

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

**CHAPTER 411
DIVISION 345**

**EMPLOYMENT SERVICES FOR INDIVIDUALS WITH INTELLECTUAL
OR DEVELOPMENTAL DISABILITIES**

EFFECTIVE JANUARY 1, 2016

411-345-0010 Statement of Purpose

(Temporary Effective 01/01/2016 to 06/28/2016)

- (1) The rules in OAR chapter 411, division 345, effectuate Oregon's Employment First policy under which the employment of individuals with intellectual or developmental disabilities in competitive integrated employment is the highest priority over unemployment, segregated employment, or other non-work day activities.
- (2) For individuals who successfully achieve the goal of competitive integrated employment, future person-centered service planning focuses on maintaining employment, maximizing the number of hours an individual works consistent with his or her preferences and interests, and considering additional career or advancement opportunities.
- (3) Employment services are considered and provided on an individualized basis using a person-centered approach based on informed choice and consistent with the philosophy of self-determination.
- (4) These rules prescribe service standards and requirements for providers of home and community-based services in settings where employment services and other non-residential services are provided.
- (5) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support

the same degree of access to the greater community as people not receiving home and community-based services.

(6) These rules prescribe qualifications and eligibility requirements for individuals with intellectual or developmental disabilities to receive employment services and other non-residential services.

(7) Employment services are provided in accordance with these rules and Oregon's Employment First policy as described in the State of Oregon Executive Order No. 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities).

Stat. Auth.: ORS 409.050, 427.007, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0020 Definitions

(Temporary Effective 01/01/2016 to 06/28/2016)

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 345:

(1) "ADL" means "activities of daily living".

(2) "Agency Service Provider" means a public or private community agency or organization certified and endorsed by the Department to provide services under these rules and the rules in OAR chapter 411, division 323.

(3) "Career Development Plan":

(a) Means the part of an ISP that identifies:

(A) The employment goals and objectives for an individual;

(B) The services and supports needed to achieve those goals;

(C) The people, agencies, and providers assigned to assist the individual to attain those goals;

(D) The obstacles to the individual working in an individualized job in a competitive integrated employment setting; and

(E) The services and supports necessary to overcome those obstacles.

(b) A Career Development Plan is based on person-centered planning principles.

(4) "CDDP" means "Community Developmental Disability Program".

(5) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions.

(6) "Competitive Integrated Employment" means work that is performed on a full-time or part-time basis (including self-employment):

(a) For which an individual:

(A) Is compensated at a rate that:

(i) Is not less than the higher of the rate specified in federal, state, or local minimum wage law, and also is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(B) Is eligible for the level of benefits provided to other employees.

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(7) "Customized Employment" means competitive integrated employment for an individual with a disability that is based on an individualized determination of the strengths, needs, and interests of the individual, is designed to meet the specific abilities of the individual and the business needs of the employer.

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

(9) "Discovery" is a time-limited comprehensive, person-centered, and community-based employment planning support service to better inform an individual seeking an individualized job in a competitive integrated employment setting and to create a Discovery Profile. Discovery includes a series of work or volunteer related activities to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as identify the conditions and employment settings in which the individual will be successful. Discovery is also an opportunity for the individual to begin active pursuit of competitive integrated employment.

(10) "Discovery Profile" is a comprehensive and person-centered report produced as an outcome of discovery, representing an individual and providing information to better inform employment service planning and job development activities. The Discovery Profile includes information about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as information about conditions and employment settings for the success of the individual.

(11) "Employment Path Services" means services to provide learning and work experiences, including volunteer opportunities, for an individual to develop general, non-job-task-specific, strengths and skills that contribute to employability in an individual job in a competitive integrated employment setting in the general workforce.

(12) "Employment Service" means a home and community-based service that supports the primary objective of exploring, obtaining, maintaining, or advancing in an individual job in a competitive integrated employment setting in the general workforce.

(a) Employment services under these rules include:

(A) Supported Employment.

(i) Individual Employment Support.

(I) Job Coaching.

(II) Job Development.

(ii) Small Group Employment Support.

(B) Discovery; and

(C) Employment Path Services.

(b) Employment services do not include vocational assessments in sheltered workshop settings or facility-based settings. Employment services do not include new participants in sheltered workshop settings.

(13) "Employment Professional" means an employee of an agency service provider, an independent provider, or an employee of an independent provider who has the qualifications and training to provide employment services under these rules, including individual employment support, small group employment support, discovery, or employment path services.

(14) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency service provider that has

met the qualification criteria outlined in these rules, the corresponding program rules, and the rules in OAR chapter 411, division 323.

(15) "Evidence-Based Practices" means well-defined best practices, which have been demonstrated to be effective by multiple peer-reviewed research studies that are specific to the relevant population or subset of that population.

(16) "Executive Director" means the person designated by a board of directors or corporate owner of an agency service provider who is responsible for the administration of agency provided employment services, attendant care, and skills training.

(17) "Facility-Based" means a service that is operated at a fixed site owned, operated, or controlled by a service provider where an individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

(18) "Functional Needs Assessment":

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

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

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment may be the Adult Needs Assessment (ANA), Child Needs Assessment, Support Needs Assessment Profile (SNAP), or Supports Intensity Scale (SIS).

(A) The Department incorporates Version C of the ANA and CNA into these rules by this reference. The ANA and CNA is maintained by the Department at:

<http://www.dhs.state.or.us/spd/tools/dd/cm>.

(B) The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at <http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx>.

(C) The Department incorporates the SIS into these rules by this reference.

(c) A printed copy of a blank functional needs assessment may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(19) "IADL" means "instrumental activities of daily living".

(20) "Independent Provider" means a qualified person who is contracted or employed by an individual to provide employment services based on the ISP for the individual.

(21) "Individual Employment Support" means job coaching or job development services to obtain or maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(22) "Integrated Employment Setting" means employment at a location where an employee interacts with other people who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

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

(24) "Job Coaching" means support for an individual to maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(25) "Job Development" means support for an individual to obtain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(26) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

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

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

(29) "PRN" means the administration of medication to an individual on an 'as needed' basis (pro re nata).

(30) "Productivity" consistent with ORS 427.005, means regular engagement in income producing work, preferable competitive integrated employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement, or engagement by an individual with an intellectual or developmental disability in work contributing to a household or community.

(31) "Service Provider" means:

(a) An agency service provider as defined in this rule;

(b) An independent provider, as defined in this rule, qualified to provide services under these rules; or

(c) A personal support worker as defined in OAR 411-375-0010, qualified to provide services under these rules.

