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

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

Rules Coordinator Address Telephone
RULE CAPTION
Program Services Rule Revisions to Implement OAR Chapter 411, Division 323 (Developmental Disability Certification and Endorsement)
Not more than 15 words that reasonably identifies the subject matter of the agency’s intended action.

December 16, 2011 10:30 a.m. Human Services Building Staff
500 Summer Street NE, Rms. 137AB
Salem, Oregon 97301

Hearing Date Time Location Hearings Officer
Auxiliary aids for persons with disabilities are available upon advance request.

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

ADOPT:
411-323-0035, 411-325-0025

AMEND:
411-325-0150, 411-325-0320, 411-325-0430, 411-325-0460, 411-328-0560,
411-328-0570, 411-328-0620, 411-328-0630, 411-328-0740, 411-335-0010,
411-335-0020, 411-335-0030, 411-335-0060, 411-335-0120, 411-335-0230,
411-335-0310, 411-345-0010, 411-345-0020, 411-345-0030, 411-345-0050,

REPEAL:
411-325-0450, 411-328-0580, 411-328-0590, 411-328-0600, 411-328-0610,
411-328-0670, 411-328-0730, 411-328-0805, 411-328-0810, 411-328-0820,
411-328-0830, 411-335-0050, 411-335-0070, 411-335-0080, 411-335-0090,
411-335-0100, 411-335-0110, 411-335-0140, 411-335-0300, 411-335-0370,
411-335-0380, 411-335-0390, 411-345-0080 and temporary rules
411-323-0010(T), 411-323-0020(T), 411-323-0030(T), 411-323-0035(T),
411-323-0040(T), 411-323-0050(T), 411-323-0060(T), 411-323-0070(T),
411-325-0020(T), 411-325-0025(T), 411-325-0060(T), 411-325-0320(T),
411-325-0460(T), 411-328-0560(T), 411-328-0570(T), 411-328-0630(T),
411-328-0740(T), 411-335-0010(T), 411-335-0020(T), 411-335-0030(T),
411-335-0060(T), 411-335-0310(T), 411-345-0010(T), 411-345-0020(T),
411-345-0030(T), 411-345-0050(T), 411-345-0100(T), 411-345-0110(T),
411-345-0130(T), 411-345-0190(T)

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 409.050 & 410.070
Other Auth.: 
Stats. Implemented: ORS 409.050 & 410.070

RULE SUMMARY

The Department of Human Services (Department) is proposing to permanently update the following rules:

- OAR chapter 411, division 323 (Developmental Disability Certification and Endorsement);
- OAR chapter 411, division 325 (24-Hour Residential Services);
- OAR chapter 411, division 328 (Supported Living Services);
- OAR chapter 411, division 335 (Proctor Care Residential Services); and
- OAR chapter 411, division 345 (Employment and Alternatives to Employment Services).

The proposed rulemaking permanently updates the rules to implement the July 1, 2011 adoption of the certification and endorsement rules; further prescribes standards, responsibilities, and procedures for endorsement; and centralizes many of the program management requirements that were previously reflected in specific program rules. The program rules continue to exist but focus on rules specific to the operation of the respective service.

To reflect current Department practice and standards, the proposed rulemaking also updates:

- The 24-hour residential services rules to remove mid-cycle reviews (OAR 411-325-0080) and clarify when first aid kits must be locked (OAR 411-325-0150);
• The supported living services rules to remove the requirement of the findings of a TB test within two weeks of an individuals entry (OAR 411-328-0630);
• The proctor care residential services rules to remove mid-cycle reviews (OAR 411-335-0110);
• The employment and alternatives to employment services rules to include a definition for Individual Support Plan (ISP) as it was inadvertently left out in a previous rulemaking (OAR 411-345-0020); and
• The ISP rules in 24-hour residential services (411-325-0430) and proctor care residential services (411-335-0230) to streamline the ISP process by removing the requirement that an ISP team meet face-to-face 45 days prior to an ISP meeting. Even though the 45 day requirement is being removed, the ISP team is still expected to have conversations, although not face-to-face, and collect and summarize the information required by rule prior to the ISP meeting.

These rules changes are being made in response to the Department's transformation efforts and the need to generally streamline operations in order to meet and address current and future budget needs.

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 Mary Lee Fay, Developmental Disability Services Administrator November 3, 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

Program Services Rule Revisions to Implement OAR Chapter 411, Division 323
(Developmental Disability Certification and Endorsement)

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


Statutory Authority: ORS 409.050 & 410.070

Other Authority:

Stats. Implemented: ORS 409.050 & 410.070
Need for the Rule(s):
To avoid conflict and duplication, the Department needs to permanently update various rules to be consistent with the developmental disability certification and endorsement rules in OAR chapter 411, division 323 that were adopted on July 1, 2011. The proposed rulemaking further prescribes standards, responsibilities, and procedures for endorsement and centralizes many of the program management requirements that were previously reflected in specific program rules.

In addition, the Department needs to update various program rules to streamline processes and reflect current practice and standards.

Documents Relied Upon, and where they are available:

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's proposal to permanently update the program services rules to be consistent and avoid conflict and duplication with the developmental disability certification and endorsement rules in OAR chapter 411, division 323 that were adopted on July 1, 2011 and to further prescribe standards, responsibilities, and procedures for endorsement and centralize many of the program management requirements is expected to have no negative fiscal or economic impact to state agencies, the Department, units of local government, Community Developmental Disability Programs (CDDPs), clients, providers, or members of the public. These rule changes are being made in response to the Department's transformation efforts and are expected to streamline operations which may create a cost savings for the Department, CDDPs, and providers.

The proposed changes made to specific program services rules to reflect current Department practice and standards are expected to have no fiscal or economic impact to state agencies, the Department, units of local government, CDDPs, and clients. Clients should notice no change in services and there should be no cost to clients.

The Department's proposal to streamline the ISP process by removing the requirement that an ISP team meet face-to-face 45 days prior to an ISP meeting for those in 24-hour and proctor care residential services is expected to have no fiscal impact. While CDDP services coordinators and providers may see a decrease in travel requirements by not having to meet face-to-face, the workload is expected to remain the same since the ISP team is still expected to have conversations and collect and summarize the information required by the rule prior to the ISP meeting.
The following may result in a decrease in workload and in some instances a cost savings for providers.

- The removal of the requirement of the findings of a TB test within two weeks of an individual's entry into supported living services; and
- The removal of the mid-cycle reviews in 24-hour and proctor care residential services.

The Department is unable to provide a monetary fiscal or economic impact.

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:
   The proposed rules impact approximately 130 agencies that contract to provide Medicaid developmental disability services in Oregon. Some of the agencies meet the definition of a small business as defined in ORS 183.310.

   b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
   The impact for providers is described above.

   c. Equipment, supplies, labor and increased administration required for compliance:
   The impact for providers is described above.

How were small businesses involved in the development of this rule?
Small businesses as defined in ORS 183.310 were active participants in the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?:
Yes. The Rule Advisory Committee included representation from Partnerships in Community Living, Alternative Services Oregon, Association of Oregon Counties, CDDPs, Danville Services, Department of Justice, Opportunity Connections, Oregon Developmental Disability Council, Oregon Rehabilitation Association, and the Department.

Signed Mary Lee Fay, Developmental Disability Services Administrator November 3, 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 323

DEVELOPMENTAL DISABILITY CERTIFICATION AND ENDORSEMENT

411-323-0010 Statement of Purpose

(1) These rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain: (1) Certification and a Medicaid agency identification number, a certificate and endorsement in order to provide the following person-centered services to individuals with developmental disabilities. (2) Endorsements to provide the following services:

(a) 24-hour residential as described in OAR chapter 411, division 325;

(b) Supported living as described in OAR chapter 411, division 328;

(c) Proctor care as described in OAR chapter 411, division 335; or

(d) Employment and alternatives to employment as described in OAR chapter 411, division 345.

(2) To provide person-centered services to individuals with developmental disabilities, agencies must have:

(a) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;

(b) Endorsement for each program service provided as described in OAR 411-323-0035;

(c) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and
(d) For each licensed site or geographic location where direct services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070

411-323-0020 Definitions

(1) "Abuse" means:

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

- (ab) Abuse of a child
  - (A) As defined in ORS 419B.005;
  - (B) for the purposes of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260, when a child resides in:
    - (i) Homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities; or
    - (ii) Agencies certified by the Department to provide proctor care for children with developmental disabilities.

(2) "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 in OAR 407-045-0310.

(3) "Administrator" means the Administrator of the Division's Department Office of Licensing and Quality of Care, or that person's designee.

(4) "Adult" means an individual 18 years or older with developmental disabilities.
(5) "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.

(6) "Agency" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department or other appropriate Divisions to provide these services. For the purposes of these rules, "provider", "service provider", "program", "applicant", or "licensee" is synonymous with "agency".

(7) "Appeal" means the process under ORS chapter 183 that the certified agency may use to petition conditions or the suspension, denial, or revocation of their application, certificate, or application endorsement.

(8) "Applicant" means a person, agency, corporation, or governmental unit, who applies for certification to operate an agency providing services to individuals with developmental disabilities.

(9) "Assessment" means an evaluation of an individual's needs.

(10) "Audit" means a review completed by a Certified Public Accountant using standards and accepted practices of accounting activities to ensure all state and federal funds are expended for the purpose the funds were contracted and intended for without fraudulent activity.

(11) "Board of Directors" means a group of persons formed to set policy and give directions to an agency designed to provide services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(12) "Certificate" means a document issued by the Division-Department to an agency that certifies the agency is eligible to receive state funds for the provision of endorsed program services and identifies the authorized endorsements.

(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 is 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 OAR chapter 411, division 320. 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) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(17) "Condition" means a provision attached to:

(a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency.

(b) A new or existing endorsement that limits or restricts the scope of program services or imposes additional requirements on the certified agency.

(18) "Denial" means the refusal of the Division-Department to issue:

(a) A certificate to operate an agency because the Division Department has determined the agency is not in compliance with one or more of these rules or the corresponding program services rules.

(b) An endorsement to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program services rules.

(19) "Department" means the Department of Human Services (DHS).
(20) "Developmental Disability" 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 as described in OAR 411-320-0080. 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.

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

(221) "Endorsement" means authorization to provide program services issued by the Division-Department to an certified agency that has met the qualification criteria outlined in these rules and the corresponding program services rules allowing the agency to provide program services.

(232) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the agency's services for individuals.

(2423) "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.

(2524) "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.

(2625) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(2726) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(2827) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are
delivered, and the frequency of provided supports are included in the ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(2928) "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 ISP.

(3029) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with developmental disabilities of the same community resources 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.

(3430) "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 the individual or a person or agency authorized by the court to make decisions about services for the individual.

(3231) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who:

(a) For the purpose of these rules, is a staff or volunteer working with individuals birth to 17 years of age, and who 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 of this rule, OAR 411-323-0020, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) For the purpose of these rules, is a staff or volunteer working with adults eighteen years and older, and who, 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 of this rule, OAR 411-323-0020, except that a psychiatrists, psychologists, clergy, and or attorneys are not mandatory reporters with regard to information received throughs not required to report if the communications that are is privileged under ORS 40.225 to 40.295.

(3332) "Medicaid Agency Identification Number" means the Medicaid identification number assigned by the Department to an agency following the agency’s enrollment as described in OAR chapter 411, division 370. once the Division has determined the agency meets the qualification criteria outlined in these rules.

(3433) "Medicaid Performing Provider Number" means the Medicaid identification number assigned to an agency-entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments, for each licensed site or geographic location where program services are delivered once the Division has determined the agency meets the qualification criteria outlined in these rules for endorsement.
"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 protective physical intervention techniques that are used to maintain health and safety, to 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.

"Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. Person with an ownership or control interest means a person or corporation that:

- Has an ownership interest totaling 5 percent or more in a disclosing entity;
- Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;
- Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;
- Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing agency if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;
- Is an officer or director of a disclosing agency that is organized as a corporation; or
- Is a partner in a disclosing entity that is organized as a partnership.

"Person-Centered Planning" means:

- A process, either formal or informal, for gathering and organizing information that helps an individual:
(aA) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(bB) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(cC) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(db) The methods for gathering information vary, but all are consistent with individual needs and preferences ranging from simple interviews with the individual, to informal observations in home and community settings, to formally structured meetings.

(38) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(39) "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.

(40) "Program Services" means, for the purpose of these rules, the services described in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(bb) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities; and

(bc) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and
(dd) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(39) "Program Services Rules" mean, for the purpose of these rules, the rules in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(40) "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.

(41) "Protective Physical Intervention (PPI)" means any manual physical holding of, or contact with, an individual that restricts the individual's freedom of movement.

(42) "Revocation" means the action taken by the Division-Department to rescind:

(a) an agency certificate after the Division-Department has determined that the agency is not in compliance with these rules or the rules for the program services endorsed by the Division-corresponding program services rules.

(b) An endorsement for an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program services rules.
(4443) "Care Services" 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. Care Services also includes being aware of the individual's general whereabouts at all times and monitoring the activities of the individual while on the premises of the residence to ensure the individual's health, safety, and welfare. The term "care services" is synonymous with "services care".

(4344) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division Department, who is selected to plan, procure, coordinate, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(4445) "Staff" means all paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds subcontracted with the community developmental disability program or contracted directly through the Division Department.

(4546) "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.

(4647) "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.

(4748) "Suspension" means an immediate temporary withdrawal of the:

(a) approval Certificate to operate an agency after the Division Department determines that the agency is not in compliance with these rules or the rules for the program services endorsed by the Division corresponding program services rules.

(b) Endorsement to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program services rules.
"These Rules" mean the rules in OAR chapter 411, division 323.

"Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons:

(a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

(b) A background check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

"Variance" means a temporary exception from a regulation or provision of these rules or the rules for the program services endorsed by the Division program services rules that may be granted by the Division Department upon written application by the agency.

"Volunteer" means any person assisting in an agency without pay to support the care services provided to an individuals residing in the home or facility.

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070

411-323-0030 Certification and Endorsement

(1) CERTIFICATION. (a) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 shall establish, conduct, maintain, manage, or operate an agency without being certified by the Division Department under these rules.

(ba) Certificates are not transferable or applicable to any location, home or facility, agency, management agent, or ownership other than that indicated on the application and certificate.

(cb) The Division Department shall issue or renew a certificate to an applicant-agency found to be in compliance with these rules and the
The certificate shall be in effect for five years from the date issued unless revoked or suspended.

(d) If an applicant agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Division-Department may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(e) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of certification.

(f) The Division-Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(f) The Department shall conduct a review of the agency prior to the issuance or renewal of a certificate.

(g) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Division that the applicant is in compliance with these rules.

(2) CURRENT AGENCY CERTIFICATION/ENDORSEMENT.

(a) All agencies providing program services as of July 1, 2011 shall be issued a certificate that expires in five years unless sooner revoked or suspended. The certificate includes endorsements for the following program services:

(a) 24-hour residential as described in OAR chapter 411, division 325;

(b) Supported living as described in OAR chapter 411, division 328;

(c) Proctor care as described in OAR chapter 411, division 335; or
(d) Employment and alternatives to employment as described in OAR chapter 411, division 345.

(b) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential care facilities for mentally or emotionally disturbed persons, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional certification as an agency under these rules to provide program services. Current license or certification may be considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to ISPs; and

(C) Develop and implement operating policies and procedures required for managing an agency and delivering services, including provisions for safeguarding individuals receiving services.

(3) INITIAL CERTIFICATION. Notwithstanding OAR 411-323-0030(2) of this rule, an agency applicant intending to provide program services as defined in OAR 411-323-0020 requiring certification must apply for an initial certificate and demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules and the corresponding program services rules and for a certificate renewal except as set forth in section (2) of this rule.

(a) INITIAL APPLICATION.

(Aa) The applicant must submit an application to the Department at least 30-90 days prior to anticipated certification. The completed application must be on a form provided by the Department and must include all information requested by the Department.
(Bb) At a minimum, the applicant requesting certification as an agency must provide the agency's business plan. At a minimum, the agency’s business plan must include:

(iA) A copy of any management agreements or contracts, relative to the operation and ownership of the agency;

(iiB) A financial plan that includes:

(iii) If an existing agency, the last two years of financial audits as defined in OAR 411-323-0020, as directed by the Office of Management and Budget circular A-133, completed by an outside firm; or

(iiij) If applying as a new firm, financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance.

(iiiC) As required by 42 CFR, 455.104, the names, dates of birth, and social security numbers of those currently serving as the agency's Board of Directors and as changes are made.

(Gc) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for those each program services as described in OAR 411-323-0035.

(Dd) The applicant must demonstrate proof of liability and operational insurance coverage as described in subsection (b) of this section. (b) LIABILITY AND OPERATIONAL INSURANCE COVERAGE.

(A) At a minimum, the agency must demonstrate proof, at the agency's expense, and maintain in effect with respect to all occurrences taking place during the certification period, liability and operational insurance as described in the agency's contract with the Department, including automobile liability.
insurance, comprehensive or commercial general liability insurance, and workers' compensation coverage if required.

(i) Automobile liability insurance with a combined single limit per occurrence of not less than $500,000.

(ii) Comprehensive or commercial general liability insurance covering bodily injury and property damage including personal injury coverage and contractual liability coverage for the agency. The combined single limit per occurrence may not be less than $500,000 or the equivalent. Each annual aggregate limit may not be less than $500,000 when applicable.

(B) The agency, the agency's subcontractors if any, and all employers providing work, labor, or materials under the agency are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers including employers' liability insurance with coverage limits of not less than $100,000 each accident. Agencies who perform the work without the assistance of labor or any employee need not obtain such coverage.

(CB) The agency must name the State of Oregon, Department of Human Services, and their the Department's divisions, officers, and employees as additional insured's on any insurance policies required by these rules their contract with respect to agency activities being performed under the agency's certification. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(DC) The agency must forward to the Division certificates of insurance indicating coverage to the Department as required by this rule prior to certification.

(ED) In the event of unilateral cancellation or restriction by the agency's insurance company of any insurance coverage required by this rule their contract, the agency must immediately
notify the Division of the cancellation or restriction and must confirm the oral notification in writing within three days of notification by the insurance company to the agency.

(e4) CERTIFICATE RENEWAL.

(a) To renew a certificate, the agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the agency’s existing certificate. The completed application must be on a form provided by the Department and must include all information requested by the Department. At a minimum, the agency must provide:

(i) A copy of any management agreements or contracts, relative to the operation and ownership of the agency;

(ii) A financial plan that includes the last two years of financial audits as defined in OAR 411-323-0020;

(iii) As required by 42 CFR, 455.104, the names, dates of birth, and social security numbers of those currently serving as the agency’s Board of Directors and as changes are made.

(B) Develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035.

(C) Demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program services rules.

