations such as seats, head, and leg rests; and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle); and

(S) Adaptations to control lights, heat, stove, etc.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home,

(c) Environmental modifications are limited to \$5,000 per modification. A services coordinator may request approval for additional expenditures through the Department's prior to expenditure. Approval is based on the individual's need and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental modifications must be tied to supporting activities of daily living, instrumental activities of daily living, and health-related tasks as identified in the IHS Plan.

(e) Modifications over \$500 must be completed by a state licensed contractor. Any modification requiring a permit must be inspected and be certified as in compliance with local codes by a local inspector. Certification of compliance must be filed in the provider's file prior to payment.

(f) Environmental modifications must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

## (12) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, intermediate care facility for the intellectually disabled, or acute care hospital to a home or community-based setting where the individual resides.

(b) Services are based on an individual's assessed need, determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for expenditures must be through the Department prior to expenditure. Approval is based on the individual's need and the Department's determination of appropriateness and cost-effectiveness.

(c) Financial assistance is limited to:

(A) Moving and move-in costs including movers, cleaning and security deposits, payment for background/credit check (related to housing), initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings (i.e. bed); and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually

(e) Basic household furnishings and other items are limited to one time per year.

(13) ALTERNATIVES TO EMPLOYMENT - HABILITATION is assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills that takes place in a non-residential setting, separate from the home in which an individual with an intellectual or developmental disability resides.

(14) PRE-VOCATIONAL SERVICES. The IHS Plan must reflect that prevocational services are directed to habilitative rather than explicit employment objectives.

(15) SUPPORTED EMPLOYMENT SERVICES. Supported employment services assist an individual to choose, get, and keep a paid job in an integrated community business setting.

(a) Supported employment services includes job development, training, and on-going supervision to obtain paid employment.

(b) Training may focus on the individual and the individual's co-workers without disabilities capable of providing natural support.

(c) Supported employment services must not replace services available under a program funded under the Rehabilitation Act of 1973, or P.L. 94-142.

(d) Supported employment services under this rule may not replace or duplicate services that the individual currently receives through the Department-contracted employment and alternative to employment services governed by OAR chapter 411, division 345.

(16) FAMILY TRAINING. Family training services are training and counseling services provided to the family of an individual to increase their capabilities to care for, support, and maintain the individual in the home.

(a) Family training services include but are not limited to:

(A) Instruction about treatment regimens and use of equipment specified in the IHS Plan;

(B) Information, education, and training about the individual's disability, medical, and behavioral conditions; and

(C) Organized conferences and workshops specifically related to the individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Family training services may be provided in various settings by various means, including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100 or nursing under ORS 678.040, social workers licensed under ORS 675.530, or counselors licensed under ORS 675.715;

(c) Examples of what family training services do not provide include, but are not limited to:

(A) Mental health counseling, treatment, or therapy;

(B) Training for paid caregivers;

(C) Legal fees;

(D) Training for families to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(d) Prior authorization by the CDDP is required for attendance by family members at organized conferences and workshops funded with IHS funds.

(e) Family training may not be provided to paid caregivers.

(17) OCCUPATIONAL THERAPY. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration, and scope in the plan do not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified occupational therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Occupational therapy services do not include:

(A) Goods and services available through other public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible or through an individual's private insurance;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and



(E) Education services for an individual such as tuition to schools.

(18) PHYSICAL THERAPY. Physical therapy services are the services of a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration, and scope in the plan do not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified physical therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Physical therapy services do not include:

(A) Goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible or through an individual's private insurance;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to schools.

(19) SPEECH, HEARING, AND LANGUAGE SERVICES. Speech, hearing, and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration, and scope specified in the plan do not apply. These services are available to maintain an individual's skills or physical condition when

prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified speech therapy professional when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Speech, hearing, and language services do not include:

(A) Goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance;

(B) Experimental therapy or treatments;

(C) Health and medical costs that the general public must pay;

(D) Legal fees; and

(E) Education services for an individual such as tuition to schools.

(20) Educational services for school age individuals, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills are not allowable expenses covered by (IHS) funds.

Stat. Auth.: ORS 409.050 and 410.070

Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.670

### **411-330-0120 Abuse and Unusual Incidents**

*(Amended 7/1/2010)*

(1) ABUSE PROHIBITED. No adult or individual as defined by OAR 411-330-0020 shall be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the individual, provider organization, or CDDP.

(a) BASIC PERSONNEL POLICIES AND PROCEDURES. The CDDP must have in place personnel policies and procedures addressing suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation. The CDDP must also have in place personnel policies and procedures addressing disciplinary action, including conditions for termination of employment when the allegation of abuse has been substantiated.

(b) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. Any employee of a CDDP is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

## (2) UNUSUAL INCIDENTS.

(a) WRITTEN REPORT. A written report that describes any injury, accident, act of physical aggression, or unusual incident involving an individual and a CDDP employee must be prepared at the time of the incident and placed in the individual's record. Such description must include:

(A) Conditions prior to or leading to the incident;

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression, or unusual incident.

(b) IMMEDIATE NOTIFICATION OF ALLEGATIONS OF ABUSE AND ABUSE INVESTIGATIONS. The CDDP must notify the Department immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(A) When an abuse investigation has been initiated, the CDDP must provide notification in accordance with OAR 407-045-0290.

(B) When an abuse investigation has been completed, the CDDP must provide notification in accordance with OAR 407-045-0320

(c) IMMEDIATE NOTIFICATION. In the case of a serious illness, injury, or death of an individual, the CDDP must immediately notify the individual's legal representative, parent, next of kin, and designated contact person.

Stat. Auth.: ORS 409.050 & 410.070

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

### **411-330-0130 Grievances and Appeals**

*(Effective 12/28/2003)*

(1) Grievances. The CDDP must implement written policies and procedures for individuals', their legal representatives and families' grievances. These policies and procedures must, at a minimum, provide for:

(a) Notification. The CDDP must inform each individual, each individual's legal representative, and family members orally and in writing of the CDDP's grievance policy and procedures and of the right to move directly to hearing according to OAR 411-330-0130(2) in the case of certain circumstances involving Medicaid services.

(b) Receipt of grievances from individuals, individuals' legal representatives, others acting on the behalf of individuals, and families;

(c) Investigation of the facts supporting or disproving the grievance;

(d) Taking appropriate actions on grievances by the CDDP Program Manager within five working days following receipt of grievance;

(e) Submission to the CDDP director. If the grievance is not resolved, it must be submitted to the CDDP director for review. Such review

must be completed and a written response to the grievant provided within 30 days;

(f) Submission to the Department. If the grievance is not resolved by the CDDP Director, it must be submitted to the Administrator or designee for review. Such review must be completed and a written response to the grievant provided within 45 days of submission to the Department. The decision of the Administrator or designee will be final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court; and

(g) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(2) Denial, termination, suspension, or reduction of services.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the CDDP must notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The CDDP must mail the notice, or personally serve it to the individual or the individual's legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The CDDP must use the Division of Medical Assistance Programs (DMAP) 3030 form, Notice of Hearing Rights, or comparable Department-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the IHS Plan and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) The adult individual or the adult individual's legal representative may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional

or different services, it must notify the appealing party, in writing, of the information specified in section (2)(c) of this rule.

(c) A notice required by sections (2)(a) or (2)(b) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with OAR Chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) That the CDDP's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice will take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the CDDP mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which CDDP services will be continued if a hearing is requested.

(d) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the CDDP, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(e) The individual or the individual's legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the individual or individual's legal representative(s) requests an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department will continue the services until whichever of the following occurs first, but in no event will services be continued in excess of ninety days from the date of the individual's (or individual's legal representative's) request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer or the Department renders a decision about the complaint; or

(C) The individual is no longer eligible for Medicaid benefits.

(D) The Department must notify the individual or individual's legal representative(s) that it is continuing the service. The notice must inform the individual or individual's legal representative that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department must reinstate services if:

(A) The Department takes an action without providing the required notice and the individual or individual's legal representative requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(D) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and



(G) Give the Department an opportunity to review its action or the action of the CDDP.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(j) The Department may provide to the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) *Withdrawals:* An individual or the individual's legal representative may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The hearings officer must send a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth work day following the date such an order is issued.

(l) Proposed and final orders.

(A) In a contested case, the hearings officer must serve a proposed order on the individual and the Department. The proposed order will become a final order if no exceptions are filed within the time specified in subsection (2)(l)(B) of this rule;

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department no later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless the Department prior-approves. After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare

a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

Stat. Auth.: ORS 409.050 & 410.070

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

### **411-330-0140 In-Home Support Service Operation**

*(Amended 7/1/2010)*

(1) PERSONNEL POLICIES AND PRACTICES. The CDDP must maintain up-to-date written position descriptions for all services coordinators coordinating in-home support services that includes written documentation of the following for each staff person:

- (a) Reference checks and confirmation of qualifications prior to hire;
- (b) Satisfactory completion of basic orientation, including mandatory abuse reporting training;
- (c) Satisfactory completion of job-related in-service training;
- (d) Department approval to work based on a criminal records check;
- (e) Notification and acknowledgement of mandatory abuse reporter status;
- (f) Any founded reports of child abuse or substantiated abuse;
- (g) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and
- (h) Legal U.S. worker status.