(32) "Sheltered Workshop" means a facility in which individuals with intellectual and developmental disabilities are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A sheltered workshop primarily employs individuals with intellectual and developmental disabilities and other disabilities, with the exception of service support staff. A sheltered workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with people who do not have disabilities, not including paid support staff.

(33) " Small Group Employment Support" means services and training activities provided in regular business, industry, and community settings for groups of two to eight individuals with disabilities. Small group employment support is provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces.

(34) "These Rules" mean the rules in OAR chapter 411, division 345.

(35) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by an agency service provider.

(36) "Vocational Assessment" means an assessment administered to provide employment related information essential to the development of, or revision of, the employment related planning documents for an individual.

Stat. Auth.: ORS 409.050 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0025 Services Provided

(Temporary Effective 01/01/2016 to 06/28/2016)

(1) The delivery of employment services provided under these rules presumes all individuals eligible for services are capable of working in an integrated employment setting and earning minimum wage or better.

(2) Employment is the preferred activity for individuals receiving services under these rules. Competitive integrated employment is the highest priority over unemployment, segregated or sheltered employment, small group employment support, or non-work day activities.

(3) Employment services must be individually planned based on person-centered planning principles. Consistent with the person-centered approach to these services, individuals accessing employment services under these rules must be encouraged, on an ongoing basis, to explore their interests, strengths, and abilities relating to employment or career advancement.

(4) All employment services have an optimal and expected outcome of sustained paid employment at the maximum number of hours, consistent with individual preferences, and work experience leading to further career development, maximizing hours, and competitive integrated employment for which an individual is compensated at or above minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(5) Effective January 1, 2016, for agency service providers initially certified and endorsed on or after January 1, 2016, and effective no later than September 1, 2018, for agency service providers initially certified and endorsed before January 1, 2016, all employment services and non-residential day services must be provided in a setting that meets the home and community-based service requirements described in OAR chapter 411, division 004.

(6) Employment services are provided under these rules in accordance with the State of Oregon Executive Order No. 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities).

(7) Employment services must be evidence-based where evidence-based practices have been identified.

(8) Employment services must be:

(a) Offered to eligible individuals in accordance with the exit, entry, and transfer requirements described in OAR 411-345-0140;

(b) Provided to eligible individuals under the authorization of an ISP and Career Development Plan in accordance with OAR 411-345-0160;

(c) Offered in accordance with these rules when services are provided by a certified provider organization;

(d) Provided in a non-residential setting, unless an individual is operating a home-based business;

(e) Provided in the most integrated employment setting appropriate to the needs of an individual, and consistent with the choice of the individual regarding services, providers, and goals; and

(f) Designed to:

(A) Increase independence, integration, and productivity;

(B) Promote integration into the workforce and workplace;

(C) Promote interaction with people without disabilities; and

(D) Support successful employment outcomes consistent with personal and career goals.

(9) Employment services do not include:

(a) Services available to an individual under Vocational Rehabilitation and Other Services, 29 U.S.C. § 701-7961, as amended;

(b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended;

(c) Vocational assessments in a sheltered workshop; or

(d) Services used for support to work in a sheltered workshop setting for individuals who did not use services for support in a sheltered workshop setting on or before June 30, 2015.

(10) Employment services include the following:

(a) SUPPORTED EMPLOYMENT.

(A) INDIVIDUAL EMPLOYMENT SUPPORT:

(i) JOB COACHING - Support to assist an individual to maintain an individualized job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(I) Personal care or attendant care provided as an incidental part of job coaching is considered a component part of the employment service.

(II) Job coaching does not include support in volunteer work.

(III) Individuals utilizing job coaching must be compensated at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.

(IV) Job coaching must be provided, at minimum, for the number of hours identified in an ISP.

(V) Transportation provided within the course of job coaching is a component part of the employment service.

(ii) Support to maintain self-employment also requires the following:

(I) Ongoing assistance, counseling, and guidance after a business has been launched.

(II) Self-employment support may not be provided to defray the operational expenses of the business.

(III) The self-employment must yield an income that is comparable to the income received by other people who are not individuals with disabilities, and who are self-employed in similar occupations or in similar tasks and who have similar training, experience, and skills.

(IV) Evidence of the self-employment must be documented and reviewed by the services coordinator or personal agent on an annual basis. Documentation may include, but is not limited to, tax records submitted to the Internal Revenue Service and an annual business plan.

(iii) JOB DEVELOPMENT - Support to assist an individual to obtain an individualized job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(I) Personal care or attendant care provided as an incidental part of job development is considered a component part of the employment service.

(II) The job developed must provide compensation at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.

(III) The job developed must meet criteria established in a Career Development Plan including, but not limited to, criteria regarding the number of hours the individual shall work in the job. The Career Development Plan must also include a goal relating to working a maximum number of hours consistent with individual preferences.

(IV) Job development may be authorized in the limited circumstances where the service is not available through Vocational Rehabilitation and the Department has approved authorization.

(V) Transportation provided within the course of job development is a component part of the employment service.

(B) SMALL GROUP EMPLOYMENT SUPPORT - To provide services and training activities in regular business, industry, and community settings.

(i) Small group employment support may be provided in groups of two to eight individuals.

(ii) Small group employment support must be provided in a manner that promotes integration into the work place and interaction with people without disabilities in those work places.

(iii) Small group employment support does not include vocational services provided in a provider owned, operated, or controlled setting, or a facility-based work setting.

(iv) Small group employment support does not include support in volunteer work.

(v) Individuals utilizing small group employment support must be compensated at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.

(vi) Personal care or attendant care provided as an incidental part of small group employment support is considered a component part of the employment service.

(vii) Transportation provided within the course of small group employment support is a component part of the employment service.

(b) DISCOVERY - A comprehensive and person-centered employment planning support service to better inform an individual seeking competitive integrated employment in the general workforce and develop a Discovery Profile.

(A) Discovery must include a series of work or volunteer related activities, completed in competitive integrated employment settings, to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual. Discovery must include analyzing detailed information from novel and past experiences in order to identify the conditions or integrated employment settings in which the individual shall be most successful.

(B) Discovery may include job and task analysis activities, assessment for use of assistive technology, job shadowing, informational interviewing, employment preparation, resume development, and volunteerism to identify transferable skills and job or career interests.

