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 DECEMBER 28, 2013

411-330-0010 Statement of Purpose
(Amended 12/28/2013)

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

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0020 Definitions
(Amended 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 the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(3) "Activities of Daily Living (ADL)" means basic personal everyday activities, including but not limited to tasks such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(4) "ADL" means "activities of daily living" as defined in this rule.

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

(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) "Attendant Care" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding, as described in OAR 411-330-0110.

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

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

(10) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice 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, health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(11) "Case Management" means the functions performed by a services coordinator. Case management includes determining service eligibility,

developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(12) "CDDP" means "community developmental disability program" as defined in this rule.

(13) "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, services, 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.

(14) "Chore Services" mean the services described in OAR 411-330-0110 that are needed to restore a hazardous or unsanitary situation in an individual's home to a clean, sanitary, and safe environment.

(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 plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(17) "Community First Choice (K Plan)" 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, training, and care coordination for an individual living in his or her own home.

(19) "Community Transportation" means the services described in OAR 411-330-0110 that enable an individual to gain access to community services, activities, and resources that are not medical in nature.

(20) "Comprehensive Services" means developmental disability services and supports that include 24-hour residential services provided in a licensed 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 intellectual or developmental disabilities enrolled in brokerages.

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

(22) "Day" means a calendar day unless otherwise specified in these rules.

(23) "Department" means the Department of Human Services.

(24) "Designated Representative" means a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the individual's representative in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(25) "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.

(26) "Director" means the director of the Department's Office of Developmental Disability Services or the director's designee.

(27) "Employer" means, for the purposes of obtaining in-home support through an independent provider as described in these rules, an individual or a person selected by the 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. An employer may also be a designated representative.

(28) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the individual's legal or designated representative or family members, with directing and supervising provision of services described in the individual's Individual Support Plan. Employer-related supports 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.

(29) "Entry" means admission to a Department-funded licensed or certified developmental disability service provider.

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

(31) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider organization.

(32) "Family":

(a) Means a unit of two or more people 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, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual with an intellectual or developmental disability when the individual 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 people who may apply, plan, and arrange for individual supports; and

(C) Determining who may receive family training.

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

(34) "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 Individual Support Plan. The fiscal intermediary acts as an agent for the individual, or as applicable the individual's legal or designated 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.

(35) "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.

(36) "Functional Needs Assessment" means a comprehensive assessment that documents:

(a) Physical, mental, and social functioning; and

(b) Risk factors, choices and preferences, service and support needs, strengths, and goals.

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

(a) Is primarily in business to provide the service chosen by the individual, or as applicable the individual's legal or designated representative, 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 person who actually provides support for the individual.

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

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

(40) "IADL" means "instrumental activities of daily living" as defined in this rule.

(41) "ICF/MR" means intermediate care facilities for the mentally retarded. Federal law and regulations use the term "intermediate care facilities for the

mentally retarded (ICF/MR)". The Department prefers to use the accepted term "individual with intellectual disability (ID)" instead of "mental retardation (MR)". However, as ICF/MR is the abbreviation currently used in all federal requirements, ICF/MR is used.

(42) "IHS" means "in-home support" as defined in this rule.

(43) "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.

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

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

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

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

(48) "Individual Support Plan" means the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. Individual 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 ISP. The ISP is the individual's plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(49) "In-Home Support (IHS)" means services that are:

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

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

(c) Provided in accordance with the individual's Individual Support Plan.

(50) "Instrumental Activities of Daily Living (IADL)" mean the activities other than activities of daily living required to continue independent living, including but not limited to:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(51) "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 people;

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

(52) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(53) "Intervention" means the action the Department or the Department's designee requires when an employer 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 an employer 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 employer representative is not able to meet the employer responsibilities described in OAR 411-330-0065.

(54) "ISP" means "Individual Support Plan" as defined in this rule.

(55) "K Plan" means "Community First Choice" as defined in this rule.

(56) "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.

(57) "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.

(58) "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.

(59) "Natural Supports" means the voluntary resources available to an individual from the individual's relatives, friends, significant others, neighbors, roommates, and the community that are not paid for by the Department.

(60) "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.

