

DEPARTMENT OF HUMAN SERVICES, MENTAL HEALTH AND  
DEVELOPMENT DISABILITY SERVICES

**DIVISION 41**  
**DEVELOPMENTAL DISABILITY SERVICES CONTRACT PROGRAMS**

**Service Wait Lists for Persons with Developmental Disabilities**

**309-041-1190 Statement of Purpose and Statutory Authority**  
*(Effective 11/16/1992)*

(1) Purpose. These rules prescribe standards and procedures for the maintenance of service wait lists for persons with developmental disabilities.

(2) Statutory Authority. These rules are authorized by ORS 430.041 and carry out the provisions of ORS 427.007 and 430.640.

Stat. Auth.: ORS 427 & ORS 430  
Stats. Implemented:

**309-041-1200 Definitions**  
*(Effective 02/27/2002)*

As used in these rules the following definitions apply:

(1) "Case Manager" means an employee of the community mental health program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate, and monitor individual support plan services and who acts as a proponent for persons with developmental disabilities.

(2) "Community Mental Health Program" or "CMHP" means the organization of all services for individuals with mental or emotional disturbances, developmental disabilities or chemical dependency, operated by, or contractually affiliated with, a local mental health authority, operated

in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Mental Health and Developmental Disability Services Division.

(3) "Comprehensive Services" means 24-hour residential care, including care provided in a group home, supported living, or foster care. Comprehensive services also include intensive in-home supports that exceed \$20,000 per year. Intensive supports may include in-home shift care, respite care, employment and other day program supports, community inclusion activities, environmental adaptations, or other services needed to support an individual with complex needs.

(4) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the **Manual of Terminology and Classification in Mental Retardation by the American Association on Mental Deficiency, 1983 Revision**. Mental retardation is synonymous with mental deficiency.

(5) "Division" means the Mental Health and Developmental Disability Services Division.

(6) "Individual" means a person with developmental disabilities for whom services are planned and needed or provided.

(7) "Individual Support Plan Team" or "ISP Team" means a team composed of the individual, the case manager, the individual's legal guardian, representatives of all current service providers, advocate or other determined appropriate by the individual receiving services. If the individual is unable or does not express a preference, other appropriate team membership shall be determined by the ISP team.

(8) "Office of Development Disability Services" or "ODDS" means the Office of Developmental Disability Services of the Mental Health and Developmental Disability Services Division.

(9) "Private Pay Status" means those individuals who are buying vocational/residential service(s) while waiting for a state funded service.

(10) "Support" means those ancillary services other than direct training which may include, but are not limited to, assisting an individual to maintain skill competencies, achieve community access and social integration, enhance productivity, increase independent functioning and enjoy a satisfying lifestyle.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 427 & ORS 430

Stats. Implemented: ORS 427.007 & ORS 430.640

### **309-041-1210 Maintenance of a Centralized Wait List(s) for Individuals Waiting for Services**

*(Effective 11/16/1992)*

(1) Eligibility. Individuals must be age 15 or older and must be formally determined eligible for developmental disability case management services to be placed on the county wait list. Individuals in private pay status are eligible for the wait list if they meet these criteria.

(2) Assessment. A written needs and wants assessment will be completed for each individual prior to the placement of the individual's name on the

wait list. Such needs assessment will be updated annually thereafter until the individual's name has been removed from the wait list.

(3) Required Data. At a minimum the following information shall be maintained for each individual placed on the wait list:

- (a) Name of the individual, current address, and phone number;
- (b) Date of birth;
- (c) Type of support; i.e., residential, vocational, and/or other support;
- (d) Urgency of support need; i.e., how soon will the support be needed;
- (e) Level of support; i.e., the degree of support needed; and
- (f) Date placed on the wait list. (Private pay status does not affect this date.)

(4) Reporting. The CMHP Developmental Disability Case Management Service will report to the Division individual wait list information at the time the individual is accepted to the county wait list. The Division will provide a format to the CMHP for reporting the required information. Such information will be reviewed annually by the CMHP and any changes in status will be reported to the Division. Terminations from the wait list will be reported when the termination occurs.

Stat. Auth.: ORS 427 & ORS 430

Stats. Implemented:

### **309-041-1220 Criteria for Selection from Wait List**

*(Effective 07/01/2006)*

(1) Selection Factors. When a vacancy in an existing service occurs or a new service is developed, the following factors will be considered in assigning an individual to a vacancy:

- (a) Date of entry on the wait list;

(b) Appropriateness of available service to individual need;

(c) Urgency of need; and

(d) The individual's preferences.