(C) Discovery must be completed within a three month period. A three month extension may be authorized if the individual and the services coordinator or personal agent determines there is a legitimate reason. Legitimate reasons may include, but are not limited to:

(i) The individual has a medical event that delayed completing discovery;

(ii) The individual had a medical event that significantly changed his or her strengths, interests, and abilities; or

(iii) An opportunity to participate in particular work trials or volunteer positions may only be scheduled outside of the three month period.

(D) Discovery must have an outcome of a Discovery Profile. The Discovery Profile must meet requirements established by the Department.

(E) Discovery results in a referral to vocational rehabilitation services.

(F) Personal care or attendant care provided as an incidental part of discovery is considered a component part of the employment service.

(G) Transportation provided within the course of discovery is a component part of the employment service.

(c) EMPLOYMENT PATH SERVICES - Support to obtain experience and develop general skills that contribute to employability in competitive integrated employment settings in the general workforce.

(A) Personal care provided as an incidental part of employment path services is considered a component part of the employment service.

(B) Producing goods or services may be incidental to employment path services but the primary purpose must be to develop general employment skills that may be used in an individual integrated job.

(C) Employment path services are expected to occur over a defined period of time with specific outcomes to be achieved, as determined by the individual and his or her service and supports planning team through an ongoing person-centered planning process.

(D) Employment path services require that an individual have an employment-related goal in his or her ISP. General habilitation activities accessed through employment path services must be designed to support such employment goals.

(E) Transportation provided within the course of employment path services is a component part of the employment service.

(F) Consistent with setting requirements for home and community-based services, employment path services must be provided in a setting where individuals using these services gain experience working with the general public.

(i) Providers initially certified or endorsed by the Department on or after January 1, 2016 must provide this service in settings that meet this requirement.

(ii) Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a Department approved transition plan, and be in full compliance with this requirement by September 1, 2018.

(G) Employment path services are a facility-based service if delivered at a fixed site where the supported individual has few or no opportunities to interact with people who do not have a disability except for paid staff. Facility-based employment services under this definition are permissible until September 1, 2018.

(H) Employment path services are the only service that may be used for support in a sheltered workshop setting. Effective July 1, 2015, no service may be authorized in a sheltered workshop setting for any individual who has not already used services for support to work in a sheltered workshop.

(I) The services coordinator or personal agent:

(i) Must always offer employment path services in the most integrated setting based on the preferences and interests of the individual;

(ii) Must encourage individuals who use employment path services in sheltered workshop settings to choose a community-based employment service option and not a sheltered workshop setting option;

(iii) Must offer an option to use employment services in a non-disability specific setting, meaning a setting that is not owned, operated, or controlled by a provider of home and community-based services, or a setting designed specifically to hire people who have disabilities. The services coordinator or personal agent must document the non-disability specific setting options presented in the ISP and Career Development Plan; and

(iv) Must offer a non-disability specific setting option, at least annually, during career development planning, and more frequently upon request.

(11) Attendant care and skills training must be:

(a) Provided to eligible individuals under the authorization of an ISP; and

(b) Offered in accordance with these rules, when services are provided by an agency service provider.

(12) Attendant care and skills training do not include:

(a) Services available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. § 701-7961, as amended; or

(b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended.

(13) Agency service providers operating under these rules may provide attendant care or skills training or both attendant care and skills training.

(a) ATTENDANT CARE SERVICES.

(A) Attendant care services include assistance with ADL, IADL, and health-related tasks in the home of the individual or community. ADL and IADL services provided through attendant care must support the individual to live as independently as

possible, and be based on the identified goals, preferences, and needs of the individual.

(B) Assistance with ADLs, IADLs, and health-related tasks 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.

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

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

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

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

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

(vi) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(vii) "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.

(b) **SKILLS TRAINING.** Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

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

(B) Skills training is authorized when:

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

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

(iii) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator or personal agent 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 within the timeframe outline in the ISP, the services coordinator or personal agent must reassess or redefine the use of skills training with the individual for that particular goal.

(c) Attendant care and skills training must, at minimum, facilitate going out into the broader community.

(A) Providers initially certified or endorsed by the Department on or after January 1, 2016, must provide this service in settings that meet this requirement.

(B) Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a Department approved transition plan, and be in full compliance with this requirement by September 1, 2018.

(d) Attendant care and skills training is a facility-based service if delivered at a fixed site operated, owned, or controlled by a service provider.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.630, 430.670

411-345-0027 Qualification for Services

(Adopted 12/28/2014)

(1) To receive employment services, attendant care, or skills training, an individual must:

- (a) Be an Oregon resident;
- (b) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;
- (c) Meet the level of care as defined in OAR 411-320-0020; and
- (d) Have services under these rules authorized in an ISP by the CDDP or Brokerage providing case management services.

(2) To be eligible for employment services, an individual must:

- (a) Meet the criteria in section (1) of this rule;
- (b) Be eligible for OSIPM;
- (c) Be legally eligible to work in the United States; and
- (d) Have an employment related goal in their ISP.

(3) Employment services for individuals under the age of 18 years must have Department approval.

(4) To be eligible for attendant care or skills training, an individual must meet the criteria in section (1) of this rule and must:

- (a) Be eligible for OHP Plus;
- (b) Have an assessed need for attendant care based upon a functional needs assessment; and

(c) Have attendant care or skills training identified as a service in their ISP.

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

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

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

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

(C) A loan evaluated according to OAR 461-145-0330; or

(D) An irrevocable trust evaluated according to OAR 461-145-0540.

(b) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0030 Service Provider Requirements

(Temporary Effective 01/01/2016 to 06/28/2016)

(1) Providers of employment services must be:

(a) A provider certified and endorsed under OAR chapter 411, division 323 (Agency Certification and Endorsement);

(b) A provider organization certified under OAR 411-340-0170 (Standards for Provider Organizations) prior to January 1, 2016; or

(c) A qualified independent provider. Independent providers who are employed by the individual may only provide job coaching.

(2) EMPLOYMENT SERVICE PROVIDER REQUIREMENTS:

(a) EMPLOYMENT PROFESSIONALS. All employment professionals who provide employment services must:

(A) Provide services designed to support successful employment outcomes consistent with the personal and career goals of an individual, including goals identified in the ISP and Career Development Plan for the individual;

(B) Ensure all records are confidential as described in OAR 411-323-0060 (Policies and Procedures);

(C) Perform the duties as a mandatory reporter when appropriate and as required by law; and

(D) Have a service agreement or job description with clearly stated job responsibilities. The service agreement must be current, signed by the employment professional, and dated. The service agreement must also include duties specific to the area of specialization, including job coach, job developer, discovery provider, or employment path services provider.