(61) "Nursing Care Plan" means the plan developed by a 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 or delegated to a qualified provider or the individual's family. When a Nursing Care Plan exists, it is a supporting document for the individual's Individual Support Plan.

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

(63) "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.

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

(65) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about personal goals, activities, services, providers, 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 the individual's cultural considerations, needs, and preferences.

(66) "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.

(67) "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 or designated representative (as applicable);

(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.

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

(69) "Plan of Care" means the written plan of Medicaid services an individual needs as required by Medicaid regulation. Oregon's plan of care is the Individual Support Plan.

(70) "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.

(71) "Prevocational Services" mean the services described in OAR 411-330-0110 that are not job-task oriented that are aimed at preparing an individual with an intellectual or developmental disability for paid or unpaid employment.

(72) "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.

(73) "Progress Note" means a written record of an action taken by a services coordinator in the provision of case management, administrative tasks, or direct services, to support an individual. A progress note may also be a recording of information related to an individual's services, support needs, or circumstances, which is necessary for the effective delivery of services.

(74) "Provider" means a person, organization, or business selected by an individual, or as applicable the individual's legal or designated representative, and paid with in-home support funds to provide support according to the individual's Individual Support Plan.

(75) "Provider Organization" means an entity selected by an individual, or as applicable the individual's legal or designated 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 person who actually provides support for the individual.

(76) "Relief Care" means the intermittent services described in OAR 411-330-0110 that are provided on a periodic basis of 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.

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

(78) "Service Level" means the amount of services determined necessary to meet an individual's identified support needs.

(79) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor services, and to act as a proponent for individuals with intellectual or developmental disabilities. A services coordinator is an individual's person-centered plan coordinator as defined in the Community First Choice state plan.

(80) "Skills Training" means the activities described in OAR 411-330-0110 that are intended to maximize an individual’s independence through training, coaching, and prompting the individual to accomplish activities of daily living, instrumental activities of daily living, supported employment, and health-related skills.

(81) "Social Benefit" 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 limits written in an individual's Individual Support Plan.

(a) Social benefits may not:

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

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

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

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

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

(82) "Specialized Equipment and Supplies" means the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that enable an individual to increase the individual's ability to perform activities of daily living or to perceive, control, or communicate with the environment in which the individual lives.

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

(84) "State Plan" means Community First Choice or state plan personal care.

(85) "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.

(86) "Support" means the assistance that an individual requires, solely because of the affects of the individual's 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.

(87) "Supported Employment Services" mean the services described in OAR 411-330-0110 that provide support for individuals for whom competitive employment is unlikely without ongoing support to perform in a work setting. Supported employment services occur in a variety of settings, particularly work sites in which people without disabilities are employed.

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

(89) "Transition Costs" mean the expenses described in OAR 411-330-0110, 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 individuals with intellectual or developmental disabilities (formerly referred to as an ICF/MR) to a community-based home setting where the individual resides.

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

(91) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-330-0170.

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

(93) "Waiver Services" means "home and community-based waiver services" as defined in this rule.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0030 Eligibility for In-Home Support Services
(Amended 12/28/2013)

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

(2) An individual who enters in-home support services is subject to eligibility as described in this section. 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 waiver services or Community First Choice state plan services. To be eligible for home and community-based waiver 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) Be determined to meet the level of care defined in OAR 411-320-0020; or

(E) Be determined to meet crisis eligibility as described in OAR 411-320-0160.

(3) Individuals are not eligible for services by more than one CDDP unless the concurrent eligibility:

(a) Is necessary to effect transition from one county to another with a change of residence; and

(b) 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 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0040 In-Home Support Service Entry and Exit
(Amended 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 individuals' legal or designated representatives. These materials must include:

(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 an individual's and an individual's legal or designated representative's responsibility for use of public funds; and

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

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

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

(4) 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 a contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(5) 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 ISP;

(b) At the written request of the individual, or as applicable the individual's legal or designated representative, to end the service relationship;

(c) No fewer than 30 days after the CDDP has served the individual, and as applicable the individual's legal or designated representative, written notice of intent to exit the individual from in-home support 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, or as applicable the individual's

legal or designated representative, appeals the notice and requests continuing services in accordance with ORS chapter 183;

(d) When the individual moves from the 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 the individual are no longer provided through the Department contract to the CDDP of the individual's county of residence;

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

(g) No fewer than 30 days after the CDDP has served written notice of intent to exit the individual from in-home support services, when the individual, or as applicable the individual's legal or designated representative, either cannot be located or has not responded to repeated attempts by CDDP staff to complete ISP development or monitoring activities, and does not respond to the notice of intent to terminate.

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Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0050 Required In-Home Support Services
(Amended 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 a functional needs assessment and use a person-centered planning approach to assist an individual, and as applicable the individual's legal or designated 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 as applicable the individual's legal or designated representative, regarding any identified risks.

(3) An individual's services coordinator must authorize an initial ISP that addresses the individual's needs. If the individual has a determined service level, the needs identified in the functional needs assessment must be addressed in the individual's ISP. Prior to services beginning, the ISP must be signed by the individual or the individual's legal or designated representative (as applicable). The ISP and attached documents must include the information described in OAR 411-320-0120, including:

(a) The individual's name and the name of the individual's legal or designated representative (as applicable);

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

(A) Independence such as the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration such as the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity such as 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, including a brief statement of the nature of the individual's disability that make the supports necessary. If the individual has a determined service level, the description must be consistent with the individual's functional needs assessment, including the reason the support is necessary;

(d) The 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 ISP;

(e) 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 waiver services, state plan services, state general funds, or natural supports;

(g) The manner in which services are delivered and the frequency of services;

(h) Service providers;

(i) The setting in which the individual resides as chosen by the individual;

(j) The individual's strengths and preferences;

(k) If the individual has a determined service level, the clinical and support needs as identified through the functional needs assessment;

(l) Individually identified goals and desired outcomes;

(m) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(n) The risk factors and the measures in place to minimize the risk factors, including back-up plans;

(o) The identity of the person responsible for case management and monitoring the ISP;

(p) A provision to prevent unnecessary or inappropriate care;

(q) The alternative settings considered by the individual;

(r) Final IHS fund costs;

(s) Schedule of ISP reviews; and

(t) If the individual has a determined service level, any changes in support needs identified through a functional needs assessment.

(4) A Nursing Care Plan must be attached to the ISP when IHS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(5) An individual's services coordinator must conduct and document reviews of an individual's ISP and resources with the individual, and as applicable the individual's legal or designated representative, as follows:

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

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

(A) Evaluate an individual's progress toward achieving the purposes of the individual's ISP;

(B) Note effectiveness of the use of IHS funds based on the services coordinator's observation as well as the satisfaction of

the individual or the individual's legal or designated representative (as applicable); 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) 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 ISP for supports.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0060 Assistance with Purchasing In-Home Supports
(Amended 12/28/2013)

(1) A CDDP must only use IHS funds to assist an individual, or as applicable the individual's legal or designated representative, to purchase supports when --

(a) The individual's services coordinator has developed a written and approved ISP that meets requirements for development and content as described in OAR 411-330-0050;

(b) For individuals who have had a service level determined, a functional needs assessment has identified supports that are necessary for the individual to live in the individual's own home or in the family home;

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

(d) The ISP identifies the resources needed to purchase the remainder of necessary supports; and

(e) The ISP is the most cost-effective plan to safely meet the goals of the individual's ISP.

(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 or designated representative (as applicable). The CDDP is specifically prohibited from:

(a) Reimbursing an individual, or as applicable the individual's legal or designated representative or family, for expenses related to services; and

(b) Advancing funds to an individual, or as applicable the individual's legal or designated 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 enable the individual, or as applicable the individual's legal or designated 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 or designated representative (as applicable), 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 or designated representative (as applicable), 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 individual's ISP.

(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, the individual’s legal or designated representative (as applicable), or provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(c) IHS funds must 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 407-045-0260;

(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 alternatives to employment services 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, such as 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 as applicable the individual's legal or designated 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 or designated representative (as applicable), family, or service provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with record keeping required to

document use of IHS funds, or otherwise knowingly misused public funds associated with in-home support services.

