

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Seniors and People with Disabilities

411

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Agency and Division		Administrative Rules Chapter Number
Christina Hartman	500 Summer Street NE, E-10 Salem, OR 97301-1074	(503) 945-6398

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Rules Coordinator	Address	Telephone
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**RULE CAPTION**

Application and Eligibility Determination for Developmental Disability Services

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 16, 2011	9:30 a.m.	Human Services Building 500 Summer Street NE, Rm. 137AB Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>			

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**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

411-320-0020, 411-320-0080

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.:** ORS 409.050, 410.070, & 430.640

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**Other Auth.:**

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**Stats. Implemented:** ORS 183.415, 427.005, 427.007, & 430.610 – 430.670

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**RULE SUMMARY**

The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 320 relating to the application and eligibility determination process for developmental disability services.

The rules are being amended to:

- Add nurse practitioners to the list of qualified professionals that may diagnose developmental disability conditions;
- Clarify the term "training or support similar to that required by individuals with intellectual disability";
- Include language that is consistent with current practice around making 18-22 year olds who have developmental disabilities other than intellectual disabilities, provisionally eligible up to age 22; and
- Make changes that are considered housekeeping to reflect the Department's rule writing standards.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

**December 21, 2011 at 5 p.m.**

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

**Signed Michael J. Maley, Community and In-Home Services Manager**

**October 20, 2011**

Signature

Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Seniors and People with Disabilities Division 411

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Agency and Division

Administrative Rules Chapter Number

**Application and Eligibility Determination for Developmental Disability Services**

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: **The amendment of 411-320-0020 and 411-320-0080 relating to Community Developmental Disability Programs**

Statutory Authority: **ORS 409.050, 410.070, & 430.640**

Other Authority:

Stats. Implemented: **ORS 183.415, 427.005, 427.007, & 430.610 – 430.670**

Need for the Rule(s):

The Department needs to amend the rules in OAR chapter 411, division 320 relating to the application and eligibility determination process for developmental disability services to:

- Add nurse practitioners to the list of qualified professionals that may diagnose developmental disability conditions as suggested in a petition against the January 1, 2011 eligibility rulemaking. Including nurse practitioners as a qualified professional will eliminate the need for individuals under the care of a nurse practitioner to have to see a Medical Doctor or Doctor of Osteopathy in order to confirm a diagnosis of a developmental disability for eligibility.
- Clarify the term "training or support similar to that required by individuals with intellectual disability" in response to a Final Order received from the Office of Administrative Hearings that ruled the Department may not terminate services for individuals under this section of the rule because the term was not clearly defined by the Department.
- Include language that is consistent with current practice around making 18-22 year olds who have developmental disabilities other than intellectual disabilities, provisionally eligible up to age 22; and
- Make changes that are considered housekeeping to reflect the Department's rule writing standards.

Documents Relied Upon, and where they are available:

1. Nurse Practitioners of Oregon, Petition of Rulemaking, March 22, 2011

Available by request ([christina.hartman@state.or.us](mailto:christina.hartman@state.or.us) or 503-945-6398)

2. Surveys sent to 12 psychologists contracted with the Division of Medical Assistance Programs for input and comments regarding the standards around which they have been using to determine if a person has "training or support similar to that required by individuals with intellectual disability".

*Available by request ([christina.hartman@state.or.us](mailto:christina.hartman@state.or.us) or 503-945-6398)*

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department is not expecting any significant fiscal or economic impact on state agencies, units of local government, clients, providers, or members of the public.

Medical facilities may see a decrease in the number of exams needed for verification of a developmental disability by a Medical Doctor or Doctor of Osteopathy when the individual has a nurse practitioner as their primary medical provider.

Individuals and their families in small rural communities where nurse practitioners are the primary practitioner may realize a small positive fiscal impact because they will not have to pay for additional exams by a physician to diagnose a developmental disability condition. However, it is not possible to estimate the fiscal impact because one does not know who these individuals are or the number of individuals this might impact.

