

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

Department of Human Services, Seniors and People with Disabilities 411

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

Rules Coordinator	Address	Telephone
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RULE CAPTION

Support Services for Adults with Developmental Disabilities

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

December 16, 2011	10 a.m.	Human Services Building 500 Summer Street NE, Rms. 137AB Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
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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:

411-340-0125

AMEND:

411-320-0090, 411-320-0110, 411-340-0020, 411-340-0100, 411-340-0110,
411-340-0120, 411-340-0130, 411-340-0140, 411-340-0150

REPEAL:

Temporary Rules 411-320-0090(T), 411-320-0110(T), 411-340-0100(T),
411-340-0110(T)

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 409.050 & 410.070

Other Auth.: House Bill 5030 (2011), Chapter 621 (2011 Oregon Laws)

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

RULE SUMMARY

The Department of Human Services (Department) is proposing to update the support services rules in OAR chapter 411, division 340 and the Community Developmental Disability Program (CDDP) rules in OAR chapter 411, division 320 to:

- Permanently make the receipt of support services contingent on eligibility for the federally approved Support Services Waiver in most cases and require that all individuals not eligible for the Support Services Waiver exit brokerage services. Prior to this, eligibility for the Support Services Waiver was not a requirement for support services;
- Further define eligibility criteria for supplemental funds relating to needs associated with activities of daily living;
- Emphasize that support funds are not meant to supplement existing and naturally occurring supports;
- Address the role of brokerages in handling an individual in crisis;
- As a result of adding the role of case manager to the personal agent, include timelines for informing individuals of the personal agent, establish expectations around providing protective services, and outline specific requirements around progress noting; and
- Specifically identify rate range and expenditure guidelines.

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 5:00 p.m.

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

Signed Corissa Neufeldt, Manager, CDDP Community Relations

November 8, 2011

Signature

Date

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

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

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

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

Agency and Division

Administrative Rules Chapter Number

Support Services for Adults with Developmental Disabilities

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

In the Matter of: The adoption of 411-340-0125; and the amendment of 411-320-0090, 411-320-0110, 411-340-0020, 411-340-0100, 411-340-0110, 411-340-0120, 411-340-0130, 411-340-0140, and 411-340-0150 relating to support services for adults with developmental disabilities.

Statutory Authority: ORS 409.050 & 410.070

Other Authority: House Bill 5030 (2011), Chapter 621 (2011 Oregon Laws)

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

Need for the Rule(s):

The Department needs to:

- Permanently amend the support services and CDDP rules to make the receipt of support services contingent on eligibility for the federally approved Support Services Waiver in most cases and require that all individuals not eligible for the Support Services Waiver exit brokerage services. Prior to this, eligibility for the Support Services Waiver was not a requirement for support services. This eligibility change was included in the 2011-2013 Legislatively Approved Budget for the Department.
- Address the need for defensible limits of support services funds by specifically identifying rate range and expenditure guidelines and further defining eligibility criteria for supplemental funds relating to needs associated with activities of daily living and emphasizing that support funds are not meant to supplement existing and naturally occurring supports. These changes provide an authoritative source to reference when aiding individuals' understanding of the limits of support services.
- Address the role of brokerages in handling an individual in crisis to adjust to the change in case management delivery as it relates to the delivery of crisis supports for support services.
- Assure statewide consistency by instituting standards for brokerage responsibilities around the role of the personal agent and case note writing to

include timelines for informing individuals of the personal agent, establish expectations around providing protective services, and outline specific requirements around progress noting.

Documents Relied Upon, and where they are available:

1. House Bill 5030 (2011)

Available at: http://www.leg.state.or.us/bills_laws/

2. Chapter 621 (2011 Oregon Laws)

Available at: http://www.leg.state.or.us/bills_laws/

3. Staff Measure 5030-A Summary for the Department of Human Services

Available upon request. Please call 503-945-6398.

4. Rate Guidelines (July 1, 2009)

Available at: <http://www.dhs.state.or.us/spd/tools/dd/bpa/rate-guidelines-090701.pdf>

5. Support Services Expenditure Guideline (July 1, 2009)

Available at: http://www.oregon.gov/DHS/dd/adults/ss_exp_guide.pdf

Fiscal and Economic Impact:

Statement of Cost of Compliance:

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

The Department is not expecting any fiscal or economic impact to members of the public.

The following fiscal or economic impact is expected for state agencies (Department), units of local government (CDDPs), clients, brokerages, and providers.

- Department: Reduced General Fund payments with no Medicaid match.
- CDDPs: Increased funding, approximately \$3,000,000, due to additional caseloads for targeted case management.
- Clients: An individual required to exit support services will lose access to as much as \$9488 in support services funds per year, though the typical amount is \$4554 per year. Approximately 600 individuals have been exited from support services since the adoption of the temporary rules that this proposed rulemaking makes permanent.
- Brokerages and Providers: Reduced targeted case management and administration costs, approximately \$4,000,000 due to reduced staffing based on the funding model. The brokerage in turn will pay out a reduced amount of General Fund dollars to providers for services, approximately \$2,000,000.

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 rulemaking has no fiscal or economic impact on small businesses as defined in ORS 183.310.

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

None.

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

None.

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

Small businesses as defined in ORS 183.310 were not involved in the development of these rules because the proposed rules have no impact on small businesses.

Administrative Rule Advisory Committee consulted?:

If not, why?:

Yes. The Administrative Rule Advisory Committee used to review the support services eligibility changes included representation from The Arc of Oregon, CDDPs, Disability Rights Oregon, Full Access, Integrated Services Network, and Oregon Council on Developmental Disabilities.

The Administrative Rule Advisory Committee used to review the rest of the proposed changes included representation from Community Pathways, Disability Rights Oregon, Full Access, and Resource Connections of Oregon.

Signed Corissa Neufeldt, Manager, CDDP Community Relations

November 8, 2011

Signature

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2005

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

**CHAPTER 411
DIVISION 320**

COMMUNITY DEVELOPMENTAL DISABILITY PROGRAM

411-320-0090 Developmental Disabilities Case Management Program Responsibilities

(1) AVAILABILITY. As required by these rules, the CDDP must assure the availability of a services coordinator to meet the service needs of an individual and any emergencies or crisis. The assignment of the services coordinator must be appropriately documented in individual service records and the CDDP must accurately report enrollment in ~~SPD~~[the Department's](#) payment and reporting systems.

(2) POLICIES AND PROCEDURES. The CDDP must adopt written procedures to assure that the delivery of services meet the standards in section [OAR 411-320-0090](#)(4) of this rule.

(a) The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the individuals' families;

(C) Individuals' legal representatives, advocates, and service providers; and

(D) ~~SPD~~[The Department](#).

(3) NOTICE OF SERVICES. The CDDP must inform the individuals, family members, legal representatives, and advocates of the minimum case management services that are set out in ~~section~~[OAR 411-320-0090](#)(4) of this rule.

(4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

(a) The CDDP must ensure that eligibility for services is determined by a trained eligibility specialist in accordance with OAR 411-320-0030.

(b) An Annual Plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1).

(A) The services coordinator must assure that there is an Annual Plan. The services coordinator must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehensive services. The services coordinator is responsible for the development of the Annual Plan, on the form provided by ~~SPD~~[the Department](#), for children receiving family support services in coordination with the child and the family.

(B) An Annual Plan must be completed for each individual that is not enrolled in any ~~SPD~~[Department](#)-funded service other than case management.

(c) Program services must be authorized in accordance with OAR 411-320-0120(3).

(d) Services coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130.

(e) Entry, exit, and transfers from comprehensive program services must be in accordance with OAR 411-320-0110.

(f) Crisis diversion services must be assessed, identified, planned, monitored, and evaluated by the services coordinator in accordance with OAR 411-320-0160.

(g) Abuse investigations and provision of protective services for adults must be provided as described in OAR 407-045-0250 to 407-045-0360 and include investigating complaints of abuse, writing investigation reports, and monitoring for implementation of report recommendations.

(h) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(i) The services coordinator must provide information and timely referral ~~for~~ [about how to access services to](#) individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county.

(A) For individuals 18 years and older, information and referral must specifically include information necessary to inform the individual of the comprehensive services wait list and support services. When more than one support services brokerage is available within the CDDP's geographic service area, the CDDP must also provide impartial information about the brokerages available to the individual.

(B) For individuals 18 years and older, information and referral must be provided initially and at minimum annually thereafter if the individual declines the comprehensive services wait list or support services. [Annual information and referral must include informing the individual of the individual's right to, at any time, request access to the comprehensive services wait list or support services.](#) Documentation of the initial referral and subsequent annual discussion must be documented in the individual's CDDP file.

(C) For individuals enrolled in the support services brokerage but not enrolled in the comprehensive services wait list, the

CDDP must coordinate with the support services brokerage to ensure that wait list information is provided annually.

~~(j) The services coordinator must assist individuals and their families in accessing services and resources.~~

~~(A) For individuals 18 years and older who decline support services, annual information and referral about support services must include informing the individual of the individual's right to access support services at any time.~~

~~(B) For individuals 18 years and older who decline support services, the services coordinator must ensure access at anytime to support services within 90 days of the individual's request for support services and selecting a support services brokerage from those available as per OAR 411-340-0110(1)(f).~~

~~(C) For individuals 18 years and older who decline the comprehensive services wait list and who are not enrolled in a support services brokerage, annual information and referral about the comprehensive services wait list must include informing the individual of the individual's right to access the wait list at any time.~~

~~(D) For individuals 18 years and older who decline the comprehensive services wait list, the services coordinator must ensure access at anytime to the comprehensive services wait list upon the individual's request to be enrolled on the wait list.~~

(kj) The services coordinator must enroll individuals in the comprehensive services wait list who meet the following criteria:

(A) The individual is age 18 or older;

(B) The individual is enrolled in case management services or a support services brokerage;

(C) The individual has requested to be enrolled in the comprehensive services wait list; and

(D) The individual is not enrolled in comprehensive services as an adult.