(7) The CDDP must inform an individual, and as applicable the individual's legal or designated 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 ISP, 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 ISP and any other written service agreements.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0065 Standards for Employers
(Amended 12/28/2013)

(1) EMPLOYEE - EMPLOYER RELATIONSHIP. The relationship between an independent provider and an individual or a person selected by an individual, or the individual's legal representative, to act on the individual's behalf to provide the employer responsibilities in this rule, is that of employee and employer.

(2) JOB DESCRIPTION. The employer is responsible for creating and maintaining 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 employer 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 employer 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 employer; or

(E) Documented observation by the CDDP of services not being delivered as identified in the individual's ISP.

(c) The Department or the CDDP may require intervention as defined in OAR 411-330-0020 when an employer 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 an employer 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 is 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 through the Home and Community Based Services Waiver or State Plan .

(5) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

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

(A) Designate an employer 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 an employer 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 employer representative.

(c) When an individual's employer 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 employer representative to receive or continue to receive in home support; or

(B) Select other available services.

(6) EMPLOYER REPRESENTATIVE.

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

(b) An employer who is also an individual’s independent provider of in-home support must seek an alternate employer for purposes of the independent provider's employment. The alternate employer 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 employer on a Department approved form.

(c) The Department or the CDDP may suspend, terminate, or deny an individual’s request for an employer representative if the requested employer 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 is given the option to select another employer representative if the Department or CDDP suspends, terminates, or denies an individual's request for an employer 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, and if applicable the individual's employer representative and legal or designated representative, when:

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

(b) CDDP ISSUED NOTICES. An individual receiving in-home support, or as applicable the individual's legal or designated representative or employer 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 employer 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, or as applicable the individual's legal or designated representative or employer representative, is dissatisfied with the CDDP director's decision, the individual, or as applicable the individual's legal or designated representative or employer 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, or as applicable the individual's legal or designated 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 employer 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 employer results in the Department or CDDP denying, suspending, or terminating an individual from comprehensive in-home supports.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0070 Standards for Independent Providers Paid with In-Home Support Funds
(Amended 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 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and 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 an individual receiving services;

(f) Not be the individual's employer of record or designated representative;

(g) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on an individual's ISP, with such demonstration confirmed in writing by the employer 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 receiving services;

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

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

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

(k) 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

(l) If providing transportation, have a valid driver's license and proof of insurance, as well as any 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 employer or employees of provider organizations who were hired prior to July 28, 2009 that 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 Behavior Support Plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention System 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 includes 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 intellectual or 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 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0080 Standards for Provider Organizations Paid with In-Home Support Funds
(Amended 12/28/2013)

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

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

(a) Recruit, hire, supervise, and train qualified staff;

(b) Provide services according to an ISP; 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) A person directed by a provider organization to provide services paid for with IHS funds as an employee, contractor, or volunteer, must meet the qualifications of an independent provider outlined in OAR 411-330-0070.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0090 Standards for General Business Providers
(Amended 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) or OAR chapter 808 (Landscape Contractors Board);

(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;

(f) For private transportation providers, a business license and drivers licensed to drive in Oregon; and

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

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

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0100 Sanctions for Independent Providers, Provider Organizations, and General Business Providers
(Amended 12/28/2013)

(1) A sanction 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 background check upon hiring or authorization of service;

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

(c) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(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, records or documentation as requested;

(g) Billed excessive or fraudulent charges or been convicted of fraud;

(h) Made a false statement concerning conviction of crime or substantiated 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 the Department or Oregon Health Authority.

(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 Department, 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.

(4) The provider may appeal a sanction within 30 calendar days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(a) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Department's director.

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

(5) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0110 Supports Purchased with In-Home Support Funds
(Amended 12/28/2013)

(1) For an initial or annual ISP, IHS funds may be used to purchase a combination of the following waiver and state plan services 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 (2) of this rule;

(B) Chore services as described in section (3) of this rule;

(C) Attendant care as described in section (4) of this rule;

(D) Skills training as described in section (5) of this rule;

(E) Community transportation as described in section (6) of this rule;

(F) Specialized equipment and supplies as described in section (7) of this rule;

(G) Relief care as described in section (8) of this rule;

(H) Behavior support services as described in section (9) of this rule;

(I) Environmental accessibility adaptations as described in section (10) of this rule; and

(J) Transition costs as described in section (11) of this rule.