There is no fiscal impact expected for clarifying the term "training or supports required by individuals with intellectual disability". No additional assessments will be required. By relying on already existing assessments of adaptive behavior, the Department will be reflecting the standards that have previously been used by psychologists when determining whether an individual has the same training or support needs as that required by individuals with intellectual disabilities.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Medical facilities may be considered a small business as defined in ORS 183.310. The proposed rulemaking now adds nurse practitioners to the list of qualified professionals that may diagnose developmental disability conditions. This rulemaking will impact medical facilities as they may see a decrease in the number of exams needed for verification of a development disability when the individual has a nurse practitioner as their primary provider. However, in small rural medical facilities where nurse practitioners may be the sole practitioners, they may benefit from additional referrals as families will not have to seek larger medical facilities with physicians.

The Department is unable to estimate how many medical offices would be considered small businesses as defined in ORS 183.310 and how many of those offices would be impacted by the proposed rule change. The Department is unable to estimate a specific fiscal impact because it is unknown how many medical facilities meet the criteria of a small business and would be impacted by the proposed rulemaking. The impact to medical facilities, some of which may be considered small businesses as defined in ORS 183.310, is expected to be very minimal.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None

c. Equipment, supplies, labor and increased administration required for compliance:

None

How were small businesses involved in the development of this rule?

Small businesses were not involved in the development of the proposed rules because the impact to those that would be considered small businesses is so very minimal.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from Disability Rights Oregon, a nurse practitioner (solely for the discussion around adding nurse practitioners as a qualified professional), various Community Developmental Disability Programs (Clackamas, Lane, Marion, Multnomah, Polk), and the Department.

Signed Michael J. Maley, Community and In-Home Services Manager      October 20, 2011

Signature

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-200

**DEPARTMENT OF HUMAN SERVICES  
SENIORS AND PEOPLE WITH DISABILITIES DIVISION  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411  
DIVISION 320**

**COMMUNITY DEVELOPMENTAL DISABILITY PROGRAM**

**411-320-0020 Definitions**

(1) "24-Hour Residential Program" means a comprehensive residential home or facility licensed by the [Division-Department](#) under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child:

(A) As defined in ORS 419B.005; and

(B) Abuse as defined in OAR 407-045-0260, when a child resides in:

(i) Homes or facilities licensed [and certified](#) to provide 24-hour residential services for children with developmental disabilities; or

(ii) Agencies licensed [or-and](#) certified by the [Division Department](#) to provide proctor ~~foster~~ care for children with developmental disabilities.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include but are not limited to adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including but not limited to walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with developmental disabilities.

(b) "Significant impairment" in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the norm including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrative Review" means the formal process that is used by the [Division-Department](#) when an individual or an individual's representative is not satisfied with the decision made by the community developmental disability program or support services brokerage about a complaint involving the provision of services or a service provider.

(~~107~~) "~~Assistant Director~~[Administrator](#)" means the [assistant director](#)[Administrator](#) of the [Division](#)[Department](#), or that person's designee. The term "Administrator" is synonymous with "Assistant Director".

(~~78~~) "Adult" means an individual 18 years or older with developmental disabilities.

| (89) "Advocate" means a person other than paid staff who has been selected by the individual, or by the individual's legal representative, to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

| (910) "Annual Plan" means:

(a) A written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services; or

(b) The written details of the supports, activities, costs, and resources required for a child receiving family support services.

(11) "Care" means supportive services including but not limited to provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. The term "care" is synonymous with "services".

(12) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior, in place of a meaningful behavior or treatment plan.

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities [according to these rules. A CDDP operates in a specific geographic service area of the state operated by or under a contract with the ~~Division~~ Department, or a local mental health authority, or other entity as contracted by the Department.](#)

(16) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department or Oregon Health Authority.

(17) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(18) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(19) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Division-Department alone or in combination with any associated employment or community inclusion program regulated by the Division-Department:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an adult in the individual or family home costing more than the individual cost limit for support services.

(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(20) "County of Origin" means the individual's county of residence, unless a minor, then county of origin means the county where the jurisdiction of the child's guardianship exists.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "Crisis Diversion Services" mean short-term services provided for up to 90 days, or on a one-time basis, directly related to resolving a crisis, and provided to, or on behalf of, an individual eligible to receive crisis services.

(23) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under these rules.