(~~h~~k) An individual who moves between CDDP's and whose case management or support services do not lapse for more than a period of 12 months shall retain the wait list enrollment date assigned or continued by the CDDP in which case management services were previously received. If an individual did not receive case management services in any county in Oregon for a period exceeding 12 calendar months, a new wait list enrollment date shall be assigned. The new wait list enrollment date must be the date the individual first meets all the criteria described in ~~section~~ [OAR 411-320-0090\(4\)](#)(~~k~~j) of this ~~rule~~[section](#).

(~~m~~l) When funding and resources are available, the CDDP must facilitate selection of individuals from the comprehensive services wait list using the date of enrollment on the comprehensive services wait list. An individual in crisis according to OAR 411-320-0160(2) and in need of service must be given first consideration for comprehensive services regardless of the date of enrollment on the comprehensive services wait list.

(~~a~~m) The services coordinator may remove an individual from the comprehensive services wait list for the following reasons:

(A) The individual requests to be removed;

(B) The individual is placed in comprehensive services; or

(C) The individual has exited or been terminated from case management services or a support services brokerage.

(~~e~~n) The CDDP must inform the individual of the CDDP's intent to remove the individual from the comprehensive services wait list.

(~~p~~o) Services coordinators must coordinate services with the child welfare (CW) caseworker assigned to a child to ensure the provision of required supports from the [Department](#), CDDP, [SPD](#), and CW.

(ep) Services coordinators may attend IEP planning meetings or other transition planning meetings for children when the services coordinator is invited by the family or guardian to participate.

(A) The services coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.

(B) Upon request and to the extent possible, the services coordinator may act as a proponent for the child or family at IEP meetings.

(C) The services coordinator must participate in transition planning by attending IEP meetings or other transition planning meetings of students 16 years of age or older, or until the student is enrolled in the support services brokerage, to discuss the individual's transition to adult living and work situations unless such attendance is refused by the child's parent or legal guardian, or the individual if the individual is 18 years or older.

(fq) The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in SPD-Department payment and reporting systems. The county of origin must enroll the individual into the SPD-Department payment and reporting systems for all developmental disability service providers except in the following circumstances:

(A) SPD-The Department shall complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with SPDthe Department.

(B) SPD-The Department shall complete the SPD-Department payment and reporting systems enrollment, termination, and billing forms for children entering or leaving the children's intensive in-home services (CIIS) program.

(C) SPD-The Department shall complete the enrollment, termination, and billing forms as part of an interagency

agreement for purposes of billing for crisis diversion services by a region.

(~~sr~~) Services coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043.

(~~ts~~) The services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150.

~~(u) If an adult is not enrolled in services other than case management and requires more than occasional services, or requires services that are available through a support services brokerage, the individual must be referred to a brokerage, unless the individual refuses. Referrals to the support services brokerage must be in accordance with OAR chapter 411, division 340.~~

(~~vt~~) The services coordinator must ensure that all serious events related to an individual are reported to ~~SPD~~ the Department using the SERT system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(~~wu~~) When the services coordinator completes the Title XIX waiver form, the services coordinator must ensure that Medicaid eligible individuals are offered the choice of home and community-based waiver services, provided a notice of hearing rights, and have a completed Title XIX waiver form that is reviewed annually or at anytime there is a significant change. For individuals who are expected to ~~enroll in~~ enter support services, the services coordinator must complete the initial Title XIX waiver form after the individual's 18th birth date and no more than 30 days prior to ~~enrollment~~ entry into the support services brokerage. The support services brokerage staff must assess the individual's level of care annually thereafter for continued Title XIX waiver eligibility or at anytime there are significant changes.

(~~xv~~) The services coordinator must participate in the appointment of a health care representative per OAR chapter 411, division 365.

(yw) The services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(zx) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults, long term supports for children, or family supports, as required, to meet the support needs of eligible individuals. This includes:

(A) Providing assistance in determining needs and planning supports;

(B) Providing assistance in finding and arranging resources and supports;

(C) Providing education and technical assistance to make informed decisions about support need and direct support service providers;

(D) Arranging fiscal intermediary services;

(E) Arranging employer-related supports; and

(F) Providing assistance with monitoring and improving the quality of supports.

(5) SERVICE PRIORITIES. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval of a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request to [SPDthe Department](#). The variance request must:

(a) Document the reason the service prioritization is necessary (including any alternatives considered);

(b) Detail the specific service priorities being proposed; and

(c) Provide assurances that the basic health and safety of individuals shall continue to be addressed and monitored.

(6) FAMILY RECONNECTION. The CDDP and the services coordinator must provide assistance to ~~SPD~~[the Department](#) when a family member is attempting to reconnect with an individual who was previously discharged from Fairview Training Center or Eastern Oregon Training Center or the individual is currently receiving developmental disability services.

(a) If a family member contacts a CDDP for assistance in locating a family member they shall be referred to ~~SPD~~[the Department](#). A family member may contact ~~SPD~~[the Department](#) directly.

(b) ~~SPD~~[The Department](#) shall send the family member an ~~SPD~~[Department](#) form requesting further information to be used in providing notification to the individual. The form shall include the following information:

(A) Name of requestor;

(B) Address of requestor and other contact information;

(C) Relationship to individual;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) ~~SPD~~[The Department](#) shall determine if the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center and also determine:

(A) If the individual is deceased or living;

(B) Whether the individual is currently or previously enrolled in ~~DHS~~[Department](#) services; and

(C) The county in which services are being provided, if applicable.

(d) Within 10 working days of receipt of the request, [SPD the Department](#) shall notify the family member if the individual is enrolled or no longer enrolled in [DHS Department](#) services.

(e) If the individual is enrolled in [DHS Department](#) services, [SPD the Department](#) shall send the completed family information form to the individual or the individual's guardian and the individual's services coordinator.

(f) If the individual is deceased, [SPD the Department](#) shall follow the process for identifying the personal representative of the deceased as provided for in ORS 192.526.

(A) If the personal representative and the requesting family member are the same, the family member shall be informed that the person is deceased.

(B) If the personal representative is different from the requesting family member, the personal representative shall be contacted for permission to share the information to the requesting family member. In the event of this situation, [SPD the Department](#) must make a good faith effort at finding the personal representative and obtaining a decision concerning the sharing of information as soon as practicable.

(g) When an individual is located, the services coordinator when the individual is enrolled in case management, or the CDDP in conjunction with the support services brokerage when the individual is enrolled in a support services brokerage, must facilitate a meeting with the individual or the individual's guardian to discuss and determine if the individual wishes to have contact with the family member.

(A) The services coordinator when the individual is enrolled in case management, or the CDDP in conjunction with the support services brokerage when the individual is enrolled in a support services brokerage, must assist the individual or the individual's guardian in evaluating the information to make a decision regarding initiating contact including providing the information

from the form and any relevant history with the family member that might support contact or present a risk to the individual.

(B) If the individual does not have a guardian or is unable to express his or her wishes, the ISP team must be convened to review factors and choose the best response for the individual after evaluating the situation.

(h) If the individual or the individual's guardian wishes to have contact, the individual or ISP team designee may directly contact the family member to make arrangements for the contact.

(i) If the individual or the individual's guardian does not wish to have contact, the services coordinator must notify ~~SPD~~ [the Department](#) with the information and ~~SPD~~ [the Department](#) shall inform the family member in writing that no contact is requested.

(j) The notification to the family member regarding the decision of the individual or the individual's guardian must be within 60 business days of the receipt of the information form from the family member.

(k) The decision by the individual or the individual's guardian is not appealable.

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

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

411-320-0110 Entry and Exit Requirements

(1) ADMISSION TO A ~~SPD~~ [DEPARTMENT](#)-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

(a) ~~SPD~~ [Department](#) staff must authorize entry into children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs, and state training centers. The services coordinator must make referrals for admission and participate in all entry meetings for these programs.

~~(b) The services coordinator must ensure that individuals are appropriately referred to a support services brokerage and enrolled~~

~~within 90 days of requesting support services and selecting a support services brokerage from those available as per OAR 411-340-0110(1)(f).~~

(eb) Admissions to all other SPD Department-funded programs for individuals must be coordinated and authorized by the services coordinator in accordance with these rules.

(2) WRITTEN INFORMATION REQUIRED. The services coordinator, or the services coordinator's designee, must provide available and sufficient written information to service providers including information that is current and necessary to meet the individual's support needs in comprehensive services prior to admission.

(a) This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination decision;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and the ability to adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam (if any) made within 90 days prior to the entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

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

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) If applicable, copies of protocols, the risk tracking record, and any support documentation;

(G) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(H) Written documentation why preferences or choices of the individual cannot be honored at that time;

(I) Written documentation that the individual is participating in out-of-residence activities including school enrollment for individuals under the age of 21; and

(J) A copy of the most recent functional assessment, Behavior Support Plan, ISP, and IEP, if applicable.

