DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 320

COMMUNITY DEVELOPMENTAL DISABILITY PROGRAMS

411-320-0010 Statement of Purpose
(Amended 7/13/2009)

The rules in OAR chapter 411, division 320 prescribe general administrative standards for operation of a community developmental disability program (CDDP).

(1) All CDDP contractors providing developmental disability services under a contract with the Seniors and People with Disabilities Division are required to meet the basic management, programmatic, health, safety, and human rights regulations in the management of the community service system for individuals with developmental disabilities.

(2) These rules prescribe the standards by which the Seniors and People with Disabilities Division provides services operated by the CDDP including but not limited to eligibility determination, case management, adult protective services, and crisis diversion services.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0020 Definitions
(Temporary Effective 7/1/2013 - 12/28/2013)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 320:

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

(2) "Abuse" means:

(a) Abuse of a child:

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

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

(i) Homes or facilities licensed to provide 24-hour residential services for children with intellectual or developmental disabilities; or

(ii) Agencies licensed or certified by the Department to provide proctor foster care for children with intellectual or developmental disabilities.

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

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

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

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

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in

individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities.

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

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

(7) "Adult" means an individual 18 years or older with an intellectual or developmental disability.

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

(9) "Annual Plan" means a written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services.

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

(11) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources and services.

(12) "CDDP" means "Community Developmental Disability Program".

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

(14) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(15) "Choice" means an individual's expression of preference, opportunity for, and active role in decision-making related to the services received and from whom, including but not limited to case management, service providers, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated verbally, through sign language, or by other communication methods.

(16) "Choice Counseling" means the sharing of information about case management and other service delivery options available to individuals with intellectual or developmental disabilities.

(17) "Choice Advisor" means an objective third party who meets the qualifications identified in OAR 411-320-0030(4)(c), who provides information in an impartial manner about the choices an eligible individual has regarding the provision of their case management services.

(18) "Community Developmental Disability Program (CDDP)" means the entity that is responsible for planning and delivery of services for individuals with intellectual or developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Department or a local mental health authority.

(19) "Community First Choice State Plan" means Oregon's state plan amendment authorized under section 1915(k) of the Social Security Act.

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

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

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

(23) "Comprehensive Services" mean developmental disability services and supports that include 24 hour residential services provided in a group home, foster home, or through a supported living program. Comprehensive services are regulated by the Department alone or in combination with an associated Department-regulated employment or community inclusion program. Comprehensive services are in-home services provided to an individual with an intellectual or developmental disability when the individual receives case management services from a community developmental disability program. Comprehensive services do not include support services for adults with intellectual or developmental disabilities enrolled in brokerages.

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

(25) "Crisis" means:

> (a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or
>
> (b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

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

(27) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving as the justification for, and the authorization of crisis supports and expenditures

pertaining to an individual receiving crisis services provided under these rules.

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

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

(30) "Developmental Disability (DD)" means a neurological condition that:

(a) Originates before the individual reaches the age of 22 years, except that in the case of intellectual disability, the condition is manifested before the age of 18;

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

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

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

(31) "DHS Quality Management Strategy" means the Department's Quality Assurance Plan that includes the quality assurance strategies for the Department (http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf).

(32) "Director" means the Director of the Department's Office of Developmental Disability Services, or the Director's designee. The term "Director" is synonymous with "Assistant Director".

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

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

(35) "Entry" means admission to a Department-funded developmental disability service.

(36) "Exit" means termination or discontinuance of --

(a) Services from a service provider; or

(b) Department-funded developmental disability services.

(37) "Family Member" means husband or wife, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(38) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (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.

(39) "Functional Needs Assessment (FNAT)" means an assessment that documents the level of need, accommodates an individual's participation in service planning, and includes --

(a) Completing a comprehensive and holistic assessment;

(b) Surveying physical, mental, and social functioning; and

(c) Identifying risk factors, choices and preferences, and service needs.

(40) "Guardian" means the parent of a child, or the person or agency appointed and authorized by a court to make decisions about services for a child.

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

(42) "Health Care Representative" means:

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

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

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

(44) "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.

(45) "Home and Community-Based Waivered Services" mean the services approved by the Centers for Medicare and Medicaid Services in accordance with Section 1915(c) and 1115 of the Social Security Act.

(46) "Imminent Risk" means:

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

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

(47) "Incident Report" means the written report of any unusual incident involving an individual.

(48) "Independence" means the extent to which individuals exert control and choice over their own lives.

(49) "Individual" means an adult or a child with an intellectual or developmental disability applying for or determined eligible for developmental disability services.

(50) "Individualized Education Plan (IEP)" means the written plan of instructional goals and objectives developed in conference with an individual and the individual's legal representative, teacher, and a representative of the school district.

(51) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal outcomes. Individual support needs are identified through a functional needs assessment. The manner in which services are delivered, service providers, and the frequency of services are reflected in an ISP. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP includes an individual's Plan of Care for Medicaid purposes and reflects whether services are purchased through a waiver, state plan, or provided through an individual's natural supports.

(52) "Individual Support Plan (ISP) Team" means a team composed of an individual receiving services and the individual's legal representative, services coordinator or personal agent, and others chosen by the individual. Others chosen by the individual may include service providers, family members, or other persons requested by the individual.

(53) "Informal Adaptive Behavior Assessment" means:

(a) Observations of the adaptive behavior impairments recorded in the individual’s progress notes by a services coordinator or a trained

eligibility specialist, with at least two years experience working with individuals with intellectual or developmental disabilities.

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

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

(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which persons without an intellectual or developmental disability participate, together with regular contact with persons without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with persons in the community.

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

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

(57) "ISP" means "Individual Support Plan" as defined in this rule.

(58) "Legal Representative" means:

(a) For a child, the parent unless a court appoints another person or agency to act as guardian; and

(b) For an adult, an attorney at law who has been retained by or for an individual or a person or agency authorized by a court to make decisions about services for an individual.

(59) "Level of Care" means an assessment completed by a services coordinator has determined an individual meets institutional level of care. An individual meets institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities if --

(a) The individual has a condition of an intellectual disability or a developmental disability as defined in this rule and meets the eligibility criteria for developmental disability services as described in OAR 411-320-0080; and

(b) The individual has a significant impairment in one or more areas of adaptive functioning. Areas of adaptive functioning include self direction, self care, home living, community use, social, communication, mobility, or health and safety.

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

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Department.

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

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

(a) Comes in contact with and has reasonable cause to believe a child with or without an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child with or without an intellectual or developmental disability, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this section, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(b) While acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with an intellectual or developmental disability has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with intellectual or developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

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

(64) "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.

(65) "Mental Retardation" is synonymous with "intellectual disability".

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

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

(68) "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.

(69) "OAPPI" means the Department’s Office of Adult Abuse Prevention and Investigation.

(70) "Oregon Intervention System (OIS)" means the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.

(71) "OSIP-M" means Oregon Supplemental Income Program-Medical as defined in OAR 461-101-0010. OSIP-M is Oregon Medicaid insurance coverage for an individual who meets eligibility criteria as described in OAR chapter 461.

(72) "Personal Agent" means a person who is a case manager for the provision of case management services, works directly with individuals and the individuals' families to provide or arrange for support services as described in OAR chapter 411, division 340, meets the qualifications set forth in OAR 411-340-0150, 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.

(73) "Person-Centered Planning" means:

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

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

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

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

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

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

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

(76) "Plan of Care" means the Medicaid authorized written document within the context of an Individual Support Plan that is developed using person-centered planning that describes the supports, services, and resources provided or accessed to address the needs of an individual.

(77) "Productivity" means:

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

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

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

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

(80) "Psychologist" means:

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

(b) A state certified school psychologist.

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

(82) "Qualified Professional" means a:

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

(b) Medical doctor (MD);

(c) Doctor of osteopathy (DO); or

(d) Nurse Practitioner.

(83) "Region" means a group of Oregon counties defined by the Department that have a designated management entity to coordinate

regional crisis and backup services and be the recipient and administration of funds for those services.

(84) "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 compromising the region agree shall be delivered more effectively or automatically on a regional basis.

(85) "Respite" means intermittent services provided on a periodic but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, a person normally providing supports to an individual unable to care for him or herself..

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

(87) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Department.

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

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

(90) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department, or other appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

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

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

(93) "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.

(94) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

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

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

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

(98) "Transition Plan" means the written plan of services and supports for the period of time between an individual's entry into a particular service and the development of the individual's Individual Support Plan (ISP). The transition plan is approved by the individual's services coordinator and includes a summary of the services necessary to facilitate adjustment to

the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

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

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

(101) "Volunteer" means any person assisting a service provider without pay to support the services and supports provided to an individual.

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

411-320-0030 Organization and Program Management
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) ORGANIZATION AND INTERNAL MANAGEMENT. Each service provider of community developmental disability services funded by the Department must have written standards governing the operation and management of the program. Such standards must be up to date, available upon request, and include:

(a) An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and the components and staff within the agency;

(b) Position descriptions for all staff providing community developmental disability services;

(c) Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions, and merit pay;

(D) Staff development and training;

(E) Employee conduct (including the requirement that abuse of an individual by an employee, staff, or volunteer of the CDDP is prohibited and is not condoned or tolerated); and

(F) Reporting of abuse (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by the Department.

(2) MANAGEMENT PLAN. The CDDP must maintain a current management plan assigning responsibility for the developmental disability services program management functions and duties described in this rule. The management plan must --

(a) Consider the unique organizational structure, policies, and procedures of the CDDP;

(b) Assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that the functions are implemented; and

(c) Reflect implementation of minimum quality assurance activities described in OAR 411-320-0045 that support the Department's Quality Management Strategy for meeting Centers for Medicare and Medicaid Services' waiver quality assurances, as required by 42 CFR 441.301 and 441.302.

(3) PROGRAM MANAGEMENT. Staff delivering developmental disability services must be organized under the leadership of a designated CDDP

manager and receive clerical support services sufficient to perform their required duties.

(a) The LMHA, public entity, or the public or private corporation operating the CDDP must designate a full-time employee who must, on at least a part-time basis, be responsible for management of developmental disability services within a specific geographic service area.

(b) In addition to other duties as may be assigned in the area of developmental disability services, the CDDP must at a minimum develop and assure:

(A) Implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve individuals;

(B) Maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, the Department, local government, and other state and local agencies with an interest in developmental disability services;

(C) Implementation of programs funded by the Department to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state, and federal requirements;

(D) Collection and timely reporting of information as may be needed to conduct business with the Department including but not limited to licensing foster homes, collecting federal funds supporting services, and investigating complaints related to services or suspected abuse; and

(E) Use of procedures that attempt to resolve complaints involving individuals or organizations that are associated with developmental disability services.

(4) QUALIFIED STAFF. Each CDDP must provide a qualified CDDP manager, services coordinator, eligibility specialist, and abuse investigator specialist for adults with intellectual or developmental disabilities, or have an agreement with another CDDP to provide a qualified eligibility specialist and abuse investigator specialist for adults with intellectual or developmental disabilities.

(a) CDDP MANAGER.

(A) A CDDP manager must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, health science, special education, public administration, or human service administration and a minimum of four years experience with at least two of those years of experience in developmental disability services that provided recent experience in program management, fiscal management, and staff supervision; or

(ii) Six years of experience with staff supervision; or

(iii) Six years of experience in technical or professional level staff work related to developmental disability services.

(B) On an exceptional basis, the CDDP may hire a person who does not meet the qualifications in subsection (A) of this section if the county and the Department have mutually agreed on a training and technical assistance plan that assures that the person quickly acquires all needed skills and experience.

(C) When the position of CDDP manager becomes vacant, an interim CDDP manager must be appointed to serve until a permanent CDDP manager is appointed. The CDDP must request a variance as described in section (7) of this rule if the person appointed as interim CDDP manager does not meet the

qualifications in subsection (A) of this section and the term of the appointment totals more than 180 days.

(b) CDDP SUPERVISOR. A CDDP supervisor (when available) must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree or equivalent course work in a field related to management such as business or public administration, or a field related to developmental disability services, may be substituted for up to three years required experience; or

(B) Five years of experience in staff supervision or five years of experience in technical or professional level staff work related to developmental disability services.

(c) SERVICES COORDINATOR. The services coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor’s degree in behavioral science, social science, or a closely related field; or

(B) A bachelor’s degree in any field and one year of human services related experience (i.e., work providing assistance to individuals and groups with issue such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, housing); or

(C) An associate’s degree in behavioral science, social science, or a closely related field and two years of human services related experience (i.e. work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, housing); or

(D) Three years of human services related experience (i.e., work providing assistance to individuals and groups with issues such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, housing).

(d) ELIGIBILITY SPECIALIST. An eligibility specialist must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in behavioral science, social science, or a closely related field; or

(B) A bachelor’s degree in any field and one year of human services related experience; or

(C) An associate’s degree in behavioral science, social science, or a closely related field and two years of human services related experience; or

(D) Three years of human services related experience.

(e) ABUSE INVESTIGATOR SPECIALIST. An abuse investigator specialist must have at least:

(A) A bachelor's degree in human, social, behavioral, or criminal science and two years of human services, law enforcement, or investigative experience; or

(B) An associate's degree in human, social, behavioral, or criminal science and four years of human services, law enforcement, or investigative experience.

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

(6) BACKGROUND CHECKS.

(a) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210 including staff who are not identified in this rule but use public funds intended for the operation of the CDDP, and who has or will have contact with an eligible individual of the CDDP, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(A) Effective July 28, 2009, the CDDP may not use public funds to support, in whole or in part, any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210 who will have contact with a recipient of CDDP services and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(B) Effective July 28, 2009, a person does not meet the qualifications described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(C) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0210 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or the Department's designee within 24 hours.

(b) Subsections (A) and (B) of section (a) do not apply to employees who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(7) VARIANCE. The CDDP must submit a written variance request to the Department prior to employment of a person not meeting the minimum qualifications in section (4) of this rule. A variance request may not be requested for sections (5) and (6) of this rule. The written variance request must include:

(a) An acceptable rationale for the need to employ a person who does not meet the minimum qualifications in section (4) of this rule; and

(b) A proposed alternative plan for education and training to correct the deficiencies.

(A) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(B) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(8) STAFF DUTIES.

(a) SERVICES COORDINATOR DUTIES. The duties of the services coordinator must be specified in the employee's job description and at a minimum include:

(A) The delivery of case management services to individuals as described in OAR 411-320-0090;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(b) ELIGIBILITY SPECIALIST DUTIES. The duties of the eligibility specialist must be specified in the employee's job description and at a minimum include:

(A) Completing intake and eligibility determination for individuals applying for developmental disability services;

(B) Completing eligibility redetermination for individuals requesting continuing developmental disability services; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(c) ABUSE INVESTIGATOR SPECIALIST DUTIES. The duties of the abuse investigator specialist must be specified in the employee's job description and at a minimum include:

(A) Conducting abuse investigation and protective services for adult individuals with intellectual or developmental disabilities enrolled in, or previously eligible and voluntarily terminated from, developmental disability services;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(9) STAFF TRAINING. Qualified staff of the CDDP must maintain and enhance their knowledge and skills through participation in education and training. The Department provides training materials and the provision of training may be conducted by the Department or CDDP staff, depending on available resources.

(a) CDDP MANAGER TRAINING. The CDDP manager must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP manager.

(A) The orientation provided by the CDDP to a new CDDP manager must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(v) A review and orientation of Medicaid, Supplemental Security Income (SSI), Social Security Administration (SS), home and community-based waivered and state plan services, the Oregon Health Plan (OHP), and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP manager's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, and children.

(B) The CDDP manager must attend the following trainings endorsed or sponsored by the Department within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP manager must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP manager must participate in a minimum of 20 hours per year of additional Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(ii) Each CDDP manager must attend trainings to maintain a working knowledge of system changes in the area the CDDP manager is managing or supervising.

(b) CDDP SUPERVISOR TRAINING. The CDDP supervisor (when designated) must participate in a basic training sequence and be

knowledgeable of the duties of the staff they supervise and of the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP supervisor.

(A) The orientation provided by the CDDP to a new CDDP supervisor must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(v) A review and orientation of Medicaid, SSI, SS, home and community-based waivered and state plan services, OHP, and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP supervisor's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, older adults, and children.

(B) The CDDP supervisor must attend the following trainings endorsed or sponsored by the Department within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP supervisor must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP supervisor must participate in a minimum of 20 hours per year of additional Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(ii) Each CDDP supervisor must attend trainings to maintain a working knowledge of system changes in the area the CDDP supervisor is managing or supervising.

(c) SERVICES COORDINATOR TRAINING. The services coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new services coordinator.

(A) The orientation provided by the CDDP to a new services coordinator must include:

(i) An overview of the role and responsibilities of a services coordinator;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Department's rules governing the CDDP;

(iv) An overview of the Department's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waivered and state plan services,

OHP, and the individual support planning processes for the services they coordinate; and

(vii) A review (prior to having contact with individuals) of the services coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, seniors, and children.

(B) The services coordinator must attend the following trainings endorsed or sponsored by the Department within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training (for services coordinators providing services to individuals in comprehensive services).

(C) The services coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities necessary to perform the position. Each services coordinator must participate in a minimum of 20 hours per year of Department-sponsored training or other training in the areas of intellectual or developmental disabilities.

(d) ELIGIBILITY SPECIALIST TRAINING. The eligibility specialist must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new eligibility specialist.

(A) The orientation provided by the CDDP to a new eligibility specialist must include:

(i) An overview of eligibility criteria and the intake process;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Department's rules governing the CDDP;

(iv) An overview of the Department's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Department's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waivered or state plan services, and OHP; and

(vii) A review (prior to having contact with individuals) of the eligibility specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, seniors, and children.

(B) The eligibility specialist must attend and complete eligibility core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of eligibility core competency training, or if competency is not demonstrated, the eligibility specialist must consult with another trained eligibility specialist or consult with a Department diagnosis and evaluation coordinator when making eligibility determinations.

(C) The eligibility specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each eligibility specialist must participate in Department-sponsored trainings for eligibility on an annual basis.

(ii) Each eligibility specialist must participate in a minimum of 20 hours per year of Department-sponsored training or

other training in the areas of intellectual or developmental disabilities.

(e) ABUSE INVESTIGATOR SPECIALIST TRAINING. The abuse investigator specialist must participate in core competency training. Training materials are provided by the OAPPI. The core competency training is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new abuse investigator specialist.

(A) The orientation provided by the CDDP to a new abuse investigator specialist must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Department's rules governing the CDDP;

(iii) An overview of the Department's licensing and certification rules for service providers;

(iv) A review and orientation of Medicaid, SSI, SS, home and community-based waivered and state plan services, OHP, and the individual support planning processes; and

(v) A review (prior to having contact with individuals) of the abuse investigator specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with intellectual or developmental disabilities, individuals with mental illness, seniors, and children.

(B) The abuse investigator specialist must attend and pass core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of core competency training, or if competency is not demonstrated, the abuse investigator specialist must consult with OAPPI prior to completing the abuse investigation and protective services report.

(C) The abuse investigator specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position. Each abuse investigator specialist must participate in quarterly meetings held by OAPPI. At a minimum, one meeting per year must be attended in person.

(f) ATTENDANCE. The CDDP manager must assure the attendance of the CDDP supervisor, services coordinator, eligibility specialist, or abuse investigator specialist at Department-mandated training.

(g) DOCUMENTATION. The CDDP must keep documentation of required training in the personnel files of the individual employees including the CDDP manager, CDDP supervisor, services coordinator, eligibility specialist, abuse investigator specialist, and other employees providing services to individuals.

(10) ADVISORY COMMITTEE. Each CDDP must have an advisory committee.

(a) The advisory committee must meet at least quarterly.

(b) The membership of the advisory committee must be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional, and consumer interests represented. Membership must include advocates for individuals as well as individuals and their families.

(c) The advisory committee must advise the LMHA, the CDDP director, and the CDDP manager on community needs and priorities for services, and assist in planning, reviewing, and evaluating services, functions, duties, and quality assurance activities described in the CDDP's management plan.

(d) When the Department or a private corporation is operating the CDDP, the advisory committee must advise the LMHA, the CDDP director, and the CDDP manager on community needs and priorities for services, and assist in planning, reviewing, and evaluating

services, functions, duties, and quality assurance activities described in the CDDP's management plan.

(e) The advisory committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the LMHA.

(11) NEEDS ASSESSMENT, PLANNING, AND COORDINATION. Upon the Department's request, the CDDP must assess local needs for services to individuals and must submit planning and assessment information to the Department.

(12) CONTRACTS.

(a) If the CDDP, or any of the CDDPs services as described in the Department's contract with the LMHA, is not operated by the LMHA, there must be a contract between the LMHA and the organization operating the CDDP or the services, or a contract between the Department and the operating CDDP. The contract must specify the authorities and responsibilities of each party and conform to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the individual's family, or the individual's guardian or legal representative.

(A) The service provider selected must also meet Department certification or licensing requirements to provide the type of service to be contracted.

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) When a CDDP contracts with a public agency or private corporation for delivery of developmental disability services, the CDDP must include in the contract only terms that are substantially similar to model contract terms established by the Department. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the services being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to the complaint procedures contained in OAR 411-320-0170. For purposes of this rule, the following definitions apply:

(A) "Model contract terms established by the Department" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by the Department as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the services being provided" means requirements that are not substantially similar to model contract terms developed by the Department.

(d) The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option as it would appear in the contract. The proposed local option must include:

(i) The date upon which the local option would become effective and a complete written description of how the local option would improve individual independence, productivity, or integration; or

(ii) How the local option would improve the protection of individual health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option impacts individual services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

(D) The CDDP has sent a written request for approval of the proposed local option to the Department's Director that includes:

(i) A copy of the information provided to the affected contractors;

(ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and

(iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.

(E) The Department has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which individual services are provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by the Department and contracted through the CDDP. Procedures implementing the dispute resolution policy must be included in the contract with any such service provider.

(13) FINANCIAL MANAGEMENT.

(a) There must be up-to-date accounting records for each developmental disability service accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities. The accounting records must be consistent with generally accepted accounting principles and conform to the requirements of OAR 309-013-0120 to 309-013-0220.

(b) There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rules pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service.

(14) POLICIES AND PROCEDURES. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with the Department, these rules, and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.695

411-320-0040 Community Developmental Disability Program Responsibilities

(Temporary Effective 7/1/2013 - 12/28/2013)

The CDDP must ensure the provision of the following services and system supports.

(1) ACCESS TO SERVICES.

(a) In accordance with the Civil Rights Act of 1964 (codified as 42 USC 2000d et seq.), any person may not be denied community developmental disability services on the basis of race, color, creed, sex, national origin, or duration of residence. CDDP contractors must comply with Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4) that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".

(b) Any individual determined eligible for developmental disability services by a CDDP must also be eligible for other community developmental disability services unless admission to the service is subject to diagnostic or developmental disability category or age restrictions based on predetermined criteria or contract limitations.

(2) COORDINATION OF COMMUNITY SERVICES. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the CDDP, other local and state human service agencies, and any other service providers as appropriate for the needs of the individual.

(3) CHOICE COUNSELING. Effective July 1, 2013, choice counseling regarding the provision of case management and other services must be provided to individuals who are eligible for and desire developmental disability services. Choice counseling is provided by a choice advisor who impartially describes service delivery options available through a support services brokerage or CDDP. Choice counseling is provided on an annual basis.

(4) CASE MANAGEMENT SERVICES.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CDDP and a service provider of case management services.

(c) If an individual is receiving services in more than one county, the county of origin must be responsible for case management services unless otherwise negotiated and documented in writing with the mutually agreed upon conditions.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring, monitoring, and investigating. Except as allowed under section (4)(e) of this rule, the case management program must be provided under an organizational structure that separates case management from other direct services for individuals. This separation may take one of the following forms:

> (A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or
>
> (B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services, or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) A CDDP or other organization that provides case management services may also provide other direct services under the following circumstances:

> (A) The CDDP coordinates the delivery of family support services for children under 18 years of age living at home with their family or comprehensive in-home supports for adults.

(B) The CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able and no other organization is able or willing to continue operations on 30 days notice.

(C) In order to develop new or expanded direct services for geographic service areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) A variance must be prior authorized by the Department if a CDDP intends to perform a direct service other than family support services or comprehensive in-home support.

(A) It is assumed that the CDDP provides family support services or comprehensive in-home supports described in subsection (e)(A) of this section. If the CDDP does not provide one or both of these services, the CDDP must submit a written variance request to the Department for prior approval that describes how the services are provided.

(B) If the circumstance described in subsection (e)(B) of this rule exist, the CDDP must propose a plan to the Department for review including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If a CDDP providing case management services delivers other services as allowed under subsection (e)(C) of this section, the organization must submit a written variance request to the Department for prior approval that includes the action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If an organization providing case management services delivers other services as allowed under subsections (e)(B) and (e)(C) of this rule, the organization must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When an RFP is

issued, a copy must be sent to the Department. The Department must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in subsection (g) of this section, the CDDP must submit a written variance request to the Department for prior approval that describes how conflict of roles are managed within the CDDP.

(i) If the CDDP also operates a support services brokerage, the CDDP must submit a written variance request to the Department for prior approval that includes the mechanism for addressing potential conflict of interest.

(5) FAMILY SUPPORT. The CDDP must ensure the availability of a program for family support services in accordance with OAR chapter 411, division 305.

(6) ABUSE AND PROTECTIVE SERVICES. The CDDP must assure that abuse investigations for adults with intellectual or developmental disabilities are appropriately reported and conducted by trained staff according to statute and administrative rules. When there is reason to believe a crime has been committed, the CDDP must report to law enforcement. The CDDP must report any suspected or observed abuse of children directly to the Department or local law enforcement, when appropriate.

(7) FOSTER HOMES. The CDDP must recruit foster home applicants and maintain forms and procedures necessary to license or certify foster homes. The CDDP must maintain copies of the following records:

(a) Initial and renewal applications for a foster home;

(b) All inspection reports completed by the CDDP (including required annual renewal inspection and any other inspections);

(c) General information about the home;

(d) Documentation of references, classification information, credit check (if necessary), background check, and training for service providers and substitute caregivers;

(e) Documentation of foster care exams for adult foster home providers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denials, or revocations (if any); and

(k) Copies of the foster home's annual license or certificate.

(8) CONTRACT MONITORING. The CDDP must monitor all community developmental disability subcontractors to assure that:

(a) Services are provided as specified in the CDDP's contract with the Department; and

(b) Services are in compliance with these rules and other applicable Department rules.

(9) INFORMATION AND REFERRAL. The CDDP must provide information and referral services to individuals, individuals' families, and interested others.

(10) AGENCY COORDINATION. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(11) MAINTENANCE OF CENTRALIZED WAIT LIST. The CDDP must maintain a current unduplicated central wait list as described in OAR 411-320-0090 of eligible individuals 18 years and older living within the

geographic service area of the CDDP who are enrolled in case management services and who are not receiving comprehensive services for adults.

(12) SERVICE DELIVERY COMPLAINTS. The CDDP must implement procedures to address individual or family complaints regarding service delivery that have not been resolved using the CDDP subcontractor's complaint procedures (informal or formal). Such procedures must be consistent with the requirements in OAR 411-320-0170.

(13) COMPREHENSIVE IN-HOME SUPPORTS. The CDDP must ensure the availability of comprehensive in-home supports for those individuals for whom the Department has funded such services. Comprehensive in-home support services must be in compliance with OAR chapter 411, division 330.

(14) EMERGENCY PLANNING. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The emergency procedure and disaster plan must be immediately available to the CDDP manager and employees. The emergency procedure and disaster plan must:

(a) Be integrated with the county emergency preparedness plan where appropriate;

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any offices, as appropriate;

(c) Include provisions for identifying individuals most vulnerable; and

(d) Include any plans for health and safety checks, emergency assistance, and any other plans that are specific to the type of emergency.

Stat. Auth.: ORS 409.050, 410.070, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.695

411-320-0045 Quality Assurance Responsibilities
(Amended 6/2/2011)

(1) Each CDDP must draft a local CDDP management plan as described in OAR 411-320-0030 that supports the Department's Quality Management Strategy for meeting CMS' six waiver quality assurances, as required and defined by 42 CFR 441.301 and 441.302. CMS' six waiver assurances are:

(a) Administrative authority;

(b) Level of care;

(c) Qualified providers;

(d) Service plans;

(e) Health and welfare; and

(f) Financial accountability.

(2) Each CDDP must implement, maintain, and monitor minimum quality assurance (QA) activities, as required by the Department and set forth in section (3) of this rule. CDDPs may conduct additional QA activities that consider local community needs and priorities for services and the unique organizational structure, policies, and procedures of the CDDP..

(3) QUALITY ASSURANCE ACTIVITIES. The CDDP must conduct, monitor, and report the outcomes and any remediation as a result of the following Department required activities:

(a) Individual case file reviews;

(b) Customer satisfaction surveys administered at least every two years;

(c) Service provider file reviews;

(d) Analysis of SERT data which may include:

(A) Review by service provider, location, reason, status, outcome, and follow-up;

(B) Identification of trends;

(C) Review of timely reporting of abuse allegations.

(D) Coordination of delivery of information requested by the Department, such as the Serious Event Review Team (SERT).

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0050 Management of Regional Services
(Amended 7/13/2009)

(1) INTERGOVERNMENTAL AGREEMENT. The management entity for a group of counties to deliver crisis diversion services, community training, quality assurance activities, or other services, must have an intergovernmental agreement with each affiliated CDDP.

(2) REGIONAL PLAN. The CDDP or private corporation, acting as the management entity for the region, must prepare in conjunction with affiliated CDDP's, a plan detailing the services that shall be administered regionally. The regional plan must be updated when needed and submitted to SPD for approval. The regional plan must include:

(a) A description of how services shall be administered;

(b) An organizational chart and staffing plan; and

(c) A detailed budget, on forms provided by SPD.

(3) IMPLEMENTATION. The CDDP or private corporation, acting as the management entity for the region, must work in conjunction with its affiliated CDDP's to implement the regional plan as approved by SPD, within available resources.

(4) MANAGEMENT STANDARDS. The region, through the management entity and its CDDP partners, must maintain compliance with management standards outlined in OAR 411-320-0030 and this rule.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0060 Rights of the Individual Receiving Developmental Disability Services
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) CIVIL RIGHTS. The rights described in this rule are in addition to and do not limit any other statutory and constitutional rights that are afforded all citizens including but not limited to the right to vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law in the case of children under 18 years of age.

(2) RIGHTS OF INDIVIDUALS RECEIVING SERVICES. The CDDP must have written policies and procedures to provide for and assure individuals the following rights while receiving developmental disability services:

(a) The right to a humane service environment that affords reasonable protection from harm, affords reasonable privacy, and ensures that individuals:

(A) Are not abused or neglected, nor is abuse or neglect tolerated by any employee, staff, or volunteer of the program;

(B) Are free to report any incident of abuse without being subject to retaliation;

(C) Have the freedom to choose whether or not to participate in religious activity and for children, according to parent or guardian preference;

(D) Have contact and visits with legal and medical professionals unless prohibited by court order, family members, friends, and advocates;

(E) Have access to and communicate privately with any public or private rights protection program advocate, services coordinator, or CDDP representative;

(F) Be free from unauthorized mechanical restraint or protective physical intervention; and

(G) Are not subject to any chemical restraint and assured that medication is administered only for the individual's clinical needs as prescribed by a health care provider.

(b) Effective July 1, 2013, the right at any time, to choose from available services, available service settings, and available service providers consistent with the individual's service needs identified through a functional needs assessment. Services must promote independence, dignity, and self-esteem and reflect the age and preferences of the individual. The services must be provided in a setting and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual, and that provide for decision-making and control of personal affairs appropriate to the individual's age.

(c) The right to a written Individual Support Plan, services delivered according to the ISP, and periodic review and reassessment of the individual's support needs.

(d) The right to an ongoing opportunity to participate in planning of services in a manner appropriate to the individual's capabilities, including the right to participate in the development and periodic revision of the ISP described in subsection (c) of this section, and the right to be provided with a reasonable explanation of all service considerations.

(e) The right to informed voluntary written consent prior to receiving services except in a medical emergency or as otherwise permitted by law.

(f) The right to informed voluntary written consent prior to participating in any experimental programs.

(g) The right to prior notice of any action that would terminate, suspend, reduce, or deny a service and notification of other available sources for necessary continued services.

(h) The right to a hearing as defined in OAR 411-320-0020 following an action that would terminate, suspend, reduce, or deny a service.

(i) The right to reasonable and lawful compensation for performance of labor, except personal housekeeping duties.

(j) The right to exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department.

(k) The right to be informed at the start of services and periodically thereafter of the rights guaranteed by this rule and the procedures for reporting abuse.

(l) The right to have these rights and procedures prominently posted in a location readily accessible to the individual and made available to the individual's guardian and any representative designated by the individual.

(m) The right to be informed of and have the opportunity to assert complaints with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial procedure.

(n) The right to have the freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(o) The right to have the individual or the individual's guardian and any representative designated by the individual be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information, if known, of the family member.

(p) The right to courteous, fair, and dignified treatment by Department personnel and to file a complaint with the Department about staff conduct or customer service to the extent provided in OAR 407-005-0100 to 407-005-0120.

(q) The right to file a complaint with the Department about discrimination or unfair treatment as provided in OAR 407-005-0030.

(3) ASSERT RIGHTS. The rights described in this rule may be asserted and exercised by the individual, the individual's guardian, and any legal representative designated by the individual.

(4) CHILDREN. Nothing in this rule alters any legal rights and responsibilities between a parent and a child.

(5) ADULTS WITH GUARDIANS. Guardians are appointed for an adult only as is necessary to promote and protect the well being of the individual. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the individual and may be ordered only to the extent necessitated by the individual's actual mental and physical limitations. An adult for whom a guardian has been appointed is not presumed to be incompetent. An individual with a guardian retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the individual include but are not limited to the right to contact and retain counsel and to have access to personal records as described in ORS 125.300.

Stat. Auth.: ORS 409.050, 410.070, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.695

411-320-0070 Records of Service
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) CONFIDENTIALITY. Records of services to individuals must be kept confidential in accordance with ORS 179.505, ORS 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department rules or policies pertaining to individual service records.

(2) INFORMATION SHARING. Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the CDDP must be made available to other CDDP's responsible for the individual's services, consistent with state statutes and federal laws, and regulations concerning confidentiality and privacy.

(3) RECORD REQUIREMENT. In order to meet Department and federal record documentation requirements, the CDDP, through its employees,

must maintain a record for each individual who receives services from the CDDP.

(a) Information contained in the record for all individuals receiving services from a services coordinator must include:

(A) Effective July 1, 2013, documentation of initial and annual choice counseling provided by a choice advisor as described in OAR 411-320-0100;

(B) Documentation of any initial referral to the CDDP for services;

(C) An application for developmental disability services. The application for developmental disability services must be completed prior to an eligibility determination and must be on the application form required by the Department or transferred onto CDDP letterhead;

(D) Sufficient documentation to conform to Department eligibility requirements including notices of eligibility determination;

(E) Documentation of an initial intake interview or home assessment, as well as any subsequent social service summaries;

(F) Effective July 1, 2013, documentation of a functional needs assessment defining support needs for activities of daily living and instrumental activities of daily living;

(G) Documentation of an individual's request for support services and the individual's selection of an available support services brokerage within the CDDP's geographic service area;

(H) Referral information or documentation of referral materials sent to a service provider or another CDDP;

(I) Progress notes written by a services coordinator;

(J) Medical information, as appropriate;

(K) Admission and exit meeting documentation into any comprehensive service including any transition plans, crisis diversion plans, or other plans developed as a result of the meeting;

(L) The ISP including documentation that the ISP is authorized by a services coordinator;

(M) Copies of any incident reports initiated by a CDDP representative for any incident that occurred at the CDDP or in the presence of the CDDP representative;

(N) Documentation of a review of unusual incidents received from service providers. Documentation of a review of unusual incidents must be made in progress notes and a copy of the incident report must be placed in the individual's file. If applicable, information must be electronically entered into the SERT system and referenced in progress notes;

(O) Documentation of Medicaid eligibility, if applicable;

(P) Initial and annual level of care assessment review on a form prescribed by the Department.;

> (i) For individuals receiving children's intensive in-home services or children's 24-hour residential services, the CDDP must maintain a current copy of the annual level of care assessment review or reflect documentation of attempts to obtain a current copy.
>
> (ii) Once the individual is enrolled in a support services brokerage, the CDDP must maintain a copy of the initial level of care assessment form completed by the CDDP and any annual reviews completed by the CDDP; and

(Q) Legal records, such as guardianship papers, civil commitment records, court orders, and probation and parole information, as appropriate.

(b) An information sheet or reasonable alternative must be kept current and reviewed at least annually for each individual receiving case management services from the CDDP enrolled in comprehensive services, family support services, or living with family or independently. Information must include:

(A) The individual's name, current address, date of entry into the program, date of birth, sex, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number (where applicable), and guardianship status; and

(B) The names, addresses, and telephone numbers of:

(i) The individual's guardian or other legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, and education surrogate, if applicable;

(ii) The individual's physician and clinic;

(iii) The individual's dentist;

(iv) The individual's school, day program, or employer, if applicable;

(v) Other agency representatives providing services to the individual; and

(vi) Any court ordered or legal representative authorized contacts or limitations from contact for individuals living in a foster home, supported living program, or 24-hour residential program.

(c) A current information sheet or reasonable alternative must be maintained for each individual enrolled in a support services brokerage. The current information must include the information listed in subsection (b) of this section.

(4) PROGRESS NOTES. Progress notes must include documentation of the delivery of service by a services coordinator to support provided case management services. Progress notes must be recorded chronologically and documented consistent with CDDP 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 individual receiving service;

(c) The name of the CDDP, the person providing the service (i.e., the services coordinator'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 county where the CDDP or agency providing case management services 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.

(5) RETENTION OF RECORDS. The CDDP must have a record retention plan for all records relating to the CDDP's provision of and contracts for services that is consistent with this rule and OAR 166-150-0055. The record retention plan must be made available to the public or the Department upon request.

(a) Financial records, supporting documents, and statistical records must be retained for a minimum of three years after the close of the contract period, or until the conclusion of the financial settlement process with the Department, whichever is longer.

(b) Individual service records must be kept for seven years after the date of the individual's death, if known. If the case is closed, inactive, or death date is unknown, the individual service record must be kept for 70 years.

(c) Copies of annual ISPs must be kept for 10 years.

(6) TRANSFER OF RECORDS. In the event an individual moves from one county to another county in Oregon, the complete individual record as described in section (3) of this rule must be transferred to the receiving CDDP within 30 days of transfer. The sending CDDP must ensure that the records required by this rule are maintained in permanent record and transferred to the CDDP having jurisdiction for services. The sending CDDP must retain information necessary to document that services were provided to the individual while enrolled in CDDP services. This includes:

(a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP including waiver or state plan eligibility;

(b) Service enrollment and termination forms, including comprehensive services wait list enrollment date if applicable;

(c) CDDP progress notes;

(d) Documentation of services provided to the individual by the CDDP; and

(e) Any required documentation necessary to complete the financial settlement with the state.

Stat. Auth.: ORS 409.050, 410.070, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.695

411-320-0080 Application and Eligibility Determination
(Amended 1/1/2012)

(1) APPLICATION.

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

(A) If the applicant is an adult, the applicant must be an Oregon resident at the time of application.

(B) If the applicant is a minor child, the legal guardian and the minor child must be Oregon residents at the time of application.

(b) The application must be completed, signed, and dated before an eligibility determination may be made.

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

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

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

(B) Following a closure, denial, or termination if the file has been closed for less than 12 months and the applicant does not meet all application requirements.

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

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

(b) The CDDP must refer minor children to Social Security if it is identified that the minor child may qualify for Social Security benefits.

(3) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist who shall act as a designee of the Department for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for

determining developmental disability eligibility according to OAR 411-320-0030.

(4) QUALIFIED PROFESSIONAL DIAGNOSIS. For the purpose of this rule, evaluation of information and diagnosis of intellectual disability and developmental disabilities must be completed by qualified professionals as defined in OAR 411-320-0020 who are qualified to make a diagnosis of the specific developmental disability.

(5) ELIGIBILITY FOR INTELLECTUAL DISABILITY. A history demonstrating an intellectual disability, as defined in OAR 411-320-0020, must be in place by the individual's18th birthday for the individual to receive developmental disability services.

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

(A) For individuals who have consistent IQ results of 65 and under, no assessment of adaptive behavior may be needed if current documentation supports eligibility.

(B) For individuals who have IQ results of 66-75, verification of an intellectual disability requires an assessment of adaptive behavior.

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

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

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

(a) Other developmental disabilities include:

(A) Autism, cerebral palsy, epilepsy, or other neurological disabling conditions that originate in and directly affect the brain; and

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

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

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

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

(7) PROVISIONAL ELIGIBILITY. Eligibility may be redetermined in the future when new information is obtained.

(a) Eligibility for children is always provisional.

(b) Eligibility may be provisional for adults between their 18th and 22nd birthdays if their eligibility is based on an other developmental disability.

(8) ELIGIBILITY FOR CHILDREN. Eligibility documentation for children must be no more than three years old.

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

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

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; OR

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

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction.

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

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

(b) Eligibility for school aged children.

(A) Eligibility for school aged children must include:

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

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

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

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

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

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

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

(9) ELIGIBILITY FOR ADULTS.

(a) Eligibility for adults must include:

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

(i) Consistent IQ results of 65 or less; and

(ii) Significant impairments in adaptive behavior that are directly related to an intellectual disability; and

(iii) Current documentation that supports eligibility; OR

(B) A diagnosis and documentation of an other developmental disability as described in section (6) of this rule.

(b) The documentation of an other developmental disability or intellectual disability must include:

(A) Information no more than three years old for individuals under 21 years of age; or

(B) Information obtained after the individual's 17th birthday, for individuals 21 years of age and older.

(10) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

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

(A) There is no evidence of head trauma;

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

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

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the individual's functioning may be impacted by the identified condition must be obtained in order to determine if the individual's significant impairment in adaptive behavior is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(11) REDETERMINATION OF ELIGIBILITY.

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

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

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

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

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

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

(i) Consistent IQ results of 65 or less;

(ii) Significant impairments in adaptive behavior that continue to be directly related to an intellectual disability; and

(iii) Current documentation continues to support eligibility.

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

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

(ii) Significant impairments in adaptive behavior continue to be directly related to the developmental disability; and

(iii) Current documentation continues to support eligibility.

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

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

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

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

(12) SECURING EVALUATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

(B) The individual dies; or

(C) The individual cannot be located.

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

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

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

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

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

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

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

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

(B) The effective date of any action proposed;

(C) The eligibility determination;

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

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

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

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

(i) The timeline for requesting a hearing;

(ii) Where and how to request a hearing;

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

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

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

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

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

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

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

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

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

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

(A) Statement of an eligibility determination;

(B) Notification of eligibility determination;

(C) Evaluations and assessments supporting eligibility; or

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

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

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

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 183.415, 427.005, 427.007, & 430.610 – 430.670

411-320-0090 Developmental Disabilities Case Management Program Responsibilities
(Temporary Effective 7/1/2013 - 12/28/2013)

(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 an individual's service records and the CDDP must accurately report enrollment in 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 (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) 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 (4) of this rule.

(4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

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

(b) An ISP for an individual receiving case management services through a CDDP must be developed and reviewed in accordance with OAR 411-320-0120.

> (A) The services coordinator must assure that there is an ISP. The services coordinator must attend the annual ISP meeting and facilitate the development of the ISP for individuals enrolled in comprehensive services. The services coordinator is responsible for the development of the ISP for children receiving family support services in coordination with the child and the child's family.
>
> (B) An Annual Plan must be completed for each individual that is not enrolled in any Department-funded service other than case management.

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

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

(e) If an individual loses OSIP-M eligibility and the individual is receiving case management services through the CDDP, the services coordinator must assist the individual in identifying why OSIP-M eligibility was lost. Whenever possible, the services coordinator must assist the individual in becoming eligible for OSIP-M again. The services coordinator must document efforts taken to assist the individual in becoming OSIP-M eligible in the individual's service record.

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

(g) Crisis diversion services for individuals receiving case management services through a CDDP must be assessed, identified, planned, monitored, and evaluated by the services coordinator in accordance with OAR 411-320-0160.

(h) 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.

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

(j) Individuals determined eligible for developmental disability services or moving into a county with an existing eligibility determination must be referred to a choice advisor within 10 days. A choice advisor describes case management and other service delivery options within the CDDP's geographic services area provided by a CDDP or support services brokerage.

(A) For individuals 18 years and older, choice counseling must specifically include information necessary to inform the individual of support services.

(B) For individuals 18 years and older, choice counseling must be provided initially and at minimum annually thereafter if the individual declines support services. Annual information and referral must include informing the individual of the individual's right to, at any time, request access to support services. Documentation of the initial referral and subsequent annual discussion must be documented in the individual's service record.

(C) For individuals who are not eligible for Community First Choice State Plan or waivered services, initial and annual choice counseling must also include information to inform the individual of their right to access the comprehensive services waitlist at anytime.

(k) For individuals who are not eligible for Community First Choice State Plan or waivered services, 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;

(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.

(l) 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 retains 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 is assigned. The new wait list enrollment date must be the date the individual first meets all the criteria described in OAR subsection (k) of this section.

(m) 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 not eligible for Community First Choice State Plan or waivered services, but is in crisis according to OAR 411-320-0160 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.

(n) 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) Upon the individual's exit or termination from case management services or a support services brokerage.

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

(p) 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, and CW.

(q) 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 for 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.

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

(A) The Department completes the enrollment or termination form for children entering or leaving a licensed 24-hour

residential program that is directly contracted with the Department.

(B) The Department completes the 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) The Department completes the enrollment, termination, and billing forms as part of an interagency agreement for purposes of billing for crisis diversion services by a region.

(s) Services coordinators must facilitate referrals to nursing facilities when appropriate as described in OAR 411-070-0043.

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

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

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

(w) The services coordinator must participate in the appointment of a health care representative as described in OAR chapter 411, division 365.

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

(y) 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 the 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 must continue to be addressed and monitored.

(6) FAMILY RECONNECTION. The CDDP and the services coordinator must provide assistance to 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 must be referred to the Department. A family member may contact the Department directly.

(b) The Department sends the family member a Department form requesting further information to be used in providing notification to the individual. The form includes 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) The Department determines if the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center and also determines:

(A) If the individual is deceased or living;

(B) Whether the individual is currently or previously enrolled in Department services; and

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

(d) Within 10 working days of receipt of the request, the Department notifies the family member if the individual is enrolled or no longer enrolled in Department services.

(e) If the individual is enrolled in Department services, the Department sends 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, the Department follows the process for identifying the individual's personal representative as provided for in ORS 192.526.

> (A) If the personal representative and the requesting family member are the same, the family member must be informed that the person is deceased.
>
> (B) If the personal representative is different from the requesting family member, the personal representative must be contacted for permission before sharing the information to the requesting family member. 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, 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 is facilitated by the individual's services coordinator or personal agent, as applicable.

> (A) The services coordinator or the CDDP in conjunction with the personal agent 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 individual's 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 or personal agent, as applicable, must notify the Department. 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, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.695

411-320-0100 Coordination of Services
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) CHOICE COUNSELING AND DESIGNATION OF A SERVICES COORDINATOR OR PERSONAL AGENT.

(a) For individuals determined eligible for developmental disability services or moving into a county with an existing eligibility determination, a referral to a choice advisor must be made within 10 days.

(b) Within 15 days from the date of referral, the choice advisor must meet with the individual or legal representative to determine whether the individual chooses case management services through a services coordinator or a personal agent.

(A) When the individual chooses case management services through a personal agent, the CDDP must send referral

information to the appropriate support services brokerage within 5 days following the individual’s decision.

(B) When the individual chooses case management services through a services coordinator, the CDDP must designate a services coordinator within 5 days following the individual's decision.

(C) When an individual is enrolled in a support services brokerage and moves from one CDDP geographic service area to another CDDP geographic service area, the new CDDP must enroll the individual in the Department's payment and reporting systems.

(2) CHANGE OF SERVICES COORDINATOR. The CDDP must keep the change of services coordinators to a minimum.

(a) If the CDDP changes services coordinator assignments, the CDDP 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 services coordinator.

(b) Effective July 1, 2013, the individual receiving services or the individual's legal representative may request a new services coordinator within the same CDDP or request case management services from a support services brokerage. The CDDP must develop standards and procedures for acting upon requests for change of services coordinators or when referring case management services to a brokerage. If another services coordinator is assigned by the CDDP, as the result of a request by the individual or the individual’s legal representative, the CDDP 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 services coordinator.

(c) Effective July 1, 2013, if an individual or an individual's legal representative requests case management services through a support services brokerage, the CDDP must refer the individual or the

individual's legal representative to the brokerage within 10 working days of the request.

(3) TERMINATION OF CASE MANAGEMENT SERVICES.

(a) A services coordinator retains responsibility for providing case management services to the individual until the responsibility is terminated in accordance with this rule, until another services coordinator is designated, or until the individual is enrolled in support services. The CDDP must terminate case management services when any of the following occur:

(A) The individual or the individual's legal representative delivers a signed written request that case management services be terminated or such a request by telephone is documented in the individual's file. An individual or an individual’s legal representative may refuse contact by a services coordinator, as well as the involvement of a services coordinator at the ISP meeting, except if the services are mandatory as described in section (5) of this rule.

(B) The individual dies.

(C) The individual is determined to be ineligible for developmental disability services in accordance with OAR 411-320-0080.

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree. In the case of a child moving into a foster home or 24-hour residential home, the county of parental residency or court jurisdiction must retain case management responsibility.

(E) An individual cannot be located after repeated attempts by letter and telephone.

(b) If an individual is determined ineligible or cannot be located, the CDDP must issue a written notification of intent to terminate services in 30 days as well as notification of the individual's right to a hearing.

(4) TERMINATION FROM DEPARTMENT PAYMENT AND REPORTING SYSTEMS.

(a) The CDDP must terminate individuals in the Department payment and reporting systems when:

(A) The individual or the individual's legal representative delivers a signed written request to the support services brokerage requesting brokerage services be terminated. Individuals who decline support services but wish to continue receiving developmental disability services through the CDDP are terminated from the support services brokerage but are not terminated from developmental disability services;

(B) The individual dies;

(C) The individual is determined to be ineligible for developmental disability services in accordance with OAR 411-320-0080;

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, developmental disability services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree; or

(E) Notification from the support services brokerage that an individual cannot be located after repeated attempts by letter and telephone.

(b) A CDDP retains responsibility for maintaining enrollment in the Department's payment and reporting systems for individuals enrolled in support services until the responsibility is terminated as described in this section of this rule.

(5) MANDATORY SERVICES. An individual in developmental disability services must accept the following services:

(a) Case management or support services;

(b) Abuse investigations;

(c) Services coordinator presence, when applicable, at Department-funded program entry, exit, or transfer meetings, or transition planning meetings required for entry or exit to adult services, including support services and in-home comprehensive supports for adults;

(d) Monitoring of service provider programs, when applicable; and

(e) Services coordinator access to individual files.

Stat. Auth.: ORS 409.050, 410.070, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 – 430.695

411-320-0110 Entry and Exit Requirements
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) ADMISSION TO A DEPARTMENT-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

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

(b) Admissions to all other 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 the 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) A copy of the most current functional needs assessment. If the individual’s needs have changed over time, the previous functional needs assessments must also be provided.

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

(H) 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;

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

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

(K) A copy of the most recent functional needs behavior 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 subsection (a) of this 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 services, the information listed in subsection (a) of this section must be made available prior to the admission.

(3) ENTRY MEETING. Prior to an individual's date of entry into a Department-funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The ISP team participants are determined according to OAR 411-320-0120. 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 roles of the participants at the entry meeting;

(d) Documentation of the pre-entry information required by section (2)(a) of this rule;

(e) Documentation of the decision to serve or not serve the individual requesting service including the reason for the determination to not serve the individual; and

(f) If the decision was made to serve the individual, a written transition plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual;

(4) CRISIS DIVERSION SERVICES. For a period not to exceed 30 days, section (2)(a) of this rule does not apply if an individual is temporarily admitted to a program for crisis diversion services.

(5) EXIT AND TRANSFERS FROM DEPARTMENT-FUNDED PROGRAMS.

(a) All transfers or exits from Department-funded developmental disability services must be authorized by the CDDP.

(b) All transfers or exits from Department direct-contracted service for children's 24-hour residential and state-operated community programs must be authorized by Department staff.

(c) Prior to an individual's exit or transfer date, the ISP team must meet to review the exit or transfer and to plan and coordinate any services necessary during or following the exit or transfer. The ISP team participants are determined according to OAR 411-320-0120.

(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 the individual's exit from service, unless the individual or the individual's legal representative is requesting the exit;

(f) Documentation of the decision regarding the individual's exit including verification of the voluntary decision to exit or a copy of the notice of involuntary transfer or exit; and

(g) The written plan for services for the individual after exit.

(7) TRANSFER MEETING. 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 or the individual's legal representative or family members may not be honored;

(g) Documentation of the decision regarding transfer including verification of the voluntary decision to transfer or exit, or a copy of the notice of involuntary transfer or exit; 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. Referrals must be made using the Department mandated application and referral form in accordance with Department guidelines.

(b) The CDDP of an individual's county of origin 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 the individual's own home or family home; AND

(C) At the time of initial entry to the brokerage, the individual is not enrolled in comprehensive services; AND

(D) At the time of initial entry to the support services brokerage, the individual is not receiving crisis diversion services from the Department because the individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160; 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;

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

(A) Being determined eligible for developmental disability services;

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

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

(D) Requesting support services; and

(E) 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.

(e) 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 Department mandated application or referral form;

(B) A completed level of care assessment 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, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.695

411-320-0120 Service Planning
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) PRINCIPLES FOR PLANNING. These rules prescribe standards for the development and implementation of plans for individuals. As such, plans for individuals must be developed using a person centered process and in a manner that address issues of independence, integration and productivity, enhance the quality of life of the individual with intellectual or developmental disabilities, and consistent with the following principles:

(a) Personal Control and Family Participation. While the service system reflects the value of family member participation in the planning process, adult individuals have the right to make informed choices about the level of participation by family members. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(b) Choice and Preferences. The planning process is critical in determining the individual's and the family's preferences for services and supports. The preferences of the individual and family must serve to guide the ISP team. The individual's active participation and input must be facilitated throughout the planning process.

(c) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve the individual's and family's preferences, identify the barriers to providing those preferred services, and develop strategies for reducing the barriers.

(d) Health and Safety. The planning process must also identify strategies to assist the individual in the exercise of the individual's rights. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the individual's exercise of rights while being equally sensitive to protecting the individual's health and safety.

(e) Children in Alternate Living Situations. When planning for children in 24-hour residential or foster care services, maintaining family connections is an important consideration. The following must apply:

(A) Unless contraindicated there must be a goal for family reunification;

(B) The number of moves or transfers must be kept to a minimum; and

(C) If the placement is distant from the family, the services coordinator must continue to seek a placement that would bring the child closer to the family.

(2) RESPONSIBILITY FOR THE FUNCTIONAL NEEDS ASSESSMENT. Effective July 1, 2013, the services coordinator must complete a functional needs assessment at least annually. The FNAT must be completed --

(a) Within 30 days following the assignment of a services coordinator,

(b) Within 30 days prior to the authorization of a plan renewal; and

(c) Not more than 45 days from the date an FNAT is requested by the individual or individual’s legal representative.

(3) RESPONSIBILITY FOR ANNUAL ISP OR ANNUAL PLAN. Individuals enrolled in waivered or state plan services must have an annual ISP or Annual Plan.

(a) The services coordinator must develop with the individual, the individual's legal representative, and other invited ISP team members, an ISP within 90 days of the individual’s entry into comprehensive services and at least annually thereafter.

(b) Upon request of a new functional needs assessment, the services coordinator must authorize a new ISP within 30 days of the FNAT, developed with the individual, the individual's legal representative, and other invited ISP team members.

(c) The CDDP must provide a written copy of the most current ISP to the individual, the individual’s legal representative, and others as identified by the individual. For an initial or annual ISP that is authorized after July 1, 2013, the ISP must address all the support needs identified on the FNAT. 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. For an initial or annual ISP that is authorized after July 1, 2013 the description must be consistent with the FNAT;

(C) Projected dates of when specific supports are to begin and end;

(D) 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. Sources of support may include waivered or state plan services, state general funds, or natural supports.

(d) Plans must be developed, implemented, and authorized as follows:

(A) FOSTER CARE, 24-HOUR RESIDENTIAL SERVICES, EMPLOYMENT OR ALTERNATIVES TO EMPLOYMENT SERVICES.

(i) For individuals in foster care, 24-hour residential services, and related employment or alternatives to employment services, a services coordinator, or the services coordinator's qualified designee, must attend and assure that an annual ISP meeting is held.
The services coordinator, or the services coordinator's qualified designee, must participate in the development of the ISP for individuals enrolled in foster care, 24-hour residential services, and related employment or alternatives to employment services.

(ii) ISP's for children in Department direct contracted children's 24 hour residential services must be coordinated by Department staff.

(iii) The services coordinator must ensure that the ISP for individuals in foster care or 24-hour residential services is developed and updated in accordance with state

guidelines. The services coordinator must track the plan timelines and coordinate the resolution of complaints and conflicts arising from ISP discussions.

(iv) At a minimum, the ISP team must include the individual, the individual's legal representative, the services coordinator, and representatives from the 24-hour residential program, a representative from the employment or alternatives to employment program (if any) , and any treatment professional requested by the individual or the ISP team on behalf of the individual.

(B) SUPPORTED LIVING SERVICES. The services coordinator for an adult in supported living services and any associated employment or alternative to employment program must ensure the development of an annual ISP. The services coordinator must facilitate and develop an ISP with the individual and others invited by the individual in conformance with the ISP content described in sections (3) and (4) of this rule.

(C) FAMILY SUPPORT. The services coordinator must coordinate with the individual’s family or the individual’s legal representative in the development of the Annual Plan for a child receiving family support services. The Annual Plan must be in accordance with OAR 411-305-0080.

(D) COMPREHENSIVE IN-HOME SUPPORTS. The services coordinator must coordinate with the individual, the individual’s family, or the individual’s legal representative, in the development of the annual In-Home Support Plan for the individual enrolled in comprehensive in-home supports in accordance with OAR 411-330-0050.

(E) LONG-TERM SUPPORTS FOR CHILDREN. The services coordinator must coordinate with the individual, the individual's family, or the individual's legal representative, in the development of the child's Annual Support Plan in accordance with OAR chapter 411, division 308.

(F) ANNUAL PLAN. For individuals not enrolled or not yet enrolled in any other Department-funded developmental disability service, the services coordinator must ensure the completion of an Annual Plan. The Annual Plan must be completed within 60 days of enrollment into case management services, and annually thereafter if not enrolled in any other Department-funded developmental disability service.

(i) For an adult, a written Annual Plan must be documented in the individual's service record as an Annual Plan or as a comprehensive progress note and consist of:

(I) A review of the individual's current living situation;

(II) A review of any personal health, safety, or behavioral concerns;

(III) A summary of support needs of the individual; and

(IV) Actions to be taken by the services coordinator and others.

(ii) For a child, the services coordinator must ensure the completion of a child's Annual Plan in accordance with OAR 411-305-0080.

(4) PLAN CONTENT. The services coordinator must ensure that individual plans conform to the requirements of this rule.

(a) The services coordinator must ensure that a plan for an individual in Department-funded comprehensive services is developed and documents a person centered process that identifies what is important to and for an individual, and also identifies the supports necessary to address issues of health, behavior, safety, and financial supports. There must be documentation of an action plan or discussion record resulting from the ISP team's discussion

addressing issues of conflict between personal preferences and issues of health and safety.

(b) The services coordinator must ensure that a plan developed for a child receiving Department-funded family support services conforms to the requirements of OAR chapter 411, division 305.

(c) The services coordinator must ensure that an In-Home Support Plan for adults conforms to the requirements described in OAR 411-330-0050.

(d) The services coordinator must ensure that a child's Annual Support Plan for long-term support conforms to the requirements in OAR 411-308-0080.

(5) PLAN FORMATS. The ISP, Annual Plan, or In-Home Support Plan developed at the annual or update meeting must be conducted in a manner specified by and on forms required by the Department. In the absence of a Department-mandated form, the CDDP with the affected service providers may develop an ISP format that conforms to the licensing or certification service provider rule and provides for an integrated plan across the funded developmental disability service settings.

(6) PLAN UPDATES. Plans for individuals must be kept current. The services coordinator or the Department's Residential Services Coordinator for children in Department- directed contracted 24-hour residential services must ensure that a current plan for individuals enrolled in comprehensive services, long-term supports for children, or in family support services is authorized and maintained.

(a) The plan must be kept in the individual's service record.

(b) Plan updates must occur as required by this rule and any rules governing the operation of the service.

(c) When there is a significant change the plan must be updated.

(7) TEAM PROCESS IN SERVICE AND SUPPORT PLANNING. Except in in-home supports or long-term supports for children, the following applies to ISPs developed for individuals in comprehensive services:

(a) ISPs must be developed by the ISP team that includes the services coordinator, the individual and the individual's legal representative, and others invited or agreed upon by the individual. The ISP team assigns responsibility for obtaining or providing services to meet the individual's identified needs.

(A) Membership on ISP teams must at a minimum conform to this rule and any relevant service provider rules.

(B) Unless refused by the adult individual, family participation must be encouraged.

(C) The individual may also suggest additional participants, friends, or significant others.

(D) The individual may raise an objection to a particular person. When an individual raises objections to a person, the ISP team must respect the individual's request. In order to assure adequate planning, provider representatives are necessary participants on the team. .

(b) Plans developed by an ISP team must respect and honor individual choice in the development of a meaningful plan. Consensus amongst team members is prioritized.

(A) No one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process.

(B) In circumstances where an individual is unable to express their opinion or choice using words, behaviors, or other means of communication, and does not have a legal or designated representative, the ISP team is empowered to make a decision.

(C) When consensus cannot be reached, majority agreement is used. For purposes of reaching a majority agreement, service providers, families, community developmental disability programs, advocacy agencies, or individuals and the

individual's representative are considered as one member of the ISP team.

(D) Any ISP team member's objections to ISP decisions must be documented in the ISP.

(E) Using a person centered planning process, and with agreement by the individual and the individual's legal representative, the plan is authorized by the services coordinator.

(F) The individual or the individual's legal representative retains the right to consent to treatment and training or to note any specific areas of the plan that they object to and wish to file a complaint.

(G) The ISP team members must keep the team informed whenever there are significant needs or changes, or there is a crisis or potential for a crisis. The services coordinator must be notified in all such instances.

Stat. Auth.: ORS 409.050, 410.070, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 to 430.695

411-320-0130 Site Visits and Monitoring of Services
(Temporary Effective 7/1/2013 - 12/28/2013)

(1) SITE VISITS TO DEPARTMENT LICENSED OR CERTIFIED SERVICE PROVIDER SITES. The CDDP must ensure that site visits are conducted at each child or adult foster home, each 24-hour residential program site, and each employment provider licensed or certified by the Department to serve individuals with intellectual or developmental disabilities.

(a) The CDDP must establish a quarterly schedule for site visits to each child or adult foster home and each 24-hour residential program.

(b) The CDDP must establish an annual schedule for visits with individuals receiving supported living services. If an individual

opposes a visit to their home, a mutually agreed upon location for the visit must be arranged.

(c) The CDDP must establish an annual schedule for visits to employment or alternatives to employment sites. If a visit to an integrated employment site disrupts the work occurring, a mutually agreed upon location for the visit must be arranged.

(d) Site visits may be increased for the following reasons including but not limited to:

(A) Increased certified and licensed capacity;

(B) New individuals being served;

(C) Newly licensed or certified provider;

(D) An abuse investigation;

(E) A serious event occurring;

(F) A change in the management or staff of the certified or licensed provider;

(G) An ISP team request;

(H) Individuals who are also receiving crisis services; or

(I) Significant change in an individual's functioning who receives services at the site.

(e) The CDDP must develop a procedure for the conduct of the visits to these sites.

(f) The CDDP must document site visits and provide information concerning such visits to the Department upon request.

(g) If there are no Department-funded individuals at the site, a visit by the CDDP is not required.

(h) When the service provider is a Department-contracted and licensed 24-hour residential program for children or is a proctor agency and the Department's Children's Residential Services Coordinator is assigned to monitor services, the Department's Children's Residential Services Coordinator and the CDDP must coordinate who visits the home. If the visit is made by Department staff, Department staff must provide the results of the monitoring visit to the local services coordinator.

(i) The Department may conduct monitoring visits on a more frequent basis than described in this section based on program needs.

(2) MONITORING OF SERVICES: The services coordinator must conduct monitoring activities using the framework described in this section.

(a) For individuals residing in 24-hour residential programs, supported living, foster care, or employment or alternatives to employment services, ongoing reviews of the individual's ISP determine whether the actions identified by the ISP team are being implemented by service providers and others. The review of an ISP must include an assessment of the following:

(A) Are services being provided as described in the plan document and do they result in the achievement of the identified action plans;

(B) Are the personal, civil, and legal rights of the individual protected in accordance with this rule;

(C) Are the personal desires of the individual, the individual's legal representative, or family addressed;

(D) Do the services provided for in the plan continue to meet what is important to and for the individual; and

(E) Do identified goals remain relevant and are the goals supported and being met?

(b) For individuals residing in 24-hour residential programs, supported living, foster care, or receiving employment or alternatives to

employment, the monitoring of services may be combined with the site visits described in section (1) of this rule. In addition:

(A) During a one year period, the services coordinator must review, at least once, services specific to health, safety, and behavior, using questions established by the Department.

(B) A semi-annual review of the process by which an individual accesses and utilizes funds, and determines whether financial records, bank statements, and personal spending funds are accurate must occur, using questions established by the Department.

(i) For individuals receiving 24-hour residential services, the financial review standards are described in OAR 411-325-0380.

(ii) For individuals receiving adult foster care services, the financial review standards are described in OAR 411-360-0170.

(iii) Any misuse of funds must be reported to the CDDP and the Department. The Department determines whether a referral to the Medicaid Fraud Control Unit is warranted.

(C) The services coordinator must monitor reports of serious and unusual incidents.

(c) For individuals receiving employment or alternatives to employment services, the services coordinator must assess the individual's progress toward a path to employment.

(d) The frequency of service monitoring must be determined by the needs of the individual. Events identified in section (1)(d) of this rule provide indicators that may potentially increase the need for service monitoring.

(e) For individuals receiving only case management services and who are not enrolled in any other funded developmental disability service,

the services coordinator must make contact with the individual at least once annually.

(A) Whenever possible, annual contact must be made in person. If annual contact is not made in person, the progress note must document how contact was achieved.

(B) The services coordinator must document annual contact in an Annual Plan as described in OAR 411-320-0120.

(C) If the individual has any identified high-risk medical issue including but not limited to risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the services coordinator must maintain contact in accordance with planned actions as described in the individual's Annual Plan.

(D) Any follow-up activities must be documented in the progress notes.

(3) MONITORING FOLLOW-UP. The services coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in a Department direct contract 24-hour residential service when the Department may conduct the follow-up.

(a) If the services coordinator determines that comprehensive services are not being delivered as agreed in the ISP, or that an individual's service needs have changed since the last review, the services coordinator must initiate action to update the ISP.

(b) If there are concerns regarding the service provider’s ability to provide services, the CDDP, in consultation with the services coordinator, must determine the need for technical assistance or other follow-up activities. This may include coordination or provision of technical assistance, referral to the CDDP manager for consultation or corrective action, requesting assistance from the Department for licensing or other administrative support, or meeting with the service provider executive director or board of directors. In

addition to conducting abuse or other investigations as necessary, the CDDP must notify the Department when --

(A) A service provider demonstrates substantial failure to comply with any applicable licensing, certification, or endorsement rules for Department-funded programs;

(B) The CDDP finds a serious and current threat endangering the health, safety, or welfare of individuals in a program for which an immediate action by the Department is required; or

(C) Any individual receiving Department-funded developmental disability services dies. Notification must be made to the Director or his or her designee within one working day of the death. Entry must be made into the Serious Event Review System according to Department guidelines.

Stat. Auth.: ORS 409.050, 410.070, and 430.640
Stats. Implemented: ORS 427.005, 427.007, and 430.610 and 430.695

411-320-0140 Abuse Investigations and Protective Services
(Amended 7/1/2010)

(1) GENERAL DUTIES OF THE CDDP. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of the Department. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs and when applicable, support services brokerages. Investigations must be done in accordance with OAR 407-045-0290. If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse or the Department may conduct an investigation in addition to the investigation by the CDDP. Under such circumstances, the CDDP must receive authorization from the Department before conducting any separate investigation.

(2) ELIGIBILITY FOR PROTECTIVE SERVICES. Unless otherwise directed by the Department, the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are:

(a) Eighteen years of age or older; and

(b) Receiving case management services; or

(c) Receiving any Division-funded services for individuals; or

(d) Adults previously determined eligible for developmental disability services and voluntarily terminated from services in accordance with OAR 411-320-0100(3) and (4).

(3) ABUSE INVESTIGATIONS. The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions, and the report writing process. Investigations must be conducted in accordance with OAR 407-045-0250 to 407-045-0360.

(4) COORDINATION WITH OTHER AGENCIES. The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.

(5) INITIAL COMPLAINTS. Initial complaints must immediately be submitted electronically, using the Division's system for reporting serious events.

(6) CONFLICT OF INTEREST. The CDDP shall not investigate allegations of abuse made against employees of the CDDP. Investigations of CDDP staff shall be conducted by the Department or other CDDP not subject to an actual or potential conflict of interest.

(7) NOTIFICATION. Upon the initiation and completion of an investigation of an alleged abuse, the CDDP must comply with the notification requirements as described in OAR 407-045-0290 and OAR 407-045-0320.

(8) REPORTS. The CDDP must complete an abuse investigation and protective service report according to OAR 407-045-0320. A copy of the final abuse investigation and protective services report must be provided to the Department within five working days of the report’s completion and

approval by OIT. Abuse investigation and protective service reports must be maintained by the CDDP in accordance with OAR 407-045-0320.

(9) DISCLOSURE. The CDDP shall disclose an abuse investigation and protective services report and related documents as described in OAR 407-045-0330.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0150 Specialized Services in a Nursing Home
(Amended 7/13/2009)

Individuals residing in nursing homes and determined to require specialized services as described in OAR 411-070-0043 must have an annual plan for specialized services incorporated with the plan of care by the nursing home.

(1) PLAN FOR SPECIALIZED SERVICES IN A NURSING HOME. The services coordinator must coordinate with the individual, the individual's legal guardian, the staff of the nursing facility, and other service providers, as appropriate, to provide or arrange the specialized services. The plan for specialized services must include:

(a) The name of the service provider;

(b) A description of the specialized services to be provided;

(c) The number of hours of service per month;

(d) A description of how the services shall be tracked; and

(e) A description of the process of communication between the specialized service provider and the nursing facility in the event of unusual incidents, illness, absence, and emergencies.

(2) REVIEW OF PLAN. The services coordinator must complete an annual review of the plan for specialized services or when there has been a significant change in the individual's level of functioning. The review must conform to OAR 411-320-0130(2)(b).

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0160 Crisis Diversion Services
(Amended 7/13/2009)

(1) CRISIS DIVERSION SERVICES. The CDDP must, in conjunction with its regional partners, provide crisis diversion services for adults and children with developmental disabilities who are enrolled in developmental disability services and are eligible for crisis diversion services as described in section (3) of this rule and experiencing a crisis risk factor.

(2) CRISIS RISK FACTORS. An individual is in crisis when one or more of the following risk factors are present:

(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:

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

(B) Fire-setting behaviors; or

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

(3) ELIGIBILITY FOR CRISIS DIVERSION SERVICES. The CDDP must ensure the determination of the eligibility of individuals to receive crisis diversion services, and must ensure eligibility information is made available to support team members upon request, and to regional crisis diversion programs upon each referral. An individual is eligible for crisis diversion services when:

(a) The individual is enrolled in developmental disability services;

(b) A crisis exists as described in section (2) of this rule;

(c) There are no appropriate alternative resources available;

(d) The crisis is not primarily related to a significant mental or emotional disorder or substance abuse; and

(e) An individual meets at least one of the following criteria:

(A) The adult is court committed to DHS under ORS 427.215 through 427.306.

(B) The adult meets one of the crisis risk factors as described in section (2) of this rule.

(C) The child with developmental disabilities is at imminent risk of out of home placement.

(D) The child with developmental disabilities is in need of out of home placement.

(E) The child with developmental disabilities requires supports to return home from out of home placement.

(4) FUNDS FOR CRISIS DIVERSION SERVICES.

(a) Funds for crisis diversion services must not supplant existing funding.

(b) Purchased goods or services must only be those necessary to resolve the crisis.

(c) Crisis diversion services must only be used when no appropriate alternative resources are available to resolve the crisis situation. The CDDP or the regional crisis diversion program administering the crisis diversion service, in consultation with the individual ISP team, must determine the appropriateness of alternative resources based on consideration of individual support needs, proximity to the individual's actively involved family members, access to other necessary resources, and cost effectiveness.

(5) ALLOWABLE SHORT-TERM EXPENDITURES. Allowable crisis diversion services include but are not limited to:

(a) Professional consultation, assessment, or evaluation;

(b) Adaptive equipment;

(c) Respite;

(d) Adaptations to the eligible individual's residence to increase accessibility or security;

(e) Short-term residential or vocational services;

(f) Added staff supervision; or

(g) Crisis diversion rates for direct care staff, respite providers, and professional consultants. Crisis diversion rates must be paid within SPD’s wage and rate guidelines.

(6) SERVICE LIMITATIONS. The following must not be purchased with crisis diversion services funds:

(a) Household appliances;

(b) Services covered under existing service provider contracts with the CDDP or SPD;

(c) Health care services covered by Medicaid, Medicare, or private medical insurance; and

(d) Services provided by the parent of a child or the spouse of an adult.

(7) SERVICE AUTHORIZATION. The CDDP or regional crisis diversion program must authorize the utilization of crisis diversion services.

(a) To assure that crisis diversion services are utilized only when no appropriate alternative resources are available, the CDDP or the regional crisis diversion program must document the individual's eligibility for crisis diversion services, the alternative resources considered, and why those resources were not appropriate or available, prior to initiating any crisis diversion services.

(b) For services that exceed 90 days duration, authorization must be made by the CDDP or the regional crisis diversion program, and must be documented in writing within the individual's case file.

(c) For services that exceed $5,000 for adaptation or alteration of fixed property, authorization must be made by SPD based upon the recommendation of the CDDP or the regional crisis diversion program.

(d) SPD may, at its discretion, exercise authority under ORS 427.300 to direct any individual who is court committed to DHS under ORS 427.290 to the facility best able to treat and train the individual. SPD shall consult with any CDDP, the regional crisis diversion program, or service provider affected by this decision, prior to placement of the individual.

(8) ADMINISTRATION OF CRISIS DIVERSION SERVICES. The CDDP and the regional crisis diversion program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:

(a) Identification of persons or positions within the organization authorized to approve expenditures;

(b) Description of limits on those authorities and procedures for management reviews; and

(c) Description of procedures to disburse and account for funds.

(9) MONITORING OF CRISIS DIVERSION SERVICES.

(a) The CDDP must monitor the delivery of crisis diversion services as specified in the crisis plan and the individual's plan of care. Monitoring must be done through contact with the individual, any service providers, and the individual's family. The monitoring contact must include the collection of information regarding supports provided and progress toward outcomes that are identified in the crisis plan. Monitoring must be documented in the individual's case file.

(b) The CDDP must coordinate with service providers or other support team members to evaluate the impact of crisis diversion services upon the individual and must ensure needed changes are recommended to the individual's support team.

(c) SPD may monitor crisis diversion services through reports received pursuant to section (10) and (11) of this rule and OAR 411-320-0180.

(10) RECORD KEEPING AND REPORTING PROCEDURES.

(a) The CDDP or the regional crisis diversion program must ensure the crisis plan is developed in partnership with the individual's support team, and the following written information is maintained within the crisis plan:

(A) Identifying information about the individual including name, address, age, and name of parent or guardian;

(B) Description of the circumstances for which crisis diversion services were requested, to clearly specify how the individual is eligible to receive crisis diversion services;

(C) Description of resources used or alternatives considered prior to the request for crisis funds, and why the resources or alternatives were not appropriate or were not available in meeting the individual's needs in addressing the crisis;

(D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, to include:

(i) The frequency of the provision or purchase of goods or services;

(ii) The duration of the provision or purchase of goods or services; and

(iii) The costs of the goods or services to be provided or purchased.

(E) Description of the outcome to be achieved including identification of benchmarks that may be used to determine whether the outcome has been achieved and maintained.

(b) The CDDP must ensure the documentation of the support team approved modifications to the individual's plan of care that outline how the crisis is to be addressed through the use of crisis diversion services.

(c) The CDDP must ensure the documentation of monitoring contacts described in section (9)(a) of this rule.

(d) The CDDP must maintain a current copy of the Title XIX waiver form, when the individual eligible for crisis diversion services is receiving home and community-based waiver services, or as otherwise instructed by SPD.

(11) REPORTING REQUIREMENTS. The CDDP or regional crisis diversion program must report, using the accepted SPD payment and reporting systems, the following information to SPD by the tenth working day the month following each month in which crisis diversion services were provided and paid:

(a) Individuals for whom crisis diversion services were provided;

(b) Individual services provided and paid; and

(c) Total cost by type of service.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0170 Complaints
(Amended 7/13/2009)

(1) COMPLAINT LOG. The CDDP must maintain a log of all complaints received regarding the CDDP or any subcontract agency providing services to individuals.

(a) The complaint log, at a minimum, must include:

(A) The date the complaint was received;

(B) The name of the person taking the complaint;

(C) The nature of the complaint;

(D) The name of the person making the complaint, if known; and

(E) The disposition of the complaint.

(b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint resulted in disciplinary action against a staff member, the documentation must include a statement that personnel action was taken.

(2) COMPLAINTS. The CDDP must address all complaints by individuals or subcontractors in accordance with CDDP policies, procedures, and these rules. Copies of the procedures for resolving complaints must be maintained on file at the CDDP offices. The complaint procedures must be

available to county employees who work with individuals, individuals who are receiving services from the county and the individual's families, the individual's legal representatives, advocates, service providers, and SPD.

(a) Subcontractor Complaints. When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of a SPD administrative rule and local dispute resolution efforts have been unsuccessful, either party may request assistance from SPD in mediating the dispute.

(A) The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(i) The party requesting mediation must send a written request to the SPD Assistant Director, the CDDP director, and the service provider agency director, unless other persons are named as official contact persons in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(ii) SPD staff shall arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting shall include:

(I) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement shall be made on arrangements for obtaining these services;

(II) Development of rules and procedures that shall be followed by all parties during the mediation; and

(III) Agreement on a date by which mediation shall be completed, unless extended by mutual agreement.

(iii) Unless otherwise agreed to by all parties:

(I) Each party shall be responsible for the compensation and expenses of their own employees and representatives; and

(II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. shall be shared equally by all parties.

(B) A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, SPD shall prepare the final report. A final report on each mediation must be retained on file at SPD.

(b) Contract Not Substantially Similar. A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by DHS in its model contract. The service provider's appeal of the imposition of the disputed terms or conditions must be in writing and sent to the SPD Assistant Director within 30 calendar days after the effective date of the contract requirement.

(A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:

(i) A copy of the contract and any pertinent contract amendments;

(ii) Identification of the specific terms that are in dispute; and

(iii) A complete written explanation of the dissimilarity between terms.

(B) Upon receipt of the notice of appeal, the CDDP must suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.

(C) The SPD Assistant Director must offer to mediate a solution in accordance with the procedure outlined in sections (2)(a)(A) and (2)(a)(B) of this rule.

(i) If a solution cannot be mediated, the SPD Assistant Director shall declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:

(I) A representative from SPD;

(II) A representative from another CDDP; and

(III) A representative from another service provider organization.

(ii) The panel must meet with the parties, consider their respective arguments, and send written recommendations to the SPD Assistant Director within 45 business days after an impasse is declared, unless the SPD Assistant Director grants an extension.

(iii) If an appeal requiring panel consideration has been received from more than one contractor, SPD may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(iv) The SPD Assistant Director must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of SPD is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(v) Notwithstanding section (2)(b)(C) of this rule, the SPD Assistant Director has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the SPD Assistant Director finds that the contract language being contested is identical to the current language in the county financial assistance agreement with SPD.

(D) The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(i) The request must be made in writing to the SPD Assistant Director. The request must describe the potential harm and level of risk that shall be incurred by following the appeal process.

(ii) SPD must notify all parties of its decision to approve an expedited appeal process within two business days.

(iii) If an expedited process is approved, SPD shall notify all parties of SPD's decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process shall be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

(c) Complaints By or On Behalf of Individuals. An individual, the individual's guardian or other legal representative, a family member, or advocate may file a complaint with the CDDP under the following conditions:

(A) An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any allegation that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does

not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual to pursue resolution through formal complaint processes. Any agreement to resolve the complaint must be reduced to writing and must be specifically approved by the complainant. The complainant must be provided with a copy of such agreement.

(B) A complaint may be filed regarding an inability to resolve a dispute concerning the appropriateness of services described in the service plan provided by a CDDP subcontractor or regarding dissatisfaction with services provided by the CDDP.

(i) The CDDP must follow its policies and procedures regarding receipt and resolution of a complaint.

(ii) The CMHDDP or CDDP director must provide to the complainant a written decision regarding the complaint within 30 days following receipt of the complaint.

(I) The written decision regarding the complaint must contain the rationale for the decision, and must list the reports, documents, or other information relied upon in making the decision.

(II) Along with the written decision, the complainant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the complaint.

(III) Along with the written decision, the complainant must also be provided a notice that the complainant has the right to request a review of the decision by SPD. Such notice, must be written in clear, simple language and at a minimum explain how and when to request such a review and when a final decision must be rendered by the SPD Assistant Director.

(iii) Following a decision by the CMHDDP director regarding a complaint, the complainant may request an administrative review by the SPD Assistant Director.

(I) The complainant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the CMHDDP director.

(II) Upon receipt of a request for an administrative review, the SPD Assistant Director shall appoint an administrative review committee and name the chairperson. The administrative review committee shall be comprised of a representative of SPD, a CDDP representative, and a service provider who provides a similar service as the service being reviewed, i.e., residential, employment, foster care, etc. Committee representatives must not have any direct involvement in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(III) The administrative review committee must review the complaint and the decision by the CMHDDP director and make a recommendation to the SPD Assistant Director within 45 days of receipt of the complaint unless the complainant and the administrative review committee mutually agree to an extension.

(IV) The SPD Assistant Director shall consider the report and recommendations of the administrative review committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the administrative review committee. The written decision must contain the rationale for the decision.

(V) The decision of the SPD Assistant Director is final. Any further review is pursuant to the provisions of ORS 183.484.

(d) Specific Complaints. Individuals, or the individual's guardian or legal representative may request a review of specific decisions by the CDDP, a service provider, or a state training center as follows:

(A) Complaints of entry, exit, or transfer decisions within residential services may only be initiated according to OAR 411-325-0400 for 24-hour residential services and OAR 309-041-0800 for supported living services.

(B) Complaints of entry, exit, or transfer decisions within employment services or community inclusion services may only be initiated according to OAR 411-345-0150.

(C) Appeals of Medicaid eligibility decisions may be initiated according to OAR 411-330-0130(2).

(D) Disagreements with Eastern Oregon Training Center decisions for admission and discharge may only be initiated according to OAR chapter 309, division 118.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0175 Hearings for Developmental Disability Services Eligibility Determination
(Amended 4/2/2013)

(1) DEFINITIONS. As used in this rule:

(a) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(b) "Department Hearing Representative" means a person authorized to represent the Department in the hearing.

(c) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(d) "Representative" means any adult chosen by the claimant to represent them at the hearing.

(e) A "Request for Hearing" is a written request by the claimant or the claimant’s representative that the claimant wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant or a claimant's representative may request a hearing, as provided in ORS chapter 183, if the claimant disagrees with the Notice of Eligibility Determination (SDS 5104) issued by the CDDP as described in OAR 411-320-0080.

(a) The request for a hearing must be in writing on the DD Administrative Hearing Request (SDS 0443DD) and signed by the claimant or the claimant's representative. Upon request by the claimant or the claimant's representative, the CDDP shall assist in completing the DD Administrative Hearing Request (SDS 0443DD).

(b) The Department must receive the signed DD Administrative Hearing Request (SDS 0443DD) within 45 calendar days from the date on the CDDP's Notice of Eligibility Determination (SDS 5104).

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

(3) CONTINUING SERVICES PENDING A HEARING OUTCOME.

(a) Following a redetermination of eligibility as described in OAR 411-320-0080, the claimant or the claimant's representative may request continuing services during the hearing process.

(b) The claimant or the claimant's representative may request continuing services by;

(A) Checking the appropriate box on the DD Administrative Hearing Request (SDS 0443DD); or

(B) Communicating directly with the local CDDP, support services brokerage, or the Department that services remain the same during the hearing process.

(c) To qualify for continuing services, the Department must receive the DD Administrative Hearing Request (SDS 0443DD), which includes the request for continuing services by the effective date identified on the Notice of Eligibility Determination (SDS 5104) or by 10 calendar days following the date of the Notice, whichever is later.

(d) The Department may grant a late request for continuing services when the Department has determined the claimant or the claimant's representative has good cause.

(e) The claimant may be required to pay back any benefits received during the hearing process unless the determination is in the claimant's favor.

(4) INFORMAL CONFERENCE.

(a) The Department representative and the claimant or the claimant's representative may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the claimant's representative to settle the matter;

(B) Ensure the claimant or the claimant's representative understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or the claimant's representative an opportunity to review the information that is the basis for the action;

(D) Inform the claimant or the claimant's representative of the rules that serve as the basis for the contested action;

(E) Give the claimant or the claimant's representative and the Department the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the claimant's representative an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review its action.

(b) A claimant or a claimant's representative may, at any time prior to the hearing date, request an additional informal conference with a Department representative. At the Department representative's discretion, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the relief sought at any time before a final order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by the claimant to represent their interests during an informal conference and hearing.

(b) Department employees are authorized to appear as a witness on behalf of the Department for hearings.

(c) Hearings are not open to the public. Non-participants may attend the hearing subject to the claimant's or the claimant's representative's consent.

(6) WITHDRAWAL OF HEARING. A claimant or the claimant's representative may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the request for withdrawal is received by the Department or the Office of Administrative Hearings (OAH). The Department shall issue the order of withdrawal to the last known address of the claimant. The claimant or the claimant's representative may cancel the withdrawal up to 10 working days following the date the order of withdrawal is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request shall be dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The

dismissal order shall be effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative upon a showing that the claimant or the claimant’s representative was unable to attend the hearing or unable to request a postponement for good cause.

(8) ORDERS.

(a) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(A) Whether the Department is authorizing OAH to issue a final order, a proposed order, a proposed and final order; and

(B) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing is being referred for an expedited hearing.

(b) FINAL ORDER. The Department shall issue the final order unless the Department authorizes OAH to issue the final order under OAR 137-003-0655. Ordinarily, the final order shall be issued within 90 calendar days of the request for hearing or within 30 calendar days following the receipt of the proposed order or proposed and final order from OAH.

(c) PROPOSED ORDERS. After OAH issues a proposed order, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order under OAR 137-003-0655.

(d) PROPOSED AND FINAL ORDERS. After OAH issues a proposed and final order, the proposed and final order shall become a final order on the 21st calendar day unless:

(A) The claimant or the claimant's representative has filed written exception and written argument as described in subsection (e) of this section;

(B) The Department has issued a revised order; or

(C) The Department has notified the claimant or the claimant's representative and OAH that the Department shall issue the final order.

(e) EXCEPTIONS.

(A) The claimant or the claimant's representative may file written exceptions and written argument to be considered by the Department once OAH has issued either a proposed order or a proposed and final order. The written exceptions and written argument must be received at the location indicated in the OAH order not later than the 20th calendar day after service of the proposed order or proposed and final order, unless subsection (a)(B) of this section applies.

(B) When the Department receives timely written exception and written argument as described above, the Department shall issue the final order, unless the Department authorizes OAH to issue the final order in compliance with OAR 137-003-0655.

(f) PETITION OF FINAL ORDER. Within 60 calendar days after a final order is served, a claimant or the claimant's representative may file a petition for reconsideration or rehearing. The petition must be filed with the entity who signed the final order, unless stated otherwise on the final order.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.670

411-320-0180 Inspections and Investigations
(Amended 7/13/2009)

(1) REQUIRED INSPECTIONS AND INVESTIGATIONS. All services covered by these rules must allow the following types of investigations and inspections:

(a) Quality assurance, certification, and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) CONDUCT OF INSPECTIONS OR INVESTIGATIONS. SPD, SPD's designee, or proper authority must perform all inspections and investigations.

(3) UNANNOUNCED. Any inspection or investigation may be unannounced.

(4) PLAN OF CORRECTION. A plan of correction must be submitted to SPD for any non-compliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0190 Program Review
(Amended 1/1/2012)

(1) The Department may review the CDDP implementation of these rules as provided in OAR 411-320-0180 at least every five years or more frequently as needed to ensure compliance.

(2) Following a Department review, the Department shall issue a report to the CDDP identifying areas of compliance and areas in need of improvement.

(3) If, following a review, the CDDP or case management provider is not in substantial compliance with these rules, the Department may offer technical assistance or request a plan of improvement. The CDDP must perform the necessary improvement measures required by and in the time specified by the Department. The Department may conduct additional reviews as necessary to ensure improvement measures have been achieved.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695

411-320-0200 Variances
(Amended 7/13/2009)

(1) CRITERIA FOR A VARIANCE. Variances that do not jeopardize individuals' health or safety may be granted to a CDDP if there is a lack of resources to meet the standards required in these rules and the alternative services, methods, concepts, or procedures proposed would result in services or systems that meet or exceed the standards. All variances must be submitted to and approved by SPD prior to implementation.

(2) VARIANCE APPLICATION. The CDDP requesting a variance must submit, in writing, an application to SPD that contains the following:

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

(b) The reason for the proposed variance;

(c) A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) Signed documentation from the CDDP reflecting the justification for the proposed variance.

(3) SPD REVIEW. The SPD Assistant Director must approve or deny the request for a variance.

(4) NOTIFICATION. SPD shall notify the CDDP of the decision within 45 days of the receipt of the request by the CPPD.

(5) APPEAL OF VARIANCE DENIAL. Appeal of the denial of a variance request must be made in writing to the SPD Assistant Director whose decision is final.

(6) WRITTEN APPROVAL. The CDDP may implement a variance only after written approval from SPD. The intergovernmental agreement is amended to the extent that the variance changes a term in that agreement.

Stat. Auth.: ORS 409.050, 410.070, & 430.640
Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.695