(b) INDEPENDENT PROVIDERS. All qualified independent providers must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 (Criminal History Checks). Additionally:

(i) 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; and

(ii) The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(C) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 (Convictions Under ORS 443.0045), unless hired or contracted with prior to July 28, 2009, remaining in the current position for which the independent provider was hired;

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

(E) Not be the spouse of the supported individual;

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

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

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

(I) If providing transportation, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation service;

(J) Meet the required qualifications for the employment service provided including those required for an employment professional; and

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

(c) AGENCY SERVICE PROVIDERS.

(A) INSPECTIONS AND INVESTIGATIONS. The agency service provider must allow inspections and investigations as described in OAR 411-323-0040 (Inspections and Investigations).

(B) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The agency service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050 (Agency Management and Personnel Practices).

(C) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency service provider must maintain written documentation of six hours of pre-service training prior to staff providing services or supports to individuals, including mandatory abuse reporting training, training to work with individuals with intellectual or developmental disabilities, and training on the support needs of the individual to whom they shall provide support;

(D) STAFFING REQUIREMENTS:

(i) Each agency service provider must provide direct service staff appropriate to the number and level of individuals served, to ensure individual rights, basic health, and safety are met;

(ii) Staff must have approval to work based on current Department policy and procedures for background checks in OAR 411-323-0050 (Agency Management and Personnel Practices);

(iii) When individuals are present at an agency site, the service provider must provide and document there are staff trained in the following areas:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical needs as determined through ISP processes; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

(3) EMPLOYMENT PROVIDER QUALIFICATIONS:

(a) EMPLOYMENT PROFESSIONAL. Each employment professional must possess and demonstrate the following qualifications:

(A) Knowledge of developmental disability services;

(B) Knowledge of the rules governing employment services;

(C) Ability to provide skills training for individuals to increase employability;

(D) Ability to support individuals to maintain and be successful in employment; and

(E) Demonstrate by background, education, references, skills, and abilities that the employment professional is capable of safely and adequately performing the tasks to support the ISP and Career Development Plan for an individual, with such demonstration confirmed in writing by the individual, including:

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

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

(iii) Ability to communicate with the individual; and

(iv) Training of a nature and type sufficient to ensure that the employment professional has knowledge of emergency procedures specific to the individual receiving services.

(b) Qualifications for specific types of employment professionals --

(A) JOB DEVELOPERS. A provider of job development services must also possess and demonstrate the following qualifications:

(i) Possess knowledge of best practice methodologies for job development; and

(ii) Be able to demonstrate the core competencies of a job developer within one year of employment, including those pertaining to skills assessment, job matching, job customization, job carving, community building, mapping and networking, analyzing labor trends, identifying patterns in job markets, identifying incentives for businesses, and mentoring job seekers. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(B) JOB COACHES. A provider of job coaching services must also possess and demonstrate the following qualifications:

(i) Knowledge of best practice methodologies for job coaching; and

(ii) Be able to demonstrate the core competencies of a job coach within one year of employment, including skills to recognize and adapt supports to individual learning styles and needs, conduct task design and accommodations, train instructional and schedule procedures, and collaborate with employee, employer, co-workers, and

support team. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(C) DISCOVERY PROVIDER.

(i) A provider of discovery services must also possess and demonstrate the following qualifications:

(I) Knowledge of best practice methodologies for conducting discovery; and

(II) Be able to demonstrate the core competencies of a discovery provider within one year of employment, including skills to facilitate the discovery process, apply person-centered planning techniques, develop an employment portfolio, identify the strengths, interests, and talents of the job seeker, and integrate all pertinent information required by the Department into a Discovery Profile. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(ii) A discovery provider must be qualified as a vendor of Vocational Rehabilitation job placement in order to provide the discovery service.

(D) EMPLOYMENT PATH SERVICE PROVIDERS. A provider of employment path services must also possess and demonstrate the following qualifications:

(i) Knowledge of best practice methodologies for providing employment path services; and

(ii) Be able to demonstrate the core competencies of an employment path service provider within one year of employment, including skills to provide learning and work experiences to teach general, non-job-task-specific strengths and skills. Documentation that the employment

professional has demonstrated these competencies must be maintained in the personnel file.

(4) EMPLOYMENT PROVIDER TRAINING:

(a) An employment professional employed by an agency service provider must complete the following training:

(A) A review of these rules;

(B) CPR and First Aid by a recognized training agency within 90 calendar days of hire;

(C) Six hours of pre-service training, including:

(i) Mandatory abuse reporting training;

(ii) Training to work with individuals with intellectual or developmental disabilities; and

(iii) Training on the employment service and support needs of the individual to whom they will provide support.

(b) An agency service provider must keep documentation of required training in the personnel files of the employment professional.

(c) All employment specialists must complete a competency based employment training as follows:

(A) Job coaches must complete at least one Department approved training for job coaching within 90 days of providing job coaching.

(B) Job developers must complete at least one Department approved training for job developers within 90 days of providing job development.

(C) Discovery providers must complete at least one Department approved training for discovery before being authorized to provide discovery.

(D) Employment path providers must complete at least one Department approved training for employment path providers within 90 days of providing employment path services.

(d) Documentation that the employment professionals have completed this training requirement must be maintained in the personnel file.

(e) Effective July 1, 2016, agency service providers of employment services must have at least one employee in a supervisory position who has the Department approved credentialing. Effective July 1, 2016, providers independently contracted to provide an employment service must have the Department approved credentialing.

(5) DISQUALIFICATION. Employment professionals must self-report any potentially disqualifying condition as described in OAR 407-007-0280 (Potentially Disqualifying Conditions) and OAR 407-007-0290 (Other Potentially Disqualifying Conditions). The employment professionals must notify the Department or the designee of the Department within 24 hours.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0040 Application for Initial Certificate and Certificate Renewal
(Repealed 7/1/2011 – Language moved to OAR 411-345-0030)

411-345-0050 Reciprocal Compliance for Agency Service Providers
(Amended 12/28/2014)

(1) The Department may accept compliance with other formally recognized standards as assurance of compliance with all or part of these rules.

(2) An employment service provider seeking an endorsement based on compliance with other standards must provide the Department with a copy of the complete detailed report from the reviewing group. Where there are differences between other standards and Oregon Administrative Rules, the Oregon Administrative Rules shall take precedence.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0060 Certification Expiration, Termination of Operations, Certificate Return

(Repealed 7/1/2011 – Language moved to OAR 411-345-0030)

411-345-0070 Change of Ownership, Legal Entity, Legal Status, Management Corporation

(Repealed 7/1/2011 – Language moved to OAR 411-345-0030)

411-345-0080 Inspections and Investigations

(Repealed 1/6/2012 – See OAR 411-323-0040)

411-345-0085 Reports and Recordkeeping

(Temporary Effective 01/01/2016 to 06/28/2016)

(1) PROGRESS NOTES.