(b) If the individual is being admitted from the individual's family home and entry information is not available due to a crisis, the services coordinator must ensure that the service provider assesses the individual upon entry for issues of immediate health or safety and the services coordinator must document a plan to secure the information listed in [section OAR 411-320-0110\(2\)\(a\)](#) this [rule-section](#) no later than 30 days after admission. The documentation must include a written description as to why the information is not available. A copy of the information and plan must be given to the service provider at the time of entry.

(c) If the individual is being admitted from comprehensive service, the information must be made available prior to the admission.

(3) ENTRY MEETING. Prior to an individual's date of entry into a [SPD Department](#)-funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of

placement. The ISP team participants shall be determined according to OAR 411-320-0120(1)(b). The findings of the entry meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the entry meeting must include at a minimum:

- (a) The name of the individual proposed for services;
- (b) The date of the entry meeting and the date determined to be the date of entry;
- (c) The names and role of the participants at the entry meeting;
- (d) Documentation of the pre-entry information required by [section OAR 411-320-0110\(2\)\(a\)](#) of this rule;
- (e) Documentation of the decision to serve or not serve the individual requesting service, with reasons;
- (f) If the decision was made to enter the individual, a written transition plan to include all medical, behavior, and safety supports needed by the individual, to be provided to the individual for no longer than 60 days after admission; and
- (g) Documentation of the participants included in the entry meeting.

(4) CRISIS DIVERSION SERVICES. For a period not to exceed 30 days, [section OAR 411-320-0110\(3\)\(d\)](#) of this rule does not apply if an individual is temporarily admitted to a program for crisis diversion services.

(5) EXIT FROM [SPD DEPARTMENT](#)-FUNDED PROGRAMS. All exits from [SPD Department](#)-funded developmental disability services must be authorized by the CDDP. All exits from [SPD Department](#) direct-contracted service for children's 24-hour residential and from state-operated community programs, must be authorized by [SPD Department](#) staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The ISP team participants must be determined according to OAR 411-320-0120(1)(b).

(6) EXIT STAFFING. The exit plan must be distributed to all ISP team members. The exit plan must include:

- (a) The name of the individual considered for exit;
- (b) The date of the exit meeting;
- (c) Documentation of the participants included in the exit meeting;
- (d) Documentation of the circumstances leading to the proposed exit;
- (e) Documentation of the discussion of the strategies to prevent an exit from service, unless the individual, the individual's legal guardian or, for a child, the child's parent or guardian, is requesting the exit;
- (f) Documentation of the decision regarding exit including verification of majority agreement of the exit meeting participants regarding the decision; and
- (g) The written plan for services for the individual after exit.

(7) TRANSFER MEETING. All transfers within a county between service sites by a comprehensive service provider agency must be authorized by the CDDP, except for transfers between [SPD-Department](#) direct contracted services for children in 24-hour residential programs and in state operated community programs. Transfers between [SPD-Department](#) direct contracted services for children in 24-hour residential programs and state operated community programs must be coordinated by [SPD-Department](#) staff. A transfer meeting of the ISP team must precede any decision to transfer an individual. Findings of such a transfer meeting must be recorded in the individual's file and include, at a minimum:

- (a) The name of the individual considered for transfer;
- (b) The date of the transfer meeting;
- (c) Documentation of the participants included in the transfer meeting;
- (d) Documentation of the circumstances leading to the proposed transfer;

- (e) Documentation of the alternatives considered instead of transfer;
- (f) Documentation of the reasons any preferences of the individual, the individual's legal representative, or family members may not be honored;
- (g) Documentation of the decision regarding transfer including verification of majority agreement of the transfer meeting participants regarding the decision; and
- (h) The written plan for services for the individual after transfer.

(8) ENTRY TO SUPPORT SERVICES.

(a) Referrals of eligible individuals to a support services brokerage must be made in accordance with OAR 411-340-0110(3). Referrals must be made using the [SPD-Department](#) mandated application and referral form in accordance with [SPD-Department](#) guidelines.

(b) The CDDP of an individual's county of origin ~~must~~ may find the individual eligible for services from a support services brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP; AND

(B) The individual is an adult living in ~~his or her own~~ the individual's own home or family home and not receiving other ~~SPD~~ SPD-Department-paid in-home or community living support other than state Medicaid plan services; AND

(C) The individual is not enrolled in comprehensive services; AND

(D) At the time of initial ~~enrollment in~~ entry to the support services brokerage, the individual is not receiving crisis diversion services from ~~SPD~~ the Department because the

individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160(2); ~~and~~AND

(E) The individual, or the individual's legal representative, has chosen to use a support service brokerage for assistance with design and management of personal supports; AND

(F) The individual is eligible for entry to the Support Services Waiver according to OAR 461-135-0750; OR

(G) The individual turns eighteen years old and meets the level of care that qualifies the individual for entry to the Support Services Waiver and the individual was enrolled in the CIIS Program up to the individual's 18th birthday.

(c) The individual must be referred ~~referred for enrollment~~ within 90 days of:

(A) Being determined eligible for developmental disability services;

(B) Being determined eligible for entry to the Support Services Waiver;

(BC) The individual's 18th birth date:

(CD) Requesting support services; and

(DE) Selecting an available support services brokerage within the CDDP's geographic service area.

(d) The individual must complete entry within 90 days of referral to the support services brokerage.

(de) The services coordinator must communicate with the support services brokerage staff and provide all relevant information upon request and as needed to assist support services brokerage staff in developing an ISP that best meets the individual's support needs including:

| (A) A current application or referral on the [SPD-Department](#) mandated application or referral form;

(B) A completed Title XIX waiver form;

(C) A copy of the eligibility statement for developmental disability services;

(D) Copies of financial eligibility information;

(E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;

(F) Copies of relevant progress notes; and

(G) A copy of any current plans.

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

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

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

**CHAPTER 411
DIVISION 340**

**SUPPORT SERVICES FOR ADULTS WITH DEVELOPMENTAL
DISABILITIES**

411-340-0020 Definitions

As used in OAR chapter 411, division 340:

- (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 by OAR 407-045-0310.
- (3) "Activities of Daily Living (ADL)" mean ~~those the~~ self-care activities ~~that must be~~ accomplished by an individual for continued well-being ~~including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.~~
- (4) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group.
- (5) "Administration of Medication" means the act of ~~a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization,~~ placing a medication in, or on, an individual's body by a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization.
- (6) "Administrative Review" means the formal process that is used when the individual or the individual's legal representative is not satisfied with the

decision made by the brokerage about a complaint involving the provision of services or a provider.

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

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

(89) "Alternative Resources" mean possible resources, not including support services, for the provision of supports to meet an individual's needs. Alternative resources includes but is not limited to private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(910) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to the brokerage services listed in OAR 411-340-0120(1); and if required

(b) Access to an amount of support services funds used to assist with the purchase of supports listed in OAR 411-340-0130(6). ~~Either:~~

~~(A) An amount when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services Waiver; or~~

~~(B) An amount of the state's General Fund when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.~~

(4011) "Basic Supplement" means an amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203.

(4412) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for a basic supplement.

(4213) "Benefit Level" means the total annual amount of support service funds for which an individual is eligible. The benefit level includes the basic benefit and any exceptions to the basic benefit financial limits.

(4314) "Certificate" means a document issued by the ~~Division~~Department to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for support services.

(4415) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(4516) "Chore Services" mean services needed to maintain a clean, sanitary, and safe environment in an individual's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress.

(4617) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(4718) "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 ~~community developmental disability program~~CDDP operates in a specific geographic service area of the state under a contract with the ~~Division~~Department, Local Mental Health Authority, or other entity as contracted by the ~~Division~~Department.

(4819) "Community Living and Inclusion Supports" mean services that facilitate independence and promote community integration by supporting

the individual to gain or maintain skills to live as independently as possible in the type of home the individual chooses. Community living and inclusion supports provide support for the individual to participate in activities in integrated settings that promote community inclusion and contribution.

(a) Community living and inclusion supports include supports designed to develop or maintain skills for self-care, ability to direct supports, care of the immediate environment, and may include instruction in skills an individual wishes to acquire, retain, or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. Community living and inclusion supports include supports in the following areas:

(A) Personal skills, which includes eating, bathing, dressing, personal hygiene, and mobility;

(B) Socialization, which includes development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(C) Community participation, recreation, or leisure, which includes the development or maintenance of skills to use available community services, facilities, or businesses;

(D) Communication, which includes development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(E) Personal environmental skills, which includes development or maintenance of skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Community living and inclusion supports may or may not be work related.

(1920) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(2021) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the [Division-Department](#) alone or in combination with any associated employment or community inclusion program regulated by the [Division-Department](#):

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

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

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

(22) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual's support needs. Less costly alternatives include other programs available from the Department, the utilization of assistive devices, natural supports, architectural modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(23) "Crisis" means:

(a) A situation 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 are present for which no appropriate alternative resources are available.

(2124) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while an individual is in emergent status. Crisis diversion services may include short-term residential placement services indicated on an individual's Support Services

Brokerage Plan of Care Crisis Addendum, as well as additional support as described in an Individual Support Plan.