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive training needed to provide or arrange for the IHS services.

(3) RECORD REQUIREMENTS. The CDDP must maintain records in compliance with this rule, applicable state and federal law, and other state rules regarding audits and clinical records and confidentiality.

(a) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, the CDDPs are considered "providers" as defined in ORS 179.505(1), and 179.505 is applicable. Access to records by the Department does not require authorization by the individual or individual's legal representative. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) INDIVIDUAL RECORDS. The CDDP must maintain and make available on request for Department review up-to-date records for each individual receiving in-home support services. These records must include:

(A) An easily-accessed summary of basic information including individual name, family name (if applicable), individual's legal representative, or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, and individual financial resource information.

(B) Records related to receipt and disbursement of public and private support funds including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-330-0070, and documentation that the individual and the individual's legal representative understand and accept or delegate record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) IHS Plan and reviews;

(F) Services coordinator correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(c) SPECIAL REQUIREMENTS FOR IHS DIRECT ASSISTANCE EXPENDITURES. The CDDP must develop and implement written policies and procedures concerning use of IHS funds to purchase goods and services that are described in the IHS Plan as required to meet the support needs of individuals. These policies and procedures must include but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records may be maintained by the individual or family:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(B) Procedures for confirming the receipt, and securing the use of specialized equipment and environmental accessibility adaptations:

(i) When specialized equipment is obtained for the exclusive use of an individual, the CDDP must record the purpose, final cost, and date of receipt;

(ii) The CDDP must secure use of equipment costing more than \$500 through a written agreement between the CDDP and the individual or the individual's legal

representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(iii) The CDDP must obtain prior authorization from the Division for environmental accessibility adaptations to the home costing more than \$1500;

(iv) The CDDP must ensure that projects for environmental accessibility adaptations to the home costing \$5000 or more are:

(I) Reviewed and approved by the Division before work begins and before final payment is made;

(II) Completed or supervised by a contractor licensed and bonded in Oregon;

(III) That steps are taken as prescribed by the Division for protection of the state's interest through liens or other legally available means; and

(v) The CDDP must obtain written authorization from the owner of a rental structure before any minor physical environmental accessibility adaptations are made to that structure.

(C) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to IHS Plan or according to an agreement securing the state's use may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, or Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written

request may be deemed reason to recover payments or deny further assistance.

(d) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:

(A) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(e) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except client records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Client records must be kept for a minimum of seven years.

(4) OTHER OPERATING POLICIES AND PRACTICES. The CDDP must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the CDDP to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 410.070

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

**411-330-0150 Quality Assurance**  
(Effective 12/28/2003)

The CDDP must participate in statewide evaluation and regulation activities as directed by the Department.

Stat. Auth.: ORS 409.050 & 410.070

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

### **411-330-0160 Inspections and Investigations**

*(Amended 7/1/2010)*

(1) The CDDP must allow the following types of investigations and inspections to be performed by the Department, or other proper authority:

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Any inspection or investigation may be unannounced.

(3) All documentation and written reports required by these rules must be:

- (a) Open to inspection and investigation by the Department, or other proper authority; and
- (b) Submitted to or be made available for review by the Department, or other proper authority within the time allotted.

(4) When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Department has determined to initiate an investigation, the CDDP may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as:

- (a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;
- (b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions shall be taken.

(5) Investigations must be completed as described in OAR 407-045-0250 to OAR 407-045-0360 and must include an Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(6) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the CDDP may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(7) Upon completion of the Abuse Investigation and Protective Service Report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider. The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(8) A plan of improvement must be submitted to the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 & 410.070

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

**411-330-0170 Variances**

*(Effective 12/28/2003)*



(1) Criteria for a variance. Variances may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in OAR chapter 411, division 330, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules, or if there are other extenuating circumstances. OAR 411-330-0060(6)(a) through (r) and 411-330-0110 are specifically excluded from variance.

(2) Variance application. 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) The alternative practice, service, method, concept or procedure proposed; and
- (d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and
- (e) If the variance applies to an individual's service, evidence that the variance is consistent with the individual's current IHS Plan.

(3) Department review. The Administrator or designee may approve or deny the request for a variance. This decision will be final.

(4) Notification. The Department must notify the CDDP of the decision. This notice must be sent within 45 calendar days of the receipt of the request by the Department with a copy sent to all relevant Department programs or offices.

(5) Written approval. The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 410.070

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