(a) Providers must maintain --

(A) Regular progress notes regarding the employment service provided. The progress note must include, at minimum, the following information regarding the service rendered:

(i) Date and time the service was provided;

(ii) Information regarding progress towards achieving the intended employment goal for which the employment services was purchased; and

(iii) Documentation of the number of hours the supported individual works.

(B) At minimum, monthly documentation of the wages and level of benefits the supported individual receives.

(b) Progress notes must be made available upon request.

(2) For each individual supported, service providers being paid for job development services must report activity at least monthly to the services coordinator or personal agent for the individual.

(3) For each individual supported, service providers being paid for discovery services must complete a Discovery Profile and submit the Discovery Profile to the services coordinator or personal agent for the individual.

(4) All documentation required by these rules, unless stated otherwise, must:

- (a) Be prepared at the time, or immediately following the event being recorded;
- (b) Be accurate and contain no willful falsifications;
- (c) Be legible, dated, and signed by the person making the entry; and
- (d) Be maintained for no less than five years.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0090 Variances for Agency Service Providers
(Amended 12/28/2014)

(1) The Department may grant a variance to these rules based upon a demonstration by the agency service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws.

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

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;

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

(d) If the variance applies to the services of an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The CDDP must forward the signed variance request form to the Department within 30 calendar days from the receipt of the request indicating the position of the CDDP on the proposed variance.

(4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the agency service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(5) The agency service provider may request an administrative review of the denial of a variance. The Department must receive a written request for an administrative review within 10 business days from the receipt of the denial. The agency service provider must send a copy of the written request for an administrative review to the CDDP. The decision of the Director is the final response from the Department.

(6) The duration of the variance is determined by the Department.

(7) The agency service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0095 Service and Payment Limitations

(Amended 12/28/2014)

(1) Effective service rates as authorized in Department payment and reporting systems for individuals enrolled in employment, attendant care, and skills training and paid to providers for delivering services, as described in these rules, shall be based upon the Collective Bargaining Agreement or the agency fee schedule published by the Department.

(2) Only one service may be billed per individual per hour. Payments based on an outcome are not in conflict with payments made based on direct service delivery.

(3) Employment services and payment for employment service are limited to:

(a) An average of 25 hours per week for any combination of job coaching, supported employment - small group employment support, and employment path services; and

(b) 40 hours in any one week for job coaching if job coaching is the only service utilized.

(4) Exceptions to the service and payment limitations may be considered by the Department based upon applicable Department policy.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0100 Staffing Requirements

(Repealed 12/28/2014)

411-345-0110 Individuals Rights

(Temporary Effective 01/01/2016 to 06/28/2016)

(1) An agency service provider must have and implement written policies and procedures that protect the rights of individuals described in OAR 411-318-0010 (Individual Rights) and encourage and assist individuals to understand and exercise these rights.

(2) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 (Individual Rights) must be provided to an individual and the legal or designated representative of the individual.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0120 Rights: Confidentiality of Records

(Repealed 7/1/2011 – Language moved to OAR 411-345-0110)

411-345-0130 Complaints, Notification of Planned Action, and Hearings

(Amended 12/28/2014)

(1) INDIVIDUAL COMPLAINTS.

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

(b) An agency service provider must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

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

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

(3) HEARINGS.

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

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

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

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0140 Entry, Exit, and Transfer Requirements for Agency Service Providers

(Amended 12/28/2014)

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) ENTRY. For individuals who receive case management from a CDDP an entry ISP team meeting must be conducted prior to the initiation of employment services, attendant care, or skill training for an individual. This meeting shall be conducted as follows:

(a) Prior to or upon an entry ISP team meeting, an agency service provider must acquire the following individual information:

(A) A copy of the eligibility determination document;

(B) A statement indicating safety skills, including the ability of the individual to evacuate from a building when warned by a signal device;

(C) A brief written history of any relevant behavioral challenges, including supervision and support needs;

(D) Documentation of any relevant physical limitations that may affect services;

(E) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other relevant legal restrictions on the rights of the individual (if applicable); and

(F) A copy of the most recent ISP (if applicable) and Career Development Plan (if applicable).

(b) The findings of the entry meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual;

(B) The date of the entry meeting;

(C) The date determined to be the date of entry;

(D) Documentation of the participants included in the entry meeting;

(E) Documentation as required by OAR 411-345-0190 and 411-345-0200;

(F) Documentation of the pre-entry information required by subsection (a) of this section;

(G) The written Transition Plan for no longer than 60 calendar days that includes all medical, behavior, and safety supports needed by the individual;

(H) Documentation of the type of services the individual is to receive; and

(I) Documentation of the decision to serve the individual requesting services.

(3) VOLUNTARY TRANSFERS AND EXITS.

(a) An agency service provider must promptly notify a services coordinator or personal agent if an individual gives notice of the intent to exit services or abruptly exits services.

(b) An agency service provider must notify a services coordinator or personal agent prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(4) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) An agency service provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the agency service provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the agency service provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. An agency service provider must not reduce services, transfer, or exit an individual involuntarily without 30 calendar days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator or personal agent, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right of the individual to a hearing as described in subsection (d) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

(c) An agency service provider may give less than 30 calendar days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator or personal agent immediately upon determination of the need for a reduction, transfer, or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 calendar days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the agency service provider must reserve service availability for the individual until receipt of the Final Order.

(5) EXIT MEETING.

(a) The ISP team for an individual must meet before any decision is made to exit services. Findings of the exit meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the exit meeting;

(C) Documentation of the participants included in the exit meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(G) Documentation of the proposed plan for services after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual requests an immediate removal from services; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(6) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual from one site to another site before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, may not be honored;

(g) Documentation of the decision regarding the, including verification of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services after the transfer.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0150 Entry, Exit and Transfer: Appeal Process

(Repealed 7/1/2011 – Language moved to OAR 411-345-0140)

411-345-0160 Individual Support Plan

(Temporary Effective 01/01/2016 to 06/28/2016)

(1) An individual has the right to participate in his or her ISP meeting and must be afforded every opportunity to develop and direct his or her ISP and Career Development Plan.

(2) In order to receive employment services, an individual must have an employment related goal in his or her ISP and Career Development Plan.