(24) "Current Documentation" means documentation relating to an individual's developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to annual plans, behavior support plans, educational records, medical assessments related to the developmental disability, psychological evaluations, and [assessments of](#) adaptive behavior [assessments](#).

(25) "Department" means the Department of Human Services (DHS). [The term "Department" is synonymous with "Division \(SPD\)".](#)

(26) "Developmental Disability (DD)" means a disability that ~~originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:~~

(a) Originates before the individual reaches the age of 22 years, except that in the case of [mental retardation](#)[intellectual disability](#), the condition ~~must be~~[is](#) manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or ~~must be~~is expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior as diagnosed and measured by a qualified professional; and

(d) Is not primarily attributed to other conditions, including but not limited to mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(27) "DHS Quality Management Strategy" means the Department's Quality Assurance Plan that includes the quality assurance strategies for the ~~Division~~Department ([http://www.oregon.gov/DHS/spd/qa/app\\_h\\_qa.pdf](http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf)).

~~(28) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).~~

~~(2928)~~ "Eligibility Determination" means a decision by a community developmental disability program or by the ~~Division~~Department regarding a person's eligibility for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

~~(3029)~~ "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or ~~Division~~Department to determine developmental disability eligibility.

~~(3130)~~ "Entry" means admission to a ~~Division~~Department-funded developmental disability service provider.

~~(3231)~~ "Exit" means either termination from a ~~Division~~Department-funded developmental disability service provider or transfer from one ~~Division~~Department-funded program to another. Exit does not mean transfer within a service provider's program within a county.

~~(3332)~~ "Family Member" means husband or wife, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-

in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

| (3433) "Founded Reports" means the Department's ~~Children, Adults, and Families Division~~ or Law Enforcement Authority's (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

| (3534) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

| (3635) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

| (3736) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

| (3837) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

| (3938) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

| (4039) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

| (4140) "Incident Report" means a written report of any unusual incident involving an individual.

| (4241) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

| (4342) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

| (4443) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

| (4544) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The [Individual Support Plan|SP](#) is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The [Individual Support Plan|SP](#) is the individual's plan of care for Medicaid purposes.

| (4645) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the [Individual Support Plan|SP](#) or requested by the individual.

| (4746) "Informal Adaptive Behavior Assessment" means:

(a) Observations of the adaptive behavior impairments recorded in the individual's progress notes by a services coordinator or a trained eligibility specialist, with at least two years experience working with individuals with developmental disabilities.

(b) A standardized measurement of adaptive behavior such as a Vineland Adaptive Behavior Scale or Adaptive Behavior Assessment System that is administered and scored by a social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals.

(4847) "Integration" [as defined in ORS 427.005](#) means:

(a) The use by individuals with developmental disabilities of the same community resources ~~that are~~ used by and available to other persons [in the community](#);

(b) Participation [by individuals with developmental disabilities](#) in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities ~~live-reside~~ in homes [or home-like settings](#) that are in proximity to community resources and foster contact with persons in their community.

[\(48\) "Intellectual Disability" means significantly sub-average general intellectual functioning defined as intelligence quotient's \(IQ's\) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional.](#)

(49) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests. [For purposes of making eligibility determinations, intelligence tests do not include brief intelligence measurements.](#)

(50) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for an individual or a person or

agency authorized by the court to make decisions about services for the individual.

(51) "Local Mental Health Authority (LMHA)" means:

- (a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;
- (b) The tribal council in the case of a Native American reservation;
- (c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a community mental health and developmental disability program; or
- (d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the [DivisionDepartment](#).

(52) "Majority Agreement" means for the purpose of entry, exit, transfer, and annual Individual Support Plan ([ISP](#)) team meetings, that no one member of the [Individual Support Plan|SP](#) team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the [Individual Support Plan|SP](#) team for the purpose of reaching majority agreement.

(53) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(54) "Mandatory Reporter" means any public or private official [as defined in OAR 407-045-0260](#) who:

- (a) Comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained

in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 ~~shall not be~~ is not required to report ~~such information communicated by a person~~ if the communication is privileged under ORS 40.225 to 40.295.

(b) While acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. ~~Pursuant to ORS 430.765(2) Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a~~ psychiatrists, psychologists, clergy, ~~and or attorneys are not mandatory reporters with regard to information received through~~ is not required to report if the communications ~~that are~~ is privileged under ORS 40.225 to 40.295.

(55) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(56) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(57) "Mental Retardation" is synonymous with "intellectual disability". ~~means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional. The adaptive behavior must be directly related to mental retardation". Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.~~

(58) "Monitoring" means the periodic review of the implementation of services identified in the Individual Support Plan or annual summary, and the quality of services delivered by other organizations.

(59) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(60) "OIT" means the Department ~~'s of Human Services~~, Office of Investigations and Training.

(61) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.~~intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.~~

(~~6362~~) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(~~6463~~) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(~~6564~~) "Plan of Care" means a written document developed for each individual by the support team using a person-centered approach that describes the supports, services, and resources provided or accessed to address the needs of the individual.

(~~6665~~) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(6766) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(6267) "~~Physical Restraint~~Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement. The term "Protective Physical Intervention" is synonymous with "Physical Restraint".

(68) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(69) "Psychotropic Medication" means medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(70) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD); or

(c) Doctor of osteopathy (DO); or

(d) Nurse Practitioner.

(71) "Region" means a group of Oregon counties defined by the Division Department that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(72) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree shall be delivered more effectively or automatically on a regional basis.

(73) "Respite" means short-term care and supervision provided to an individual on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary care giver.

(74) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(75) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the [DivisionDepartment](#).

(76) "School Aged" means the age at which a child is old enough to attend kindergarten through high school.

(77) "Service Element" means a funding stream to fund program or services including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(78) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the [DivisionDepartment](#), or other

appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

(79) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or [DivisionDepartment](#), who is selected to plan, procure, coordinate, [and](#) monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(80) "State Training Center" means the Eastern Oregon Training Center.

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

(82) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is [flexible and](#) subject to change with time and circumstances.

(83) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with developmental disabilities.

(84) "Support Team" means a group, composed of members as determined by an individual receiving services or the individual's legal guardian, that participates in the development of the individual's plan of care.

(85) "These Rules" mean the rules in OAR chapter 411, division 320.

(86) "Transfer" means movement of an individual from a service site to another service site within a county, administered by the same service provider that has not been addressed within the Individual Support Plan.

(87) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan ([ISP](#)) is developed and approved by the [Individual](#)

[Support Plan|SP](#) team. The transition plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the [Individual Support Plan|SP](#) development.

(88) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(89) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the [Division|Department](#), upon written application by the community developmental disability program.

(90) "Volunteer" means any person providing services without pay to [individuals receiving case management services|support the services provided to an individual](#).

Stat. Auth.: ORS 409.050, 410.070, & 430.640

Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

## **411-320-0080 Application and Eligibility Determination**

(1) APPLICATION. ~~The Division required application for developmental disability services must be used.~~

[\(a\) To apply for developmental disability services, an applicant must use the Department required application and apply in the county of origin as defined in OAR 411-320-0020.](#)

~~(a) All applications must be accepted under the following situations:~~

(A) If the applicant is an adult, they [applicant](#) must be an Oregon resident.

(B) If the applicant is a minor child, the legal guardian and the [minor](#) child must be Oregon residents.

~~(b) The applicant must apply in the county of origin as defined in OAR 411-320-0020.~~

~~(cb) The application applicant must ~~be~~ completed, signed, and dated the application before an eligibility determination ~~can~~ may be made.~~

~~(dc) The date the CDDP receives the completed, signed, and dated application is the date of application for developmental disability services.~~

~~(ed) A new application is required in the following situations:~~

~~(A) Following a closure, denial, or termination if the file has been closed for more than 12 months; or~~

~~(B) The applicant does not meet all application requirements.~~

(2) FINANCIAL STATUS. The CDDP must identify whether the applicant receives any unearned income benefits.

~~(a) The CDDP must refer Adults with no unearned income benefits ~~must be referred~~ to Social Security for a determination of financial eligibility.~~

~~(b) The CDDP must ~~Minor individuals must be~~ referred minor children to Social Security if it is identified that ~~they~~ the minor child may qualify for Social Security benefits.~~

(3) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist who shall act as a designee of the ~~Division~~ Department for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030.