(D) Demonstrate proof of liability and operational insurance coverage as described in OAR 411-323-0030(3)(d) of this rule.

(A) The Division shall conduct a certification review of the agency prior to the renewal of the certificate. The review shall be conducted 30 to 120 days prior to expiration of the certificate.
(Bb) An application for renewal filed with the Division Department before the date of expiration extends the effective date of the existing certificate until the Division Department takes action upon the application for renewal.

(Cc) If the renewal application is not submitted to the Department prior to the expiration date, the agency shall be treated as a non-certified Medicaid agency subject to termination of their Medicaid Agency Identification Number.

(D) The Division may not renew a certificate if the agency is not in substantial compliance with these rules.

(E) Renewal of endorsements for program services is contingent upon the successful renewal of the agency's certificate.

(5) FINANCIAL AUDITS. Agencies certified and endorsed to provide program services must submit financial audits to the Department within 90 days of the end of the fiscal year.

(46) CERTIFICATE EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency shall expire five years following the date of issuance.

(57) CERTIFICATE TERMINATION. The certificate shall automatically terminate on the date agency operation is discontinued or if there is a change in ownership.

(68) RETURN OF CERTIFICATE. The certificate must be returned to the Division Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(79) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The agency must notify the Division Department in writing of any pending change in the agency’s ownership or legal entity, legal status, or management corporation.
(b) A new certificate shall be required upon change in an agency’s ownership or legal entity, legal status, or management corporation. The agency must submit a certificate application as described in OAR 411-323-0030(3) of this rule, to the Department at least 30 days prior to change in ownership or legal entity, legal status, or management corporation.

(8) ENDORSEMENT.

(a) To provide program services, an agency must have:

(A) A certificate to provide Medicaid services in the state of Oregon;

(B) A Medicaid agency identification number;

(C) Approved endorsement for the program services; and

(D) A Medicaid performing provider number for each licensed site or geographic location where direct services shall be delivered.

(b) The applicant must comply with the corresponding program services rules for the Division to endorse the program services.

(10) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on a certificate includes one or more of the following actions:

(a) Conditions;

(b) Denial, revocation, or refusal to renew a certificate; or

(c) Immediate suspension of a certificate.

(911) CERTIFICATE CONDITIONS.

(a) The Division-Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency.
The type of condition attached to a certificate shall directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, and safety, or welfare of individuals;

(B) A threat to the health, safety, and or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program services rules.

(b) Conditions that the Division-Department may impose on a certificate include but are not limited to:

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number and support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Reclassifying the level of individuals that may be served or the support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare.
(FG) Requiring additional documentation; or

(GH) Restricting admissions.

(c) NOTICE OF CERTIFICATE CONDITIONS. The Division Department shall notify the agency in writing of any conditions imposed, and the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department. The agency shall be given an opportunity to request a hearing as described in section (13) of this rule.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrative review as described in OAR 411-323-0030(14) of this rule. The administrative review does not diminish an agency's right to a hearing.

(de) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied. Conditions may be imposed for the extent of the certification period or limited to some other shorter period of time. If the condition corresponds to the certifying period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until the expiration date of the condition indicated on the notice.

(4012) CERTIFICATE DENIAL, SUSPENSION, REFUSAL TO RENEW, OR REVOCATION, OR REFUSAL TO RENEW.
(a) The Division-Department may deny, revoke, or refuse to renew, or revoke a certificate when the Division-Department finds the agency, or any person holding 5 percent or greater ownership interest in the agency:

(aA) Demonstrates substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(bB) Has demonstrated a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized;

(cC) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(dD) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(eE) Falsifies information required by the Division-Department to be maintained or submitted regarding care of individuals, individual services, employment and alternatives to employment, program services finances, or individuals' funds; or

(fF) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare;

(gG) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(44b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of the certificate following a Division-Department finding that there is a substantial failure to comply with these rules or the corresponding program services rules.
such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section OAR 411-323-0030(12)(10a) of this rule has occurred, the Division may issue a notice of certificate revocation, denial, or refusal to renew.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Division of denial, refusal to renew, or revocation of the certificate.

(A) DENIAL. The applicant must request a hearing within 60 days of receipt of the Department’s written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days of receipt of the Department’s written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding OAR 411-232-0030(12)(c)(C)(ii) of this section, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0030(14) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of revocation.

(4213) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Division finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Division may, by written
notice to the certificate holder agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operation.

(13b) HEARING. An applicant for a certificate or a certificate holder, as applicable, The agency may request a contested case hearing in accordance with ORS chapter 183, and this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Division Department of imposition of conditions, denial or refusal to renew a certificate, or the immediate suspension or revocation of the certificate.

(a) DENIAL. The applicant must request a hearing within 60 days of receipt of the Division's written notice of denial.

(b) REFUSAL TO RENEW. The certificate holder must request a hearing within 60 days of receipt of the Division's written notice of refusal to renew.

(eA) SUSPENSION, REVOCATION, AND CERTIFICATE CONDITIONS. Notwithstanding subsection OAR 411-323-0030 (13)(b)(dB) below of this section, the certificate holder agency must request a hearing within 21 days of receipt of the Division's Department's written notice of suspension, revocation, or certificate conditions. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0030(14) of this rule. The administrative review does not diminish the agency's right to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of suspension.

(d14) ADMINISTRATIVE REVIEW.

(a) Notwithstanding OAR 411-323-0030(14)(b) of this section, In the case of a notice of suspension or imposition of conditions where a
condition is to be effective prior to a hearing, the certificate holder the agency, in addition to the right to a contested case hearing, may request an administrative review by the Division's Department's Administrator or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, may request an administrative review for imposition of conditions.

(Ac) The request for administrative review must be received by the Division Department within 10 days from the date of the Division's Department's notice of suspension, revocation, or imposition of conditions. The certificate holder agency may submit, along with the request for administrative review, any additional written materials the certificate holder agency wishes to have considered during the administrative review.

(Bd) The Division Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by a certificate holder the agency.

(Ce) If the decision of the Division Department is to affirm the suspension, revocation, or condition, the certificate holder agency, notwithstanding OAR 411-323-0030(14)(b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Division Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(e15) INFORMAL CONFERENCE. After the Division Department has received a request for hearing, the Division Department shall offer the applicant or certificate holder the agency an opportunity for an informal conference unless an administrative review has been completed as described in subsection OAR 411-323-0030(d13) of this section rule.

Stat. Auth. ORS 409.050 & 410.070
411-323-0035 Endorsement

(1) ENDORSEMENT REQUIRED. No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 shall establish, conduct, maintain, manage, or operate program services without being endorsed by the Department under these rules.

(a) Endorsements are not transferable or applicable to any other program services. Separate endorsements are required for each program service provided. A certified agency intending to provide additional program services once initial endorsement has been issued must apply for the additional endorsement as described in OAR 411-323-0035(3) of this rule.

(b) The agency must report each geographic location where program services are provided to the Department and to the corresponding CDDP of the geographic location as described in this rule.

(c) The Department shall issue or renew an endorsement to a certified agency found to be in compliance with these rules and the corresponding program services rules. The effective date of each endorsement shall correspond with the effective date of the agency’s certification unless sooner revoked or suspended.

(d) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement for program services.

(e) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of endorsement.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.
(g) The Department shall conduct a review of the agency prior to the issuance or renewal of an endorsement.

(2) CURRENT AGENCY ENDORSEMENT.

(a) All agencies providing program services as of July 1, 2011 shall be endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(b) Agencies intending to provide additional program services after July 1, 2011 must apply for endorsement as described in OAR 411-323-0035(3) of this rule.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential care facilities for mentally or emotionally disturbed persons, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional endorsement as an agency under these rules to provide program services.

(3) INITIAL ENDORSEMENT.

(a) Notwithstanding OAR 411-323-0035(2) of this rule, a certified agency intending to provide program services as defined in OAR 411-323-0020 must apply for initial endorsement and demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program services rules.

(b) The certified agency must submit an application to the Department at least 90 days prior to providing program services that identifies the program services that the agency intends to provide and all geographic locations where program services shall be provided.

(A) The completed application must be on a form provided by the Department and must include all information requested by the Department.
(B) Each licensed site or geographic location where direct services shall be delivered must be assigned a Medicaid Performing Provider Number by the Department as described in OAR chapter 411, division 370.

(4) ENDORSEMENT RENEWAL.

(a) To renew endorsement, the certified agency must:

(A) Submit an application prior to the expiration date of the existing endorsement. The completed application must identify the program services that the agency provides and all geographic locations where program services are provided. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Demonstrate to the satisfaction of the Department that the certified agency is in compliance with these rules and the corresponding program services rules.

(b) On renewal, no additional program services shall be endorsed unless specifically approved by the Department. An agency requesting to provide additional program services must reapply for initial endorsement as described in OAR 411-323-0035(3) of this rule.

(c) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(d) If the renewal application is not submitted to the Department prior to the expiration date, the agency may not provide program services.

(e) Renewal of endorsements for program services is contingent upon the successful renewal of the agency’s certificate.

(5) EXISTING ENDORSEMENT - ADDING A GEOGRAPHIC LOCATION.
Adding a geographic location to an existing endorsement must be reported by the agency to the Department and to the corresponding CDDP of the geographic location on a form provided by the Department at least 30 days prior to providing program services at the additional geographic location.

(6) ENDORSEMENT EXPIRATION. Unless revoked, suspended, or terminated earlier, the effective date of each endorsement shall correspond with the effective date of the agency’s certification.

(7) ENDORSEMENT TERMINATION. Endorsement shall automatically terminate on the date program services are discontinued or agency certification is terminated.

(8) CHANGE OF CERTIFICATION. New endorsement shall be required upon change of an agency's certification. The recertified agency must submit an application for endorsement at least 30 days prior to change of an agency's certification including but not limited to change in ownership or legal entity, legal status, or management corporation.

(9) ENDORSEMENT ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

   (a) Conditions:

   (b) Denial, revocation, or refusal to renew a certificate; or

   (c) Immediate suspension of a certificate.

(10) ENDORSEMENT CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for program services. The type of condition attached to an endorsement shall directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to an endorsement upon a finding that:

   (A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;
(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program services rules.

(b) Conditions that the Department may impose on an endorsement include but are not limited to:

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE OF ENDORSEMENT CONDITIONS. The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon
issued, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of endorsement conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0035(13) of this rule. The administrative review does not diminish the agency's right to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

11) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency, or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized;
(D) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(E) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(F) Falsifies information required by the Department to be maintained or submitted regarding individual services, program services finances, or individuals' funds;

(G) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(H) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(b) NOTICE OF ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in OAR 411-323-0035(11)(a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the endorsement.

(A) DENIAL. The applicant must request a hearing within 60 days of receipt of the Department's written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days of the receipt of the Department's written notice of refusal to renew.
(C) REVOCATION.

(i) Notwithstanding OAR 411-323-0035(11)(c)(C)(ii) of this section, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in lieu of a hearing, an agency may request an administrative review as described in OAR 411-323-0035(13) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of revocation.

(12) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program service may not continue operation.

(b) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the endorsement.

(A) Notwithstanding OAR 411-323-0035(12)(b)(B) of this section, the endorsed agency must request a hearing within 21 days of receipt of the Department’s written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in OAR 411-323-0035(13) of this rule. The administrative review does not diminish the agency's right to a hearing.
(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of suspension.

(13) ADMINISTRATIVE REVIEW.

(a) Notwithstanding OAR 411-323-0035(13)(b) of this section, the agency, in addition to the right to a contested case hearing, may request an administrative review by the Department's Administrator or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The request for administrative review must be received by the Department within 10 days from the date of the Department’s notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the agency.

(e) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency, notwithstanding OAR 411-323-0035(13)(b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(14) INFORMAL CONFERENCE. After the Department has received a request for hearing, the Department shall offer the applicant or agency an
opportunity for an informal conference unless an administrative review has been completed as described in OAR 411-323-0035(13) of this rule.

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070

411-323-0040 Inspections and Investigations

(1) **Entities Agencies** certified and endorsed under these rules must allow the following types of investigations and inspections:

(a) Quality assurance, onsite inspections, and certificate renewal;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or the Department's designee has determined to initiate an investigation, the agency may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, OAR 411-323-0040(5), an "internal investigation" is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;
(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

   (A) If there is reasonable cause to believe that abuse has occurred;

   (B) If the alleged victim is in danger or in need of immediate protective services;

   (C) If there is reason to believe that a crime has been committed; or

   (D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or the Department's designee shall conduct abuse investigations as described in OAR 407-045-0250 to 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate agency. The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) The agency must submit a plan of correction to the Division-Department for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070
(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member or subcontractor including respite providers and volunteers has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The agency or service provider may not retaliate against any staff member, subcontractor including respite providers and volunteers, or proctor providers that reports in good faith suspected abuse or retaliate against the child or adult with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, OAR 411-323-0050(3)(b), "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the child or adult because of the report and includes but is not limited to:

   (A) Discharge or transfer from the agency, except for clinical reasons;

   (B) Discharge from or termination of employment;
(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the agency or the individuals served by the agencies.

(4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.

(a) Any employee-staff of an agency, proctor providers, substitute caregivers, independent contractors, and volunteers is a mandatory reporters.

(b) The agency must notify all employees-staff, proctor providers, substitute caregivers, independent contractors, and volunteers, of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all employees-staff, proctor providers, substitute caregivers, independent contractors, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) For reporting purposes the following shall apply:

(A) Agencies providing services to adults must report to the CDDP where the adult resides and if there is reason to believe a crime has been committed a report must also be made to law enforcement.

(B) Agencies providing services to children must report to the Department or law enforcement in the county where the child resides.

(5) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) BACKGROUND CHECKS. Any employee-staff, volunteer, proctor provider, respite provider, crisis provider, advisor, skill trainer, or any
subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with an individual in services must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, a person as described above in section OAR 411-323-0050(6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection OAR 411-323-0050(6)(a) of this section does not apply to agency employees who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any staff, volunteer, respite provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) GENERAL STAFF QUALIFICATIONS. Any employee providing direct assistance to individuals must meet the following criteria:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and procedures for background checks in OAR 407-007-0200 to 407-007-0370 and section OAR 411-323-0050(6) of this rule;

(c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275:
(d) Be literate and capable of understanding written and oral orders;

(e) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;

(f) Be able to respond to emergency situations at all times; and

(g) Be certified in CPR and First Aid by a recognized training agency within 90 days of employment;

(h) Receive 12 hours of job-related in-service training annually;

(i) Have clear job responsibilities as described in a current signed and dated job description; and

(j) If transporting individuals, have a valid Oregon driver's license and proof of insurance.

(9) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain up-to-date written job descriptions for all employees as well as a file available to the Department or the Department's designee for inspection that includes written documentation of the following for each employee:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action;
(de) Written documentation of any founded report of child abuse or substantiated abuse; and

(ef) Written documentation of 12 hours of job-related services in-service training annually; required training and hours of training received.

(g) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current; and

(h) For staff operating vehicles that transport individuals, documentation of a valid Oregon driver's license and proof of insurance.

(10) DISSOLUTION OF AN AGENCY. Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Division-Department 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070

411-323-0060 Policies and Procedures

(1) INDIVIDUAL RIGHTS. The agency must have and implement written policies and procedures that protect an individual's rights that address the following:

(a) ABUSE. Individuals as defined in OAR 411-323-0020 must not be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the agency.

(b) PROTECTION AND WELLBEING. The agency must ensure the health and safety of individuals from abuse including the protection of individual rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18, where reasonable limitations have been placed by a parent or guardian, these rights must at a minimum provide allow for:
(A) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order:

(B) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(C) Visits with family members, guardians, friends, advocates and others of the individual's choosing, and legal and medical professionals;

(D) Confidential communication including personal mail and telephone;

(E) Personal property and fostering of personal control and freedom regarding that property;

(F) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(G) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical, mechanical, or physical restraints protectivophysical intervention;

(H) Freedom to choose whether or not to participate in religious activity;

(I) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(J) Expression of sexuality within the framework of state and federal laws, and for adults over the age of 18, freedom to marry and to have children;

(K) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities, and health care resources;
(L) Individual choice for children and adults that allows for decision making and control of personal affairs appropriate to age;

(M) Services that promote independence, dignity, and self-esteem and reflect the age and preferences of the individual;

(N) Individual choice for adults to consent to or refuse treatment, unless incapable, and then an alternative decision maker must be allowed to consent or refuse for the individual. For children, the child's parent or guardian must be allowed to consent to or refuse treatment except as described in ORS 109.610 or limited by court order;

(O) Individual choice to participate in community activities; and

(P) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(2) HEALTH. The agency must have and implement policies and procedures that maintain and protect the health of individuals.

(3) INDIVIDUAL AND FAMILY INVOLVEMENT. The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal representatives, and significant others of the individuals served by the agency to interact; and

(c) Opportunities for individuals, families, guardians, legal representatives, and significant others to participate on the Board or on committees or to review policies of the agency that directly affect the individuals served by the agency.

(4) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION. As stated in ORS 427.007, the agency must have a written policy that states each
individual's ISP is developed to meet each individual's level of independence, productivity, and integration into the local community.

(45) CONFIDENTIALITY OF RECORDS. The agency must have and implement written policies and procedures that ensure all individuals' records are confidential except as otherwise provided by applicable state and federal rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.

(b) For the purpose of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

(56) BEHAVIOR SUPPORT. The agency must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(67) PROTECTIVE PHYSICAL INTERVENTION. The agency must have and implement written policies and procedures for protective physical interventions that address the following:

(a) Circumstances allowing the use of protective physical intervention. The agency must only employ protective physical intervention techniques that are included in the OIS curriculum approved by the Division or the OIS Steering Committee.

(b) Protective physical intervention techniques must only be applied:

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

(B) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or
(C) As a health related protection ordered by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(78) HANDLING AND MANAGING INDIVIDUALS' MONEY. The agency must have written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his or her own financial planning and management of an individual's funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

(d) Taking into account the individual's interests and preferences.

(89) INFORMAL COMPLAINTS AND GRIEVANCES. The agency must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) INFORMAL COMPLAINT RESOLUTION. An individual or someone acting on behalf of the individual must be given the opportunity to informally discuss and resolve any allegation that an agency has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity does not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(b) FORMAL GRIEVANCE AND GRIEVANCE LOG.

(A) The agency's formal grievance policies and procedures must include:
(i) A description of how the agency receives and documents grievances from individuals and others acting on the individuals' behalf; and

(ii) Investigation of the facts supporting or disproving the grievance.

(B) The Executive Director or designee must provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant’s satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant of the availability of assistance in appealing the grievance and how to access that assistance.

(C) The Executive Director or designee must submit to the Department for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the Division.

(D) Documentation of each grievance and its resolution must be filed or noted in the complainant’s record. In addition, the agency must maintain a grievance log, which must, at a minimum, identify the person making the complaint, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(c) If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Department, and notify the Executive Director or designee.

(910) AGENCY DOCUMENTATION REQUIREMENTS. The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

(a) Be prepared at the time, or immediately following the event being recorded;
(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070

411-323-0070 Variances

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

(2) The agency requesting a variance must submit, in writing, an application to the Division that contains the following:

   (a) The section of the rule from which the variance is sought;

   (b) The reason for the proposed variance; and

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

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

(3) The Division shall approve or deny the request for a variance.

(4) The Division's decision shall be sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(5) The agency may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the
The Administrator and the CDDP, whose decision is final. The Administrator's decision is final.

(6) The Division Department shall determine the duration of the variance.

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

Stat. Auth. ORS 409.050 & 410.070
Stats. Implemented: ORS 409.050 & 410.070
24 HOUR RESIDENTIAL SERVICES FOR CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES

411-325-0020 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 as defined in ORS 419B.005 and for the purpose of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260.

   (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 in OAR 407-045-0310.

(4) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(5) "Administrator" means the Administrator of the Department, or that person's designee. The term "Administrator" is synonymous with "Assistant Director".

(56) "Adult" means an individual 18 years or older with developmental disabilities.
(67) "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.

(78) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(89) "Appeal" means the process under ORS chapter 183 that the licensed service provider may use to petition conditions or the suspension, denial, or revocation of their application, certificate, endorsement, or license or application.

(910) "Applicant" means a person, agency, corporation, or governmental unit, who applies for a license to operate a residential home or facility providing 24-hour comprehensive services to individuals with developmental disabilities.

(4011) "Assessment" means an evaluation of an individual's needs.

(11) "Assistant Director" means the assistant director of the Division, or that person's designee.

(12) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. This baseline measure serves as the reference point by which the ongoing efficacy of the Individual Support Plan (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the Individual Support Plan (ISP) team meeting.

(13) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.
(14) "Behavior Data Summary" means a document composed by the service provider to summarize episodes of physical intervention. The behavior data summary serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(15) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to service provider that provides residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(16) “Certificate" means a document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed 24-hour residential services.

(17) "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.

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

(19) "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.

(20) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. 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.

(21) "Competency Based Training Plan" means a written description of a service provider's process for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:
(a) Addresses health, safety, rights, values and personal regard, and the service provider's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by a service provider to accommodate a staff person's member's specific circumstances.

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

(23) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the licensee service provider.

(24) "Crisis" means:

   (a) A situation as determined by a qualified services coordinator that may 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.

(25) "Denial" means the refusal of the Division Department to issue a certificate, endorsement, or license to operate a 24-hour residential home or facility for children or adults because the Division Department has determined that the service provider or the home or facility is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(26) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)."

(27) "Developmental Disability" 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 as described in OAR 411-320-0080. 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, the condition must be manifested before the age of 18;

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

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(28) "Direct Nursing Service" means the provision of individual-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

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

(30) "Domestic Animals" mean any various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(31) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent cannot be identified or located after reasonable efforts;
(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of a parent or adult student.

(31) "Endorsement" means authorization to provide 24-hour residential services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(32) "Entry" means admission to a Division-funded developmental disability service provider. For the purposes of these rules, "entry" means admission to a licensed 24-hour home or facility.

(33) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the program's 24-hour residential services for individuals.

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

(35) "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.

(36) "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.

(37) "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.

(38) "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.

(39) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

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

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

(42) "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.

(43) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The Individual Support Plan (ISP) 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 (ISP) is the individual's Plan of Care for Medicaid purposes.

(44) "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 (ISP).

(45) "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.

(46) "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 the individual or a person or agency authorized by the court to make decisions about services for the individual.

(47) "Licensee" means a person or organization to whom a certificate, endorsement, and license is granted.

(48) "Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan (ISP) team meetings, that no one member of the Individual Support PlanISP 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 PlanISP team for the purpose of reaching majority agreement.

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

(a) For the purposes of these rules, is a staff or volunteer working with individuals birth to 17 years of age, and 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 of this rule, OAR 411-325-0020, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not beis not
required to report **such information communicated by a person** if the communication is privileged under ORS 40.225 to 40.295.

(b) For the purposes of these rules, is a staff or volunteer working with adults **eighteen** years and older, **and who** 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 of this rule, OAR 411-325-0020, 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 privileged under ORS 40.225 to 40.295.

(50) "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, and that restricts freedom of movement or access to the individual's body.

(51) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(52) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(5453) "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.

(5254) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.
"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.

"Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the provider and staff.

"Oregon Core Competencies" means:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

"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 protective 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.

"Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;
(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(57) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(59) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(60) "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.

(61) "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.

(62) "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.

(6365) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(6466) "Revocation" means the action taken by the Division-Department to rescind a certificate, endorsement, or 24-hour home or facility license after the Division-Department has determined that the 24-hour residential program service provider is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(6567) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(6668) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved certified and endorsed by the Division, or other appropriate agency, to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency", "provider", "program", "applicant", or "licensee" is synonymous with "service provider."

(6669) "Care Services" 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. Care-Services also includes being aware of the individual's general whereabouts at all times and monitoring the activities of the individual while on the premises of the residence to ensure the individual's health, safety, and welfare. The term "careservices" is synonymous with "servicescare".

(6770) "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.

(6871) "Significant Other" means a person selected by the individual to be the individual's friend.

(6972) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A specialized diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(7073) "Staff" means a paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds subcontracted with the community developmental disability program or contracted directly through the DivisionDepartment.

(7174) "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.

(7275) "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.

(7376) "Suspension of License" means an immediate temporary withdrawal of the approval to operate a 24-hour home or facility residential services after the DivisionDepartment determines that the service provider or 24-hour home or facility is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(7477) "These Rules" mean the rules in OAR chapter 411, division 325.
"Transfer" means movement of an individual from one home or facility to another home or facility within the same county, administered by the same service provider.

"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 (ISP) 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 (ISP) development.

"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, or any incident requiring an abuse investigation.

"Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that may be granted by the Division - Department upon written application by the service provider.

"Volunteer" means any person assisting in a 24-hour home or facility by a service provider without pay to support the care services provided to an individuals residing in the home or facility.

Stat. Auth. ORS 409.050, 410.070, 443.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0025 Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide 24-hour residential services, a service provider must have:

(a) A certificate and an endorsement to provide 24-hour residential services as set forth in OAR chapter 411, division 323;
(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where 24-hour residential services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

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

(3) MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) COMPETENCY BASED TRAINING PLAN. The service provider must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(5) GENERAL STAFF QUALIFICATIONS. Any staff member providing direct assistance to individuals must:

   (a) Have knowledge of individuals' ISP's and all medical, behavioral, and additional supports required for the individuals; and

   (b) Have met the basic qualifications in the service provider's Competency Based Training Plan. The service provider must maintain written documentation kept current that the staff member has demonstrated competency in areas identified by the service provider's Competency Based Training Plan as required by OAR 411-325-0025(4) of this rule, and that is appropriate to their job description.

(6) CONFIDENTIALITY OF RECORDS. The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(7) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:
(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050, 410.070, 443.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0060 Conditions on License

Attaching conditions to a license.—The Department may attach conditions to the license which limit, restrict, or specify other criteria for operation of the home or facility. The type of condition attached to a license shall directly relate to a risk of harm or potential risk of harm to individuals.

(1) Circumstances under which conditions may be applied to a license. Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(b) There exists a threat to the health, safety, and welfare of an individual;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home or facility is not being operated in compliance with these rules; or

(e) The service provider is licensed to provide services for a specific person(s) only and further placements may not be made into that home or facility.

(2) Imposing conditions.—Conditions that the Department may impose on a licensee include but are not limited to:
(a) Restricting the total number of individuals that can be served.

(b) Restricting the number and support level of individuals allowed within a licensed classification level based upon the capacity of the service provider and staff to meet the health and safety needs of all individuals.

(c) Reclassifying the level of individuals that can be served.

(d) Requiring additional staff or staff qualifications.

(e) Requiring additional training of provider/staff.

(f) Restricting the service provider from allowing persons on the premises who may be a threat to an individual's health, safety, or welfare.

(fg) Requiring additional documentation; or

(gh) Restriction of admissions.

(3) The Department shall notify the service provider in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183 to 183.550. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(4) Administrative review. The service provider may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(a) The service provider must request a hearing within 21 days of receipt of the Department's written notice of conditions.
In addition to, or in lieu of, a contested case hearing, a service provider may request an administrative review as described in OAR 411-325-0060(5) of this rule review by the Administrator or designee of conditions imposed by the Department. The administrative review does not diminish the service provider's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the extent of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the license.

(5) ADMINISTRATIVE REVIEW.

(a) A service provider, in addition to the right to a contested case hearing, may request an administrative review by the Department's Administrator or designee for imposition of conditions.

(b) The request for administrative review must be received by the Department within 10 days from the date of the Department's notice of imposition of conditions. The service provider may submit, along with the request for administrative review, any additional written materials the service provider wishes to have considered during the administrative review.

(c) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the service provider.

(d) If the decision of the Department is to affirm the condition, the service provider may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of imposition of conditions.

(6) The service provider may send a written request to the Department to remove a condition if the service provider believes the situation that warranted the condition has been remedied.
411-325-0080 Mid-Cycle Review
(Repeal)

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the home or facility nine to fifteen months after renewal of the provider's license under the following circumstances:

   (a) Failure by the provider to successfully complete licensing renewal as evidenced by two or more follow-up reviews; or

   (b) Failure by the provider to successfully complete plans of correction for protective service investigations; or

   (c) Upon the request of the CDDP or other Department designee, or provider.

(2) Self-Assessment Required. As part of the mid-cycle process the provider must conduct a self-assessment based upon the requirements of this rule.

   (a) The provider must document the findings of the self-assessment on forms provided by the Department;

   (b) The provider must develop and implement a plan of correction based upon the findings of the self-assessment; and

   (c) The provider must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) Compliance with OAR 411-325-0010 through 411-325-0480. The review will be conducted for compliance with OAR 411-325-0010 through 411-325-0480, and at the discretion of the Department the review may be announced or unannounced.
Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 – 443.455

411-325-0100 Inspections and Investigations
(Repeal – See OAR 411-323-0040)

(1) All services covered by these rules must allow the following types of investigations and inspections:

   (a) Quality assurance, license renewal, and onsite inspections;

   (b) Complaint investigations; and

   (c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

   (a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

   (b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee has determined to initiate an investigation, the provider may not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as:

   (a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

   (b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or
(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation has been initiated, the Department or the Department's designee shall provide notification in accordance with OAR chapter 407, division 045.

(7) The Department or the Department's designee shall conduct investigations as described in OAR chapter 407, division 045.

(8) When an abuse investigation has been completed, the Department or the Department's designee shall provide notice of the Abuse Investigation and Protective Services Report according to OAR chapter 407, division 045.

(9) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the provider may conduct an investigation to determine if any personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Service Report, according to OAR chapter 407, division 045 the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider. The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.
(11) A plan of correction must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 409.050, 410.070, 443.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0110 Variances

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

(2) **Variance application.** The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

   (a) The section of the rule from which the variance is sought;

   (b) The reason for the proposed variance;

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

   (d) If the variance applies to an individual’s services, evidence that the variance is consistent with an individual's currently approved authorized ISP according to OAR 411-325-0430.

(3) **Community Developmental Disability Program review.** The CDDP shall forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance.

(4) **Department review.** The Administrator or designee may approve or deny the request for a variance.

(5) **The Department's decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.** Notification. The Department must notify the provider and the CDDP of the decision. This
notice will be sent within 30 calendar days of receipt of the request by the Department with a copy to other relevant Department programs or offices.

(6) The service provider may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Administrator and a copy of the request to the CDDP. Appeal of the denial of a variance request will be made in writing to the Administrator with a copy sent to the CDDP. The Administrator's decision will be final.

(7) Duration of variance. The Department shall determine the duration of the variance.

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

Stat. Auth. ORS 409.050, 410.070, 409.05043.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0150 Safety: General

(1) Toxic materials. TOXIC MATERIALS. All toxic materials including, but not limited to, poisons, chemicals, rodenticides and insecticides must be:

(a) Properly labeled;

(b) Stored in original container separate from all foods, food preparation utensils, linens, and medications; and

(c) Stored in a locked area unless the Risk Tracking records for all individuals residing in the home document that there is no risk present.

(2) Flammable and combustible materials. FLAMMABLE AND COMBUSTIBLE MATERIALS. All flammable and combustible materials must be properly labeled, stored, and locked in accordance with State Fire Code.

(3) Knives and sharp objects. KNIVES AND SHARP OBJECTS. For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.
(4) **Window coverings for privacy**. **WINDOW COVERINGS.** Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) **Hot water supply and temperature**. **HOT WATER TEMPERATURE.** Hot water in bathtubs and showers must not exceed 120 °F (degrees Fahrenheit). Other water sources, except the dishwasher, must not exceed 140 °F (degrees Fahrenheit).

(6) **Window openings**. **WINDOW OPENINGS.** Sleeping rooms on ground level must have at least one window readily openable from the inside without special tools that provides a clear opening of not less than 821 square inches, with the least dimension not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level. Exterior sill heights may not be greater than 72 inches from the ground, platform, deck, or landing. There must be stairs or a ramp to ground level. Those homes/facilities previously licensed having a minimum window opening of not less than 720 square inches are acceptable unless through inspection it is deemed that the window opening dimensions present a life safety hazard.

(7) **Square footage requirement for sleeping rooms**. **SQUARE FOOTAGE REQUIREMENTS FOR SLEEPING ROOMS.** Sleeping rooms must have 60 square feet per individual with beds located at least three feet apart.

(8) **Flashlights**. Operative flashlights, at least one per floor, must be readily available to staff in case of emergency.

(9) **First-aid kit and manual**. **FIRST-AID KIT AND MANUAL.** First-aid kits and first-aid manuals must be available to staff within each residence in a designated location. First aid kits containing any items other than band-aids, tape, bandages must be locked. First aid kits must be locked if, after evaluating any associated risk, items contained in the first aid kit present a hazard to individuals living in the house. First aid kits containing any medication including topical must be locked.

Stat. Auth. ORS 409.050, 410.070, 409.050443.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455
411-325-0160 Program Management and Personnel Practices
(Repeal – See OAR 411-323-0050)

(1) NON-DISCRIMINATION. The program must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The program must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The program or service provider may not retaliate against any staff that reports in good faith suspected abuse or retaliate against the child or adult with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the child or adult because of the report and includes but is not limited to:

(A) Discharge or transfer from the program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or
(D) Restriction or prohibition of access to the program or the individuals served by the program.

(4) COMPETENCY BASED TRAINING PLAN. The program must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Division’s Oregon Core Competencies.

(5) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. Any employee of a program is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following shall apply:

(a) Programs providing services to adults must report to the CDDP where the adult resides and if there is reason to believe a crime has been committed a report must also be made to law enforcement.

(b) Programs providing services to children must report to the Department or law enforcement in the county where the child resides.

(6) APPLICATION FOR EMPLOYMENT. An application for employment at the program must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(7) CRIMINAL RECORDS CHECKS. Any employee, volunteer, respite provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with a resident of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the program may not use public funds to support, in whole or in part, a person as described in section (7) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.
(b) Section (7)(a) of this rule does not apply to employees of the service provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any staff, volunteer, respite provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(8) DIRECTOR QUALIFICATIONS. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(9) GENERAL STAFF QUALIFICATIONS. Any employee providing direct assistance to individuals must meet the following criteria:

   (a) Be at least 18 years of age;

   (b) Have approval to work based on current Department policy and procedures for review of criminal records in OAR 407-007-0200 to 407-007-0370 and section (7) of this rule;

   (c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275:

   (d) Be literate and capable of understanding written and oral orders;

   (e) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;

   (f) Be able to respond to emergency situations at all times;

   (g) Have clear job responsibilities as described in a current signed and dated job description;

   (h) Have knowledge of individuals’ ISP’s and all medical, behavioral, and additional supports required for the individuals; and
(i) Have met the basic qualifications in the program's Competency Based Training Plan.

(10) PERSONNEL FILES AND QUALIFICATIONS RECORDS. The program must maintain up-to-date written job descriptions for all employees as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each employee:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of an approved criminal records check by the Department;

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any founded report of child abuse or substantiated abuse;

(e) Written documentation kept current that the staff person has demonstrated competency in areas identified by the provider's Competency Based Training Plan as required by section (4) of this rule, and that is appropriate to their job description; and

(f) Written documentation of 12-hours job-related in-service training annually including documentation of training in CPR and first aid certification.

(11) PROGRAM DOCUMENTATION REQUIREMENTS. All entries required by these rules must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and
(d) Be maintained for no less than three years.

(12) DISSOLUTION OF PROGRAM. Prior to the dissolution of a program, a representative of the governing body or owner of the program must notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth. ORS 409.050, 410.070, 443.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0210 Individual/Family Involvement Policy
(Repeal – See OAR 411-323-0060)

(1) Individual/family involvement policy needed. The program must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the program;

(b) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the program to interact;

(c) Opportunities for individuals, families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the program.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 - 443.455

411-325-0310 Rights: Confidentiality of Records
(Repeal – See OAR 411-323-0060)

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules are considered "providers" as defined in ORS 179.505(1).
(2) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 – 443.455

411-325-0320 Rights: Informal Complaints and Formal Grievances

(1) **Grievances.** The program-service provider must develop and implement written policies and procedures regarding individual informal complaints and formal grievances as required by OAR 411-323-0060. These policies and procedures must at minimum address:

(a) Informal complaint resolution. Opportunity for an individual or someone acting on behalf of the individual to informally discuss and resolve any allegation that a program has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity will not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(b) Formal grievances and grievance log. A description of how the program receives and documents grievances from individual(s) and others acting on the behalf of individuals. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, Department for direct contracted services and notify the Executive Director or designee. The formal grievance policies and procedures must require:

   (A) Investigation of the facts supporting or disproving the grievance;

   (B) That the Executive Director or designee provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant’s satisfaction prior to that time. The formal written
response of the Executive Director or designee must clearly inform the grievant:

(i) Of the right to appeal an adverse decision to the CDDP and how to do so, including the name, address, and phone number of the person at the CDDP to whom the appeal should be submitted;

(ii) Of the availability of assistance in appealing the grievance and how to access that assistance.

(C) That the Executive Director or designee will submit to the CDDP for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the CDDP.

(D) The CDDP will address the appeal as provided in the Community Developmental Disability Programs Administrative Rule, OAR 411-320-0170.

(E) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. In addition, the program must maintain a grievance log, which will, at a minimum, identify the person making the grievance, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(2) The service provider must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.

(23) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's grievance policy and procedures and a description of how to utilize them. Notification of policies and procedures. The program must inform each individual, parent or guardian orally and in writing, of its grievance policy and procedures. This must be done at entry to the program and in a timely manner thereafter as changes occur.
Information must be presented using language, format and methods of communication appropriate to the individual's needs and abilities.

Stat. Auth. ORS 409.050, 410.070, 409.0504.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0430 Individual Support Plan

(1) Department Individual Support Plan implementation schedule. Providers must participate as scheduled in the Department ISP training and must implement the required Department ISP process after completion of training.

(21) Individual Support Plan required. A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the residence within 60 days of entry and annually thereafter, unless the provider has not been trained to implement the Department ISP process. In situations where the provider has not been trained, the individual must have a completed ISP with supporting documents as required by OAR 309-041-1300 through 309-041-1370.

(32) Preparation for ISP. The following information must be collected and summarized within 45 days prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(e) Other documents required by the ISP team.

(43) Content of Individual Support Plan. A completed ISP must be documented on the Department required form that includes and includes the following:
(a) What's most important to the individual;

(b) Risk summary;

(c) Professional services the individual uses or needs;

(d) Action plan(s);

(e) Discussion record;

(f) Service supports; and

(g) Signature sheet.

(54) Documentation required. The provider must maintain documentation of implementation of each support specified in OAR 411-325-0430(3)(ee) and services specified in OAR 411-325-0430(2)(c) to (2)(e) of this rule noted in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP, and Department representatives.

Stat. Auth. ORS 409.050, 410.070, 409.050443.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0450 Conditions
(Repeal – See OAR 411-325-0060)

(1) Circumstances under which conditions may be applied to a license. Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(b) There exists a threat to the health, safety, and welfare of an individual;

(c) There is reliable evidence of abuse, neglect, or exploitation;
(d) The home/facility is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific person(s) only and further placements must not be made into that home or facility.

(2) Imposing conditions. Conditions that may be imposed on a licensee include:

(a) Restricting the total number of individuals that can be served;

(b) Restricting the number and support level of individuals allowed within a licensed classification level based upon the capacity of the provider and staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training of provider/staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) Written notification. The provider will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.310 to 183.550.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, a provider may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the provider's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the extent of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the
conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the license.

Stat. Auth. ORS 410.070, 409.050
Stats. Implemented: ORS 443.400 - 443.455

411-325-0460 Civil Penalties

(1) **Long-term care facility statute applicable.** For purposes of imposing civil penalties, 24-hour residential homes and facilities licensed under ORS 443.440-443.455 and subsection (2) of ORS 443.991(2) are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) **Schedule and sections of rule subject to civil penalties.** The Department will exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to 24-hour residential homes and facilities as provided for under ORS 441.705 to 441.745:

(a) Violations of any requirement within any part of the following sections of the rules may result in a civil penalty up to $500 per day for each violation not to exceed $6,000 for all violations for any licensed 24-hour residential home or facility within a 90-day period:

- **(EA) 411-325-04600025(3), (4), (5), (6), (7) and (8);**
- **(AB) 411-325-0120(2), and (11);**
- **(BC) 411-325-0130;**
- **(CD) 411-325-0140;**
- **(DE) 411-325-0150;**
- (F) 411-325-0170;
- (G) 411-325-0190;
- (H) 411-325-0200;
(I) 411-325-0220(1), and (2);

(J) 411-325-0230;

(K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;

(L) 411-325-0300, 0310, 0320, 0330, 0340, and 0350;

(M) 411-325-0360;

(N) 411-325-0380;

(O) 411-325-0430(3), (4), and (5); and

(P) 411-325-0440.

(b) Civil penalties of up to $300 per day per violation may be imposed for violations of any section of these rules not listed in OAR 411-325-0460(2)(a)(A) to (2)(a)(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential home or facility where such surveys are conducted by an employee of the Department. Penalties assessed under this section of this rule, OAR 411-325-0460(2), may not exceed $6,000 within a 90-day period.

(3) Monitoring defined. For the purposes of this rule, monitoring occurs when a 24-hour residential home or facility is surveyed, inspected, or investigated by an employee or designee of the Department or an employee of the Office of State Fire Marshal.

(4) Consideration of factors when imposing civil penalties. In imposing a civil penalty pursuant to the schedule published in section OAR 411-325-0460(2) of this rule, the Department will consider the following factors:

(a) The past history of the program-service provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential homes or facilities;
(c) The economic and financial conditions of the program-service provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, and/or well-being of individuals.

(5) Due and payable. Any civil penalty imposed under ORS 443.455 and 441.710 will shall become due and payable when the program-service provider incurring the penalty receives a notice in writing from the Department's Administrator or designee. The notice referred to in this section of this rule, OAR 411-325-0460(5), will shall be sent by registered or certified mail and will shall include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the program's-service provider's right to request a hearing.

(6) Timeline to make written application for a hearing. The person representing the program-service provider, to whom the notice is addressed, will shall have 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) Conduct of hearing. All hearings will shall be conducted pursuant to the applicable provisions of ORS Chapter 183.

(8) Failure to request a hearing within 20 days. If the program-service provider notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) Program is found to be in violation of a license, rule, or order listed in ORS 441.701(1). If, after a hearing, the program-service provider is found
to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) Remittance or reduction of a civil penalty. A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Administrator considers proper and consistent with individual health and safety.

(11) Civil penalty payable within 10 days after order is entered. If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 183.480 to 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) Violation of any general order or final order. A violation of any general order or final order pertaining to a 24-hour residential home or facility issued by the Department shall be subject to a civil penalty in the amount of not less than $5 and not more than $500 for each and every violation.

(13) Judicial review of civil penalties. Judicial review of civil penalties imposed under ORS 441.710 shall be provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) Penalties recovered. All penalties recovered under ORS 443.455 and 441.710 to 441.740 shall be paid into the State Treasury and credited to the General Fund.

Stat. Auth. ORS 409.050, 410.070, 409.050443.450, & 443.455
Stats. Implemented: ORS 443.400 - 443.455
411-328-0560 Definitions

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "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 in OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

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

(5) "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.

(6) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(7) "Annual Individual Support Plan (ISP) Meeting" means an annual meeting, coordinated facilitated by a services coordinator of the community developmental disability program that attended by the individual served, agency representatives who provide service to the individual, the
individual's guardian, if any, relatives of the individual, or other persons, such as an advocate, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an Individual Support Plan (ISP).

(8) "Board of Directors" mean a group of persons formed to set policy and give directions to a program designed to service provider that provides residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(9) "Certificate" means a document issued by the Division-Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed supported living services to a provider of supported living services that certifies that the provider is eligible to receive state funds for these services.

(10) "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.

(11) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for the planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. 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.

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

(13) "Controlled Substance" means any drug classified as Schedules 1 through 5 under the Federal Controlled Substance Act.
(14) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(15) "Developmental Disability" 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 as described in OAR 411-320-0080. 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, the condition must be manifested before the age of 18;

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

   (c) Constitutes a significant impairment in adaptive behavior; and

   (d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

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

(16) "Endorsement" means authorization to provide supported living services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(18) "Entry" means the admission to a DivisionDepartment-funded developmental disability service.

(1817) "Entry" means the admission to a DivisionDepartment-funded developmental disability service.

(1818) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the supported living program and provision of support services for individuals.
(19) "Exit" means either termination from a DivisionDepartment-funded developmental disability service provider or transfer from one DivisionDepartment-funded program-service provider to another. Exit does not mean transfer within a program within a county.

(20) "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.

(21) "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.

(22) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

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

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

(25) "Individual Profile" means a written profile that describes the individual entering into supported living. The profile may consist of materials or assessments generated by the service provider or other related agencies, consultants, family members, or advocates.

(26) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The Individual Support PlanISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support PlanISP is the individual's Plan of Care for Medicaid purposes.
(27) "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 (ISP).

(28) "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 in homes or home-like settings that are in proximity to community resources and foster contact with persons in their community.

(29) "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 the individual or a person or agency authorized by a court to make decisions about services for the individual.

(30) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, for the purpose of these rules, is a staff or volunteer working with adults 18 years and older who, 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 of this rule, OAR 411-328-0560, 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 are privileged under ORS 40.225 to 40.295.

(31) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(32) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(33) "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.

(34) "Needs Meeting" means a process in which the Individual Support Plan team defines the supports an individual needs to live in his or her own home, and makes a determination as to the feasibility of creating such services. The information generated in this meeting or discussion is used by the supported living service provider to develop the individual's Transition Plan.

(35) "Personal Futures Planning" means an optional planning process for describing a desirable future for an individual with developmental disabilities. The planning process generally occurs around major life transitions (e.g. moving into a new home, graduation from high school, marriage, etc.). This process helps determine activities, supports, and resources that best create a desirable future for the individual.

(36) "Person-Centered Planning" means:

   (a) A process, either formal or informal, for gathering and organizing information that helps an individual:

      (A) Determine and describe choices about personal goals, activities, and lifestyle preferences;
(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(3537) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(38) "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.

(3639) "Protection" and "Protective Services" means the 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.

(3440) "Physical RestraintProtective 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".

(3741) "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.
"Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

"Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is certified and endorsed approved by the Division or other appropriate agency, Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency", "provider", or "program" is synonymous with "service provider."

"Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division Department, who is selected to plan, procure, coordinate, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

"Significant Other" means a person selected by the individual to be the individual's friend.

"Staff" means a paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds subcontracted with the community developmental disability program or contracted directly through the Division Department.

"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.

"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.
"Supported Living" means the endorsed service that provides the opportunity for individuals with developmental disabilities to live in a residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

"These Rules" means the rules in OAR chapter 411, division 328.

"Transfer" means movement of an individual from one type of service to another within the same county, administered by the same service provider.

"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 ISP team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to supported living services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the Individual Support Plan ISP development.

"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, or any incident requiring an abuse investigation.

"Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that may be granted by the Department upon written application by the service provider.

"Volunteer" means any person assisting a service provider without pay to support the services provided to an individual, providing services without pay to individuals receiving supported living services.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670
(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide supported living services, a service provider must have:

(a) A certificate and an endorsement to provide supported living services as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where supported living services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

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

(3) MANAGEMENT AND PERSONNEL PRACTICES. The service provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The service provider must maintain written documentation of six hours of pre-service training prior to supervising individuals that includes mandatory abuse reporting training and training on individual profiles and Transition Plans or ISPs.

(5) CONFIDENTIALITY OF RECORDS. The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(6) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;
(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

(1) No person or governmental unit acting individually or jointly with any other person or governmental unit shall establish, conduct, maintain, manage, or operate a supported living program without being certified.

(2) Each certificate is issued only for the supported living program and persons or governmental units named in the application and is not transferable or assignable.

(3) Terms of certificate. Each certificate is issued for a maximum of two years. A certificate issued on or before February 1, 2009 shall be valid for a maximum of five years unless revoked or suspended.

(4) Service provider review. As part of the certificate renewal process, the service provider must conduct a self-evaluation based upon the requirements of this rule.

(a) The service provider must document the self-evaluation information on forms provided by the Division;

(b) The service provider must develop and implement a plan of improvement based upon the findings of the self-evaluation; and

(c) The service provider must submit these documents to the local CDDP with a copy to the Division.

(5) The Division shall conduct a review of the service provider prior to the issuance of a certificate.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0580 Application for Initial Certificate and Certificate Renewal
(Repeal – See OAR chapter 411, division 323)

(1) Form. The application shall be on a form provided by the Division and shall include all information requested by the Division.
(2) Initial application. The applicant shall identify the number of individuals
to be served.

(3) Renewal application. To renew certification, the service provider shall
make application at least 30 days but not more than 120 days prior to the
expiration date of the existing certificate. On renewal, no increase in the
number of individuals to be served shall be certified unless specifically
approved by the Division.

(4) Renewal application extends expiration date. Filing of an application for
renewal at least 30 days but not more than 120 days prior to the expiration
date of the existing certificate extends the effective date until the Division or
its designee takes action upon such application.

(5) Incomplete or incorrect information. Failure to disclose requested
information on the application or provision of incomplete or incorrect
information on the application may result in denial, revocation or refusal to
renew the certificate.

(6) Demonstrated capability. Prior to issuance or renewal of the certificate
the applicant must demonstrate to the satisfaction of the Division that the
applicant is capable of providing services identified in a manner consistent
with the requirements of these rules.

(7) Separate certificates. Separate certificates are required when the
service provider delivers services in multiple counties to the extent that
contracts with each different county are required.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0590 Certification Expiration, Termination of Operations,
Certificate Return
(Repeal – See OAR chapter 411, division 323)

(1) Expiration. Unless revoked, suspended or terminated earlier, each
certificate to operate a supported living program shall expire on the
expiration date specified on the certificate.
(2) Termination of operation. If a supported living program operation is discontinued, the certificate terminates automatically on the date the operation is discontinued.

(3) Return of certificate. Each certificate in the possession of the program shall be returned to the Division immediately upon suspension, revocation or termination.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0600 Change of Ownership, Legal Entity, Legal Status, Management Corporation
(Repeal – See OAR chapter 411, division 323)

(1) Notice of pending change in ownership, legal entity, legal status or management corporation. The program shall notify the Division in writing of any pending change in the program's ownership or legal entity, legal status or management corporation.

(2) New certificate required. A new certificate shall be required upon change in a program's ownership/legal entity or legal status. The program shall submit a certificate application at least 30 days prior to change in ownership/legal entity or legal status.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0610 Inspections and Investigations
(Repeal – See OAR 411-323-0040)

(1) All services covered by these rules must allow the following types of investigations and inspections:

   (a) Quality assurance, certificate renewal, and onsite inspections;

   (b) Complaint investigations; and

   (c) Abuse investigations.
(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

   (a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

   (b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee has determined to initiate an investigation, the service provider may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as:

   (a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

   (b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

   (c) Any other actions beyond the initial actions of determining:

      (A) If there is reasonable cause to believe that abuse has occurred;

      (B) If the alleged victim is in danger or in need of immediate protective services;

      (C) If there is reason to believe that a crime has been committed; or

      (D) What, if any, immediate personnel actions must be taken to assure individual safety.
(6) When an abuse investigation has been initiated, the Department or the Department's designee shall provide notification in accordance with OAR 407-045-0290.

(7) The Department or the Department's designee shall conduct investigations as described in OAR 407-045-0250 to OAR 407-045-0360.

(8) When an abuse investigation has been completed, the Department or the Department's designee shall provide notice of the Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the service provider may conduct an investigation to determine if any other personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Services Report, according to OAR 407-045-0330 the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate service provider. The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) A plan of improvement must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0620 Alternative Methods, Variances

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals. Criteria for a variance. Variances may be granted to a service provider if the service provider lacks the resources needed to implement the standards required in this rule, if implementation of the proposed alternative services, methods, concepts or procedures would result in
services or systems that meet or exceed the standards in these rules or if there are other extenuating circumstances.

(2) **Variance application.** The service provider requesting a variance **shall must** submit, in writing, an application to the CMHP which CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

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

(d) **If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.** A plan and timetable for compliance with the section of the rule from which the variance is sought.

(3) **Community Mental Health Program review.** The CMHP shall CDDP must forward signed documentation the signed variance request form to the Division Department within 30 days of receipt of the request for variance indicating its position on the proposed variance.

(4) **Office of Developmental Disability Services review.** The Assistant Administrator or designee of the DD Office Department shall approve or deny the request for a variance.

(5) The Department’s decision shall be sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days of receipt of the variance request. Notification. The DD Office shall notify the provider and the CMHP of the decision. This notice shall be sent within 30 days of the receipt by the DD Office with a copy to other relevant sections of the Division.

(6) The service provider may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Administrator and a copy of the request to the CDDP. The Administrator's decision is final. Appeal. Appeal of the denial of a variance request shall be
made in writing to the Administrator of the Division, whose decision shall be final.

(7) The Department shall determine the duration of the variance. Duration of variance. The duration of the variance shall be determined by the DD Office.

(8) Written approval. The service provider may implement a variance only after written approval from the Division Department.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0630 Health: Medical Services

(1) Confidentiality. All individuals' medical records shall must be kept confidential as described in OAR 411-328-0730 411-323-0060.

(2) Sufficient oversight and guidance. Individuals shall must receive sufficient oversight and guidance by the program-service provider to ensure their the individual's health and medical needs are adequately addressed.

(3) Written health and medical supports. Written health and medical supports shall must be developed as required by the individual's ISP team and integrated into the Transition Plan or ISP. The Plan shall must be based on a review or identification of the individual's health and medically related support needs and preferences, and updated annually or as significant changes occur.

(4) Written policies and procedures. The program shall service provider must have and implement written policies and procedures which that maintain and/or improve the physical health of individuals. Policies and procedures shall must address:

(a) Early detection and prevention of infectious disease;

(b) Emergency medical intervention;
(c) Treatment and documentation of illness and health care concerns; and

(d) Obtaining, administering, storing, and disposing of prescription and non-prescription drugs including self administration; and confidentiality of medical records.

(5) **Primary physician or health care provider.** The service provider shall **must** ensure each individual has a primary physician whom he or she the individual has chosen from among qualified providers.

(6) **Secondary physician/clinic.** Provisions **shall-must** be made for a secondary physician/ or clinic in the event of an emergency.

(7) **Medical evaluation.** The program shall service provider must ensure that individuals have a medical evaluation by a physician no less often than every two years or as recommended by a physician. Evidence of the evaluation **shall-must** be placed in the individual's record and **shall-must** address:

   (a) Current health status;

   (b) Changes in health status;

   (c) Recommendations, if any, for further medical intervention;

   (d) Any remedial and corrective action required and when such actions were taken;

   (e) Statement of restrictions on activities due to medical limitations; and

   (f) A review of medications, treatments, special diets, and therapies prescribed.

(8) **Medical profile.** Provider, before entry, shall Before entry, the service provider must obtain the most complete medical profile available, including:

   (a) The results of a physical exam made within 90 days prior to entry;
(b) Findings of a TB test made within two weeks of entry;

(eb) Results of any dental evaluation;

(dc) A record of immunizations;

(ed) Status of Hepatitis B screening;

(fe) A record of known communicable diseases and allergies; and

(gf) A summary of the individual's medical history including chronic health concerns.

(9) **Written physician's order.** The provider **shall** must ensure that all medications, treatments, and therapies **shall**:

(a) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription, or non-prescription, is administered to or self-administered by the individual unless otherwise indicated by the ISP team in the written health and medical support section of the ISP or Transition Plan.

(b) Be followed per written orders.

(10) **PRN/Psychotropic medication prohibited.** PRN orders **shall** are not be allowed for psychototropic medication.

(11) **Drug regimen.** The drug regimen of each individual on prescription medication **shall** must be reviewed and evaluated by a physician or physician designee, no less often than every 180 days unless otherwise indicated by the ISP Team in the written health and medical support section of the ISP or Transition Plan.

(12) **Administering prescribed medications and treatments with assistance.** All prescribed medications and treatments **shall** must be self-administered unless contraindicated by the ISP team. For individuals who require assistance in the administration of their own medications, the following **shall** must be required:
(a) The ISP team has recommended that the individual be assisted with taking their medication;

(b) There is a written training program for the self-administration of medication unless contraindicated by the ISP team; and

(c) There is a written record of medications and treatments, that document physician's orders are being followed.

(13) Independent in medication administration. For individuals who independently self-administer medications, there shall be a plan for the periodic monitoring and/or review of medications on each individual's ISP.

(14) Use of prosthetic devices. The program shall assist individuals with the use of prosthetic devices as ordered.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0670 Safety: Personnel
(Repeal – See OAR 411-323-0050)

(1) BASIC PERSONNEL POLICIES AND PROCEDURES. The program must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation. The program must also have in place and implement personnel policies and procedures that address disciplinary or termination of employment when the allegation of abuse has been substantiated.

(2) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. Any employee of a private agency that contracts with a CDDP is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department-produced card regarding abuse reporting status and abuse reporting.
(3) APPLICATION FOR EMPLOYMENT. An application for employment at the program must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(4) CRIMINAL RECORDS CHECKS. Any employee, volunteer, advisor, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with an individual of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the program may not use public funds to support, in whole or in part, a person as described in section (4) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (4)(a) of this rule does not apply to employees of the service provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any staff, volunteer, advisor, or any subject individual as defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(5) DIRECTOR QUALIFICATIONS. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health, or a related field. Six years of experience, including supervision, in the field of developmental disabilities or a social service or mental health field may be substituted for a degree.

(6) STAFF QUALIFICATIONS. Any staff who supervises individuals must:

(a) Be at least 18 years of age;

(b) Be capable of performing the duties of the job as described in a current job description which he or she signed and dated; and
(c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(7) PERSONNEL FILES AND QUALIFICATION RECORDS. The program must maintain a personnel file for each staff person. In addition, the program must maintain the following for each staff person in a file available to the Division or the Division’s designee for inspection:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training and training on individual profiles and Transition Plan or ISP;

(c) Documentation that CPR and first aid certification were obtained from a recognized training agency within three months of employment and are kept current;

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of an approved criminal records check by the Department;

(f) Written documentation of a TB test within two weeks of hire;

(g) Written documentation of employees’ notification of mandatory reporter status;

(h) Written documentation of any founded report of child abuse or substantiated abuse; and

(i) Written documentation of any complaints filed against the staff person and the results of the complaint process, including, if any, disciplinary action.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670
Confidentiality. All individuals' records are confidential except as otherwise provided by applicable rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules shall be considered "providers" as defined in ORS 179.505(1), and all of ORS 179.505 shall be applicable.

(2) For the purposes of disclosure from nonmedical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0740 Rights: Grievances

(1) Policies and procedures. The program shall service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060. These policies and procedures shall, at a minimum, provide for:

(a) Receipt of grievances from individual(s) or others acting on his/her behalf. If the grievance is associated in any way with abuse or the violation of the individual's rights, the recipient of the grievance shall immediately report the issue to the program's director or designee and the CMHP;

(b) Investigation of the facts supporting or disproving the grievance;

(c) Taking appropriate actions on grievances within five working days following receipt of the grievance;

(d) Submission to the program's director. If the grievance is not resolved it shall be submitted to the program's director for review.
Such review shall be completed and a written response provided within 15 days;

(e) Submission to the Community Mental Health Program. If the grievance is not resolved by the program’s director it shall be submitted to the Community Mental Health Program for review. Such review shall be completed and a written response provided within 30 days;

(f) Submission to the Administrator. If the grievance is not resolved by the Community Mental Health Program, it may be submitted to the Administrator for review. Such review shall be completed and a written response provided within 45 days of submission. The decision of the Administrator or designee shall be final; and

(g) Documentation of each grievance and its resolution in the grievant’s record. If a grievance resulted in disciplinary action against a staff member, the documentation shall include a statement that disciplinary action was taken.

(2) Copies of all grievances to case manager. The service provider must send copies of the documentation on all grievances shall be sent by the program to the case managers services coordinator within 15 working days of initial receipt of the grievance.

(3) At entry to service and as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider’s grievance policy and procedures and a description of how to utilize them. The program shall inform each individual, and parent/guardian/advocate orally and in writing at entry to the program and as changes occur in the program’s grievance policy and procedures and a description of how to utilize them.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0805 Individual/Family Involvement
(Repeal – See OAR 411-323-0060)
Policy needed. The program shall have a policy that addresses:

(1) Opportunities for the individual to participate in decision regarding the operation of the program;

(2) Opportunities for families, guardians, and/or significant others of the individuals served by the program to interact; or

(3) Opportunities for individuals, families, guardians, and significant others to participate on the Board or on committees of the program or to review policies of the program that directly affect the individuals served by the program.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0810 Program Management
(Repeal – See OAR 411-323-0050)

(1) NON-DISCRIMINATION. The program must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment practices.

(2) PROHIBITION AGAINST RETALIATION. A community program or service provider may not retaliate against any staff who reports in good faith suspected abuse or retaliate against the adult with respect to any report. An alleged perpetrator may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. Adverse action means only those actions arising solely from the filing of an abuse report. For purposes of this subsection, "adverse action" means any action taken by a community
facility, community program, or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

(A) Discharge or transfer from the community program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the community program or the residents served by the program.

(3) DOCUMENTATION REQUIREMENTS. All entries required by this rule, unless stated otherwise, must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

(4) DISSOLUTION. Prior to the dissolution of a program, a representative of the governing body or owner must notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individuals' records.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0820 Certificate Denial, Suspension, Revocation, Refusal to Renew
(See OAR chapter 411, division 323)
(1) Conditions. The Division may deny, revoke or refuse to renew a certificate when it finds the program, the program's director, or any person holding five percent or greater financial interest in the program:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized and fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an on-site review of the service site by the Division for the purpose of investigation or certification);

(c) Has demonstrated a failure to comply with applicable laws relating to safety from fire;

(d) Has been convicted of a felony;

(e) Has been convicted of a misdemeanor associated with the operation of a residential program;

(f) Falsifies information required by the Division to be maintained or submitted regarding care of individuals, supported living program finances, or individuals' funds; or

(g) Has been found to have permitted, aided or abetted any illegal act which has had significant adverse impact on individual health, safety or welfare.

(2) Immediate suspension of certificate. In any case where the Division finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Division may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(3) Notice of certificate revocation or denial. Following a Division finding that there is a substantial failure to comply with these rules such that the
health, safety or welfare of individual is jeopardized, or that one or more of the events listed in section (1) of this rule has occurred, the Division may issue a notice of certificate revocation, denial or refusal to renew.

(4) Informal process. Following the notice issued pursuant to section (3) of this rule, the Division shall provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice.

(5) Hearing. Following issuance of a notice of certificate revocation, denial or refusal to renew, the Division shall provide the opportunity for a hearing pursuant to OAR 411-328-0830.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-328-0830 Hearings
(Repeal – See OAR chapter 411, division 323)

(1) Hearings rights. An applicant for a certificate, or certificate holder, upon written notice from the Division of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the Contested Case Provisions of ORS Chapter 183.

(2) Request for hearing. Upon written notification by the Division of revocation, denial or refusal to renew a certificate, pursuant to OAR 411-328-0830(1), the applicant/certified program shall be entitled to a hearing in accordance with ORS Chapter 183 within 60 days of receipt of notice. The request for a hearing shall include an admission or denial of each factual matter alleged by the Division and shall affirmatively allege a short plain statement of each relevant, affirmative defense the applicant/certified program may have.

(3) Hearing rights under OAR 411-328-0820(2). In the event of a suspension pursuant to OAR 411-328-0820(2) and during the first 30 days after the suspension of a certificate, the certified program shall be entitled to a fair hearing within 10 days after its written request to the Division for a hearing regarding certificate suspension. Any hearing requested after the end of the 30-days-period following certificate suspension shall be treated as a request for hearing under section (2) of this rule.
(4) Issue at hearing on denial or revocation pursuant to OAR 411-328-0820(1)(a). The issue at a hearing on certification, denial, revocation, suspension or refusal to renew a certificate pursuant to OAR 411-328-0820(1)(a) is limited to whether the program was/is in compliance at the end of the 30-calendar days following written notice of non-compliance.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670
411-335-0010 Statement of Purpose

**PURPOSE.** These rules prescribe administrative, policy, procedure, documentation, and personnel requirements for proctor agencies providing intensive, person focused services to individuals with developmental disabilities experiencing significant emotional, medical, or behavioral difficulties. Proctor providers are specially trained and supported by the proctor agency. Proctor providers assist the individual in a home environment, to make positive changes in the individual's adaptive skills that will enable him or her to move to a less restrictive setting. These rules, in addition to the rules in OAR chapter 411, division 323, also prescribe standards and procedures by which the Department of Human Services certifies programs to safely operate and oversee proctor care homes, and provide training and support to children with developmental disabilities.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007, & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0020 Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005 and for the purposes of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260.

(2) "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 in OAR 407-045-0310.
(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a person who is responsible for the individual's care.

(4) "Administrator" means the administrator of the Department, or that person's designee. The term "Administrator" is synonymous with "Assistant Director".

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

(5) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's guardian 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.

(6) "Agency Staff" means paid employees responsible for providing services directly or indirectly to children in proctor care, and to individuals whose wages or fees are paid in part or in full with funds subcontracted with the community developmental disability program or contracted directly through the Division. For the purpose of these rules, agency staff includes skill trainers.

(7) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(8) "Appeal" means the process under ORS chapter 183 that the licensed or certified provider may use to petition the suspension, denial, or revocation of their license or certificate or application.

(9) "Applicant" means a person, agency, corporation, or governmental unit, who applies for a certificate to operate a proctor agency providing 24-hour intensity individually, focused contracted services to children or adults with developmental disabilities experiencing emotional, medical, or behavioral difficulties.
(10) "Assistant Director" means the assistant director of the Division, or that person's designee.

(8) "Alternate Caregiver" means any person 18 and older responsible for the care or supervision of a child in foster care.

(449) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. This baseline measure serves as the reference point by which the ongoing efficacy of the Individual Support Plan (ISP) is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the Individual Support Plan (ISP) team meeting.

(4210) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(4311) "Behavior Data Summary" means a document composed by the service proctor provider to summarize episodes of physical intervention. The behavior data summary serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(4412) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for service proctor providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment, and teach new skills.

(4513) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to proctor agency that provides residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(14) "Certificate" means a document issued by the Department to a proctor agency that certifies the proctor agency is eligible under the rules in OAR
chapter 411, division 323 to receive state funds for the provision of endorsed proctor care residential services.

(4715) "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.

(4816) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(4917) "Choice" means the individual's and guardian'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.

(2018) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. 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.

(2419) "Competency Based Training Plan" means a written description of the proctor agency's process for providing training to newly hired agency staff and proctor providers. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the provider's proctor agency's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by the proctor agency to accommodate a staff person's or proctor provider's specific circumstances.
"Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

"Condition" means a provision attached to a new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the proctor agency or proctor provider.

"Contracting Entity" means the community developmental disability program or proctor agency contracting with the Division.

"Crisis" means:

(a) A situation as determined by a qualified services coordinator that may 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.

"Denial" means the refusal of the Division to issue a certificate to operate a proctor agency because the Division has determined that the agency is not in compliance with one or more of these rules.

"Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

"Developmental Disability" 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 as described in OAR 411-320-0080. 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, the condition must be manifested before the age of 18;
(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(2925) "Direct Nursing Service" means the provision of child-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

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

(3426) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of a parent or adult student.

(27) "Endorsement" means authorization to provide proctor care residential services issued by the Department to a certified proctor agency that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(3228) "Entry" means admission to a DivisionDepartment-funded developmental disability service provider. For the purposes of these rules,
"entry" means admission to a certified proctor provider home certified by the Department as described in OAR chapter 411, division 346.

(3329) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the program's proctor care residential services for individuals.

(3430) "Exit" means either termination from a DivisionDepartment-funded developmental disability service provider proctor agency or transfer from one DivisionDepartment-funded proctor agency to another. Exit does not mean transfer within the proctor agency.

(3531) "Foster Care" for the purpose of these rules means 24-hour substitute care for children in a foster home that is contracted with the proctor agency and certified by the Department as described in OAR chapter 411, division 346 foster home that is maintained and lived in by the person named on the foster home certificate, and contracted with the proctor agency.

(3632) "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.

(3733) "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.

(3834) "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.

(3935) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual, written by the proctor provider or agency representative involved in or witnessing the incident.
(4036) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(4437) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(4238) "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.

(4339) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP. The Individual Support Plan (ISP) 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 (ISP) is the individual's Plan of Care for Medicaid purposes.

(4440) "Individual Support Plan (ISP) Team" means a team composed of the individual served, the foster proctor provider, 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 (ISP).

(4541) "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.
"Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian.

"Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan (ISP) team meetings, that no member of the Individual Support Plan (ISP) team has the authority to make decisions for the team unless so authorized by the team process. Service Agency staff, proctor providers, families, the services coordinator, or advocacy agencies are considered as one member of the Individual Support Plan (ISP) team for the purpose of reaching majority agreement.

"Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, 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 of this rule, OAR 411-335-0020, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

"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, and that restricts freedom of movement or access to the individual's body.

"Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

"Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.
(5048) "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.

(5149) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(5250) "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.

(5351) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the provider and staff.

(5452) "Oregon Core Competencies" means:

(a) A list of skills and knowledge for newly hired staff and proctor providers in the areas of health, safety, rights, values and personal regard, and the service provider's proctor agency's mission; and

(b) The associated timelines in which newly hired staff and proctor providers must demonstrate competencies.

(5553) "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 protective 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.

(54) "Person-Centered Planning" means:
(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(56) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(58) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(59) "Proctor Agency" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency" or "program" is synonymous with "proctor agency" an entity or program certified by the Division to provide contracted and supervised services in foster homes.

(60) "Proctor Care Services" means a comprehensive residential program certified endorsed by the Division to provide intensive individually focused contracted foster care, training, and support to individuals with developmental disabilities, experiencing emotional, medical, or behavioral difficulties.

(61) "Proctor Provider" means the certified care provider of the home who is either licensed as an adult foster home or certified as who resides at
a child foster home for individuals with developmental disabilities certified by the Department as described in OAR chapter 411, division 346.

(6259) "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.

(6360) "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.

(5761) "Physical RestraintProtective 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".

(6462) "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.

(6563) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(66) "Revocation" means the action taken by the Division to rescind a proctor provider home or agency certificate after the Division has determined that the proctor provider home or agency is not in compliance with one or more of these rules.

(6764) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication
and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon the written order of a physician, and safely maintains the medication without supervision.

(68) "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 Division, or other appropriate agency, to provide these services. For the purpose of these rules, "provider", "proctor agency", "proctor agency staff", "applicant", "foster provider", "proctor provider", "alternative care-giver", "baby-sitter", "respite provider", "crisis provider", "skill trainer" or "sub contractor" are synonymous with "service provider".

(4665) "CareServices" 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. CareServices also includes being aware of the individual's general whereabouts at all times and monitoring the activities of the individual while at the proctor home to ensure the individual's health, safety, and welfare. The term "careservices" is synonymous with "servicescare".

(6966) "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, produce procure, coordinate, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities as long as the Division holds the direct contract with the proctor agency.

(7067) "Significant Other" means a person selected by the individual and guardian to be the individual's friend.

(7168) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physicians order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A specialized diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.
"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.

"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.

"Suspension of Certificate" means an immediate temporary withdrawal of the approval to operate a proctor provider home or agency after the Division determines that the proctor provider home or agency is not in compliance with one or more of these rules.

"These Rules" mean the rules in OAR chapter 411, division 335.

"Transfer" means movement of an individual from one proctor home provider to another within the same agency within the same county administered by the same proctor agency.

"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 (ISP) team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to assure health and safety, and the assessments and consultations necessary for the Individual Support Plan (ISP) development.

"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, or any incident requiring an abuse investigation.

"Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that
may be granted by the Division Department upon written application by the proctor provider or proctor agency.

(8076) "Volunteer" means any person assisting in a proctor homea proctor provider or the proctor agency without pay to support the care services provided to an individuals residing in the home or facility.

Stat. Auth.: ORS 409.050, 410.070, 427.007, & 430.215
Stats. Implemented: ORS 430.021 & 430.610 - 430.670

411-335-0030 Agency Management and Personnel Practices

(1) PROCTOR AGENCY.

(a) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide proctor care residential services, a proctor agency must have:

(A) A certificate and an endorsement to provide proctor care residential services as set forth in OAR chapter 411, division 323;

(B) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(C) For each specific geographic service area where proctor care residential services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(b) INSPECTIONS AND INVESTIGATIONS. The proctor agency must allow inspections and investigations as described in OAR 411-323-0040.

(c) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The proctor agency must comply with the agency management and personnel practices as described in OAR 411-323-0050.

(d) COMPETENCY BASED TRAINING PLAN. The proctor agency must have and implement a Competency Based Training Plan that
meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(e) PERSONNEL FILES AND QUALIFICATION RECORDS. The proctor agency must maintain written documentation kept current that the staff member and proctor provider has demonstrated competency in areas identified by the proctor agency's Competency Based Training Plan as required by OAR 411-335-0030(1)(d) of this section, and that is appropriate to their job.

(f) POLICIES AND PROCEDURES. The proctor agency must implement policies and procedures to:

(A) Assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure training of agency staff and proctor providers.

(B) Assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in proctor care services. Policies and procedures must include frequency of review.

(C) Assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to:

   (i) Respite care in the proctor provider's home during day hours only;

   (ii) Respite care in the home of someone other than the proctor provider for day time only;

   (iii) Overnight care in the proctor provider's home; and

   (iv) Overnight care at someone other than the proctor provider's home.

(D) Review and document that each child enrolled in proctor care services continues to require such services. Policies and
procedures must include frequency of review and the criteria as listed below.

(i) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record and functional assessment of the behavior.

(ii) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(iii) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(iv) The child poses no significant risk to self or community.

(v) The proctor provider has not needed or utilized the proctor agency's crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(vi) The proctor provider is successfully supporting the child over time, with a minimum of proctor agency case management contact other than periodic monitoring and check in.

(vii) The proctor provider does not require professional support for the child, and there has been or may be a reduction in ongoing weekly professional support for the child including consultation, skill training, and staffing.

(viii) The proctor agency is not actively working with the child's family to return the child to the family home.

(g) RESPONSIBILITIES. The proctor agency must:
(A) Assure that preliminary certification for the proctor provider is completed per the relevant foster care statutes and OAR chapter 411, divisions 346. Such work must be submitted to the Department for final review and approval.

(B) Complete an initial home study for all proctor provider applicants that is updated at the certification renewal for all certified proctor providers.

(C) Provide and document training and support for agency staff, proctor providers, subcontractors, volunteers, and respite providers:

   (i) To maintain the health and safety of the individuals served.

   (ii) To implement the ISP process, including completion of a Risk Tracking Record, development of protocols and BSP for each individual served, and the development of the ISP.

(D) Have a plan for emergency back-up for proctor providers including but not limited to use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(E) Coordinate and document entries, exits, and transfers.

(F) Report to the Department, and the CDDP, any placement changes due to a Crisis Plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(G) Assure that each proctor provider has a current Emergency Disaster Plan on file in the proctor provider home, in the proctor agency office, and provided to the CDDP and the individual’s services coordinator if not an employee of the local CDDP.

(H) Assure emergency backup in the event the proctor provider is unavailable.
(2) QUALIFICATIONS FOR PROCTOR AGENCY STAFF AND PROCTOR PROVIDERS INCLUDING SUBCONTRACTORS AND VOLUNTEERS. Any agency staff including skill trainers, respite providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age and have a valid social security card.

(b) Have approval to work based on Department policies and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 and OAR 411-323-0050.

(c) Disclose any founded reports of child abuse or substantiated abuse.

(d) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, services coordinators, and appropriate others, and be able to respond to emergency situations at all times.

(e) Have met the basic qualification in the agency's Competency Based Training Plan.

(3) GENERAL REQUIREMENTS FOR SAFETY AND TRAINING. All proctor providers, substitute caregivers, respite providers, child care providers, agency staff, and volunteers having contact with an individual, except for those providing services in a crisis situation, must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification, is required if it is unlikely that protective physical intervention shall be required.
(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age and have a valid social security card.

(f) Be cleared by the Department's background check requirements in OAR 407-007-0200 to 407-007-0370 and OAR 411-323-0050.

(g) Receive training in applicable agency policies and procedures.

(4) PROCTOR PROVIDERS.

(a) Proctor providers must:

   (A) Meet all the standards in these rules and the rules in OAR chapter 411, division 346;

   (B) Must have knowledge of these rules and the rules in OAR chapter 411, division 346; and

   (C) Must receive and maintain current First Aid and CPR training.

(b) Any home managed and contracted to serve children with developmental disabilities by a proctor agency must be certified by the Department as a foster home for children with developmental disabilities in accordance with OAR chapter 411, division 346.

(5) SKILLS TRAINERS, ADVISORS, OR OTHER AGENCY STAFF. Skills trainers, advisors, or other agency staff must:

(a) Receive and maintain current First Aid and CPR training;

(b) Must have knowledge of these rules and the rules in OAR chapter 411, division 346;

(c) Anyone age 18 or older, living in an agency staff members uncertified home must have an approved Department background check per OAR 407-007-0200 to 407-007-0370 and as described in
OAR 411-323-0050, prior to any visit of an individual to the staff member's home.

(d) Assure health and safety guidelines for alternative caregivers including but not limited to the following:

(A) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(B) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(D) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(E) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.

(F) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(G) First aid supplies must be available in the home and in the vehicles used to transport an individual.

(6) RESPITE PROVIDERS.
(a) If respite is being provided in the proctor provider's home day or night, the respite provider must be trained on the:

(A) Basic health needs of the individuals in service; and

(B) Basic safety in the home including but not limited to first aid supplies, the Emergency Plan, and the Fire Evacuation Plan.

(b) If respite is being provided in a home other than the proctor provider's home day or night, the respite provider must assure health and safety guidelines for alternative caregivers, including but not limited to:

(A) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(B) Any sleeping room used for an individual in respite must be finished, have a window that may be opened, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(C) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(D) The alternative caregivers must have access to a working telephone in the home and must have a list of emergency telephone numbers and know where the numbers are located.

(E) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents an individual from accessing them.

(F) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.
(G) First aid supplies must be available in the home and in the vehicles used to transport individuals.

(7) DAY CARE AND CAMP. When a child is cared for by a child care provider, camp, or child care center, the proctor agency must assure that the camp, provider home, or center is certified, licensed, or registered as required by the Child Care Division (ORS 657A.280). The proctor agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, child care center, or child care provider home.

(8) SOCIAL ACTIVITIES FOR LESS THAN 24 HOURS, INCLUDING OVERNIGHT ARRANGEMENTS. The proctor agency must assure:

(a) The person providing care is capable of assuming all care responsibilities and shall be present at all times.

(b) The ISP team is in agreement with the planned social activity.

(c) The proctor provider maintains back-up responsibilities for the individual in service.

(9) GENERAL CRISIS REQUIREMENTS FOR INDIVIDUALS ALREADY IN PROCTOR AGENCY HOMES.

(a) Crisis service providers must:

(A) Be at least 18 years of age.

(B) Have initial and annual approval to work based on current Department policies and procedures for review of background checks per OAR 407-007-0200 to 407-007-0370 and as described in OAR 411-323-0050, prior to supervising any individual. Providers must also have a child welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols.
Be trained on required documentation for health, safety, and behavioral needs of the individual.

(b) The proctor agency must:

(A) Make follow-up contact with the crisis provider within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(10) MANDATORY ABUSE REPORTING. Proctor agency staff and providers are mandatory reporters. Upon reasonable cause to believe that abuse has occurred, all members of the household and any proctor providers, substitute caregivers, agency staff, independent contractors, or volunteers must report pertinent information to the Department, the CDDP, or law enforcement. For reporting purposes the following shall apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(11) CONFIDENTIALITY OF RECORDS.

(a) The proctor agency must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(b) The proctor agency, proctor provider, and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 407-014-0020 only on a need to know basis to law enforcement, services coordinators, the Department including child protective services staff and child welfare caseworkers, the CDDP, Office of Investigations and Training
investigators, and medical professionals who are treating or providing services to the individual. The information shared must be limited to the health, safety, and service needs of the individual.

(c) The proctor agency, proctor provider, and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 407-014-0020 and therefore may use or disclose an individual's protected health information as defined in OAR 407-014-0000 only:

(A) To law enforcement, the Department, or the CDDP;

(B) As authorized by the individual's guardian including but not limited to a guardian appointed under ORS 125.305, 419C.481, or 419C.555;

(C) For purposes of obtaining healthcare and treatment of the individual;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court.

(d) The proctor agency and the proctor provider must keep all written records for each individual in a manner that assures their confidentiality.

(12) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsification;

(c) Be legible, dated, and signed by the person making the entry;

(d) Be maintained for no less than five years; and
(e) Be made readily available for the purposes of inspection.

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when an agency staff member, or subcontractor including respite providers and volunteers, has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated. Policy must reflect that any incurred crime as described under the criminal records check rules in OAR 407-007-0200 to 407-007-0370 shall be reported to the agency.

(3) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(4) CRIMINAL RECORDS CHECKS. Any employee, volunteer, proctor provider, respite provider, crisis provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with a resident of the agency, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

   (a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, a person as described in section (4) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

   (b) Section (4)(a) of this rule does not apply to employees of the proctor provider or proctor agency who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

   (c) Any employee, volunteer, proctor provider, respite provider, crisis provider, advisor, skill trainer, or any subject individual defined by
OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(5) INVESTIGATIONS. For investigations conducted by the Department or the Department’s designee in homes certified for children, the definitions of abuse described in ORS 419B.005 and OAR 407-045-0260 shall apply.

(6) PROHIBITION AGAINST RETALIATION. The agency may not retaliate against any agency staff member, subcontractor including respite providers and volunteers, or proctor providers that report in good faith suspected abuse, or retaliate against the individual, with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the individual because of the report and includes but is not limited to:

(A) Discharge or transfer from the program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the program or the individuals served by the program.
(7) RESPONSIBILITIES OF PROCTOR AGENCY. The proctor agency must:

(a) Implement policies and procedures to assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure necessary training of agency staff and proctor providers.

(b) Implement policies and procedures to assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in the proctor care services. Policies and procedures must include frequency of review.

(c) Implement policies and procedures to assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to:

(A) Respite care in the proctor provider's home during day hours only;

(B) Respite care in the home of someone other than the proctor provider for day time only;

(C) Overnight care in the proctor provider's home; and

(D) Overnight care at someone other than the proctor provider's home.

(d) Implement policies and procedures to assure confidentiality of individuals in service and of family information.

(e) Implement policies and procedures to review and document that each child enrolled in proctor care services continues to require such services. Policies and procedures must include frequency of review and the criteria as listed below.
(A) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record and functional assessment of the behavior.

(B) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(C) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub-acute) for the last 12 months, except for assessment and evaluation.

(D) The child poses no significant risk to self or community.

(E) The proctor provider has not needed or utilized the agency crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(F) The proctor provider is successfully supporting the child over time, with a minimum of agency case management contact other than periodic monitoring and check in.

(G) The proctor provider does not require professional support for the child, and there has been or could be a reduction in ongoing weekly professional support for the child including consultation, skill training, and staffing.

(H) The proctor agency is not actively working with the child's family to return the child to the family home.

(f) ADULTS IN PROCTOR SERVICES. Implement policies and procedures where the ISP Team evaluates annually the adult individual's support needs and need for proctor services.

(g) Assure that preliminary certification or licensing activities (whichever is appropriate) are completed per the relevant foster care statutes and OAR chapter 411, divisions 346 or 360. Such work must be submitted to the Division for final review and approval.
(h) Complete an initial home study for all proctor provider applicants that are updated at the certification renewal for all licensed or certified proctor providers.

(i) Provide and document training and support to agency staff, proctor providers, subcontractors, volunteers, and respite providers to maintain the health and safety of the individuals served.

(j) Provide and document training and support to the agency staff, proctor providers, subcontractors, volunteers, and respite providers to implement the ISP process, including completion of a Risk Tracking Record, development of protocols and BSP for each individual served, and the development of the ISP.

(k) Have a plan for emergency back-up for home provider including but not limited to use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(l) Coordinate and document entries, exits, and transfers.

(m) Report to the Division, and the CDDP, any placement changes due to a Crisis Plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(n) Assure that each proctor provider has a current Emergency Disaster Plan on file in the proctor provider home, in the agency office, and provided to the CDDP and any case manager of an individual who is not an employee of the local CDDP.

(o) Assure emergency backup in the event the proctor provider is unavailable.

8. GENERAL REQUIREMENTS FOR SAFETY AND TRAINING. All volunteers having contact with the individual, proctor providers, substitute caregivers, respite providers, child care providers, and agency staff, except for those providing services in a crisis situation, must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety,
ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification is required if it is unlikely that physical intervention shall be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age and have a valid social security card.

(f) Be cleared by the Department's criminal records check requirements.

(g) Have a valid Oregon driver's license and proof of insurance.

(h) Receive training in applicable agency policies and procedures.

(9) In addition to the above general requirements, the following requirements must be met for each specific provider classification as listed below.

(a) PROCTOR PROVIDERS:

   (A) Must receive and maintain current First Aid and CPR training.

   (B) Must have knowledge of these rules and OAR divisions 346 or 360 as appropriate to their license or certificate.

(b) SKILLS TRAINERS, ADVISORS, OR OTHER AGENCY STAFF:

   (A) Must receive and maintain current First Aid and CPR training.
(B) Must have knowledge of these rules and OAR divisions 346 or 360.

(C) Anyone age 18 or older, living in an agency staff persons uncertified home must have an approved Department criminal records check per OAR 407-007-0200 to 407-007-0370 and as described in section (4) of this rule, prior to any visit of an individual to the staff person's home.

(D) Must assure health and safety guidelines for alternative caregivers including but not limited to the following:

   (i) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

   (ii) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

   (iii) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

   (iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

   (v) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.
(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport an individual.

(c) RESPITE PROVIDERS.

(A) IN PROCTOR PROVIDER HOME—DAY OR NIGHT:

(i) Must be trained on basic health needs of the individuals in service.

(ii) Must be trained on basic safety in the home including but not limited to first aid supplies, the Emergency Plan, and the Fire Evacuation Plan.

(B) IN OTHER THAN PROCTOR PROVIDER HOME—DAY OR NIGHT. Must assure health and safety guidelines for alternative caregivers, including but not limited to:

(i) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, have a window that may be opened, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.
(iv) The alternative caregivers must have access to a working telephone in the home and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents an individual from accessing them.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport individuals.

(d) ALTERNATE CAREGIVERS.

(A) DAY CARE, CAMP:

(i) When a child is cared for by a child care provider, camp, or child care center, the proctor agency must assure that the camp, provider home, or center is certified, licensed, or registered as required by the Child Care Division (ORS 657A.280). The agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, child care center, or child care provider home.

(ii) Adults participating in employment or alternatives to employment must have such services addressed in their ISP. Any camping or alternative day service experience must be addressed in the ISP and approved by the ISP team.

(B) SOCIAL ACTIVITIES FOR LESS THAN 24 HOURS, INCLUDING OVERNIGHT ARRANGEMENTS:
(i) The proctor agency must assure the person providing care is capable of assuming all care responsibilities and shall be present at all times.

(ii) The proctor agency must assure that the ISP team is in agreement with the planned social activity.

(iii) The proctor agency must assure that the proctor provider maintains back-up responsibilities for the person in service.

(10) GENERAL CRISIS REQUIREMENTS FOR INDIVIDUALS ALREADY IN PROCTOR AGENCY HOMES.

(a) Crisis service providers must:

(A) Be at least 18 years of age.

(B) Have initial and annual approval to work based on current Department policies and procedures for review of criminal records check per OAR 407-007-0200 to 407-007-0370 and as described in section (4) of this rule, prior to supervising any individual. Providers serving children must also have a child welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Training for the provider must include information on required documentation for health, safety, and behavioral needs of the individual.

(b) The agency must:

(A) Make follow-up contact with the crisis providers within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.
(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(11) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. Proctor agency staff and caregivers are mandatory reporters. Upon reasonable cause to believe that abuse has occurred, all members of the household and any proctor providers, substitute caregivers, agency employees, independent contractors, or volunteers must report pertinent information to the Department, the CDDP, or law enforcement. For reporting purposes the following shall apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(12) DIRECTOR QUALIFICATIONS. The proctor agency must be operated under the supervision of a Director who has a minimum of a bachelor’s degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(13) QUALIFICATIONS FOR PROCTOR AGENCY STAFF AND PROCTOR PROVIDERS INCLUDING SUBCONTRACTORS AND VOLUNTEERS. Any agency staff including skill trainers, respite providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age and have a valid social security card.

(b) Have approval to work based on Department policies and a criminal records check completed by the Department as described in section (4) of this rule.
(c) Disclosed any founded reports of child abuse or substantiated abuse.

(d) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, services coordinators, and appropriate others, and be able to respond to emergency situations at all times.

(e) Have met the basic qualification in the agency's Competency Based Training Plan.

(f) Meet any additional qualifications specified for substitute caregivers in OAR 411-360-0110 and OAR 411-360-0120 if working in a home licensed as an adult foster home for individuals with developmental disabilities.

(14) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain clear, written, signed, and up-to-date job descriptions and respite agreements when applicable, as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each agency employee:

(a) Written documentation that references and qualifications were checked.

(b) Written documentation of an approved criminal records check by the Department as required by OAR 407-007-0200 to 407-007-0370.

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter.

(d) Written documentation of any founded reports of child abuse or substantiated abuse.

(e) Written documentation kept current that the agency staff person has demonstrated competency in areas identified by the agency's Competency Based Training Plan as required by Oregon's Core Competencies defined in OAR 411-335-0020 and that is appropriate to their job description.
(f) Written documentation of 12 hours of job-related in-service training annually.

(g) Proctor providers must meet all of the standards in these rules and the standards that apply to the specific type of foster home:

(A) The child foster home certification standards in OAR chapter 411, division 346.

(B) The adult foster home licensing standards in OAR chapter 411, division 360.

(C) The child welfare administrative rules in OAR chapter 413, divisions 200 and 220.

(15) AGENCY DOCUMENTATION REQUIREMENTS. All documentation required by these rules must:

(a) Be prepared at the time, or immediately following the event being recorded.

(b) Be accurate and contain no willful falsification.

(c) Be legible, dated, and signed by the person making the entry.

(d) Be maintained for no less than five years.

(e) Be made readily available for the purposes of inspection.

(16) DISSOLUTION OF AGENCY. Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Division 30 days in advance in writing and make appropriate arrangement for the transfer of individual’s records.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215
Stats. Implemented: ORS 430.021 & 430.610 - 430.670

411-335-0050 Issuance of Proctor Care Agency Certificate
(Repeal – See OAR chapter 411, division 323)
(1) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate Department funded proctor services in proctor provider homes for individuals with developmental disabilities without being certified by the Department for each home or facility.

(2) No certificate is transferable or applicable to any other agency, management agent, or ownership other than that indicated on the application and certificate.

(3) The Department shall issue a certificate to an agency found to be in compliance with these rules. A certificate issued on or before February 1, 2009 shall be valid for five years unless revoked or suspended.

(4) Any home managed and contracted to serve children with developmental disabilities by a proctor care agency under this certificate must be certified by the Department in accordance with the Division’s rules for children’s foster provider homes: OAR chapter 411, division 346.

(5) Any home managed and contracted to serve adults with developmental disabilities must be licensed as an adult foster home for adults with developmental disabilities (AFH-DD) in accordance with OAR chapter 411, division 360.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215
Stats. Implemented: ORS 430.021 & 430.610–430.670

**411-335-0060 Application for Proctor Care Agency Certificate Admittance of Individuals**

(a1) A proctor agency or home contracted with the proctor agency must have prior written consent of the Department or the Department's designee to No proctor agency or home contracted with the proctor agency will admit individuals to a home whose care needs or age, exceed the home’s certificate or license, or would violate conditions on the certificate or license, without prior written consent of the Department or its designee.

(b2) A proctor agency or home contracted with the proctor agency must have Department approval to No proctor agency or home contracted with
The proctor agency will admit or continue to serve children or adults whose numbers exceed the capacity on the proctor provider's Child Foster Home certificate or Adult Foster Home license without Department approval.

(e3) No proctor agency or home contracted to provide proctor services, will may not admit or continue to provide proctor services to children who can may be safely and appropriately supported in foster care, if available, or the individual's family home, as outlined in this OAR 411-335-0030(5)(e)(A-H).

(d4) No proctor agency or home contracted with the proctor agency will may not admit an individual from another funding source without first determining that the care and safety needs of all individuals in the home may be maintained, and that there is prior written approval from the placing agency(s) and the Community Developmental Disability Program (CDDP) where the foster home is located.

(1) Application. At least 60 days prior to anticipated certification the agency must submit an application on a Department approved form and must include all information required by the Department.

(2) Number of homes and individuals. The agency must identify the number of homes and children the agency is presently capable of managing at the time of application, considering ancillary service capability and the requirements as specified by these rules. For purposes of agency certification renewal, the number of homes to be certified or licensed and the number of individuals to be served must not exceed the number identified on the certificate to be renewed unless approved by the Department.

(3) Certification required prior to providing services. A Proctor Agency must not recruit, train, perform preliminary certification activities or provide any proctor services prior to receiving a written confirmation of Proctor Agency Certification from the Department.

(4) Demonstrated Capability and Performance History

(a) If an agency fails to provide complete, accurate, and truthful information during the application and certification process the
approval process may be delayed and the Department may deny the application or revoke the certificate.

(b) Any applicant(s) or person(s) with a controlling interest in an agency will be considered responsible for acts occurring during, and relating to, the operation of such agency for purpose of certification.

(c) The Department may consider the background and operating history of the agency, the Executive Director and each person with a having an incident of ownership in the facility of ten percent or more when determining whether to issue certificate.

(d) When an application for initial certification is made by an agency that manages, owns or operates other certified services or licensed facilities in Oregon, the Department may deny the certificate if the agency’s existing home(s) or facility(ies) are not, or have not been, in substantial compliance with applicable Oregon Administrative Rules.

(5) Admittance of individuals.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

(Repeal – See OAR chapter 411, division 323)

(1) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a proctor agency will expire two years following the date of issuance.

(2) Termination of operation. The certificate will be considered void immediately if the operation is discontinued for any reason by voluntary action of the agency or if there is a change in ownership.

(3) Return of certificate. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when the operation is voluntarily or involuntarily discontinued.
411-335-0080 Renewal of Certification
(Repeal – See OAR chapter 411, division 323)

(1) Renewal application required. A certificate is renewable upon submission of an application to the Department.

(2) Filing of application extends date of expiration. Filing of an application for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application is not submitted prior to the expiration date, the agency will be considered as not certified to provide Proctor Care Services for individuals with developmental disabilities funded by the Department.

(3) Certification review. The Department will conduct a certification review of the agency and agency services prior to the renewal of the certificate. The review may be unannounced, will be conducted prior to expiration of the certificate and will review compliance with OAR chapter 411, division 335 and where appropriate, chapter 411, divisions 346 or 360.

(4) Refusal to renew a certification. The Department will not renew a certificate if the agency or its services are not in substantial compliance with these rules.

411-335-0090 Change of Ownership, Legal Entity, Legal Status, Management Corporation
(Repeal – See OAR chapter 411, division 323)

Notice of pending change in ownership, legal entity, legal status, or management corporation: new certificate required. The agency must notify the Department in writing of any pending change in the program’s ownership or legal entity, legal status, or management corporation and submit a certification application at least 30 days prior to change in ownership, legal entity, or legal status.
411-335-0100 Inspections and Investigations
(Repeal – See OAR 411-323-0040)

(1) All services covered by these rules must allow the following types of investigations and inspections:

   (a) Quality assurance, certificate renewal, and onsite inspections including a review of records at the agency office, as well as onsite review of at least one or more proctor provider homes as selected by the Division;

   (b) Complaint investigations; and

   (c) Abuse investigations. Priority review may be given when protective service investigations have taken place.

(2) The Department, the Department’s designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

   (a) Open to inspection and investigation by the Department, the Department’s designee, or proper authority; and

   (b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department’s designee has determined to initiate an investigation, the provider may not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as:
(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

   A. If there is reasonable cause to believe that abuse has occurred;

   B. If the alleged victim is in danger or in need of immediate protective services;

   C. If there is reason to believe that a crime has been committed; or

   D. What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation has been initiated, the Department or the Department’s designee shall provide notification in accordance with OAR chapter 407, division 045.

(7) The Department or the Department’s designee shall conduct investigations as described in OAR chapter 407, division 045.

(8) When an abuse investigation has been completed, the Department or the Department’s designee shall provide notice of the Abuse Investigation and Protective Services Report according to OAR chapter 407, division 045.

(9) Upon completion of the abuse investigation by the Department, the Department’s designee, or a law enforcement agency, the agency may conduct an investigation to determine if any additional personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Service Report, according to OAR chapter 407, division 045 the sections of the
report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider. The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) A plan of correction must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215
Stats. Implemented: ORS 430.021 & 430.610–430.670

411-335-0110 Mid-Cycle Review
(Repeal)

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the agency and its services nine to fifteen months after renewal of the agency’s certificate under the following circumstances:

(a) Failure by the agency to successfully complete certificate renewal as evidenced by two or more follow-up reviews; or

(b) Failure by the agency to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or agency.

(2) Self-Assessment Required. As part of the mid-cycle process the agency must conduct a self-assessment based upon the requirements of this rule.

(a) The agency must document the findings of the self-assessment on forms provided by the Department;

(b) The agency must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The agency must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.
Compliance with OAR chapter 411, division 335. The review will be conducted for compliance with OAR chapter 411, division 335 and where applicable, OAR chapter 411, divisions 346 or 360. The review may be announced or unannounced based on the discretion of the Department.

Stats. Implemented: ORS 430.021(4) & 430.610--430.670

411-335-0120 Variances

(1) Criteria for a variance--The Department may grant a variance to these rules based upon a demonstration by the proctor agency that the requested variance an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals.

(2) Variance application--The proctor agency requesting a variance must submit, in writing, an application--variance request on Department forms either to the SPD Department's Residential Services Coordinator or the CDDP designee whichever entity holds the contract for proctor services. The representative for the entity holding the contract will review the request, make a recommendation for approval or denial and submit to the Department. Any variance that applies to a proctor provider home must be submitted in accordance with this rule OAR chapter 411, divisions 335 or 360 whichever rule apply to the home. Variance applications must at a minimum contain the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed that provides equal or greater program effectiveness that does not adversely impact health, safety or rights; and

(d) If the variance applies to an individual's services, evidence, when appropriate, that the variance is consistent with an individual's currently approved--authorized ISP, according to OAR chapter 411, divisions 335 and 360; and
(e) Provide any supplementary information as may be required by the Department.

(3) Program review. The Manager or designee of the contracting entity will forward the signed variance request form with a recommendation for approval or denial to the Department within 30 days of receipt of the request indicating its position on the proposed variance. If the variance affects more than one contracting entity, the variance must be reviewed and signed by each contracting entity.

(4) Department review. The Administrator or designee will approve or deny the request for a variance.

(5) The Department's decision shall be sent to the proctor agency, the contracting entity, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request. Notification. The Department must notify the proctor agency and the contracting entity of the decision. The Department will send this notice within 30 calendar days of receipt of the request with a copy to other relevant Department programs or offices.

(6) The proctor agency may appeal the denial of a variance request within 10 working days of the denial, by sending a written request for review to the Administrator and a copy of the request to either the Department's Residential Services Coordinator or the CDDP whichever entity holds the contract for proctor services. Appeal. An Agency may appeal of the denial of a variance by submitting a request in writing to the Administrator or his designee within 10 days of the denial with a copy sent to the contracting entity. The Administrator's decision will be final.

(7) Duration of variance. The Department will determine the duration of the variance. A variance cannot extend beyond the term of the certificate.

(8) Written approval. The proctor agency or proctor provider may implement a variance only after receiving written approval from the Department.
Individual/family involvement policy needed. The agency must have and implement a written policy that addresses:

(1) Opportunities for the adult service recipients and guardians to participate in decisions regarding the operations of the agency;

(2) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the agency to interact;

(3) Opportunities for adult service recipients, families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the agency.

411-335-0230 Individual Support Plan

(1) Department Individual Support Plan required. A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the proctor provider home within 60 days of entry and annually thereafter. The agency must assure that agency staff and proctor providers are trained to implement the Proctor ISP in a manner consistent with the Department prescribed process.

(2) Preparation for ISP. The following required documents information must be completed collected and summarized within 45 days prior to the ISP meeting for an individual:

   (ea) Personal Focus Worksheet.

   (ab) Risk Tracking Record;
(bc) Necessary protocols or plans that address health, behavioral, and safety, and (including financial) supports as identified on the Risk Tracking Record;

(ed) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(de) Other documents required by the ISP team.

(3) Content of Individual Support Plan. A completed ISP must be documented on the Department required form. Documentation of ISP Team members’ signatures must be attached to the ISP and include the following:

(a) What’s most important to the individual;

(b) Risk summary;

(c) Professional services the individual uses or needs;

(d) Action plan;

(e) Discussion record;

(f) Service supports; and

(g) Signature sheet.

(4) Any protocols as required by the Risk Tracking Record must be available for the proctor provider and any other caregivers.

(5) Availability and Implementation of ISP. The ISP and all documents of support must be available in the home for the provider(s) and any staff. The provider(s) and any staff must be trained in the ISP and it be implemented as written. Implementation must occur within the month of the expiration of the current ISP.

(64) Documentation required. The agency must maintain documentation of implementation of each support and services specified in OAR 411-335-0230(2)(c) to (2)(e) of this rule noted in the individual's ISP. This
documentation must be kept current and be available for review by the individual, guardian, CDDP, and Department representatives.

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0300 Rights: Confidentiality of Records
(Repeal – See OAR 411-335-0030)

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records, service providers under these rules are considered "providers" as defined in ORS 179.505.

(2) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) The proctor agency, proctor provider and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 410-014-0020(1-5) only on a need to know basis to law enforcement, Services Coordinator, DHS-CW child protective services staff, SOSCF DHS-CW caseworker, CDDP or OIT investigators, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health and safety, and service needs of the individual.

(4) The proctor agency, proctor provider and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 410-014-0020(1-5) and therefore may use or disclose an individual's protected health information as defined in OAR 410-014-0000(33) only:

   (a) To law enforcement, CDDP, SPD, or DHS-CW staff;
(b) As authorized by the child or adults personal representative, including but not limited to a guardian appointed under ORS 125.305, 419C.481 or 419C.555;

(c) For purposes of obtaining healthcare and treatment of the individual;

(d) For purposes of obtaining payment for health care treatment; or

(e) As permitted or required by state or federal law or by order of a court.

(5) The proctor agencies and the proctor providers must keep all written records for each individual in a manner that assures their confidentiality.

Stats. Implemented: ORS 430.021(4) & 430.610—430.670

411-335-0310 Rights: Informal Complaints and Formal Grievances

(1) Grievances. The proctor agency must develop and implement written policies and procedures regarding individual informal complaints and formal for individuals’ grievances as required by OAR 411-323-0060. These policies and procedures must at minimum address:

(a) Informal complaint resolution. This provides an opportunity for an individual or guardian to informally discuss and resolve any allegation that an agency has taken action on which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity will not preclude the individual or guardian to pursue resolution through formal grievance processes.

(b) Formal grievances and grievance log must include a description of how the agency receives and documents grievances from individuals or guardians. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Services Coordinator from the agency that holds the contract, and the Executive Director or designee. The formal grievance policies and procedures must require:
(A) Investigation of the facts supporting or disproving the grievance;

(B) That the Executive Director or designee provide a formal written response to the grievance within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant’s satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant:

(i) Of the right to appeal an adverse decision to the CDDP and how to do so, including the name, address, and phone number of the person at the CDDP to whom the appeal should be submitted;

(ii) Of the availability of assistance in appealing the grievance and how to access that assistance.

(C) That the Executive Director or Designee will submit to the CDDP and Services Coordinator for review, grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or Designee believes that the grievant may not have the capability to appeal an adverse decision to the CDDP.

(D) The CDDP will address the appeal as provided in the Community Developmental Disability Program’s Administrative Rule, OAR 411-320-0170.

(E) Documentation of each grievance and its resolution must be filed or noted in the grievant’s record. In addition, the agency must maintain a grievance log, which will, at a minimum, identify the person making the grievance, the date of the grievance, and the nature of the grievance, the resolution, and the date of the resolution.

(2) The proctor agency must send copies of the documentation on all grievances to the services coordinator within 15 working days of initial receipt of the grievance.
At entry to service and as changes occur, the proctor agency must inform each individual and parent, guardian, or advocate orally and in writing of the proctor agency's grievance policy and procedures and a description of how to utilize them. Notification of policies and procedures. The program must inform each individual and guardian orally and in writing of its grievance policy and procedures. This must be done at entry to the agency and in a timely manner thereafter as changes occur. Information must be presented using language, format and methods of communication appropriate to the individuals and family/guardians needs and abilities.

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0370 Conditions on Certificate
(Repeal – See OAR chapter 411, division 323)

Attaching conditions to a certificate. The Department may attach conditions to the certificate, which limit, restrict or specify other criteria for operation of the agency and its proctor service.

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0380 Conditions
(Repeal – See OAR chapter 411, division 323)

(1) Conditions may be attached to a certificate upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(b) There exists a threat to the health, safety, and welfare of individuals;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home or agency is not being operated in compliance with these rules; or
(e) The proctor provider is certified to care for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that may be imposed on a certificate include but are not limited to:

   (a) Restricting the total number of individuals;

   (b) Restricting the number and support level of individuals allowed within a certified classification level based upon the capacity of the proctor provider and agency staff to meet the health and safety needs of all individuals;

   (c) Reclassifying the level of individuals that can be served;

   (d) Requiring additional agency staff or agency staff qualifications;

   (e) Requiring additional training of proctor providers and agency staff;

   (f) Requiring additional documentation; or

   (g) Restriction of admissions.

(3) The agency shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.502.

(4) In addition to, or in lieu of, a contested case hearing, an agency may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the agency's right to a hearing.

(5) Conditions may be imposed for the duration of the certificate period (five years) or limited to some other shorter period of time. If the condition corresponds to the certification period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on an attachment to the certificate.
411-335-0390 Certificate Denial, Suspension, Revocation, Refusal to Renew
(Repeal – See OAR chapter 411, division 323)

(1) Substantial failure to comply with rules. The Department will deny, suspend, revoke or refuse to renew a certificate where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or his representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) Imminent danger to individuals. The Department will immediately suspend the home or agency certificate where imminent danger to health or safety of individuals exists.

(3) Debarred providers or individuals. The Department will deny, suspend, revoke or refuse to renew a certificate or license where it finds that a provider or agency is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with these rules and ORS Chapter 183.

(5) Failure to disclose requested information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application will constitute grounds for denial or revocation of the certificate.

(6) Failure to implement a plan of correction or comply with a final order. The Department will deny, suspend, revoke or refuse to renew a certificate if the agency fails to implement a plan of correction or comply with a final order of the Department.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215
Stats. Implemented: ORS 430.021 & 430.610–430.670
DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES DIVISION
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 345

EMPLOYMENT AND ALTERNATIVES TO EMPLOYMENT SERVICES
FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

411-345-0010 Statement of Purpose

These rules prescribe standards for providing employment and alternatives to employment services for individuals with developmental disabilities receiving residential services. These rules also prescribe the standards and procedures by which the Division certifies service providers to provide employment and alternatives to employment services.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-345-0020 Definitions

As used in these rules, the following definitions apply:

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "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 in OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(4) "Administrator" means the Administrators of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.
(5) "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.

(6) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(7) "Alternatives to Employment Services" mean any services, conducted away from an individual's residence that addresses the academic, recreational, social, or therapeutic needs of the individuals for whom it serves.

(8) "Annual Individual Support Plan (ISP) Meeting" means an annual meeting, facilitated by a services coordinator of the community developmental disability program and attended by the ISP team members and other persons, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an ISP.

(9) "Certificate" means a document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed employment and alternatives to employment services provider of employment and alternatives to employment services that certifies that the service provider is eligible to receive state funds for the provision of these services.

(10) "Community Based Service" means any service or program providing opportunities for the majority of an individual's time to be spent in community participation or integration.

(11) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state operated by or under a contract with the Department, local mental health authority, or other entity as contracted by the Department.
(12) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(13) "Controlled Substance" means any drug classified as Schedules 1 to 5 under the Federal Controlled Substance Act.

(14) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".

(15) "Developmental Disability" 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 as described in OAR 411-320-0080. 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.

(16) "Discovery" is a focused time-limited service engaging a participant in identifying their strengths, needs, and interests to prepare for integrated employment.

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

(18) "Employment Services" means any service that has as its primary goal the employment of individuals, including job assessment, job development, training, and ongoing supports.

(19) "Endorsement" means authorization to provide employment and alternatives to employment services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(20) "Entry" means admission to a Department-funded developmental disability service.

(21) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the
employment and alternatives to employment services and provision of support services for individuals.

(21) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded program or service provider to another.

(22) "Facility Based Service" means any service or program operated by a service provider that occurs in a location supporting more than eight individuals as a group.

(23) "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.

(24) "Important for an Individual" means the areas of life that relate to being healthy, safe, and a valued member of the community.

(25) "Important to an Individual" means the individual's perspective on the people, places, and things they like, personal values, spirituality, and a sense of self. This is learned by listening to what is being said by words or actions. When there is a conflict between words and actions, actions are considered first.

(26) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(27) "Independence" means the extent to which individuals exert control and choice over their own lives.

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

(29) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The type of service supports needed, how supports are delivered, and the frequency of provided supports are included in the ISP.
The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(2930) "Individual Support Plan (ISP) Action Plan" means the written documentation of the ISP team’s commitment in supporting an individual to resolve or improve particular aspects of their life. An ISP Action Plan identifies the necessary measurable steps to be taken, who is accountable for assuring implementation, and timelines for completion.

(3031) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (as appropriate), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(3432) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons in the community;

(b) including 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 reside in homes or home-like settings that are in proximity to community resources and having foster contact with persons in their community.

(3233) "Job Development" means assistance and support for individuals to pursue employment and obtain job placement.

(3334) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, 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 of this rule, OAR 411-345-0020, except that 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.

(35) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the service provider's enrollment as described in OAR chapter 411, division 370.

(36) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.

(3437) "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.

(3638) "Oregon Intervention System (OIS)" means Oregon Intervention System 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 protective physical intervention techniques that are used to maintain health and safety.

(3639) "Path to Employment" means a concept that identifies an individual’s preferences in moving toward employment using principles of self-determination and a set of questions and strategies that assist the Individual Support Plan team when planning.

(3740) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about employment or personal goals, activities, and lifestyle preferences; and
(B) Identify, use, and strengthen naturally occurring opportunities for support in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(3841) "Person-Centered Process" means a practice of identifying what is important to and for an individual, and the supports necessary to address issues of health, safety, behavior, and financial support.

(39) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(4442) "Productivity" as defined in ORS 427.005 means:

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

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

(4243) "Protection" means the 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.

(4044) "Physical Restraint/Protective Physical Intervention" 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".

(4345) "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.
(4446) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon the written order of a physician, and safely maintains the medication without supervision.