(b) Home and Community-Based Waiver Services:

(A) Alternatives to employment - habilitation as described in section (12) of this rule;

(B) Pre-vocational services as described in section (13) of this rule;

(C) Supported employment as described in section (14) of this rule;

(D) Family training as described in section (15) of this rule;

(E) Occupational therapy as described in section (16) of this rule;

(F) Physical therapy as described in section (17) of this rule; and

(G) Speech, hearing, and language services as described in section (18) of this rule.

(2) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Evaluation, including medication reviews, and identification of supports that minimize health risks while promoting an individual's autonomy and self-management of healthcare;

(B) 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 ISP; and

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

(b) Community nursing services exclude direct nursing care.

(c) Community nursing services are not covered by other Medicaid spending authorities.

(3) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) 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.

(4) ATTENDANT CARE SERVICES.

(a) ADL services include but are not limited to:

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

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

(C) Mobility, transfers, and repositioning -- assisting with ambulation or transfers with or without assistive devices,

turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

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

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

(F) Delegated nursing tasks.

(b) IADL services include but are not limited to:

(A) Light 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 laundry;

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

(C) Assistance with necessary medical appointments, including help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments;

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

(E) First aid and handling emergencies, including addressing medical incidents related to conditions such as seizures, aspiration, constipation, or dehydration or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

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

(c) Attendant care services means an individual requires assistance with ADLs. Assistance may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, 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 assistance 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 the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment 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 if the individual is unable to complete the task independently.

(5) SKILLS TRAINING. Skills training is specifically tied to the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence in supports otherwise provided through state plan or waiver services.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcomes are measured and the measurements are evaluated by a services coordinator no less frequently than every six months based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved, the services coordinator must reassess the use of skills training with the individual.

(6) COMMUNITY TRANSPORTATION.

(a) Community transportation services include but are not limited to:

(A) Community 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 to accomplish an ISP goal related task; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation services exclude medical transportation, purchase of individual or family vehicles, routine vehicle maintenance and repair, ambulance services, payment to the spouse of an individual receiving in-home support services, and costs for transporting a person other than the individual.

(7) 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 the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's ability to perform and support ADLs and IADLs 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 areas identified in a functional needs assessment.

(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 may 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, 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 enable self direction of care and maximize independence, such as motion or sound sensors, two-way communication systems, automatic faucets

and soap dispensers, incontinent and fall sensors, or other electronic backup systems;

(i) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(D) Assistive devices not covered by other Medicaid programs to assist and enhance an individual's independence in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, electrical appliances, or information technology devices.

(i) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval.

(ii) Any single device or assistance costing more than $500 must be approved by the Department prior to expenditure.

(d) Specialized equipment and supplies may not include items not of direct medical or remedial benefit to the individual.

(e) Specialized equipment and supplies must meet applicable standards of manufacture, design, and installation.

(8) RELIEF CARE.

(a) Relief care includes two types of care, neither of which may be characterized as daily or periodic services provided to allow an individual's provider to attend school or work.

(b) 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.

(9) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

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

(B) Developing positive behavior support strategies, including a Behavior Support Plan if needed;

(C) Implementing the Behavior Support Plan with an individual's provider or family; and

(D) Revising and monitoring the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring an individual's family;

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

(C) Communicating as authorized by an individual, or as applicable the individual's legal or designated representative, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(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 the needs of an individual at school; or

(E) An assessment in a school setting.

(10) 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 alarms, 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, such as lift, interior alterations to seats, head and leg rests, 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 accessibility adaptations are limited to $5,000 per modification. A services coordinator may request approval for additional expenditures through the Department prior to expenditure. Approval is based on the individual’s service and support needs and goals and the Department's determination of appropriateness and cost-effectiveness.

(d) Environmental accessibility adaptations must be tied to supporting ADL, IADL, and health-related tasks as identified in the individual's ISP.

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

(f) Environmental accessibility adaptations 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.

(11) TRANSITION COSTS.

