DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 4

HOME AND COMMUNITY-BASED SERVICES AND SETTINGS AND PERSON-CENTERED SERVICE PLANNING

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(Amended 8/1/2018)

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411-004-0000 Statement of Purpose *(Amended 7/1/2017)*

The rules in OAR chapter 411, division 4 provide a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon. Additional standards are set forth in OAR chapters 309 and 411.

(1) These rules are consistent with the missions and goals of the Department of Human Services (DHS) and the Oregon Health Authority (OHA) to help people achieve optimum physical, mental, and social well-being and independence.

(2) These rules ensure that individuals receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to --

(a) Seek employment and work in competitive integrated employment settings;

(b) Engage in greater community life;

(c) Control personal resources; and

(d) Receive services in the greater community.

(3) These rules implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) in the following areas:

(a) HCBS and HCB settings authorized under the following Medicaid authorities:

(A) 1915(c) - HCBS Waivers;

(B) 1915(i) - State Plan HCBS; or

(C) 1915(k) - Community First Choice (K State Plan Option).

(b) HCBS and HCB settings delivered through the following program areas:

(A) DHS, Aging and People with Disabilities;

(B) DHS, Office of Developmental Disabilities Services; and

(C) OHA.

(c) Programs, services, or settings designated as HCB and licensed, certified or endorsed by, and receiving oversight from, DHS, or OHA.

(d) Alternative resources specifically authorized as HCB by DHS or OHA.

(e) Person-centered service plans for individuals receiving HCBS. Person-centered service plans provide the written details of the supports, desired outcomes, activities, and resources required for individuals to achieve and maintain personal goals and health and safety.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085

411-004-0010 Definitions *(Amended 7/1/2017)*

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 4:

(1) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(2) "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.

(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.

(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.

(3) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is --

(A) Chosen by the individual or, as applicable, the legal representative of the individual;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual or, as applicable, the legal representative of the individual to serve as the representative of the individual or, as applicable, the legal representative in connection with the provision of funded supports.

(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(b) An individual or the legal representative of the individual is not required to appoint a designated representative.

(4) "DHS" means the Department of Human Services.

(5) "HCB" means "Home and Community-Based."

(6) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual.

(a) HCBS are authorized under the following Medicaid authorities:

(A) 1915(c) - HCBS Waivers;

(B) 1915(i) - State Plan HCBS; or

(C) 1915(k) - Community First Choice (K State Plan Option).

(b) HCBS are delivered through the following program areas:

(A) DHS, Aging and People with Disabilities;

(B) DHS, Office of Developmental Disabilities Services; and

(C) OHA.

(c) DHS or OHA may designate other services, delivered under (6)(b) above, as HCBS.

(7) "HCB Setting" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives HCBS.

(8) "Heightened Scrutiny" means the process set out in OAR 411-004-0020(7)(e) that DHS or OHA uses when determining if a setting meets the criteria to be considered a HCB setting.

(9) "Individual" means a person enrolled in or utilizing HCBS.

(10) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020(1)(d) and (2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(11) "Informed Consent" means:

(a) Options, risks, and benefits have been explained to an individual and, as applicable, the legal representative of the individual, in a manner that the individual and, as applicable, the legal representative, comprehends; and

(b) The individual and, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to

implementation of the initial or updated person-centered service plan or any individually-based limitation.

(12) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian.

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term “legal representative” is used in this rule.

(13) "OHA" means the Oregon Health Authority.

(14) "Person-Centered Service Plan" means, for Medicaid eligible individuals, the written details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030 as documented by the person-centered service plan coordinator.

(15) "Person-Centered Service Plan Coordinator" means case managers, service coordinators, personal agents, and other people designated by DHS or OHA to provide case management services or person-centered service planning for and with individuals.

(16) "Provider" means any person or entity providing HCBS.

(17) "Provider Owned, Controlled, or Operated Residential Setting" means:

(a) The residential provider is responsible for delivering HCBS to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.

