

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

**CHAPTER 411
DIVISION 330**

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

EFFECTIVE JULY 1, 2014

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

(Temporary Effective 07/01/2014 to 12/28/2014)

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 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) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

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

(5) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that are necessary to enable an individual to increase the ability of the individual to perform ADL or to perceive, control, or communicate with the environment in which the individual lives.

(6) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-330-0110 that are purchased to provide additional security for an individual and replace the need for direct interventions to enable self-direction of care and maximize independence of the individual.

(7) "Attendant Care" means assistance with ADL, IADL, 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 Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

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

(11) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL,

health related tasks, and cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(12) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

(13) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, 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 the home of an individual 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 First Choice (K Plan)" means the state plan amendment authorized under section 1915(k) of the Social Security Act.

(17) "Community Nursing Services" mean the nursing services described in OAR 411-330-0110 that focus on the chronic and ongoing health and safety needs of an individual living in his or her own home. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(18) "Community Transportation" means the services described in OAR 411-330-0110 that enable an individual to gain access to community-based state plan and waiver services, activities and resources. Community transportation is provided in the area surrounding the home of the

individual that is commonly used by people in the same area to obtain ordinary goods and services. The area is not determined by the social or recreational groups or activities of an individual.

(19) "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 day support activities 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 CDDP. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.

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

(21) "Day Supports Activities" means "day support activities" in OAR 411-345-0020.

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

(23) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual 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.

(24) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(25) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(26) "Discovery and Career Exploration" means "discovery and career exploration" as defined in OAR 411-345-0020.

(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 legal representative of the individual to act on the behalf of the individual 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 legal or designated representative or family members of the an individual, with directing and supervising provision of services described in the ISP for the individual. 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) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(30) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(31) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

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

(33) "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 his or her own home, or that are necessary to enable the individual to function with greater independence around his or her own home.

(34) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-330-0110 that are made to the exterior of the home of an individual or the home of the family of the individual as identified in the ISP for the individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around the home.

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

(36) "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 the eligibility of an individual 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.

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

(38) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of an individual according to the ISP for the individual. The fiscal intermediary acts as an agent for the individual, or as applicable the legal or designated representative of the individual, 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.

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

(40) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for an adult is known as the Adult Needs Assessment. The Department incorporates Version B of the Adult Needs Assessment dated July 1, 2014 into these rules by this reference. The Adult Needs Assessment is maintained by the

Department at: www.dhs.state.or.us/spd/tools/dd/cm/ANA_Adult_In-home.xls. Printed copies may be obtained by contacting the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(41) "General Business Provider" means an organization or entity selected by an individual, or as applicable the legal or designated representative of the individual, 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 legal or designated representative of the individual, to the general public;

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

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

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

(43) "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.

(44) "IADL" means "instrumental activities of daily living." IADL include activities other than ADL required to continue independent living such as:

(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) Participating in the community.

(45) "ICF/IDD" means an intermediate care facility for individuals with intellectual disabilities.

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

(47) "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.

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

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

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

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

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

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

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

(c) Provided in accordance with the ISP for the individual.

(53) "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.

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

(55) "Intervention" means the action the Department or the designee of the Department 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 designee of the Department, 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 the current employer representative of an individual is not able to meet the employer responsibilities described in OAR 411-330-0065.

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

(57) "Job Coaching" means "Job Coaching" as defined in OAR 411-345-0020.

(58) "Job Development" means "Job Development" as defined in OAR 411-345-0020.

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

(60) "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 an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, 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.

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

(62) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(63) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(64) "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.

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

(66) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.

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

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

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

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

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

(67) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(68) "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.

(69) "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.*

(70) "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 the services, support needs, or circumstances of the individual which is necessary for the effective delivery of services.

(71) "Provider" means a person, organization, or business selected by an individual, or as applicable the legal or designated representative of the individual, and paid with in-home support funds to provide support to an individual according to the ISP for the individual.