~~(2225) "Department" means the Department of Human Services (DHS). The term "Department" is synonymous with "Division (SPD)".~~

~~(2326) "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 (ADHD).~~

~~(24) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).~~

~~(2527) "Emergent Status" means an individual has been determined to be eligible for crisis diversion services according to OAR 411-320-0160. a temporary, unpredictable situation when an individual enrolled in a brokerage may be allowed to receive Division-paid support exceeding the individual cost limit to remain in the individual's home or family home or to enter a short-term out-of-home residential placement without exiting support services. Individuals are considered in emergent status when the community developmental disability program of the individual's county of residence has determined that the individual meets criteria for crisis diversion services according to OAR 411-320-0160.~~

| (2628) "Employer-Related Supports" mean activities that assist individuals and, when applicable, their family members with fulfilling roles and obligations as employers as described in the Individual Support Plan. Supports to the employer include but are not limited to:

- (a) Education about employer responsibilities;
- (b) Orientation to basic wage and hour issues;
- (c) Use of common employer-related tools such as job descriptions; and
- (d) Fiscal intermediary services.

| (2729) "Entry" means admission to a [Division/Department](#)-funded developmental disability service provider.

| (2830) "Environmental Accessibility Adaptations" mean physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Environmental accessibility adaptations include but are not limited to:

- (A) Environmental modification consultation to determine the appropriate type of adaptation;
- (B) Installation of shatter-proof windows;
- (C) Hardening of walls or doors;
- (D) Specialized, hardened, waterproof, or padded flooring;
- (E) An alarm system for doors or windows;
- (F) Protective covering for smoke detectors, light fixtures, and appliances;

- (G) Sound and visual monitoring systems;
- (H) Fencing;
- (I) Installation of ramps, grab-bars, and electric door openers;
- (J) Adaptation of kitchen cabinets and sinks;
- (K) Widening of doorways;
- (L) Handrails;
- (M) Modification of bathroom facilities;
- (N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;
- (O) Installation of non-skid surfaces;
- (P) Overhead track systems to assist with lifting or transferring;
- (Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or
- (R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Environmental accessibility adaptations exclude:

- (A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and
- (B) Adaptations that add to the total square footage of the home.

(2931) "Environmental Modification Consultant" means either an independent provider, provider organization, or general business paid with support services funds, to provide advice to an individual, the individual's legal representative, or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(3032) "Exit" means either termination from a ~~Division~~Department-funded developmental disability service provider or transfer from one ~~Division~~Department-funded program service provider to another. ~~Exit does not mean transfer within a provider's program within a county.~~

(3133) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that include at least one individual with developmental disabilities where the primary caregiver is:

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with developmental disabilities and the individual with developmental disabilities is related to one of the partners by blood, marriage, or legal adoption.

(3234) "Family Training" means training and counseling services for the family of an individual that increase the family's capacity to care for, support, and maintain the individual in the home. Family training includes:

(a) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(b) Information, education, and training about the individual's developmental disability, medical, and behavioral conditions; and

(c) Counseling for the family to relieve the stress associated with caring for an individual with developmental disabilities.

| (3335) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual who employs persons to provide services, supervision, or training in the home or community according to the Individual Support Plan.

| (3436) "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.

| (3537) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

| (3638) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Habilitation services include supported employment and community living and inclusion supports.

| (3739) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing and contested case hearing.

| (3840) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

| (3941) "Homemaker Services" mean the general household activities such as meal preparation and routine household services required to maintain a clean, sanitary, and safe environment in an individual's home.

| (4042) "Incident Report" means a written report of any unusual incident involving an individual.

| (4143) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

| (4244) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with support services funds that personally provide services to the individual.

| (4345) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

| (4446) "Individual Cost Limit" means the maximum annual benefit level available under the Support Services Waiver.

| (4547) "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.

| (4648) "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.

(4749) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(4850) "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 411-340-0020, 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~~ is privileged under ORS 40.225 to 40.295.

(4951) "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.

~~(50) "Mental Retardation" means significantly sub-average general intellectual functioning existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.~~

(52) "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates, and the community. Services provided by natural supports are resources that are not paid for by the Department.

(5453) "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.

(5254) "Nursing Care Plan" means a plan 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, assigned, or delegated to the qualified provider or family.

(5355) "Occupational Therapy" means the services provided by a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(56) "OSIP-M" means Oregon Supplemental Income Program Medical.

(5457) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for support services as described in the Support Services Waiver and these rules, is a case manager for the provision of waiver-targeted case management services, meets the qualifications set forth in OAR 411-340-0150(5), and is:

(a) A trained employee of a brokerage; or

(b) A person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(5558) "Personal Emergency Response Systems" mean electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(5659) "Person-Centered Planning" means:

(a) aA 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 Mm 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.~~

(5760) "Physical Therapy" means the services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(5861) "Plan Year" means 12 consecutive months used to calculate an individual's annual benefit level. Unless otherwise set according to the conditions of OAR 411-340-0120(67)(b), the initial plan year begins on the start date specified on the individual's first authorized Individual Support Plan (ISP) after enrollment in entry to a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial ISP Individual Support Plan.

(5962) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used;
and

(d) Evaluates the effectiveness of behavior interventions based on
objective data.

| (6063) "Prescription Medication" means any medication that requires a
physician prescription before it may be obtained from a pharmacist.

| (6164) "Primary Caregiver" means the person identified in an Individual
Support Plan as providing the majority of service and support for an
individual in the individual's home.

| (6265) "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.

| [\(66\) "Protection" and "Protective Services" mean necessary actions taken
as soon as possible to prevent subsequent abuse or exploitation of an
individual, to prevent self-destructive acts, and to safeguard an individual's
person, property, and funds.](#)

| (6367) "Provider Organization" means an entity selected by an individual or
the individual's legal representative, and paid with support services funds
that:

(a) Is primarily in business to provide supports for individuals with
developmental disabilities;

(b) Provides supports for the individual through employees,
contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons
who actually provide support for the individual.

(6468) "Provider Organization Director" means the employee of a provider organization, or the employee's designee, responsible for administration and provision of services according to these rules.

(6569) "Psychotropic Medication" means a 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.

(6670) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

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

(a) Crisis intervention services;

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

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

(6772) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(6873) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(6974) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her 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.

| (7075) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual with a developmental disability, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's community through competitive 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 with developmental disabilities.

| (7476) "Social Benefit" means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan [\(ISP\)](#); or

(B) An advance payment in anticipation of an expense authorized in a previously authorized [ISP Individual Support Plan](#).

[\(7277\)](#) "Special Diet" means specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to an individual's medical condition or diagnosis that are needed to sustain an individual in the individual's home. Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements. Special diets may include:

(a) High caloric supplements;

(b) Gluten-free supplements; and

(c) Diabetic, ketogenic, or other metabolic supplements.

[\(7378\)](#) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies may not include items not of direct medical or remedial benefit to the individual.

Specialized medical equipment and supplies must meet applicable standards of manufacture, design, and installation.

| [\(7479\)](#) "Specialized Supports" mean treatment, training, consultation, or other unique services necessary to achieve outcomes in the Individual Support Plan that are not available through State Medicaid Plan services or other support services listed in OAR 411-340-0130(6). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the plan of support;

(d) Monitor implementation of the plan of support; and

(e) Revise the plan of support as needed.

| [\(7580\)](#) "Speech and Language Therapy" means the services provided by a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

| [\(7681\)](#) "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.

| [\(7782\)](#) "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.

| [\(7883\)](#) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with

public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(7984) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by the individual or the individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(8085) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions listed in OAR 411-340-0120(1) associated with planning and implementation of support services for individuals with developmental disabilities.

(8486) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(8287) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the ~~Division~~ Department to be added to an Individual Support Plan to describe crisis diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement.

(8388) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources.

(89) "Support Services Expenditure Guideline" means a publication of the Department that describes allowable uses for support services funds.

(8490) "Support Services Funds" mean public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(91) "Support Services Rate Ranges" means a publication of the Department that defines policy regarding the use of support services funds and limits to the rates paid for some support services.

(8592) "These Rules" mean the rules in OAR chapter 411, division 340.

(8693) "Transportation" means services that allow individuals to gain access to community services, activities, and resources that are not medical in nature.

(8794) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(8895) "Volunteer" means any person providing care assisting a service provider without pay to support the services provided to an individuals receiving support services.

Stat. Auth.: ORS 409.050 & 410.070

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

411-340-0100 Eligibility for Support Services Brokerage Services

(1) NON-DISCRIMINATION. Individuals determined eligible according to section OAR 411-340-0100(2) of this rule may not be denied brokerage services or otherwise discriminated against on the basis of age, or diagnostic or disability category. Access to service may also not be restricted due to, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) ELIGIBILITY. The CDDP of an individual's county of residence may find the individual eligible for a brokerage when:

(a) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP; AND

(b) The individual is an adult living in the individual's own home or family home and not receiving other SPD Department-paid in-home or community living support other than State Medicaid Plan services; AND

(c) The individual is not enrolled in comprehensive services; AND

(d) At the time of initial enrollment in entry to the brokerage, the individual is not receiving short-term services from SPD the Department because the individual is eligible for, and at imminent risk of, civil commitment under ORS chapter 427.215 through 427.306; AND

(e) The individual or the individual's legal representative has chosen to use a brokerage for assistance with design and management of personal supports; AND.

(f) The individual is an adult eligible for enrollment in the Support Services Waiver according to OAR 461-135-0750; OR

(g) The individual turns 18 years old and meets the level of care that qualifies the individual for enrollment to the Support Services Waiver and the individual was enrolled in the Children's Intensive In-home Services (CIIS) Program up to the individual's 18th birthday.