(4547) "Self-Determination" means, for the purpose of these rules, a philosophy and process by which individuals are empowered to gain control over the selection of services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely chosen family, friends, and professionals, to plan for employment beyond the parameters of a predefined program;

(b) Authority. The ability for an individual, together with the Individual Support Plan team, to declare a chosen employment path and to plan supports accordingly.

(c) Autonomy. Planning for and accessing resources that support an individual to seek employment; and

(d) Responsibility. The acceptance of a valued role in an individual's community through employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals.

(4648) "Service Provider" or "Service" means a public or private community agency or organization that provides recognized developmental disability services and is approved, certified and endorsed by the Division or other appropriate agency, Department to provide these services under these rules and the rules in OAR chapter 411, division 323. For the purpose of these rules, "agency", "provider", or "program" is synonymous with "service provider".

(4749) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and
monitor Individual Support Plan services and to act as a proponent for individuals with developmental disabilities.

(4850) "Staff" means a paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds contracted with the community developmental disability program or contracted directly through the Department.

(4951) "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.

(5052) "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 subject to change with time and circumstances.

(5453) "Supported Employment" means the provision of situational assessment, job development, job training, and ongoing support necessary to place, maintain, or change the employment of an individual in an integrated work setting. The individual is compensated in accordance with the Fair Labor Standards Act.

(5254) "These Rules" mean the rules in OAR chapter 411, division 345.

(5355) "Transfer" means movement of an individual from one site to another site administered by the same service provider within the same county.

(54) "Unacceptable Background Check" means a background check as defined in OAR 407-007-0210 that precludes the service from being certified for the following reasons:

(a) The service or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or
(b) A criminal records check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(5556) "Unit of Service" means the equivalent of an individual receiving services 25 hours per week, 52 weeks per year minus the following:

(a) Personal, vacation, or sick leave allowed by the service provider or employer;

(b) Holidays as recognized by the state of Oregon; and

(c) Up to 4-four days for all-staff in-service training.

(5657) "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, or any incident requiring an abuse investigation.

(58) "Variance" means a temporary exception from a regulation or provision of these rules or the rules in OAR chapter 411, division 323 that may be granted by the Department upon written application by the service provider.

(5759) “Volunteer” means any person providing services assisting a service provider without pay to support the services provided to an individual receiving employment or alternatives to employment services.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-345-0030 Certification Program Management

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To provide employment and alternatives to employment services, a service provider must have:

(a) A certificate and an endorsement to provide employment and alternatives to employment services as set forth in OAR chapter 411, division 323;
(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where employment and alternatives to employment services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

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

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

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The service provider must maintain written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training to work with individuals with developmental disabilities, and training on the support needs of the individual to whom they will provide support;

(5) CONFIDENTIALITY OF RECORDS. The service provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(6) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

(1) No person or governmental unit acting individually or jointly with any other person or governmental unit shall establish, conduct, maintain,
manage, or operate an employment or alternative to employment service without being certified.

(2) Each certificate is issued only for the service and persons or governmental units named in the application. No certificate is transferable or assignable to any location, service, facility, agency, management agent, or ownership other than that indicated on the application and certificate.

(3) A certificate issued on or after February 1, 2008 shall be valid for a maximum of five years unless revoked or suspended.

(4) As part of the certificate renewal process the service provider must conduct a self-assessment based upon the requirements of these rules. The service provider must:

   (a) Document the self-assessment on forms provided by the Division;

   (b) Develop and implement a plan of improvement based upon the findings of the self-assessment; and

   (c) Submit these documents to the local CDDP with a copy to the Division.

(5) The Division shall conduct a review of the service provider prior to the issuance of a certificate.

(6) APPLICATION FOR INITIAL CERTIFICATE AND CERTIFICATE RENEWAL. The application must be on a form provided by the Division and must include all information requested by the Division.

   (a) The applicant's initial application must identify the number and types of units of service that shall be provided.

   (b) To renew certification, the service provider must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal, no increase in the number of units of service shall be certified unless specifically approved by the Division.
(c) Filing of an application for renewal at least 30 days but not more than 120 days prior to the expiration date of the existing certificate extends the effective date until the Division or its designee takes action upon such application.

(d) Failure to disclose requested information on the application, or provision of incomplete or incorrect information on the application, may result in denial, revocation, or refusal to renew the certificate.

(e) Prior to issuance or renewal of the certificate the applicant must demonstrate to the satisfaction of the Division that the applicant is capable of providing the types of services identified in a manner consistent with the requirements of these rules.

(f) Separate certificates are required when the service provider delivers services in multiple counties to the extent that contracts with each different county are required.

(7) EXPIRATION. Unless revoked or terminated earlier, each certificate to operate shall expire on the expiration date specified on the certificate.

(8) TERMINATION OF OPERATION. If the service provider discontinues operation of the certified service, the certificate terminates automatically.

(9) RETURN OF CERTIFICATE. Each certificate in the possession of the service must be returned to the Division immediately upon suspension or revocation of the certificate, or when operation is discontinued by the holder of the certificate.

(10) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The service provider must notify the Division in writing of any pending change in the service provider’s ownership or legal entity, legal status, or management corporation.

(b) A new certificate is required upon change in a service provider’s ownership or legal entity, legal status, or management corporation. The service provider must submit a certificate application at least 30
days prior to change in ownership or legal entity, legal status, or management corporation.

(11) CERTIFICATE DENIAL, SUSPENSION, REVOCATION, OR REFUSAL TO RENEW. The Division may deny, revoke, or refuse to renew a certificate when the Division finds the service, or any person holding 5 percent or greater ownership interest in the service:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated during two inspections within a six-year period a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized. For the purpose of this subsection, "inspection" means an onsite review of the service site by the Division for the purpose of investigation or certification;

(c) Has demonstrated a failure to comply with applicable laws relating to safety from fire;

(d) Has been convicted of any crime that would have resulted in an unacceptable background check as defined in OAR 407-007-0210 upon hiring or authorization of service;

(e) Has been convicted of a misdemeanor associated with the operation of employment and alternatives to employment services;

(f) Falsifies information required by the Division to be maintained or submitted regarding care of individuals, employment and alternatives to employment services finances, or individuals' funds; or

(g) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare.

(12) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. Following a Division finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of
individuals is jeopardized, or that one or more of the events listed in section (11) of this rule has occurred, the Division may issue a notice of certificate revocation, denial, or refusal to renew.

(13) IMMEDIATE SUSPENSION OF CERTIFICATE. When the Division finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Division may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(14) HEARING. An applicant for a certificate or a certificate holder may request a hearing pursuant to the contested case provisions of ORS chapter 183 upon written notice from the Division of denial, suspension, revocation, or refusal to renew a certificate.

(a) The Division shall provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice of denial, suspension, revocation, or refusal to renew issued pursuant to this rule.

(b) The applicant or certificate holder must request a hearing within 60 days of receipt of written notice from the Division of denial, suspension, revocation, or refusal to renew a certificate. The request for a hearing must include an admission or denial of each factual matter alleged by the Division and must affirmatively allege a short plain statement of each relevant affirmative defense the applicant or certificate holder may have.

(c) The issue at a hearing on certification denial, revocation, or refusal to renew a certificate is limited to whether the service was or is in compliance at the end of the 30-calendar days following written notice of non-compliance.

(d) In the event of a suspension of a certificate pursuant to section (13) of this rule and during the first 30 days after the suspension of a certificate, the certified service provider may submit a written request to the Division for an administrative review. The Division shall conduct the administrative review within 10 days after receipt of the request for an administrative review.
requested after the end of the 30-day period following certificate suspension shall be treated as a request for hearing under this section of the rule.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-345-0050 Reciprocal Compliance

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

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

Stat. Auth.: ORS 409.050, 410.070
Stats. Implemented: ORS 430.610, 430.630 & 430.670

411-345-0080 Inspections and Investigations
(Repeal – See OAR 411-323-0040)

(1) All services covered by these rules must allow the following types of investigations and inspections:

   (a) Quality assurance, certificate renewal, and on-site inspections;

   (b) Complaint investigations; and

   (c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.
(4) All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, the Department’s designee, or proper authority; and

(b) Submitted to or made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee, has determined to initiate an investigation, the service provider may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation has been initiated, the CDDP must provide notice to the service provider according to OAR 407-045-0290.

(7) The Department or the Department’s designee shall conduct investigations as described in OAR 407-045-0250 to OAR 407-045-0360.
(8) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation by the Department, the Department’s designee, or a law enforcement agency, the service provider may conduct an investigation to determine if any other personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Services Report, according to OAR 407-045-0330 the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider. The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) A plan of improvement must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-345-0090 Variances

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

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

   (a) The section of the rule from which the variance is sought;

   (b) The reason for the proposed variance;

   (c) The alternative practice, service, method, concept, or procedure proposed; and
(d) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP. A plan and timetable for compliance with the section of the rule from which the variance is sought.

(3) The CDDP must forward signed documentationthe signed variance request form to the Division-Department within 30 days of receipt of the request for variance indicating the CDDP’s position on the proposed variance.

(4) The Administrator for the Division-Department shall approve or deny the request for a variance.

(5) The Division's-Department's decision shall be sent to the service provider, and the CDDP, and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(6) The service provider may appeal the denial of a variance, request within 10 working days of the denial, by sending a written request for review to the Administrator and a copy of the request to the CDDP. The Administrator's, whose decision is final.

(7) The Division-Department shall determine the duration of the variance.

(8) The service provider may implement a variance only after written approval from the Division-Department.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-345-0100 Management, Personnel Practices, and Staffing Requirements

(6) STAFFING REQUIREMENTS.

(a1) Each service provider must provide direct service staff appropriate to the number and level of individuals served as follows:
(Aa) Supported employment and community based service providers must provide adequate direct services staff to ensure initial service and site development, training, and ongoing support to ensure that individual's rights, basic health, and safety are met. A staff member must contact individual's receiving services through supported employment or community based sites two times per month at minimum.

(Bb) Facility based service providers must provide adequate direct services staff to ensure that individual's rights, basic health, and safety are met. When individuals are present, the service provider must provide and document that there are staff trained in the following areas:

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

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

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

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

(b2) Each service provider must meet all additional requirements for direct service staff ratios and specialized training as specified by contract requirements.

(1) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION. As stated in ORS 427.007, the service provider must have a written policy that states that each individual's ISP is developed to meet employment and activities that address each individual's level of independence, productivity, and integration into the local community.

(2) INDIVIDUAL AND FAMILY INVOLVEMENT. The service provider must have and implement a written policy that addresses:
(a) Opportunities for the individual to participate in decisions regarding the operations of the services;

(b) Opportunities for families, guardians, and significant others of the individuals served by the service provider to interact; or

(c) Opportunities for individuals, families, guardians, and significant others to participate on the Board or on committees of the service provider or to review policies of the services that directly affect the individuals supported by the service provider.

(3) DOCUMENTATION REQUIREMENTS. All documentation entries required by these rules, unless stated otherwise, must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

(4) DISSOLUTION OF SERVICE. Prior to the dissolution of a service, a representative of the governing body or owner of the service must notify the Division in writing 30 days in advance and make appropriate arrangements for the transfer of individual records.

(5) NONDISCRIMINATION. The service provider must comply with all applicable state and federal statutes, rules, and regulations in regard to nondiscrimination in employment practices.

(7) BASIC PERSONNEL POLICIES AND PROCEDURES. The service provider must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.
(8) MANDATORY ABUSE REPORTING. Any employee of a private agency that contracts with a CDDP is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(9) PROHIBITION AGAINST RETALIATION. A community program or service provider may not retaliate against any staff that reports in good faith suspected abuse or retaliate against the individual with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action arising solely from the filing of an abuse report taken by a community facility, community program, or person involved in a report against the person making the report or against the individual because of the report and includes but is not limited to:

(A) Discharge or transfer from the community program or service, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the community program or service or the individuals served by the program or service.
(10) APPLICATION FOR EMPLOYMENT. An application for employment at the service must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(11) BACKGROUND CHECKS. Any employee, volunteer, advisor, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with an individual of the service, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the service provider may not use public funds to support, in whole or in part, any person as described in section (9) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (a) of this section does not apply to employees of the service provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any employee, volunteer, advisor, or any subject individual as defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or designee within 24 hours.

(12) DIRECTOR QUALIFICATIONS. The service must be operated under the supervision of a director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, social services, mental health, or a related field. Six years of experience, including supervision, in the field of developmental disabilities, social services, or mental health field may be substituted for a degree.

(13) GENERAL STAFF QUALIFICATIONS. Any staff supervising individuals must:

(a) Be at least 18 years of age;

(b) Be capable of performing the duties of the job as described in a current job description which he or she has signed and dated; and
(c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(14) PERSONNEL FILES. The service provider must maintain a personnel file available to the Department or the Department’s designee for inspection that includes written documentation of the following for each employee:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training to work with individuals with developmental disabilities, and training on the support needs of the individual to whom they will provide support;

(c) Documentation that CPR and first-aid certification were obtained from a recognized training agency within three months of employment and kept current if needed to meet the staffing requirements as described in section (4) of this rule;

(d) Written documentation of 12 hours of annual job-related in-service training;

(e) Written documentation of employees' notification of mandatory reporter status;

(f) Written documentation of any founded report of child abuse or substantiated abuse;

(g) Written documentation of an approved Department background check per OAR 407-007-0200 to 407-007-0370; and

(h) Written documentation of any complaints filed against the staff person and the results of the complaint process, including, if any, disciplinary action.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670
411-345-0110 Individual Rights

(1) ABUSE. Any individual as defined in OAR 411-345-0020 must not be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the service provider.

(2) PROTECTION AND WELLBEING.

(a) The service provider must have and implement written policies and procedures that protect individuals' rights during the hours the individual is receiving services. The service provider must encourage and assist individuals to understand and exercise their rights. The policies and procedures must at a minimum provide for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens;

(B) Adherence to all applicable state and federal labor rules and regulations;

(C) Opportunities for individuals to be productive;

(D) Services that promote independence and that are appropriate to the age and preferences of the individual;

(E) Confidentiality of personal information regarding the individual;

(F) Adequate medical and health care, supportive services, and training;

(G) Opportunities for visits to legal and medical professionals when necessary;

(H) Private communication, including personal mail and access to a telephone, consistent with the service provider's policies for all employees;

(I) Fostering of personal control and freedom regarding personal property;
(J) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical or mechanical restraints;

(K) Freedom from unauthorized personal restraints; and

(L) Transfer of individuals within a service as described in OAR 411-345-0140.

(b) At entry to service and in a timely manner as changes occur, the service provider must inform each individual and parent, guardian, or advocate orally and in writing of the service provider's policy and procedures and a description of how the individual may exercise their rights.

(3) CONFIDENTIALITY OF RECORDS. All individuals' records are confidential except as otherwise provided by applicable rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, service providers under these rules are considered a "public provider" as defined in ORS 179.505.

(b) For the purpose of disclosure from non-medical individual records, all or portions of the information contained in those records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670

411-345-0130 Grievances

(1) The service provider must implement written policies and procedures for individuals' grievances as required by OAR 411-323-0060. These policies and procedures must at a minimum provide for:

(a) Receipt of grievances from an individual or others acting on behalf of the individual. If the grievance is associated in any way with abuse or the violation of the individual's rights, the recipient of the grievance
must immediately report the issue to the service provider's director or
designee and the CDDP;

(b) Investigation of the facts supporting or disproving the grievance;
and

(c) Taking appropriate actions on grievances within five working days
following receipt of the grievance.

(2) The service provider's director or designee must provide a formal
written response to the grievant within 15 days of receipt of the grievance
unless the grievance is informally resolved to the satisfaction of the
grievant prior to that time.

(3) If the grievance is not resolved by the service provider's director, the
grievance may be submitted to the CDDP for review. The CDDP must
complete a review and provide a written response to the grievant and
service provider within 30 days.

(4) If the grievance is not resolved by the CDDP, it may be submitted to the
Administrator of the Division for review. The Administrator shall complete
the review and provide a written response within 45 days of submission.
The decision of the Administrator or designee is final.

(5) The service provider must document each grievance and the resolution
in the grievant's record. If a grievance resulted in disciplinary action against
a staff member, the documentation must include a statement that
disciplinary action was taken.

(2) The service provider must send copies of the documentation on all
grievances to the services coordinator within 15 working days of initial
receipt of the grievance.

(63) At entry to service and as changes occur, the service provider must
inform each individual and parent, guardian, or advocate orally and in
writing of the service provider's grievance policy and procedures and a
description of how to utilize them.
(1) All individuals' medical records must be kept confidential as described in OAR 411-345-0100.

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

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

   (a) The service provider must observe the health and physical condition of individuals and take action in a timely manner in response to identified changes in condition that could lead to deterioration or harm;

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

   (c) The service provider, with the individual's knowledge, must share information regarding medical conditions with the individual's residential contact and the Services Coordinator; and

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

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

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

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

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

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

(A) A copy of all current orders for medication administered, maintained at the service provider’s site;

(B) A list of all current medications; and

(C) A record of visits to medical professionals, consultants, or therapists if facilitated or provided by the service provider.

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

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

(b) Follow written orders.

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

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

(a) Kept in their original containers;
(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the physician's or licensed health care practitioner's written order;

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

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

(8) The MAR must include:

(a) The name of the individual;

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

(c) For topical medications and basic first aid treatments utilized without a physician's order, a transcription of the printed instructions from the package or the description of the basic first aid treatment provided;

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

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

(f) Method of administration;

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

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

(i) An explanation of any medication administration irregularity with documentation of administrative review by the service provider's executive director or designee.
(9) Safeguards to prevent adverse medication reactions shall be utilized to include:

(a) Maintaining information about each prescribed medication's effects and side-effects;

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

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

(10) The service site or service provider may not keep unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels. All unused, discontinued, outdated, or recalled drugs, or drug containers with worn, illegible, or missing labels must be promptly disposed of in a manner consistent with federal statutes and designed to prevent illegal diversion of the substances into the possession of people other than for whom it was prescribed. A written record must be maintained by the service provider of all disposed drugs and must include:

(a) Date of disposal;

(b) A description of the medication including amount;

(c) The individual for whom the medication was prescribed;

(d) The reason for disposal;

(e) The method of disposal;

(f) Signature of staff disposing; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) For any individual who is self-administering medication the service provider must:
(a) Have documentation that a training program was initiated with approval of the individual's ISP team or that training for the individual is unnecessary;

(b) If necessary, have a training program that is consistent with the self-administration training program in place at the individual's residence;

(c) If necessary, have a training program that provides for retraining when there is a change in dosage, medication, or time of delivery;

(d) Have specific supports identified and documented for the individual when training has been deemed unnecessary; and

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

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

(13) The service provider must immediately contact the services coordinator when the individual's medical, behavioral, or physical needs change to a point that the individual's needs may not be met by the service provider. The ISP team must determine alternative placement or arrangement if necessary.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 430.610, 430.630, & 430.670