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

(b) Transition costs 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 transition costs must be through the Department prior to expenditure. The Department's approval is based on the individual’s need and the Department’s determination of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or 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, such as a bed; and

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

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

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(12) ALTERNATIVES TO EMPLOYMENT - HABILITATION. 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.

(13) PREVOCATIONAL SERVICES. Prevocational services include teaching such concepts as compliance, attendance, task completion, problem solving, and safety. Prevocational services are provided to an individual not expected to be able to join the general work force or participate in a transitional sheltered workshop within one year. An individual's ISP must reflect that prevocational services are directed to habilitative rather than explicit employment objectives.

(14) 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 must not replace or duplicate services that an individual currently receives through Department-contracted employment and alternative to employment services governed by OAR chapter 411, division 345.

(15) FAMILY TRAINING. Family training services are training and counseling services provided to an individual's family to increase the family's capability to care for, support, and maintain the individual in the individual's home.

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

(A) Instruction about treatment regimens and use of equipment specified in an individual's ISP;

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

(C) Organized conferences and workshops specifically related to an 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) Family training services exclude:

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

(B) Training for paid care providers;

(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.

(16) 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 plan, except that the

limitation on amount, duration, and scope in the state plan do not apply. Occupational therapy 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 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 exclude:

(A) Goods and services available through an individual's private insurance or other public programs, such as the Oregon Health Plan, schools, or federal assistance programs for which an individual is eligible;

(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 a school.

(17) 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 plan, except that the limitation on amount, duration, and scope in the state plan do not apply. Physical therapy 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 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 exclude:

(A) Goods and services available through either an individual's private insurance or public programs, such as the Oregon Health Plan, schools, or Federal assistance programs for which an individual is eligible;

(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 a school.

(18) 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 plan, except that the limitation on amount, duration, and scope specified in the state plan do not apply. Speech, hearing, and language 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 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 exclude:

(A) Goods and services available through either an individual's private insurance or public programs, such as the Oregon Health Plan, schools, or Federal assistance programs for which an individual is eligible;

(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 a school.

(19) 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 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0120 Abuse and Unusual Incidents
(Amended 12/28/2013)

(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 an individual, provider organization, or CDDP.

(2) UNUSUAL INCIDENTS.

(a) 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 service record. The report 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) 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) In the case of a serious illness, injury, or death of an individual, the CDDP must immediately notify the individual's legal or designated representative, parent, next of kin, and designated contact person, as applicable.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0130 Grievances and Appeals
(Amended 12/28/2013)

(1) GRIEVANCES. The CDDP must implement written policies and procedures for the grievance of individuals' and the individuals' legal or designated representatives and families. These policies and procedures must, at a minimum, provide for the following:

(a) The CDDP must inform each individual, and as applicable each individual's legal or designated representative and family members, orally and in writing of the CDDP's grievance policy and procedures and of the right to move directly to a hearing according to section (2) of this rule in the case of certain circumstances involving Medicaid services.

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

(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, the grievance must be submitted to the CDDP director for review. CDDP 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, the grievance must be submitted to the Department's director, or designee, for review. Department review must be completed and a written response to the grievant provided within 45 days of submission to the Department. The decision of the Department's director, or designee, is final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review; and

(g) Documentation of each grievance and 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 as applicable the individual's legal or designated representative, of the right to a hearing and the method to obtain a hearing. The CDDP must mail the notice or personally serve the notice to the individual, or as applicable the individual's legal or designated representative, 10 days or more prior to the effective date of the action.

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

(B) This notification requirement does not apply if an action is part of, or fully consistent with, the individual's ISP and the individual, or as applicable the individual's legal or designated representative, has agreed with the action by signature to the ISP.

(b) The individual, or as applicable the individual's legal or designated 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, the CDDP must notify the individual, or as applicable the individual's legal or designated representative, 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 individual, or as applicable the individual's legal or designated representative, 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 supports, or the change in federal or state law that requires, the action;

(D) The right of the individual, or as applicable the individual's legal or designated representative, 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 take effect by default if the Department representative does not receive a request for a hearing from the individual, or as applicable the individual's legal or designated representative, 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 shall be granted; and

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

(d) If the individual, or as applicable the individual's legal or designated representative, disagrees with a decision or proposed action by the CDDP, the individual, or as applicable the individual's legal or designated representative, 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 as applicable the individual's legal or designated representative, may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health if the normal timing of the hearing process is followed.

(f) If the individual, or as applicable the individual's legal or designated representative, 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 shall continue the services until whichever of the following occurs first, but in no event shall services be continued in excess of 90 days from the date of the individual's, or as applicable the individual's legal or designated 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.

(g) The Department must notify the individual, or as applicable the individual's legal or designated representative, that the Department is continuing the service. The notice must inform the individual, or as applicable the individual's legal or designated 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.

(h) The Department must reinstate services if:

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

(B) The Department does not provide the notice in the time required in this rule and the individual, or as applicable the individual's legal or designated representative, requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual, or as applicable the individual's legal or designated representative, but the location of the individual, or as applicable the individual's legal or designated 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.

(i) The Department representative and the individual, or as applicable the individual's legal or designated representative, 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 as applicable the individual's legal or designated representative, to settle the matter;

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

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

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

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

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

(G) Give the Department an opportunity to review the Department or CDDP's action.

(j) At any time prior to the hearing, the individual, or as applicable the individual's legal or designated representative, may request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if the conference shall facilitate the hearing process.

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

(l) WITHDRAWALS. An individual, or as applicable the individual's legal or designated representative, may withdraw a hearing request at any time. The withdrawal shall be effective on the date the

Department or the hearings officer receives the request. The hearings officer must send a final order confirming the withdrawal to the last known address of the individual, or as applicable the individual's legal or designated representative. The individual, or as applicable the individual's legal or designated representative, may cancel the withdrawal up to 10 work days following the date such an order is issued.

(m) PROPOSED AND FINAL ORDERS.

(A) In a contested case, the hearings officer must serve a proposed order on the individual, or as applicable the individual's legal or designated representative, and the Department. The proposed order shall become a final order if no exceptions are filed within the time specified in subsection (B) of this section;

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual, or as applicable the individual's legal or designated 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 10 days after service of the proposed order. The individual, or as applicable the individual's legal or designated 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 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0140 In-Home Support Service Operation
(Amended 12/28/2013)

(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 background 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 in-home support services.

(3) RECORD REQUIREMENTS. The CDDP must maintain records in compliance with this rule, OAR 411-320-0070, 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 ORS 179.505 is applicable.

(A) Access to records by the Department does not require authorization by an individual or an individual's legal or designated representative or family.

(B) For the purposes of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual 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 or designated representative (as applicable), 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 as applicable the individual's legal or designated 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) ISP 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 to meet the supports needs of an individual that are described in the individual's ISP. These policies and procedures must include but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records must be maintained by the individual, or as applicable the individual's legal or designated representative or family:

(i) Itemized invoices and receipts to record the 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 business providers; and

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

(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 as applicable the individual's legal or designated representative, that specifies the time period the item is to be available to the individual and the responsibilities of all parties if the item is lost, damaged, or sold within that time period;

(iii) The CDDP must obtain prior authorization from the Department for environmental accessibility adaptations to the home costing more than $1,500;

(iv) The CDDP must ensure that projects for environmental accessibility adaptations to the home costing $5,000 or more are:

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

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

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

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

(C) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to an individual's ISP 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 as applicable 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 and consistent with generally accepted accounting principles that reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities.

(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 individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual 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 the CDDP's objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0150 Quality Assurance
(Amended 12/28/2013)

The CDDP must participate in statewide evaluation and regulation activities as directed by the Department in OAR 411-320-0045.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0160 Inspections and Investigations
(Amended 12/28/2013)

(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 must be taken.

(5) Abuse 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.

(8) The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

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

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670

411-330-0170 Variances
(Amended 12/28/2013)

(1) A variance may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in these rules, if implementation of the proposed alternative services, methods, concepts, or procedures shall 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) and 411-330-0110 are specifically excluded from variance.

(2) The CDDP requesting a variance must submit a written application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed;

(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 ISP.

(3) The Department's director may approve or deny the request for a variance. The director's decision is final.

(4) The Department must notify the CDDP of the Department's decision. The decision 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) The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 and 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, and 430.662 to 430.670