(3) CONCURRENT SERVICES. Individuals are not eligible for service by more than one brokerage unless the concurrent service:

(a) Is necessary to affect transition from one brokerage to another;

(b) Is part of a collaborative plan between the affected brokerages; and

(c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: [ORS](#) 427.005, 427.007, & 430.610 – 430.695

411-340-0110 Standards for Support Services Brokerage Entry and Exit

(1) The brokerage must make accurate, up-to-date information about the brokerage available to individuals referred for services. This information must include:

- (a) A declaration of brokerage philosophy;
- (b) A brief description of the services provided by the brokerage, including typical timelines for activities;
- (c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;
- (d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;
- (e) A brief description of individual responsibilities for use of public funds;
- (f) An explanation of individual rights, including an individual's right to:
 - (A) Choose a brokerage from among [SPD-Department](#) contracted brokerages in an individual's county of residence that is serving less than the total number of individuals specified in the brokerage's current contract with [SPDthe Department](#);
 - (B) Choose a personal agent among those available in the selected brokerage;
 - (C) Select providers among those willing, available, and qualified according to OAR 411-340-0160, OAR 411-340-0170, and OAR 411-340-0180 to provide supports authorized through the ISP;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060(3) when services covered under Medicaid are denied, terminated, suspended, or reduced.

(g) Indication that additional information about the brokerage is available on request. The additional information must include but not be limited to:

(A) A description of the brokerage's organizational structure;

(B) A description of any contractual relationships the brokerage has in place or may establish to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and the brokerage's Policy Oversight Group.

(2) The brokerage must make information required in [section OAR 411-340-0110\(1\)](#) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) ~~An individual must enter brokerage services within 90 calendar days of the date that~~ To enter brokerage services:

(A) ~~The CDDP has determined an individual to be eligible for brokerage services according to OAR 411-340-0100(2); and An individual must be determined by the CDDP to be eligible for brokerage services according to OAR 411-340-0100(2);~~

(B) The individual or the individual's legal representative ~~has chosen~~ must choose to receive services from a selected brokerage; ~~and.~~

(C) The individual must be enrolled in the Support Services Waiver unless eligibility for support services is based upon OAR 411-340-0100(2)(g).

(b) ~~SPD-The Department~~ may implement guidelines that govern ~~enrollments entries~~ when ~~SPD-the Department~~ has determined that such guidelines are prudent and necessary for the continued development and implementation of support services.

(c) The brokerage may not accept individuals for entry beyond the total number of individuals specified in ~~its~~ the brokerage's current contract with ~~SPD~~the Department.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

(A) At the written request of the individual or the individual's legal representative to end the service relationship;

(B) No less than 30 days after the brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by brokerage staff to complete ISP development and monitoring activities, and does not respond to the notice of intent to terminate;

(C) Whenever the individual's emergent status exceeds 270 consecutive days;

(D) Upon entry into a comprehensive service; ~~or~~

(E) When the individual is incarcerated or in a medical hospital, psychiatric hospital, or convalescent center and it is determined that the individual will not return home, or will not return home after 90 consecutive days. ~~The 90 day limit may be exceeded with the permission of SPD.;~~

(F) After no more than 90 consecutive days from the date the individual becomes ineligible for the Support Services Waiver under OAR 461-135-0750, or no more than 30 days from the date the brokerage learns of the individual's loss of eligibility, whichever is later, except as stated in OAR 411-340-0110(4)(a)(A-G) of this section; or

(G) After 10 days when an individual is eligible for support services based on OAR 411-340-0100(2)(g) and:

(i) The individual does not apply for a disability determination and OSIP-M within 10 business days of the individual's 18th birthday; OR

(ii) The Social Security Administration or the Department's Presumptive Medicaid Disability Determination Team finds that an individual does not have a qualifying disability; OR

(iii) The individual is determined by the State of Oregon to be ineligible for OSIP-M.

(b) Any individual being exited from a brokerage shall be given written notice of the intent to terminate service at least 10 days prior to the termination.

(c) An individual who exits support services as a result of the application of OAR 411-340-0110(4)(a)(F) or (G) of this section may not receive continuation of benefits pending a contested case hearing if a hearing is requested to contest the decision to exit from support services.

(bd) Each brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when that individual plans to exit, or exits, brokerage services. Notification method, timelines, and content must be based on agreements between the brokerage and CDDP's of each county in which the brokerage provides services.

Stat. Auth.: ORS 409.050 & 410.070

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

411-340-0120 Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

- (a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;
- (b) Assistance for individuals to find and arrange the resources to provide planned supports;
- (c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;
- (d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;
- (e) Fiscal intermediary services in the receipt and accounting of support services funds on behalf of an individual in addition to making payment to providers with the authorization of the individual;
- (f) Employer-related supports; and
- (g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) SELF-DETERMINATION. Brokerages must apply the principles of self-determination to provision of services required in [section OAR 411-340-0120](#)(1) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports including but not limited to:

- (a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;
- (b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and
- (c) Education and support to recognize and report abuse.

(5) PERSONAL AGENT SERVICES.

(a) INITIAL DESIGNATION OF PERSONAL AGENT.

(A) The brokerage must designate a personal agent for individuals newly entered in support services within 10 working days from the date entry becomes known to the brokerage.

(B) In the instance of an individual transferring into a brokerage from another brokerage, the brokerage must designate a personal agent within 10 days of entry to the new brokerage.

(C) The brokerage must send a written notice that includes the name, telephone number, and location of the personal agent or brokerage to the individual and the individual's legal representative within 10 working days from the date entry becomes known to the brokerage.

(D) If the individual does not object to the brokerages designation of a personal agent, the brokerage must send notice to the individual's family or advocate no later than 10 days from confirmation that the individual does not object.

(b) CHANGE OF PERSONAL AGENT. Changes of personal agents initiated by the brokerage must be kept to a minimum. If the brokerage must change personal agent assignments, the brokerage must notify the individual, the individual's legal representative, and all

current service providers within 10 working days of the change. The notification must be in writing and include the name, telephone number, and address of the new personal agent, if known, or of a contact person at the brokerage.

(6) PARTICIPATION IN PROTECTIVE SERVICES. The brokerage and personal agent must participate in the delivery of protective services, in cooperation with the CDDP, through the completion of activities necessary to address immediate health and safety concerns.

(57) MEDICAID WAIVERS. The brokerage must assure that individuals who become eligible for Medicaid after entry into the brokerage are offered the choice of home and community-based waiver services, provided a notice of fair hearing rights, and have a completed [Title XIX Support Services](#) Waiver form that is reviewed annually or at any time there is a significant change.

(68) WRITTEN PLAN REQUIRED.

(a) Unless circumstances allow exception under [subsection OAR 411-340-0120\(8\)](#)(b) of this section, the personal agent must write an ISP dated within 90 days of an individual's entry into brokerage services and at least annually thereafter. [The brokerage must provide Aa](#) written copy of the most current ISP ~~must be provided~~ to the individual and the individual's legal representative. The ISP or attached documents must include:

- (A) The individual's name;
- (B) A description of the supports required, including the reason the support is necessary;
- (C) Projected dates of when specific supports are to begin and end;
- (D) Projected costs, with sufficient detail to support estimates;
- (E) A list of personal, community, and public resources that are available to the individual and how they shall be applied to provide the required supports;

(F) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general business provider), of supports to be purchased with support services funds;

(G) Schedule of ISP reviews; and

(H) Any revisions to [paragraphs OAR 411-340-0120\(8\)\(a\)](#)(A) to (G) of this section that may alter:

(i) The amount of support services funds required;

(ii) The amount of support services required;

(iii) Types of support purchased with support services funds; and

(iv) The type of support provider.

(b) The schedule of the support services ISP₁ developed in compliance with [section OAR 411-340-0120\(3\)](#) of this rule after an individual enters a brokerage₁ may be adjusted one time for any individual entering a brokerage in certain circumstances. Such an adjustment shall interrupt any plan year in progress and establish a new plan year for the individual beginning on the date the first new ISP is authorized. Circumstances where this adjustment is permitted include:

(A) Brokerages, with the consent of the individual, may designate a new ISP start date.

(i) This adjustment may only occur one time per individual upon ISP renewal.

(ii) The individual's benefit level must be pro-rated based on the shortened plan year in order to not exceed the annual benefit level for which the individual is eligible.

(iii) ISP date adjustments ~~shall~~must be clearly documented on the ISP.

(B) Transition of individuals receiving family support services for children with developmental disabilities regulated by OAR chapter 411, division 305, children's intensive in-home services (CIIS) regulated by OAR chapter 411, division 300, or medically fragile children (MFC) services regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of the individual's first new support services ISP after ~~enrollment in~~entry to the brokerage may be adjusted to correspond to the expiration date of the individual's Annual Plan of Care in place at the time the individual turns 18 years of age when the Annual Plan of Care, developed while the individual is still receiving family support, CIIS, or MFC services, has been authorized for implementation prior to or upon the individual's ~~enrollment in~~entry to the brokerage.

(C) Transition of individuals receiving other ~~Division~~Department-paid services who are required by the ~~Division~~Department to transition to support services. The date of the individual's first support services ISP may be adjusted to correspond to the expiration date of the individual's plan for services when the plan for services:

(i) Has been developed according to regulations governing ~~Division~~Department-paid services the individual receives prior to transition;

(ii) Is current at the time designated by the ~~Division~~Department for transition to support services; and

(iii) Is authorized for implementation prior to or upon the individual's ~~enrollment in~~entry to the brokerage.

(79) PROFESSIONAL OR OTHER SERVICE PLANS.

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase services requiring the education and training of a licensed professional nurse.