(b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(18) "Residency Agreement" means the written, legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual, when the individual is receiving HCBS in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(19) "Restraint" means:

(a) Physical restraints are any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the individual’s body that the individual cannot remove easily, which restricts freedom of movement or normal access of the individual to the individual’s body. Any manual method includes physically restraining someone by manually holding someone in place.

(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual’s freedom of movement or behavior and is not used to treat the individual’s medical or psychiatric condition.

(20) "Room and Board" means compensation for the provision of meals and a place to sleep.

(21) "These Rules" mean the rules in OAR chapter 411, division 4.

(22) "Unit" means the personal space and bedroom of an individual receiving HCBS in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

Stat. Auth.: ORS 409.050, 413.042, 413.085, 443.738
Stats. Implemented: ORS 409.050, 413.042, 413.085, 443.738

411-004-0020 Home and Community-Based Services and Settings
(Amended 7/1/2017)

(1) Residential and non-residential HCB settings must have all of the following qualities:

(a) The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to --

(A) Seek employment and work in competitive integrated employment settings;

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The residential or non-residential setting is selected by an individual or, as applicable, the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:

(A) Identified and documented in the person-centered service plan for the individual.

(B) Based on the needs and preferences of the individual.

(C) For residential settings, based on the available resources of the individual for room and board.

(D) For employment and non-residential day services, a non-disability specific setting option must be presented and documented in the person-centered service plan.

(c) The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint.

(d) The setting ensures the individual the right to freedom from restraints, except in accordance with the standards set forth in ORS 443.739, OAR chapters 309 and 411, 1915(c) HCBS Waivers, 1915(i) State Plan HCBS, or 1915(k) Community First Choice (K State Plan Option). When the right to freedom from restraints must be limited due to a threat to the health and safety of an individual or others, an individually-based limitation as described in OAR 411-004-0040 must apply in any residential or non-residential setting.

(e) The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to: daily activities, physical environment, and with whom the individual chooses to interact.

(f) The setting facilitates individual choice regarding services and supports, and who provides the services and supports.

(2) Provider owned, controlled, or operated residential settings must have all of the following qualities:

(a) The setting meets all the qualities in section (1) of this rule.

(b) The setting is physically accessible to an individual.

(c) The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement. The individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord tenant law of the state, county, city, or other

designated entity. For a setting in which landlord tenant laws do not apply, the Residency Agreement must provide protections for the individual and address eviction and appeal processes. The eviction and appeal processes must be substantially equivalent to the processes provided under landlord tenant laws.

(d) Each individual has privacy in his or her own unit.

(e) Units must have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit.

(f) Individuals sharing units must have a choice of roommates.

(g) Individuals must have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.

(h) Each individual may have visitors of his or her choosing at any time.

(i) Each individual has the freedom and support to control his or her own schedule and activities.

(j) Each individual has the freedom and support to have access to food at any time.

(3) The qualities of an HCB setting described in sections (1)(d) and (2)(d) to (2)(j) of this rule apply to children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities. Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, shall be addressed through a person-centered service planning process and documented in the person-centered service plan for the child. Limitations which deviate from and are more restrictive than what is typical for children of the same age without disabilities, must comply with OAR 411-004-0040.

(4) When conditions under sections (1)(d) and (2)(d) to (2)(j) of this rule may not be met due to threats to the health and safety of the individual or others, the person-centered service plan may apply an individually-based limitation with the consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(5) Providers initially licensed, certified, or endorsed by DHS or OHA on or after January 1, 2016 must meet the requirements in this rule prior to being licensed, certified, or endorsed.

(6) Providers licensed, certified, or endorsed prior to January 1, 2016 must make measurable progress toward compliance with these rules and be in full compliance with these rules by September 1, 2018. The Department will not issue sanctions and penalties on the rules in OAR chapter 411, division 004 until September 1, 2018 if a provider is making measureable progress towards compliance.