(72) "Provider Organization" means an entity selected by an individual, or as applicable the legal or designated representative of the individual, 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 an individual through employees, contractors, or volunteers; and
- (c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(73) "Relief Care" means the intermittent services described in OAR 411-330-0110 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

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

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

(76) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(77) "Skills Training" means the activities described in OAR 411-330-0110 that are intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related skills.

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

(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 ISP or prior payment in anticipation of an expense authorized in a 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 home of the individual.

(79) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-330-0110, such as:

(a) Necessary medical supplies, specified in an ISP that are not available under the state plan;

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

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

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

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

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

(83) "Supported Employment - Individual Employment Support" means "Supported Employment - Individual Employment Support" as defined in OAR 411-345-0020.

(84) "Supported Employment - Small Group Employment" means "Supported Employment - Small Group Employment" as defined in OAR 411-345-0020.

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

(86) "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 ICF/IDD to a community-based home setting where the individual resides.

(87) "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.

(88) "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.

(89) "Vehicle Modifications" means the adaptations or alterations described in OAR 411-330-0110 that are made to the vehicle that is the primary means of transportation for an individual in order to accommodate the service needs of the individual.

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

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

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

(Temporary Effective 07/01/2014 to 12/28/2014)

(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;
- (e) Be eligible for Community First Choice state plan services; and
- (f) Be determined to meet the level of care defined in OAR 411-320-0020.

(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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

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

(Temporary Effective 07/01/2014 to 12/28/2014)

(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 authorized by 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 oral or 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) Upon entry into support services case management services;

(f) Upon entry into another comprehensive service;

(g) When funds to support the individual are no longer authorized by the CDDP of the individual's county of residence;

(h) 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;

(i) After the individual, or as applicable the individual's legal or designated representative, either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete ISP development or monitoring activities; or

(j) Any individual being exited from in home support services must be given written notice of the intent to terminate service consistent with OAR chapter 411, division 318.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-330-0050 Required In-Home Support Services

(Temporary Effective 07/01/2014 to 12/28/2014)

(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.

(7) For an individual transferring from a support services brokerage to in home comprehensive services, the brokerage ISP may be used as authorization for available in home comprehensive services for up to 90 days.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-330-0060 Assistance with Purchasing In-Home Supports

(Temporary Effective 07/01/2014 to 12/28/2014)

(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 Community First Choice services, the support will address a need that has been determined to be necessary by a functional needs assessment;

(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) SERVICE LIMITS. The use of IHS funds to purchase individual supports in any plan year is limited to:

(a) The individual's service level as determined by the functional needs assessment. The functional needs assessment determines a total number of hours available to meet identified needs. This amount may not be exceeded in without prior approval from the Department. The types of services that contribute to the total of hours used are; Attendant Care, Hourly Relief Care, and Skills Training. Attendant Care and Skill Training hours that constitute Day Support Activities contribute to the total of hours used.

(b) Other services and supports determined by the personal agent to be necessary to meet identified support needs.

(c) 108.3 hours per month of Employment Path Services and Individual Supported Employment - Small Group Employment individually or combined.

(d) 40 hours per week of Supported Employment - Individual Employment, not including Job Development. If an individual is receiving less than 25 hours per week of Supported Employment - Individual Employment services, the individual may also receive any combination of Small Group Employment Services, and Employment Path Services, the total of which (including the Supported Employment - Individual Employment services) shall not exceed an annual average of 108.3 hours per month.

(6) 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.

(7) 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.

(8) 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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

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 RESPONSIBILITIES.

(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

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) PERSONAL SUPPORT WORKER QUALIFICATIONS. Each personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor or a self-employed person, who is not a personal support worker, selected to provide the services and supports in OAR 411-330-0110 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 with multiple individuals statewide when the subject individual is working in the same employment role. The Department's Background Check Request Form must be completed by the subject individual to show intent to work statewide;

(A) Prior background check approval for another Department provider type is inadequate to meet background check requirements for personal support worker enrollment.

(B) Background check approval is effective for two years from the date a personal support worker is hired or contracted with to provide in-home services, except in the following circumstances:

(i) Based on possible criminal activity or other allegations against the personal support worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the personal support worker.

(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) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services; 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.

(3) 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.

(4) 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.

(5) BEHAVIOR CONSULTANTS. Behavior consultants are not Personal Support Workers. 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.

(6) NURSE. A nurse providing community nursing services or skilled nursing is not a personal support worker. The nurse 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.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

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

(Temporary Effective 07/01/2014 to 12/28/2014)

(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, attendant care, skills training, community transportation, or behavior consultation.

(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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-330-0090 Standards for General Business Providers

(Temporary Effective 07/01/2014 to 12/28/2014)

(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 assistive devices or specialized medical 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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-330-0100 Provider Termination

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) A personal support worker's provider enrollment may be terminated by a brokerage or the Department consistent with OAR chapter 411, division 375.

(2) An independent provider who is not a personal support worker may have their provider enrollment terminated.

(a) Provider enrollment may be terminated when the CDDP or Department 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;

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(L) Violates the requirement to maintain a drug-free work place;

(M) Fails to provide services as required; or

(N) Fails to provide a tax identification number or social security number that matches the independent provider's legal name, as

verified by the Internal Revenue Service or Social Security Administration.

(b) If the CDDP makes a decision to terminate a provider's enrollment, the CDDP must issue a written notice that shall include --

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in section (a) of this rule; and

(C) The independent provider's appeal rights, including where to file the appeal.

(D) For terminations based on substantiated protective services allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

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

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

(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 termination notice was mailed to the provider.

(d) 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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-330-0110 Supports Purchased with In-Home Support Funds
(Temporary Effective 07/01/2014 to 12/28/2014)

(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. An individual who is eligible for OHP Plus and meets Level of Care may access Community First Choice services when supported by an assessed need.

(b) Effective October 1, 2014, an individual receiving medical benefits under OAR 410-200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if they were requesting these services under OSIPM.

(A) This includes, but is not limited to, the following assets:

(i) An annuity is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual is evaluated according to OAR 461-145-0330;

(iv) An Irrevocable trust is evaluated according to OAR 461-145-0540;

(B) When an individual will be disqualified for a transfer of assets they must receive a notice meeting the requirements of

OAR 461-175-0310 in the same manner as if they were requesting services under OSIPM.

(C) An individual found to have transferred assets is not eligible for Community First Choice Services.

(c) Community First Choice services include:

(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) Assistive Devices as described in section (7) of this rule;

(G) Assistive Technology as described in section (8) of this rule;

(H) Relief care as described in section (9) of this rule;

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

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

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

(d) Home and Community-Based Waiver Services. Individuals who are eligible for OSIP-M and meet Level of Care may access Community First Choice Services and the following services:

(A) Employment Services as described in section (13) of this rule that include:

(i) Supported employment - Individual Employment Support;

(ii) Supported Employment - Small Group Employment Support;

(iii) Employment Path Services;

(iv) Discovery/Career Exploration Services;

(B) Case management as defined in OAR 411-320-0020;

(C) Family training as described in section (14) of this rule;

(D) Environmental Safety Modifications as described in section (15) of this rule;

(E) Vehicle modifications as described in section (16) of this rule;

(F) Specialized Medical Supplies as described in section (17) 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.

(G) Support in the community around socialization, and participation in the community.

(i) Support with socialization includes assisting participants in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills.

(ii) Support with community participation includes assisting individuals in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses.

(iii) Support with communication provided to assist individuals in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

(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 ADL, IADL, health related task or employment goal identified on an ISP; 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.

(c) Mileage reimbursement must be limited to those destinations where other members of the individual's local community would typically get similar services.

(d) Community transportation is not provided by the Department to obtain medical or non-medical items that may be delivered by a supplier or sent by mail order without cost to the eligible individual.

(e) Community transportation must be prior authorized by an individual's service coordinator and documented in the individual's service plan. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the brokerage and documented in the individual's service plan.

(A) Personal support workers who use their own personal vehicle for community transportation are reimbursed according to the terms defined in their Collective Bargaining Agreement between the Home Care Commission and Service Employees International Union, Local 503, OPEU.