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by the ~~Division~~ Department for use in these circumstances, must be attached to the ISP when an individual enrolled in a brokerage: ~~(A) Has been determined by the CDDP of the individual's county of residence as eligible for crisis diversion services according to OAR 411-320-0160; and (B) Is is~~ in emergent status in a short-term, out-of-home, residential placement as part of the individual's crisis diversion services. ~~This short-term plan must be coordinated by staff of the CDDP of the individual's county of residence.~~

(810) ~~INDIVIDUAL SERVICE PLAN~~ ISP AUTHORIZATION.

(a) An initial and annual ISP must be authorized prior to implementation.

(b) A revision to the annual or initial ISP that involves the types of support purchased with support services funds must be authorized prior to implementation.

(c) A revision to the annual or initial ISP that does not involve the types of support purchased with support services funds does not require authorization. Documented verbal agreement to the revision by the individual or the individual's legal representative is required prior to implementation of the revision.

(d) An ISP is authorized when:

(A) The signature of the individual or the individual's legal representative is present on the ISP or documentation is present explaining the reason an individual who does not have a legal representative may be unable to sign the ISP.

(i) Acceptable reasons for an individual without a legal representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(ii) Unavailability of the individual is not an acceptable reason for the individual or the individual's legal representative not to sign the ISP.

(iii) In the case of a revision to the initial or annual ISP that is in response to immediate, unexpected change in circumstance, and is necessary to prevent injury or harm to the individual, documented verbal agreement may substitute for a signature for no more than 10 working days.

(B) The signature of the personal agent involved in the development of, or revision to, the ISP is present on the ISP; and

(C) A designated brokerage representative has reviewed the ISP for compliance with ~~Division~~Department rules and policy.

| (911) PERIODIC REVIEW OF PLAN AND RESOURCES.

(a) The personal agent must conduct and document reviews of plans and resources with the individual and the individual's legal representative.

(b) At least annually as part of preparation for a new ISP, the personal agent must:

(A) Evaluate progress toward achieving the purposes of the ISP, assessing and revising goals as needed;

| (B) Note effectiveness of the use of support services funds based on personal agent observation as well as individual satisfaction;

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports; and

(D) Record final support services fund costs.

(4012) TRANSITION TO ANOTHER BROKERAGE. At the request of an individual enrolled in brokerage services who has selected another brokerage, the brokerage must collaborate with the receiving brokerage and the CDDP of the individual's county of residence to transition support services.

(a) If the Division-Department has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify the Division-Department to consider transfer of the funds for the individual to the receiving brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after enrollment in entry to the new brokerage while a new ISP is negotiated and authorized.

Stat. Auth.: ORS 409.050 & 410.070

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

411-340-0125 Crisis Supports in Support Services

(1) The brokerage must, in conjunction with its Regional Crisis Diversion Program, attempt to provide supports that mediate a crisis risk factor for adults who are:

(a) Entered in support services; and

(b) Determined to be in crisis as described in OAR 411-340-0125(2) of this rule.

(2) CRISIS DETERMINATION. An individual enrolled in support services is eligible for crisis diversion services when:

(a) A brokerage has referred an individual to the Regional Crisis Diversion Program because the brokerage has determined that one or more of the following crisis risk factors, not primarily related to a significant mental or emotional disorder or substance abuse, are present and for which no appropriate alternative resources are available:

(A) An individual is not receiving necessary supports to address life-threatening safety skill deficits;

(B) An individual is not receiving necessary supports to address life-threatening issues resulting from behavioral or medical conditions;

(C) An individual currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;

(D) An individual undergoes, or is at imminent risk of undergoing, loss of caregiver due to caregiver inability to provide supports;

(E) An individual experiences a loss of home due to a protective service action; or

(F) An individual is not receiving the necessary supports to address significant safety risks to others, including but not limited to:

(i) A pattern of physical aggression serious enough to cause injury;

(ii) Fire-setting behaviors; or

(iii) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(b) The Regional Crisis Diversion Program has determined crisis eligibility according to OAR 411-320-0160.

(c) The individual's ISP has been revised to address the identified crisis risk factors and the revisions:

(A) May resolve the crisis; and

(B) May not contribute to new or additional crisis risk factors.

(3) CRISIS SUPPORTS.

(a) An ISP for an individual in emergent status may authorize short-term, out-of-home, residential placement. Residential placement does not exit an individual from support services.

(b) The individual's personal agent must:

(A) Participate with the Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the individual's benefit level;

(B) Assist with the identification of qualified providers who may be paid in whole or in part using crisis diversion funding except in the case of short-term, out-of-home, residential placements with a licensed or certified provider;

(C) Complete and coordinate the Support Services Brokerage Plan of Care Crisis Addendum when an individual in emergent status requires a short-term, out-of-home, residential placement; and

(D) Monitor the delivery of supports provided, including those provided through crisis funding.

(i) Monitoring is done through contact with the individual, any service providers, and the individual's family.

(ii) Monitoring is done to collect information regarding supports provided and progress toward outcomes that are identified as necessary to resolve the crisis.

(iii) The personal agent must document the information described in OAR 411-340-0125(3)(b)(D)(ii) of this section in the individual's case file and report to the Regional Crisis Diversion Program or CDDP as required.

(c) Support services provided during emergent status are subject to all requirements of this rule.

(d) All supports authorized in an ISP continue during the crisis unless prohibited by other rule, policy, or the supports contribute to new or additional crisis risk factors.

(4) TRANSITION TO COMPREHENSIVE SERVICES: When an individual eligible for crisis supports may have long-term support needs that may not be met through support services:

(a) The brokerage must immediately notify the CDDP of the individual's county of residence;

(b) The brokerage must coordinate with the CDDP and the Regional Crisis Diversion Program to facilitate a timely exit from support services and entry into appropriate, alternative services; and

(c) The brokerage must assure that information required for a potential provider of comprehensive services is available as needed for a referral to be made.

Stat. Auth.: ORS 409.050 & 410.070

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

411-340-0130 Using Support Services Funds to Purchase Supports

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP when:

(a) Supports are necessary for an individual to live in the individual's own home or in the family home;

(b) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the ISP;

(A) Support services funds are not intended to replace the resources available to an individual from their natural support system. Support services funds may be authorized only when the natural support system is unavailable, insufficient, or inadequate to meet the needs of the individual.

(B) Support services funds are not available when an individual's support needs may be met by alternative resources. Support services funds may be authorized only when alternative resources are unavailable, insufficient, or inadequate to meet the needs of the individual.

(c) An individual is receiving crisis diversion services according to OAR 411-320-0160 and:

(A) Crisis diversion services ~~are not~~ allowed by OAR 411-320-0160 ~~to do not~~ provide the necessary support;

(B) The support was identified as necessary prior to the onset of the crisis;

(C) Support services funds are not expended to such an extent that the support services funds that may be required to purchase the remainder of necessary supports following the termination of crisis diversion services shall be unavailable; and

(D) Support services funds are used for no more than 90 days following the determination that the individual shall enter a comprehensive service.

(d) The ISP projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports that are within the benefit level; and

(e) The ISP has been authorized for implementation.

(2) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(3) LIMITS OF FINANCIAL ASSISTANCE. Assistance of The use of support services funds to purchase individual supports in any plan year is limited to the individual's annual benefit level.

(a) Individuals must have access throughout the plan year to the total annual amount of support services funds for which they are eligible that are determined to be necessary to implement an authorized ISP,

even if there is a delay in implementation of the ISP, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) The ~~Division~~ Department may require that annual benefit level amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year, an individual's benefit level changes, or when an individual's ISP is developed and written to be in effect for less than 12 months.

(A) Except in the case of an individual whose benefit level changes as the result of a change in eligibility for the Support Services Waiver, when an individual's benefit level changes, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the change in benefit level remain in effect for 12 calendar months. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in benefit level occurred, from the date the change occurred.

~~(B) In the case of an individual whose Support Services Waiver eligibility changes, the new monthly benefit level is calculated based on the remainder of the General Fund contribution to the individual benefit level being evenly distributed across the remaining months of the plan year. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in Support Services Waiver eligibility occurred, from the date the change occurred.~~

~~(C)~~ (B) In the case of an individual with an ISP developed for a partial plan year, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly benefit level shall be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Estimates of the cost for each unique support service purchased with support services funds individual plan costs must be based on the Department's Support Services Rate Ranges ~~Division rate guidelines~~ for costs of frequently used services.

(A) ~~Division rate guidelines n~~Notwithstanding the Department's Support Services Rate Ranges, final costs for any support service purchased with support services funds may not exceed local usual and customary charges for these services as evidenced by the brokerage's own documentation.

(B) The brokerage must establish a process for review and approval of all cost estimates budgets based on estimates exceeding Division rate guidelines~~the Department's Support Services Rate Ranges~~ and must monitor the authorized ISP involved for continued cost effectiveness.

(4) EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS. Exceptions to the basic benefit annual support services fund limit may be only as follows.

(a) Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory (Form DHS 0203) may have access to a basic supplement in order to purchase necessary supports.

(A) For Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the individual cost limit.

~~(B) For individuals who are not Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the state's General Fund contribution to the individual cost limit, calculated according to the Medicaid match rate current at the beginning of the plan year, and adjusted annually to correspond to changes in the Medicaid match rates.~~

~~(C)~~ (B) The brokerage director, or a designee from brokerage management and administration, must administer the Basic Supplement Criteria Inventory only after receiving Division~~Department~~-approved training. The brokerage director or designee must score basic supplement criteria according to written and verbal instruction received from the Division~~Department~~.

(~~DC~~) The trained brokerage director or a designee from a brokerage's management or administration must administer the Basic Supplement Criteria Inventory within 30 calendar days of the documented request of the individual or the individual's legal representative.

(~~ED~~) The brokerage director or designee must send written notice of findings regarding eligibility for a basic supplement to the individual and the individual's legal representative within 45 calendar days of the written documented request for a basic supplement. This written notice must include:

(i) An offer for the individual and the individual's legal representative to discuss the findings in person with the director and with the individual's personal agent in attendance if desired;

(ii) A notice of the complaint process under OAR 411-340-0060; and

(iii) A notice of planned action.

(~~FE~~) Annual ISP reviews for recipients of the basic supplement must include a review of circumstances and resources to confirm continued need according to the instructions included with the Basic Supplement Criteria Inventory.

(F) The basic supplement must be used to address the conditions and caregiver circumstances identified in the Basic Supplement Criteria Inventory as contributing to the extraordinary long-term need.

(b) ~~An individual who has been assessed as in need of, and meeting criteria for, crisis diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160, in emergent status may receive crisis diversion services that may cause an individual's benefit level to be exceeded short-term assistance with purchase of support in excess of the individual's benefit level. Use of crisis diversion services may only be authorized by the CDDP of the~~

~~individual's county of residence or by the Regional Crisis Diversion Program responsible for the individual's county of residence.~~

(A) ~~Use of crisis diversion services and L~~length of emergent status may be authorized only by the CDDP of the individual's county of residence, or the Regional Crisis Diversion Program responsible for the individual's county of residence, depending on the source of the ~~funds for~~ crisis diversion ~~funds~~services. ~~Emergent status for an individual shall not exceed 270 consecutive days.~~

(B) Funds associated with crisis diversion services may be used to pay the difference in cost between the authorized ISP and the supports authorized by either the CDDP of the individual's county of residence or the Regional Crisis Diversion Program responsible for crisis diversion services in the individual's county of residence, depending on the source of crisis diversion services funds required to meet the short-term need.

(C) Although costs for crisis diversion services may bring the individual's total plan year cost temporarily above the individual cost limit, the individual's costs may not exceed the cost of the state's current ICF/MR daily cost per individual nor shall plan year expenses at or above the individual cost limit make the individual eligible for comprehensive services.

(~~i~~D) Individuals placed in emergent status due to receiving crisis diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive support services from, the brokerage while both crisis diversion services and support services are required to stabilize and maintain the individual at home or in the family home. ~~In no case, may the individual remain enrolled in the brokerage under emergent status for more than 270 consecutive days.~~

~~(ii) Support services provided during emergent status are subject to all requirements of this rule.~~

~~(iii) The individual's personal agent must participate with CDDP or Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the individual's benefit level, documenting reviews of effectiveness at least every 90 days while the individual is receiving crisis diversion services.~~

(c) Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through a Division Department contract from a Division Department-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to enrollment in entry to a brokerage, may have access to the amount specified in the Division Department contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(d) Individuals whose support funds were specifically assigned through a Division Department contract to self-directed support services prior to the date designated by the Division Department for transfer of the individual from self-directed support services to a brokerage may have access to the amount specified in the Division Department contract as available for the individual's use.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal

representative at least annually and must make budget reductions when allowed by the ISP.

(e) Individuals transferring from the ~~Division's Department's~~ Home and Community-Based Waiver Services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds in accordance with OAR 411-015-0015(4)(c), shall have limited access to support services funds as described in these rules. The amount of support services funds available shall be equal to the ~~Division's Department's~~ previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins the date the individual starts receiving support services exclusively through a brokerage.

(f) For Medicaid recipients eligible for and choosing services under the Support Services Waiver, individuals may have access to a basic supplement for ADLs to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. ~~The services~~ADLs include:

(i) Basic personal hygiene -- providing or assisting an individual with such needs as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(ii) Toileting, bowel, and bladder care -- assisting to and from bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing the individual or adjusting clothing related to toileting, emptying catheter drainage bag or assistive device, ostomy care, or bowel care;

(iii) Mobility, transfers, and repositioning -- assisting the individual with ambulation or transfers with or without assistive devices, turning the individual or adjusting

padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises; comfort;

(iv) Nutrition -- preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;~~Planning and preparing nutritious meals and assuring adequate fluid intake;~~

(v) Medication and oxygen management -- assisting with ordering, organizing, and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply;~~Assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions, and reminding appropriate persons when prescriptions need to be filled;~~

~~(vi) Maintaining clean oxygen equipment and supply; and~~

~~(vii) Delegated nursing tasks.~~

(B) Assistance means the individual requires help from another person with ADLs. Assistance may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may also require verbal reminding to complete one of the tasks described in OAR 411-340-0130(4)(f)(A) of this section.

(i) "Cueing" means giving verbal or visual clues during the activity to help the individual complete activities without hands-on assistance.

(ii) "Hands-on" means a provider physically performs all or parts of an activity because the individual is unable to do so.

(iii) "Monitoring" means a provider must observe the individual to determine if intervention is needed.

(iv) "Reassurance" means to offer encouragement and support.

(v) "Redirection" means to divert the individual to another more appropriate activity.

(vi) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual may perform an activity.

(vii) "Stand-by" means a provider must be at the side of an individual ready to step in and take over the task should the individual be unable to complete the task independently.

(BC) The supplement for ADLs must be used to meet identified support needs related to ADLs. The supplement for ADLs may also be used for the following services ADL services may include the following activities if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

(i) Housekeeping tasks necessary to maintain the eligible individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and gathering and washing soiled clothing and linens. Only the housekeeping activities related to the eligible individual's needs may be considered in housekeeping; Light housekeeping tasks necessary to maintain a healthy and safe environment;

(ii) Arranging for necessary medical appointments including help scheduling appointments and arranging medical transportation services, assistance with mobility, and transfers or cognition in getting to and from appointments;

(iii) Observation of an individual's status and reporting of significant changes to physicians, health care professionals, or other appropriate people;

(iv) First aid and handling emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements where assistance is needed by another person, or responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response ;
and

(v) Cognitive assistance or emotional support provided to an individual by another person ~~Extra support~~ due to developmental disability. This support includes helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive symptoms.

(D) The supplement for ADL support may not be used for any of the following services:

(i) Shopping;

(ii) Transportation;

(iii) Money management;

(iv) Mileage reimbursement;

(v) Social companionship; or

(vi) Respite

(~~E~~E) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(~~D~~F) Planned expenses must be based upon the least costly means of providing adequate services and must only be to the extent necessary to meet the documented ADL needs.

(~~E~~G) The supplement for ADLs may not cause the cost per any plan year to exceed the individual cost limit. There is an exception for individuals receiving both support services under these rules who had a benefit level at the individual cost limit and state plan personal care services under OAR chapter 411, division 034, as of June 30, 2005. These individuals may continue to access the basic supplement and the supplement for ADLs until the individual terminates their receipt of support services or becomes ineligible for one of the supplements. The combined basic benefit, the basic supplement, and supplement for ADLs must remain above the individual cost limit to remain eligible for this exception.

(~~F~~H) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Assessment (Form SDS 0531A) shall serve as the individual's authorized ISP for a period not to exceed 90 days.

(~~G~~I) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural support system of relatives, friends, neighbors, or other available sources of support.

(5) AMOUNT, METHOD, AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an authorized ISP. The brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from

advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with support services funds are:

(a) Chore services. Chore services may be provided only in situations where no one else in the household is capable of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of or responsible for providing these services;

(b) Community living and inclusion supports;

(c) Environmental accessibility adaptation;

(d) Family training;

(A) Family training must be provided:

(i) By licensed psychologists, medical professionals, clinical social workers, or counselors as described in OAR 411-340-0160(9); or

(ii) In organized conferences and workshops that are limited to topics related to the individual's developmental disability, identified support needs, or specialized medical or habilitative support needs.

(B) Family training may not be provided to paid caregivers.

(e) Homemaker services. Homemaker services may be provided only when the person regularly responsible for general housekeeping activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for

self or the individual in the home, or needs to devote additional time to caring for the individual;

(f) Occupational therapy services;

(g) Personal emergency response systems;

(h) Physical therapy services;

(i) Respite;

(A) Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence.

(B) Respite includes two types of care, neither of which may be characterized as eight-hours-a-day, five-days-a-week services or provided to allow caregivers to attend school or work.

(i) Temporary respite must be provided on less than a 24-hour basis.

(ii) Twenty-four hour overnight care must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from the [DivisionDepartment](#).

(j) Special diets. Special diets may not provide or replace the nutritional equivalent of meals and snacks normally required regardless of developmental disability.

(k) Specialized medical equipment and supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized medical equipment and supplies with support services funds must be limited to the types of equipment and supplies permitted under the State

Medicaid Plan and specifically those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by the State Medicaid Plan or private insurance, and the denial has been upheld in an applicable hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform ADLs or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that may be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);

(ii) Positioning devices;

(iii) Specially designed clothes to meet the unique needs of the individual, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(iv) Assistive technology items;

(v) Computer software used by the individual to express needs, control supports, plan, and budget supports;

(vi) Augmentative communication devices;

(vii) Environmental adaptations to control lights, heat, stove, etc.; or

(viii) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(l) Specialized supports;

(m) Speech and language therapy services;

(n) Supported employment; and

(o) Transportation.