(4) QUALIFIED PROFESSIONAL DIAGNOSIS. For the purpose of this rule, ~~evaluation of information and diagnosis of intellectual disability and developmental disabilities and evaluation information~~ must be completed by ~~a~~ qualified professionals qualified to make a diagnosis of developmental

~~disabilities~~ as defined in OAR 411-320-0020, ~~in accordance with the American Association on Mental Deficiency, 1977.~~

(5) ~~ELIGIBILITY FOR MENTAL RETARDATION~~INTELLECTUAL DISABILITY. (a) A history demonstrating ~~mental retardation~~an intellectual disability, as defined in OAR 411-320-0020, must be in place by the individual's 18th birthday for the individual to receive developmental disability services.

(a) Diagnosing ~~mental retardation~~an intellectual disability is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a qualified professional as described in section (4) of this rule.

(A) For individuals who have consistent IQ results of 65 and under, no assessment of adaptive behavior ~~assessment, as defined in OAR 411-320-0020~~, may be needed if current documentation supports eligibility.

(B) For individuals who have IQ results of 66-75, verification of ~~mental retardation~~an intellectual disability requires an assessment of adaptive behavior ~~assessment as defined in OAR 411-320-0020~~.

(b) The adaptive behavior impairments must be directly related to ~~mental retardation~~an intellectual disability and cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition or impairment must be expected to last indefinitely.

(6) ~~ELIGIBILITY FOR OTHER DEVELOPMENTAL DISABILITIES~~. (a) A history of a developmental disability, as defined in OAR 411-320-0020, ~~other than mental retardation~~ must be in place prior to the individual's 22nd birthday for the individual to receive developmental disability services.

(a) Developmental disabilities include:

(A) Intellectual disability, autism, cerebral palsy, epilepsy; or

(B) Other neurological disabling conditions that require training or support similar to that required by individuals with intellectual disability. For the purpose of this rule, "training or support similar to that required by individuals with intellectual disability" means an individual has a score that is at least two standard deviations below the mean, as measured on a standardized assessment of adaptive behavior administered by a qualified professional, of either one of the domain categories or an overall composite score.

(b) Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairment in adaptive behavior, as defined in OAR 411-320-0020, related to the diagnosis.

(c) IQ scores are not used in verifying the presence of a ~~non-mental retardation~~ developmental disability. ~~Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairment in adaptive behavior, as defined in OAR 411-320-0020, related to the diagnosis.~~

(bd) The adaptive behavior impairments must be directly related to the developmental disability and cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(ee) The condition or impairment must be expected to last indefinitely.

(7) PROVISIONAL ELIGIBILITY. Provisional eligibility may change in the future when new information is obtained.

(a) Eligibility for children is always provisional.

(b) Eligibility for adults between the ages of 18 and 22 that have a developmental disability other than an intellectual disability may be provisional.

(78) ELIGIBILITY FOR CHILDREN. ~~Eligibility for children is always provisional. This means eligibility may change in the future when new information is obtained.~~ Eligibility documentation for children must be no more than three years old.

(a) Eligibility for children under 7 years of age must include:

(A) Standardized testing by a qualified professional or master's level trained early intervention evaluation specialist that demonstrates at least two standard deviations below the norm in two or more areas of adaptive behavior including but not limited to:

- (i) Self-care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; OR

(B) A medical statement by a licensed medical practitioner ~~of~~ confirming a neurological condition or syndrome that originates in and directly affects the brain and causes or is likely to cause significant impairment in at least two or more areas of adaptive behavior including but not limited to:

- (i) Self-care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction.

(C) The condition or syndrome cannot be primarily attributed to other conditions, including but not limited to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(D) The condition or impairment must be expected to last indefinitely.

(b) Eligibility for school aged children.

(A) Eligibility for school aged children must include:

(i) School age documents that are no more than three years old.

(ii) Documentation of ~~mental retardation~~ an intellectual disability as described in section (5) of this rule; or

(iii) A diagnosis and documentation of a developmental disability as described in section (6) of this rule.

(B) School aged eligibility may be completed on individuals:

(i) Who are at least 5 years old and who have had school aged testing completed;

(ii) Up to age 18 for individuals who are provisionally eligible based on a condition of ~~mental retardation~~ an intellectual disability; or

(iii) Up to age 22 for individuals who are provisionally eligible based on a condition of a developmental disability other than ~~mental retardation~~ an intellectual disability.

(89) ELIGIBILITY FOR ADULTS.

(a) Eligibility for adults must include:

(dA) A diagnosis and documentation of a developmental disability as described in section (6) of this rule; or

(eB) Documentation of mental retardation an intellectual disability as described in section (5) of this rule. Adult intellectual functioning assessments are not needed if the individual has:

(Ai) Consistent IQ results of 65 or less;

(Bii) Significant impairments in Functioning adaptive behavior that is directly related to mental retardation an intellectual disability; and

(Ciii) Current documentation that supports eligibility; OR,

(b) The documentation of a developmental disability or intellectual disability must be:

(aA) Documents that are nBased on information no more than three years old for individuals under 21 years of age; or

(bB) Documents bBased on information obtained after the individual's 17th birthday, for individuals 21 years of age and older.

(910) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

(a) In the absence of sufficient data during the developmental years, current data may be used if:

(A) There is no evidence of head trauma;

(B) There is no evidence or history of significant mental or emotional disorder; or

(C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the individual's functioning may be impacted by the identified condition must be obtained in order

to determine if the individual's significant impairment in adaptive behavior is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(4011) REDETERMINATION OF ELIGIBILITY.

(a) The CDDP must notify the individual or the individual's [legal representative](#) anytime that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(b) Eligibility for school age children must be redetermined no later than age 7.

(c) Eligibility for adults must be redetermined by age 18 for [mental retardation](#) and [an intellectual disability](#) and by age 22 for developmental disabilities other than [mental retardation](#) and [an intellectual disability](#).

(d) Any time there is evidence that contradicts the eligibility determination, the [Division-Department](#) or [its-the Department's](#) designee may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(e) Eligibility must be redetermined using the criteria established in this rule.

(A) IQ testing, completed within the last three years, is not needed if the individual has:

(i) Consistent IQ results of 65 or less;

(ii) [Functioning Significant impairments in adaptive behavior that](#) continues to be directly related to [mental retardation](#) and [an intellectual disability](#); and

(iii) Current documentation continues to support eligibility.

(B) A current medical or clinical diagnosis of a developmental disability may not be needed if:

(i) There is documentation of a developmental disability by a qualified professional, as defined in OAR 411-320-0020;

(ii) ~~Functioning~~Significant impairments in adaptive behavior that continues to be directly related to the developmental disability; and

(iii) Current documentation continues to support eligibility.

(C) An informal adaptive behavior assessment, as defined in OAR 411-320-0020, may be completed if all of the following apply:

(i) An assessment of adaptive behavior ~~assessment~~ is required in order to redetermine eligibility;

(ii) An assessment of adaptive behavior ~~assessment~~ has already been completed by a qualified professional; and

(iii) The individual has obvious significant ~~adaptive~~ impairments in adaptive behavior.

#### (~~4112~~) SECURING EVALUATIONS.

(a) In the event that the services coordinator has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the ~~Division-Department~~ or its-the Department's designee shall assist in obtaining additional testing if required to complete the eligibility determination.

(b) In the event there is evidence that contradicts the information that an eligibility determination was based upon, the ~~Division-Department~~ or its-the Department's designee, may obtain additional information including securing an additional evaluation for clarification purposes.

(4213) PROCESSING ELIGIBILITY DETERMINATION. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP shall work in collaboration with the individual to gather historical records related to the individual's developmental disability.

(b) The CDDP must process eligibility for developmental disability services in the following time frames.

(A) The CDDP must complete an eligibility determination and issue a Notice of Eligibility Determination within 90 calendar days of the date that the application for services is received by the CDDP, except in the following circumstances:

(i) The CDDP may not make an eligibility determination because the individual or the individual's [legal](#) representative fails to complete an action;

(ii) There is an emergency beyond the CDDP's control; or

(iii) More time is needed to obtain additional records by the CDDP, the individual, or the individual's [legal](#) representative.