(7) HCB settings do not include the following:

(a) A nursing facility.

(b) An institution as outlined in ORS 426.010.

(c) An intermediate care facility for individuals with intellectual disabilities.

(d) A hospital providing long-term care services.

(e) Any other setting that has the qualities of an institution.

(A) The following settings are presumed to have the qualities of an institution:

(i) A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.

(ii) A setting that is located in a building on the grounds of, or immediately adjacent to, a public institution.

(iii) A setting that has the effect of isolating individuals receiving HCBS from the greater community.

(B) In addition to the qualities under subsection (A) above, non-residential settings that isolate individuals receiving HCBS from the greater community and are presumed to have the qualities of an institution also include:

(i) Facility-based prevocational settings that do not, at minimum, provide interaction with the general public.

(ii) Facility or site-based non-residential day service settings that do not, at minimum, facilitate going out into the greater community.

(C) A setting that is presumed to have the qualities of an institution, as described in this section, will be subject to a heightened scrutiny process. If a setting has indicators that lead the State to question their HCBS status, the setting will be given the opportunity to rebut that presumption by submitting evidence of their compliance with these regulations. Based on the evidence, the State may determine that a setting has not overcome the presumption and HCBS funding will not be utilized. If the State determines that a setting has provided adequate evidence to rebut the presumption that it has the qualities of an institution, the State will submit the evidence to CMS after a public comment period. CMS determines, based on information presented by DHS, OHA, or other parties, whether the setting is home and community-based or is institutional in nature. If CMS determines that a setting has not overcome the presumption and is institutional in nature, HCBS funding will not be utilized.

Stat. Auth.: ORS 409.050, 413.042, 413.085, 443.738
Stats. Implemented: ORS 409.050, 413.042, 413.085, 443.738

411-004-0030 Person-Centered Service Plans *(Amended 7/1/2017)*

(1) PERSON-CENTERED SERVICE PLANNING PROCESS. A person-centered service plan must be developed through a person-centered service planning process. The person-centered service planning process --

(a) Is driven by the individual;

(b) Includes people chosen by the individual;

(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;

(e) Reflects the cultural considerations of the individual;

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the legal or designated representative of the individual;

(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:

(A) Discussing the concerns of the individual and determining acceptable solutions;

(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;

(C) Utilizing any available greater community conflict resolution resources;

(D) Referring concerns to the Office of the Long-Term Care Ombudsman; or

(E) For Medicaid recipients, following existing, program-specific grievance processes.

(h) Offers choices to the individual regarding the services and supports the individual receives, and from whom, and records the alternative HCB settings that were considered by the individual;

(i) Provides a method for the individual or, as applicable, the legal or designated representative of the individual, to request updates to the person-centered service plan for the individual, as needed;

(j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;

(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;

(l) Includes any services that are self-directed, if applicable;

(m) Includes, but is not limited to, individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;

(n) Includes risk factors and plans to minimize any identified risk factors; and

(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual or, as applicable, the legal or designated representative of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in section (2)(d) of this rule. The person-centered service plan is distributed to the individual, and, as applicable, the legal or designated representative of the individual, and other people involved in the person-centered service plan as described below in section (2)(d) of this rule.

(2) PERSON-CENTERED SERVICE PLANS.

(a) For individuals receiving Medicaid:

(A) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible.

(B) The person-centered service plan must be developed by the individual and, as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the legal or designated representative.

(C) To avoid conflict of interest, the person-centered service plan may not be developed by the provider of HCBS for individuals receiving Medicaid. Exceptions may be granted when DHS or OHA has determined that the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area also provides HCBS.

(b) For private pay individuals, a person-centered service plan will be developed by the individual, or, as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers may assist private pay individuals in developing person-centered service plans when no alternative resources are available. Private pay individuals are not required to have a written person-centered service plan.