(7) CONDITIONS OF PURCHASE. The brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction from the brokerage about the limits and conditions of such arrangements;

(B) Combined support services funds ~~cannot~~may not be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one individual;

(D) A provider organization resulting from the combined arrangements for community living and inclusion supports or supported employment services must be certified according to these rules; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; [and](#)

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities; [and](#)

[\(g\) In accordance with the Department's Support Services Expenditure Guidelines.](#)

(8) INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, AND GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES. When support services funds are used to purchase services, training, supervision, or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected abuse;

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or the individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP.

(d) The provisions of [section OAR 411-340-0130](#)(9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with any Department or brokerage investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of [section OAR 411-340-0130](#)(8) of this rule or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by another division within the Department [or Oregon Health Authority](#).

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the brokerage or the [DivisionDepartment](#), as applicable; or

(C) The brokerage may withhold payments to the provider.

(c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the [Department's Administrator](#)~~Division's Assistant Director~~.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the [Division](#)~~Department~~ within 30 days of the date the sanction notice was mailed to the provider.

(e) At the discretion of the [Division](#)~~Department~~, providers who have previously been terminated or suspended by any Department division [or by the Oregon Health Authority](#) may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

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

411-340-0140 Using Support Services Funds for Certain Purchases Is Prohibited

(1) Effective July 28, 2009, support services funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) [Section OAR 411-340-0140](#)(1) of this rule does not apply to employees of individuals, individual's legal representatives, employees of general business providers, or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

- (3) Support services funds may not be used to pay for:
- (a) Services, materials, or activities that are illegal;
 - (b) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;
 - (c) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;
 - (d) Individual or family vehicles;
 - (e) Health and medical costs that the general public normally must pay including:
 - (A) Medications;
 - (B) Health insurance co-payments;
 - (C) Dental treatments and appliances;
 - (D) Medical treatments;
 - (E) Dietary supplements including but not limited to vitamins and experimental herbal and dietary treatments; or
 - (F) Treatment supplies not related to nutrition, incontinence, or infection control.
 - (f) Ambulance services;
 - (g) Legal fees;
 - (h) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of developmental disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

- (i) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;
- (j) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;
- (k) Educational services for school-age individuals over the age 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;
- (l) Services provided in a nursing facility, correctional institution, or hospital;
- (m) Services, activities, materials, or equipment that may be obtained by the individual or family through [alternative resources or natural support](#)~~other available means such as private or public insurance, or other governmental or public services~~;
- (n) Unless under certain conditions and limits specified in [Division Department](#) guidelines, employee wages or contractor charges for time or services when the individual is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;
- (o) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or
- (p) Notwithstanding abuse as defined in OAR 407-045-0260, services when there is sufficient evidence to believe that the individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services

Stat. Auth.: ORS 409.050 & 410.070

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

411-340-0150 Standards for Support Services Brokerage Administration and Operations

(1) **POLICY OVERSIGHT GROUP.** The brokerage must develop and implement procedures for incorporating the direction, guidance, and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) **FULL-TIME BROKERAGE DIRECTOR REQUIRED.** The brokerage must employ a full-time director who is responsible for daily brokerage operations in compliance with these rules and has authority to make budget, staffing, policy, and procedural decisions for the brokerage.

(3) DIRECTOR QUALIFICATIONS. In addition to the general staff qualifications of OAR 411-340-0070(1) through (2), the brokerage director must have:

- (a) A minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health, or a related field; or
- (b) Six years of experience, including supervision, in the field of developmental disabilities, social services, or mental health.

(4) FISCAL INTERMEDIARY REQUIREMENTS.

(a) A fiscal intermediary must:

- (A) Demonstrate a practical understanding of laws, rules, and conditions that accompany the use of public resources;
- (B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;
- (C) Establish and meet the time lines for payments that meet individuals' needs;
- (D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;
- (E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to effectively manage the brokerage and by individuals to effectively manage supports;
- (F) Maintain flexibility to adapt to changing circumstances of individuals; and
- (G) Provide training and technical assistance to individuals as required and specified in ISPs.

(b) A fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline those employed to provide services described in an authorized ISP.

(c) Fiscal intermediary qualifications.

(A) A fiscal intermediary may not:

(i) Be a provider of support services paid using support funds; or

(ii) Be a family member or other representative of an individual for whom they provide fiscal intermediary services;

(B) The brokerage must obtain and maintain written evidence that:

(i) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(ii) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training, and experience.

(5) PERSONAL AGENT QUALIFICATIONS.

(a) Each personal agent must have:

(A) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(B) Five years of equivalent training and work experience related to developmental disabilities; and

(C) Knowledge of the public service system for developmental disability services in Oregon.

(b) A brokerage must submit a written variance request to [SPD the Department](#) prior to employment of a person not meeting the minimum qualifications for a personal agent set forth in [section OAR 411-340-0150\(5\)\(a\)](#) of this [rule section](#). The variance request must include:

(A) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(B) A proposed alternative plan for education and training to correct the deficiencies. The proposal must specify activities, timelines, and responsibility for costs incurred in completing the plan. A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(6) PERSONAL AGENT TRAINING. The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including but not limited to:

- (a) Principles of self-determination;
- (b) Person-centered planning processes;
- (c) Identification and use of alternative support resources;
- (d) Fiscal intermediary services;
- (e) Basic employer and employee roles and responsibilities;
- (f) Developing new resources;
- (g) Major public health and welfare benefits;
- (h) Constructing and adjusting individualized support budgets; and

(i) Assisting individuals to judge and improve quality of personal supports.

(7) INDIVIDUAL RECORD REQUIREMENTS. The brokerage must maintain current, up-to-date records for each individual served and must make these records available to [SPD the Department](#) upon request. Individual records must include at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including the individual's name, family name (if applicable), individual's legal representative (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and plan year anniversary date;

(c) Documents related to determining eligibility for brokerage services and the amount of support services funds available to the individual, including basic supplement criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180;

(e) Documentation, signed by the individual or the individual's legal representative, that the individual or the individual's legal representative has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) Assessments used to determine supports required, preferences, and resources;

(h) ISP and reviews. If the individual is unable to sign the ISP, the individual record must document that the individual was informed of the contents of the ISP and that the individual's agreement to the ISP was obtained to the extent possible;

(i) Names of those who participated in the development of the ISP. If the individual was not able to participate in the development of the ISP, the individual record must document the reason.

(j) Written service agreements. A written service agreement must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the contractor or provider organization.

(k) A written job description for all services to be delivered by an employee of the individual or the individual's legal representative. The written job description must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location, duration of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the employee of the individual.

(l) Personal agent correspondence and notes related to resource development and plan outcomes.

[\(m\) Progress notes. Progress notes must include documentation of](#)

the delivery of service by a personal agent to support each case service provided. Progress notes must be recorded chronologically and documented consistent with brokerage policies and procedures. All late entries must be appropriately documented. Progress notes must at a minimum include:

(A) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date service was rendered;

(B) The name of the person receiving service;

(C) The name of the brokerage, the person providing the service (i.e., the personal agent's signature and title), and the date the entry was recorded and signed;

(D) The specific services provided and actions taken or planned, if any;

(E) Place of service. Place of service means the name of the brokerage and where the brokerage is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(F) The names of other participants (including titles and agency representation, if any) in notes pertaining to meetings with or discussions about the individual.; and

(mn) Information about individual satisfaction with personal supports and the brokerage services.

(8) SPECIAL RECORDS REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.

(a) The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include but may not be limited to:

(A) Minimum acceptable records of expenditures:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Itemized invoices for any services purchased from independent contractors, provider organizations, and professionals. Itemized invoices must include:

(I) The name of the individual to whom services were provided;

(II) The date of the services; and

(III) A description of the services.

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services; and

(v) Documentation that services provided were consistent with the authorized ISP.

(B) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations.

(i) When equipment is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

(ii) The brokerage must secure use of equipment or furnishings costing more than \$500 through a written agreement between the brokerage and the individual or the individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period.

(iii) The brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5,000 or more per single instance or cumulatively over several modifications:

(I) Are approved by [SPD the Department](#) before work begins and before final payment is made;

(II) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(III) That steps are taken as prescribed by [SPD the Department](#) for protection of [SPD's the Department's](#) interest through liens or other legally available means.

(iv) The brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(b) Any goods purchased with support services funds that are not used according to an ISP or according to an agreement securing the state's use may be immediately recovered. Failure to furnish written documentation upon written request from [DHSthe Department](#), the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(9) QUALITY ASSURANCE.

(a) The Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The Quality Assurance Plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional, and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the brokerage to changing needs, and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by [SPDthe Department](#).

(10) BROKERAGE REFFERRAL TO AFFILIATED ENTITIES.

(a) When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services which an individual may purchase using private or support services funds, brokerage staff may not refer, recommend, or otherwise encourage the individual to utilize this entity to provide services unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services shall be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity of which the brokerage is a

part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy must address, at minimum:

- (A) Disclosure of the relationship between the brokerage and the potential provider;
- (B) Provision of information about all other potential providers to the individual without bias;
- (C) A process for arriving at the option for selecting the provider;
- (D) Verification of the fact that the providers were freely chosen among all alternatives;
- (E) Collection and review of data on services, purchased by an individual enrolled in the brokerage, by an entity of which the brokerage is a part or otherwise directly affiliated; and
- (F) Training of personal agents and individuals in issues related to selection of providers.

(11) GENERAL OPERATING POLICIES AND PRACTICES. The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 410.070

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