(B) The Department or CDDP does not authorize reimbursement for travel to or from the residence of a personal support worker. The Department or CDDP only authorizes community transportation and mileage from the home of an eligible individual to the destination necessary to meet the goal stated in the individual's service plan and back to the individual's home.

(7) ASSISTIVE DEVICES. When assistive devices are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of assistive devices with IHS funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Assistive devices 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) Assistive devices 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) Assistive devices 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) 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;

(B) 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) Assistive devices may not include items not of direct medical or remedial benefit to the individual.

(e) Assistive devices must meet applicable standards of manufacture, design, and installation.

(f) To be authorized by a services coordinator, Assistive devices must be:

(A) In addition to any medical equipment and supplies furnished under OHP and private insurance;

(B) Determined necessary to the daily functions of the individual; and

(C) Directly related to the disability of the individual.

(g) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the individual;

(B) Assistive devices intended to supplant similar items furnished under OHP or private insurance;

(C) Items available through the family, community, or other governmental resources;

(D) Items that are considered unsafe for an individual;

(E) Toys or outdoor play equipment; and

(F) Equipment and furnishings of general household use.

(8) ASSISTIVE TECHNOLOGY 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;

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

(b) Any single purchase costing more than \$500 must be approved by the Department prior to expenditure.

(9) 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.

(A) Twenty-four hour relief care must be provided in segments of 24-hour units that may be sequential but may not exceed 7 consecutive days without permission from the Department.

(B) Hourly relief care is substitute work for the usual attendant care provider.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The home of the individual;

(B) A licensed or certified setting;

(C) The home of a qualified provider. If relief care is provided in the home of a qualified provider, the personal agent and the individual, or the representative of the individual, must document that the home of the qualified provider is a safe setting for the individual;

(D) The community, during the provision of ADL, IADL, health related tasks, and other supports identified in the ISP.

(10) 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;

(E) An assessment in a school setting;

(F) Attendant Care;

(G) Skills Training; or

(H) Relief Care.

(11) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

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

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

- (F) Protective covering for smoke alarms, light fixtures, and appliances;
- (G) Sound and visual monitoring systems;
- (H) Installation of ramps, grab-bars, and electric door openers;
- (I) Adaptation of kitchen cabinets and sinks;
- (J) Widening of doorways;
- (K) Handrails;
- (L) Modification of bathroom facilities;
- (M) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;
- (N) Installation of non-skid surfaces;
- (O) Overhead track systems to assist with lifting or transferring;
- (P) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and
- (Q) 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) Except for ramps that attach to the home for the purpose of entry or exit, adaptations outside 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 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.

(12) TRANSITION COSTS.

(a) Transition costs are limited to individuals transitioning from a nursing facility, ICF/IDD, 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.

(13) Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(14) FAMILY TRAINING. Family training services are 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:

(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 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.

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

(15) ENVIRONMENTAL SAFETY ADAPTATIONS.

(a) Materials must be of the most cost effective type and decorative additions will not be considered.

(b) Fencing will be limited to 200 linear feet without approval from DHS to exceed the limit. Large gates such as automobile gates are excluded. Costs for paint and stain are excluded.

(16) VEHICLE MODIFICATIONS. Vehicle modification does not include:

(a) Adaptations or improvements to the vehicle that are of general utility, and are not of direct medical or remedial benefit to the individual;

(b) Purchase or lease of a vehicle; or

(c) Regularly scheduled upkeep and maintenance of a vehicle except upkeep and maintenance of the modifications.

(17) SPECIALIZED MEDICAL SUPPLIES. Specialized Medical supplies will not cover services which are otherwise available to the individual under section 110 of the Rehabilitation Act of 1973, or the IDEA (20 U.S.C. 1401 et seq.). This service will not overlap with, supplant, or duplicate other services provided through the waiver or Medicaid state plan services.

(18) Day support activities must be provided according to OAR 411-345-0025.

(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, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

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 Complaints, Notification of Planned Action, and Hearings

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

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

(c) Upon enrollment, request, and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual.

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

(3) HEARINGS.

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

(b) An individual, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations.

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

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

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