(c) For individuals receiving Medicaid services the written person-centered service plan reflects:

(A) HCBS and setting options based on the needs and preferences of the individual, and for residential settings, the available resources of the individual for room and board.

(B) The HCBS and settings are chosen by the individual and are integrated in, and support full access to, the greater community.

(C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option must be presented and documented in the person-centered service plan.

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS.

(E) The strengths and preferences of the individual.

(F) The service and support needs of the individual.

(G) The goals and desired outcomes of the individual.

(H) The providers of services and supports, including unpaid supports provided voluntarily.

(I) Risk factors and measures in place to minimize risk.

(J) Individualized backup plans and strategies, when needed.

(K) People who are important in supporting the individual.

(L) The person responsible for monitoring the person-centered service plan.

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and, as applicable, the legal or designated representative of the individual.

(N) The written informed consent of the individual or, as applicable, the legal or designated representative of the individual.

(O) Signatures of the individual or, as applicable, the legal or designated representative of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (d) of this section.

(P) Self-directed supports.

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(d) The individual or, as applicable, the legal or designated representative of the individual, decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers must have access to the portion of the person-centered service plan that the provider is responsible for implementing.

(e) The person-centered service plan is distributed to the individual and, as applicable, the legal or designated representative of the individual, and other people involved in the person-centered service plan as described above in subsection (d) of this section.

(f) The person-centered service plan must justify and document an individually-based limitation as described in OAR 411-004-0040 when conditions under OAR 411-004-0020(1)(d) and (2)(d) to (2)(j) may not be met due to threats to the health and safety of the individual or others.

(g) The person-centered service plan must be reviewed and revised:

(A) At the request of the individual or, as applicable, the legal or designated representative of the individual;

(B) When the circumstances or needs of the individual change; or

(C) Upon reassessment of functional needs as required every 12 months.

Stat. Auth.: ORS 409.050, 413.042, 413.085, 443.738
Stats. Implemented: ORS 409.050, 413.042, 413.085, 443.738

411-004-0040 Individually-Based Limitations *(Amended 8/1/2018)*

This rule will begin being implemented January 1, 2017. The requirements in this rule must be in place no later than June 30, 2020. Individual program rules may require compliance to this rule earlier than June 30, 2020.

(1) When the condition under OAR 411-004-0020(1)(d) may not be met due to a threat to the health and safety of an individual or others, an individually-based limitation process, as described in this rule, must apply in any residential or non-residential setting.

(2) When a condition under OAR 411-004-0020(2)(d) to (2)(j) may not be met due to a threat to the health and safety of an individual or others in a provider owned, controlled, or operated residential setting, an individually-based limitation process, as described in this rule, must apply.

(3) An individually-based limitation must be supported by a specific assessed need and documented in the person-centered service plan by completing and signing a program approved form documenting the consent to the appropriate individually-based limitation. The form identifies and documents, at minimum, all of the following requirements:

(a) The specific and individualized assessed need justifying the individually-based limitation.

(b) The positive interventions and supports used prior to any individually-based limitation.

(c) Less intrusive methods that have been tried but did not work.

(d) A clear description of the limitation that is directly proportionate to the specific assessed need.

(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation.

(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually.

(g) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative.

(h) An assurance that the interventions and support do not cause harm to the individual.

(i) For restraints, there is a physician or other qualified practitioner order for the use of restraint. Individual licensing authorities may adopt stricter criteria regarding the use of restraints.

(4) Providers are responsible for:

(a) Maintaining a copy of the completed and signed form documenting the consent to the appropriate limitation. The form must be signed by the individual, or, if applicable, the legal representative of the individual.

(b) Regular collection and review of data to measure the ongoing effectiveness of and the continued need for the individually-based limitation.

(c) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.

Stat. Auth.: ORS 409.050, 413.042, 413.085, 443.738
Stats. Implemented: ORS 409.050, 413.042, 413.085, 443.738