(2) Order of Selection. Generally, the individual who has been on the wait list the longest will be assigned to the first service vacancy which arises that is appropriate to that individual's needs. This selection order is subject to the following exceptions:

(a) An individual in crisis having no vocational service and needing such service to resolve the crisis may be given first consideration for an appropriate vocational vacancy regardless of date of entry on the wait list;

(b) An individual in crisis having no residential service and needing such service to resolve the crisis may be given first consideration for an appropriate residential vacancy regardless of date of entry on the wait list; and

(c) No fewer than 300 adult individuals will be selected for entry into non-crisis comprehensive services pursuant to the Staley v Kitzhaber (USDC CV00-0078-ST) settlement agreement during the period July 1, 2001, through June 30, 2009.

(A) The number of individuals receiving non-crisis comprehensive services must be no fewer than the following: 20 individuals by June 30, 2003; 40 individuals by June 30, 2005; 170 individuals by June 30, 2007; 300 individuals by June 30, 2009.

(B) Individuals receiving non-crisis comprehensive services must be adults, 18 years of age or older; must be enrolled in case management; must be eligible for Oregon's Medicaid Waiver for Comprehensive Services; must not at the time of selection be authorized to receive Crisis services as defined in OAR 411-320-0160 (7); and individuals and their legal representatives must be ready to accept and move into the

developed services within the time frames established and published by the Department.

(C) Priority consideration must be given to individuals previously identified for non-crisis comprehensive services but whose plans were developed during the previous biennium but not completed.

(D) Local Criteria. When Community Developmental Disability Program resources are insufficient to serve all otherwise eligible individuals in the area of service, additional considerations for determining individual selection may be established by Community Developmental Disability Programs under these conditions:

(i) Increasing local capacity must be a local criteria consideration; and

(ii) Local criteria for selection must reflect local needs and resources including the identified needs of the individuals in the service area, the development budget available, the resource opportunities available and the number of individuals requesting services; and

(iii) Established local criteria must be applied consistently across all otherwise qualified individuals in the service area.

(iv) When individuals under consideration for non-crisis comprehensive services meet the criteria established in paragraphs (2)(c)(B) and (C) **and** have comparable needs **and** are equally appropriate for those services, priority will be given to the individual currently living in the family home.

Stat. Auth.: ORS 409.050 & ORS 410.070

Stats. Implemented: ORS 427.007 & ORS 430.640

### **309-041-1230 Wait List Referrals from Other Counties**

*(Effective 11/16/1992)*

(1) Referral Process. Services for an individual may be requested of other counties by the Developmental Disability case manager initially by phone. If the referral appears to be feasible the case manager will submit a complete written referral packet including the latest needs assessment to the other county.

(2) Wait List Entry. The wait list status of an individual may be reported to the state only by the county of residence of the individual. A wait list referral to another county will not be entered on the state wait list report for that county but rather will be maintained by the county of residence. The county receiving the referral may add the individual's name to the county's internal wait list.

Stat. Auth.: ORS 427 & ORS 430

Stats. Implemented:

### **309-041-1240 Grievance Procedures**

*(Effective 11/16/1992)*

Mediation of grievances. Individuals, legal representatives, family members or advocates may mediate eligibility for, or appropriateness of, services in individual cases per the "Case Management Services for Individuals with Developmental Disabilities and Their Families" rule. (OAR 309-041-0465).

Stat. Auth.: ORS 427 & ORS 430

Stats. Implemented:

### **309-041-1250 Variances**

*(Effective 11/16/1992)*

(1) Criteria for a variance. Variances may be granted to a CMHP if there is a lack of resources to implement the standards required in this rule or if implementation of the proposed alternative services, methods, concepts, or procedures would result in services or systems that meet or exceed the standards in this rule.

(2) Variance Application. The CMHP requesting a variance shall submit, in writing, an application to the Division which contains the following:

- (a) The section of the rule from which a variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, concept, method, or procedure proposed;
- (d) A plan and timetable for compliance with the section of the rule from which a variance is sought; and
- (e) Signed documentation from the CMHP reflecting the justification for the proposed variance.

(3) Office of Developmental Disability Services Review. The assistant Administrator or designee of the Office of Developmental Disability Services shall approve or deny the request for a variance.

(4) Notification. The ODDS shall notify the CMHP within 30 days of the receipt of the request by the DD Office with a copy to other relevant sections of the Division.

(5) Appeal Application. Appeal of the denial of a variance request shall be made in writing to the Administrator of the Division, whose decision shall be final.

(6) Written Approval. The CMHP may implement a variance only after written approval from the Division. The Intergovernmental Agreement shall be amended to the extent that the variance changes terms in that agreement.

Stat. Auth.: ORS 427 & ORS 430

Stats. Implemented: