

Information Memorandum Transmittal Developmental Disabilities Services



Anna Lansky

Authorized signature

Number: DD-IM-21-035

Issue date: 5/5/2021

Topic: Developmental Disabilities

Due date:

Subject: Provider Agency Worker Classification

Applies to (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging: {Select type} | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Office of Developmental Disabilities Services (ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input checked="" type="checkbox"/> ODDS Children's Intensive In Home Services |
| <input checked="" type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input checked="" type="checkbox"/> Support Service Brokerage Directors | <input checked="" type="checkbox"/> Other (<i>please specify</i>): |
| <input type="checkbox"/> ODDS Children's Residential Services | Developmental Disabilities Medicaid agency providers; Adult Foster Care providers |
| <input type="checkbox"/> Child Welfare Programs | |

Message: This IM addresses three issues that have come to the attention of ODDS regarding provider agencies: DSP employment status; incentives for individuals; and Medicaid payments.

DSP employment status:

ODDS has learned that some Provider Agencies may maintain an independent contractor relationship with its Direct Support Professionals (DSP). It is very unlikely that the relationship meets the standard for independent contracting found in ORS 670.600 and the regulations of multiple state agencies. An agency who considers its DSPs to be contractors is encouraged to review the information [here](#)* to learn about properly classifying workers and the repercussions for failing to do so.

If a Provider Agency does subcontract out any services covered under the PEAA, Provider shall comply, and require all subcontractors to comply, with federal, state and local laws and regulations applicable to items and services under the PEAA, including

but not limited to OAR 407-120-0325, as they are amended from time to time. Without limiting the generality of the prior sentence, the Provider expressly agrees to comply, and require all subcontractors to comply, with all of the laws, regulations and executive orders listed under OAR 410-120-1380 to the extent they are applicable to the items and services provided under the PEAA.

Any Provider Agency that does subcontract our any of the services covered under the PEAA must have subcontracts in place and copies of the subcontractor's Certificate of Insurance (COI) that meet the required amounts in the PEAA. Subcontracts and COI must be available for quick reference at times of any audits or as requested by ODDS.

* <https://www.oregon.gov/ic/Business-Impacts/Pages/Why.aspx>

Incentives for individuals

Because ODDS services are funded by Medicaid, some ways of attracting new business are not permitted under Federal law and may be subject to criminal penalties. The Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)] prohibits the knowing and willful payment of "remuneration" to induce or reward individual referrals or the generation of business involving any item or service payable by the Federal health care programs, such as the services provided through ODDS.

Remuneration includes anything of value and can take many forms besides cash. This could include payment of a referral fee, or a bonus paid to a new client, or any sort of incentive that has a cash value.

Medicaid Payments

Whenever ODDS pays for a service, that payment is payment in full ([CFR 447.15](#)). Except where the Department determines the client has a liability (aka "an offset" or "pay-in"), under no circumstances may an agency require an individual or their family to pay for any portion of services available to them through ODDS. Individuals and families cannot be required to agree to pay for DSP overtime or hours that are not authorized. Individuals and families cannot be asked by an agency to perform the functions of an employer, including tracking hours or overtime. The agency is the employer and has the complete responsibility of managing the agency's DSPs.

In the event a personal support worker is delivering care to an individual also served by an agency, and the PSW's employer causes scheduling conflicts, the agency and CLE should cooperate to keep weekly and monthly hour utilization within agreed upon limits. It may be necessary or desirable to work on this through the individual's case manager.

Communication/training: This transmittal will be discussed during the next Monthly Transmittal Review. These meetings are held the second Wednesday of every month at 2 pm using the TEAMS platform. The link to participate is here: [Join Microsoft Teams Meeting](#), or you can call 971-277-2343 using conference ID: 403 980 561# to hear only the audio portion of the meeting. Please send questions in advance to ODDS.Questions@dhsoha.state.or.us.

If you have any questions about this information, contact:

Contact(s): Mike Parr	
Phone:	Fax:
Email: mike.r.parr@dhsoha.state.or.us	