(B) The process of making an eligibility determination may be extended up to 90 calendar days by mutual agreement among all parties. Mutual agreement may be in verbal or written form. The CDDP must document in the individual's record the reason for the delay and type of contact made to verify the individual's agreement to an extension.

(c) The CDDP must make an eligibility determination unless the following applies and is documented in the individual's progress notes:

(A) The individual or the individual's [legal](#) representative voluntarily withdraws the individual's application;

(B) The individual dies; or

(C) The individual cannot be located.

(d) The CDDP may not use the time frames established in subsection (b) of this section as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(4314) NOTICE OF ELIGIBILITY DETERMINATION. The CDDP, based upon a review of the documentation used to determine eligibility, must issue a written Notice of Eligibility Determination to the individual and to the individual's legal representative.

(a) The Notice of Eligibility Determination must be sent or hand delivered within:

(A) Ten working days of making an eligibility redetermination.

(B) Ten working days of making an eligibility determination or 90 calendar days of receiving an application for services, whichever comes first.

(b) The notice must be on forms prescribed by the DivisionDepartment. The notice must include:

(A) The specific date the notice is mailed or hand delivered;

(B) The effective date of any action proposed;

(C) The eligibility determination;

(D) The rationale for the eligibility determination, including what reports, documents, or other information that were relied upon in making the eligibility determination;

(E) The specific rules that were used in making the eligibility determination;

(F) Notification that the documents relied upon may be reviewed by the individual or the individual's legal representative; and

(G) Notification that if the individual or the individual's representative, as defined in OAR 411-320-0175, disagrees with the Division's Department's eligibility determination, the individual or the individual's representative has the right to request a hearing on the individual's behalf, as provided in ORS chapter 183 and OAR 411-320-0175 including:

(i) The timeline for requesting a hearing;

(ii) Where and how to request a hearing;

(iii) The right to receive assistance from the CDDP in completing and submitting a request for hearing; and

(iv) The individual's right to receive continuing services at the same level during the hearing and at the request of the individual including:

(I) Notification of the time frame within which the individual must request continuing services;

(II) Notification of how and where the individual must submit a request for continuing services; and

(III) Notification that the individual may be required to repay the state for any services received during the hearing process if the determination of ineligibility is upheld in a final order.

(1415) REQUESTING A HEARING. An individual or an individual's representative, as defined in OAR 411-320-0175, may request a hearing as described in OAR 411-320-0175 if they disagree with the eligibility determination or redetermination made by the CDDP. The request for a hearing must be made by completing the DD Administrative Hearing Request (SDS 0443DD) within the timeframe identified on the Notice of Eligibility Determination.

(1516) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another.

(a) The receiving CDDP must notify the individual, on forms prescribed by the [DivisionDepartment](#), that a transfer of services to a new CDDP has taken place;

(b) The receiving CDDP must continue services for the individual as soon as it is determined that the individual is residing in the county of the receiving CDDP; and

(c) The receiving CDDP has verification of developmental disability eligibility in the form of a:

(A) Statement of an eligibility determination;

(B) Notification of eligibility determination;

(C) Evaluations and assessments supporting eligibility; or

(D) In the event that the items in subsection (c)(A-C) above cannot be located, written documentation from the sending CDDP verifying eligibility and enrollment in developmental disability services may be used. This may include documentation from the [Division's Department's](#) electronic payment system.

(d) If the receiving CDDP receives information that suggests the individual is not eligible for developmental disability services, the CDDP that determined the individual was eligible for developmental disability services may be responsible for the services authorized on the basis of that eligibility determination.

(e) If an individual submits an application for developmental disability services and discloses that they have previously received developmental disability services in another CDDP, and the termination of case management services as described in OAR 411-320-0100(3) occurred within the past 12 months, the eligibility

determination from the other CDDP shall transfer as outlined in this section of the rule.

Stat. Auth.: ORS 409.050, 410.070, & 430.640

Stats. Implemented: ORS 183.415, 427.005, 427.007, & 430.610 – 430.670