(3) All individuals utilizing services under these rules must participate in career development planning as a part of the annual ISP.

(4) A Career Development Plan must be developed and implemented with the ISP as follows. The Career Development Plan must --

(a) Focus on the strengths of the individual;

(b) Prioritize employment in integrated settings;

(c) Be based on person-centered planning principles;

(d) Be completed with the goal of maximizing the number of hours spent working consistent with the interests, abilities, and choices of the individual; and

(e) Document all employment service options presented, including an option to use employment services in a non-disability setting.

(5) For services provided by an agency service provider, the ISP and Career Development Plan must be implemented, and a copy of the sections of the ISP and Career Development Plan for each individual that are necessary to deliver the employment services must be available for the employment service provider prior to the start of services and at least annually or as changes occur.

(6) Agency service providers must:

(a) Assign a staff member to participate as a team member in the development of the ISP and Career Development Plan when invited by the individual;

(b) Follow any required process and format as described in this rule;

(c) Train staff to understand the ISP, Career Development Plan, and supporting documents for each individual and to provide individual services; and

(d) Comply with Department rules and policies regarding the ISP and Career Development Plan.

(7) Agency service providers must participate in a face-to-face meeting annually with the ISP team of an individual. An exception is made when:

(a) The individual chooses not to participate in the meeting or the legal representative of the individual objects to the participation of the individual in the face-to-face meeting. The individual must receive a copy of the ISP and Career Development Plan related to the necessary delivery of services; or

(b) The individual objects to the participation of an agency service provider during the face-to-face meeting.

(8) In preparation for the ISP meeting, the agency service provider must:

- (a) Gather person-centered information regarding preferences, interests, and desires of the individual supported;
- (b) Review the current ISP and Career Development Plan of the individual to determine the ongoing appropriateness and adequacy of the services and supports identified in the ISP and Career Development Plan; and
- (c) Share all materials drafted in preparation for the ISP meeting with the ISP team one week prior to the ISP meeting.

(9) The agency service provider must receive a copy of the ISP and Career Development Plan, or at least portions thereof, related to the necessary delivery of services.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0170 Behavior Support for Agency Service Providers
(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

- (1) The agency service provider must have and implement a written policy for behavior support utilizing individualized positive support techniques and prohibiting abusive practices.
- (2) The agency service provider must inform the individual, and as applicable the legal or designated representative of the individual, of the behavior support policy and any applicable procedures at the time of entry to services and as changes to the behavior policy occur.
- (3) Prior to the development of a Behavior Support Plan, the agency service provider must conduct a functional behavioral assessment of the behavior, which must be based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior that includes (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior that includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) A Behavior Support Plan must include:

(a) An individualized summary of the needs, preferences, and relationships of an individual;

(b) A summary of the functions of the behavior as derived from the functional behavioral assessment;

(c) Strategies that are related to the functions of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with OIS;

- (g) A plan to address post crisis issues;
- (h) A procedure for evaluating the effectiveness of the Behavior Support Plan that includes a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;
- (i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and
- (j) Positive behavior supports that includes the least intrusive intervention possible.

(5) The agency service provider must maintain the following additional documentation for implementation of Behavior Support Plans:

- (a) Written evidence that the individual, the legal or designated representative of the individual (as applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns;
- (b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and
- (c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0180 Protective Physical Intervention for Agency Service Providers

(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

- (1) The agency service provider must only employ protective physical intervention techniques that are included in the approved OIS curriculum or

as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health-related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the protection of the individual during the time that a medical condition exists.

(2) Staff supporting an individual must be trained and certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying current OIS certification of staff must be maintained in the personnel file for the staff person and be available for review by the Department or the designee of the Department.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of protective physical intervention techniques must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the record for the individual.

(4) Use of protective physical intervention techniques in emergency situations that are not part of an approved Behavior Support Plan must:

(a) Be reviewed by the executive director of the agency service provider or the designee of the executive director within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Be documented as an incident report and submitted to the services coordinator, personal agent, or other Department designee (if applicable) and the legal representative of the individual (if applicable), no later than one business day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances as described in section (8) of this rule. The incident report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the protective physical intervention;

(f) The name and position of the staff witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of an administrative review by the executive director of the agency service provider or the designee of the executive director who is knowledgeable in OIS as evident by a job

description that reflects this responsibility, which includes the follow-up to be taken to prevent a recurrence of the incident.

(6) The agency service provider must forward a copy of the incident report within five business days of the incident to the services coordinator or personal agent and the legal representative of the individual (if applicable).

(a) The services coordinator, personal agent, or the Department designee (if applicable) must receive a complete copy of the incident report.

(b) A copy of an incident report may not be provided to the legal representative or other agency service provider of an individual when the report is part of an abuse or neglect investigation.

(c) A copy of an incident report provided to the legal representative or other service provider of an individual must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(7) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the services coordinator, personal agent, or other Department designee (if applicable), within one business day of the incident.

(8) The agency service provider may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others;

(b) There is a formal written functional behavioral assessment and a written Behavior Support Plan;

(c) The Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(d) The protective physical intervention techniques and the behaviors for which the protective physical intervention techniques are applied remain within the parameters outlined in the Behavior Support Plan for the individual and the OIS curriculum;

(e) The behavior data collection system for recording observation, intervention, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record items as required in section (5) of this rule; and

(f) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(9) A copy of the behavior data summary must be forwarded every 30 calendar days to the services coordinator, personal agent, or other Department designee (if applicable) and the legal representative of an individual (if applicable).

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0190 Medical Services for Agency Service Providers
(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) All medical records for the individuals must be kept confidential as described in OAR 411-323-0060.

(2) The agency service provider must have and implement written policies and procedures that describe the medical management system, including medication administration, early detection and prevention of infectious disease, self-administration of medication, drug disposal, emergency medical procedures including the handling of bodily fluids, and confidentiality of medical records.

(3) Individuals must receive care that promotes their health and well-being as follows:

(a) The agency service provider must observe the health and physical condition of an individual and take action in a timely manner in

response to identified changes in condition that may lead to deterioration or harm;

(b) The agency service provider must assist an individual with the use and maintenance of prosthetic devices as necessary for the activities of the service;

(c) The agency service provider, with the knowledge of the individual, must share information regarding medical conditions with the residential contact (if applicable) and the services coordinator or personal agent of the individual; and

(d) The agency service provider must provide rest and lunch periods at least as required by applicable law unless the needs of the individual dictate additional time.

(4) The agency service provider must maintain records on each individual to aid physicians, health care providers, and the agency service provider in understanding the medical history and current treatment program for the individual. These records must be kept current and organized in a manner that permits a staff and health care provider to easily follow the course of treatment for the individual. Such documentation must include:

(a) A medical history obtained prior to entry to services including where available:

(A) A copy of a record of immunizations; and

(B) A list of known communicable diseases and allergies.

(b) A record of the current medical condition of the individual, including:

(A) A copy of all current orders for medication administered and maintained at the site of the agency service provider;

(B) A list of all current medications; and

(C) A record of visits to health care providers if facilitated or provided by the agency service provider.

(5) The administration of medication at the service site must be avoided whenever possible. When medications, treatments, equipment, or special diets must be administered or monitored for self-administration, the agency service provider must:

(a) Obtain a copy of a written order signed by a physician, designee of a physician, or health care provider prescribing the medication, treatment, special diet, equipment, or other medical service; and

(b) Follow written orders.

(6) PRN orders are not accepted for psychotropic medication.

(7) All medications administered or monitored in the case of self-administration must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician or health care provider, as specified per the written order of a physician or health care provider;

(c) Kept in a secured locked container and stored as indicated by the product manufacturer; and

(d) Recorded on an individualized Medication Administration Record (MAR), including treatments and PRN orders.

(8) The MAR must include:

(a) The name of the individual;

(b) The brand or generic name of the medication, including the prescribed dosage and frequency of administration as contained on the order of the physician or health care provider and medication;

(c) For topical medications and basic first aid treatments utilized without the order of a physician or health care provider, a

transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

(d) Times and dates of administration or self-administration of the medication;

(e) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(f) Method of administration;

(g) Documentation of any known allergies or adverse reactions to a medication;

(h) Documentation and an explanation of why a PRN medication was administered and the results of such administration; and

(i) An explanation of any medication administration irregularity with documentation of administrative review by the executive director of the agency service provider or the designee of the executive director.

(9) Safeguards to prevent adverse medication reactions must be utilized to include:

(a) Maintaining information about the effects and side-effects of each prescribed medication;

(b) Communicating any concerns regarding any medication usage, effectiveness, or effects to the residential contact (if applicable) and the services coordinator or personal agent; and

(c) Prohibiting the use of the medications of one individual by another individual.

(10) The service site or agency service provider may not keep unused, discontinued, outdated, or recalled medication, or medication containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled medication or medication containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the

possession of people other than for whom the medication was prescribed. The agency service provider must maintain a written record of all disposed medications that includes:

- (a) Date of disposal;
- (b) A description of the medication, including amount;
- (c) The name of the individual for whom the medication was prescribed;
- (d) The reason for disposal;
- (e) The method of disposal;
- (f) Signature of staff disposing; and
- (g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication while receiving services from an agency service provider, the agency service provider must:

- (a) Have documentation that a training program was initiated with approval of the ISP team for the individual or that training for the individual is unnecessary;
- (b) If necessary, have a training program that is consistent with the self-administration training program in place at the residence of the individual;
- (c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;
- (d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

(e) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program or when training for the individual has been deemed necessary by the ISP team.

(12) The agency service provider must ensure that individuals able to self-administer medications keep the medications secured, unavailable to any other person, and stored as recommended by the product manufacturer.

(13) The agency service provider must immediately contact the services coordinator or personal agent when the medical, behavioral, or physical needs of an individual change to a point that the needs of the individual may not be met by the agency service provider. The ISP team may determine alternative service providers or may arrange other services if necessary.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0200 Individual Summary Sheets and Emergency Information for Agency Service Providers

(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The agency service provider must maintain a current one to two page summary sheet record at the primary place of business of the agency service provider for each individual receiving services. The record must include:

(a) The name of the individual and his or her current address, telephone number, date of entry into services, date of birth, gender, preferred hospital, medical prime and private insurance number (if applicable), and guardianship status; and

(b) The name, address, and telephone number of:

(A) The legal or designated representative, family, and other significant person of the individual (as applicable);

(B) The primary care provider and clinic preferred by the individual;

(C) The dentist preferred by the individual;

(D) The services coordinator or personal agent of the individual; and

(E) Other agencies and representatives providing services and supports to the individual.

(2) An agency service provider must maintain emergency information for each individual receiving supports and services from the agency service provider in addition to an individual summary sheet identified in section (1) of this rule. The emergency information must be kept current and must include:

(a) The name of the individual;

(b) The name, address, and telephone number of the agency service provider;

(c) The address and telephone number of the residence where the individual lives;

(d) The physical description of the individual, which may include a picture and the date the picture was taken, and identification of:

(A) The race, gender, height, weight range, hair, and eye color of the individual; and

(B) Any other identifying characteristics that may assist in identifying the individual may the need arise, such as marks or scars, tattoos, or body piercing.

(e) Information on the abilities and characteristics of the individual, including:

(A) How the individual communicates;

(B) The language the individual uses or understands;

(C) The ability of the individual to know and take care of bodily functions; and

(D) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(f) The health support needs of the individual, including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

(C) Health issues that a person needs to know when taking care of the individual;

(D) Special dietary or nutritional needs, such as requirements around the textures or consistency of foods and fluids;

(E) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(F) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(G) Physical limitations that may affect the ability of the individual to communicate, respond to instructions, or follow directions; and

(H) Specialized equipment needed for mobility, positioning, or other health-related needs.

(g) The emotional and behavioral support needs of the individual, including:

(A) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(B) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(h) Any court ordered or legal representative authorized contacts or limitations;

(i) The supervision requirements of the individual and why; and

(j) Any additional pertinent information the agency service provider has that may assist in the care and support of the individual in the event of a natural or man-made disaster.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0210 Health and Safety: Personnel

(Repealed 7/1/2011 – Language moved to OAR 411-345-0100)

411-345-0220 Health and Safety: Staffing Requirements

(Repealed 7/1/2011 – Language moved to OAR 411-345-0100)

411-345-0230 Incident Reports and Emergency Notifications by Agency Service Providers

(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) A written incident report describing any injury, accident, act of physical aggression, or unusual incident involving an individual must be placed in the record for the individual. The incident 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) Follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression, or unusual incident.

(2) Copies of incident reports for all unusual incidents (as defined by OAR 411-345-0020) must be sent to the services coordinator or personal agent within five business days of the unusual incident.

(3) The agency service provider must immediately notify the CDDP or Brokerage of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(4) In the case of an unusual incident requiring emergency response, the agency service provider must immediately notify:

(a) The legal representative, parent, next of kin, designated representative, and other significant person of the individual (as applicable);

(b) The CDDP or Brokerage;

(c) The residential contact of the individual; and

(d) Any other agency responsible for the individual.

(5) In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the agency service provider must immediately notify:

(a) The designated representative of the individual (if applicable);

(b) The legal representative of the individual or nearest responsible relative (as applicable);

(c) The residential contact of the individual;

(d) The local police department; and

(e) The CDDP or Brokerage.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0240 Emergency Plan and Safety Review for Agency Service Providers

(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) An agency service provider must develop, keep current, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster. The emergency plan must:

(a) Be practiced at least annually;

(b) Consider the needs of the individuals being supported and address all natural and human-caused events identified as a potential significant risk to the individuals, such as a pandemic or an earthquake;

(c) Coordinate with each residential provider or residential contact to address the possibility of emergency or disaster resulting in the following:

(A) Extended utility outage;

(B) No running water;

(C) Inability to provide food or supplies; and

(D) Staff unable to report as scheduled.

(d) Include provisions for evacuation and relocation that identifies:

(A) The duties of staff during evacuation, transport, and housing of individuals;

(B) The requirement for staff to notify the Department and the local CDDP and Brokerage offices of the plan to evacuate or the evacuation of the facility, as soon as the emergency or disaster reasonably allows;

(C) The method and source of transportation;

(D) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals;

(E) A method that provides a person unknown to the individual the ability to identify the individual by name and to identify the name of the agency service provider for the individual; and

(F) A method for tracking and reporting to the Department, local CDDP and Brokerage offices, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(e) Address the needs of the individual, including medical needs; and

(f) Be submitted to the Department as a summary, per Department format, at least annually and upon revision and change of ownership.

(2) An agency service provider must post the following emergency telephone numbers in close proximity to all phones used by staff:

(a) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the executive director of the agency service provider and additional people to be contacted in the case of an emergency.

(3) If an individual regularly accesses the community independently, the agency service provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(4) A documented safety review must be conducted quarterly to ensure the service site is free of hazards. The agency service provider must keep the quarterly safety review reports for five years and must make them available upon request by the CDDP, Brokerage, or the Department.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0250 Evacuation for Agency Service Providers

(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) The agency service provider must train all individuals immediately upon entry to each service site to leave the site in response to an alarm or other emergency signal.

(2) The agency service provider must document the level of assistance needed by each individual to safely evacuate and such documentation must be maintained in the entry records for the individual.

(3) The agency service provider must provide, or assure provision of, necessary adaptations or accommodations to ensure evacuation safety for individuals with sensory and physically impairments.

(4) Site-based agency service providers must:

(a) Conduct unannounced evacuation drills one per quarter each year when individuals are present, unless required more often by the Oregon Occupational Safety and Health Division.

(A) Drills must occur at different times of the day.

(B) Routes to leave the site for the drill must vary based on the location of a simulated emergency.

(C) Any individual failing to evacuate the service site unassisted within three minutes, or an amount of time set by the local fire

authority for the site, must be provided specialized training and support in evacuation procedures.

(b) Make written documentation at the time of each drill and keep the documentation for at least two years following the drill.

Documentation must include:

(A) The date and time of the drill;

(B) The location of the simulated emergency and route of evacuation;

(C) The last names of all individuals and staff present in the service area at the time of the drill;

(D) The type of evacuation assistance provided by staff to individuals that need more than three minutes to evacuate as specified in the safety plan for the individuals;

(E) The amount of time required by each individual to evacuate if the individual needs more than three minutes to evacuate;

(F) The amount of time for all individuals to evacuate exclusive of individuals with specialized support as described in section (3)(c) of this rule; and

(G) The signature of the staff conducting the drill.

(c) Develop a written safety plan for individuals who are unable to evacuate the site within the required evacuation time or who, with concurrence of the ISP team, request not to participate in evacuation drills. The safety plan must include:

(A) Documentation of the risk to the medical, physical condition, and behavioral status of the individual;

(B) Identification of how the individual must evacuate the site, including level of support needed;

(C) The routes to be used to evacuate the individual to a point of safety;

(D) Identification of assistive devices required for evacuation;

(E) The frequency the plan must be practiced and reviewed by the individual and staff;

(F) The alternative practices;

(G) Approval of the plan by the legal representative of the individual, services coordinator or personal agent, and the executive director of the agency service provider; and

(H) A plan to encourage future participation in evacuation drills.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0260 Physical Environment for Agency Service Providers
(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR chapter 411, division 323:

(1) All agency service providers must ensure that the service site has no known health or safety hazards in its immediate environment and that individuals are trained to avoid recognizable hazards.

(2) The agency service provider must:

(a) Assure that at least once every five years a health and safety inspection is conducted of owned, leased, or rented buildings and property.

(A) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices, and storage areas.

(B) The inspection may be performed by:

- (i) Oregon Occupational Safety and Health Division;
- (ii) The workers compensation insurance carrier of the agency service provider;
- (iii) An appropriate expert, such as a licensed safety engineer or consultant approved by the Department; or
- (iv) The Oregon Public Health Division, when necessary.

(C) The inspection must cover:

- (i) Hazardous material handling and storage;
- (ii) Machinery and equipment used by the agency service provider;
- (iii) Safety equipment;
- (iv) Physical environment; and
- (v) Food handling, when necessary.

(D) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the agency service provider for five years.

(b) Ensure buildings and property at each owned, leased, or rented service site has annual fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes, and documentation of any resulting action taken must be kept by the agency service provider for five years.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0270 Vehicles and Drivers for Agency Service Providers
(Amended 12/28/2014)

For an agency service provider certified by the Department to provide services under these rules and endorsed under the rules in OAR 411-323:

(1) An agency service provider that owns or operates vehicles that transports individuals must:

- (a) Maintain the vehicles in safe operating condition;
- (b) Comply with the laws of the Driver and Motor Vehicle Services Division;
- (c) Maintain insurance coverage; and
- (d) Carry a first-aid kit in the vehicles.

(2) A driver operating vehicles to transport individuals must meet all applicable requirements of the Driver and Motor Vehicle Services Division.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-345-0280 Individual/Family Involvement
(Repealed 7/1/2011 – Language moved to OAR 411-345-0100)

411-345-0290 Certificate Denial, Suspension, Revocation, Refusal to Renew
(Repealed 7/1/2011 – Language moved to OAR 411-345-0030)

411-345-0300 Hearings
(Repealed 7/1/2011 – Language moved to OAR 411-345-0030)