DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 325

24-HOUR RESIDENTIAL SERVICES FOR CHILDREN AND ADULTS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

411-325-0010 Statement of Purpose
(Amended 12/28/2013)

The rules in OAR chapter 411, division 325 prescribe standards, responsibilities, and procedures for 24-hour residential programs providing services to individuals with intellectual or developmental disabilities. These rules also prescribe the standards and procedures by which the Department of Human Services licenses a 24-hour residential program to provide residential care and training to individuals with intellectual or developmental disabilities.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0020 Definitions
(Temporary Effective 07/01/2014 to 12/28/2014)

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 325:

(1) "24-Hour Residential Program" means a comprehensive residential home 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) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a home licensed to provide 24-hour residential services for children with intellectual or developmental disabilities.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

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

(4) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

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

(6) "Agency" means "service provider" as defined in this rule.

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

(8) "Apartment" means "24-hour residential program" as defined in this rule.

(9) "Appeal" means the process under ORS chapter 183 that a service provider may use to petition a civil penalty.

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

(11) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is

reviewed and reestablished at least yearly, at the time of an ISP team meeting.

(12) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(13) "Behavior Data Summary" means the document composed by a service provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(14) "Board of Directors" means "board of directors" as defined in OAR 411-323-0020.

(15) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(16) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.

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

(18) "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.

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

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

(21) "Competency Based Training Plan" means the written description of the process of the service provider for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:

> (a) Addresses health, safety, rights, values and personal regard, and the mission of the service provider; and
>
> (b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency may be waived by a service provider to accommodate the specific circumstances of a staff member.

(22) "Complaint" means "complaint" as defined in OAR 411-318-0005.

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

(24) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(25) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential home for individuals with intellectual or developmental disabilities because the Department has determined that the applicant or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(26) "Department" means the Department of Human Services.

(27) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.

(28) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

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

(30) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(31) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(32) "Duplex" means "24-hour residential program" as defined in this rule.

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

(a) When the parent of the child cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

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

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

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

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

(37) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(38) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for an individual less than 18 years of age receiving, or targeted to receive, 24-hour residential services is known as the Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx.

(c) The functional needs assessment for an individual 18 years of age and older receiving, or targeted to receive, 24-hour residential services is known as the Supports Intensity Scale (SIS). The Department incorporates the SIS into these rules by this reference.

(d) Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(39) "Guardian" means the parent of an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.

(40) "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.

(41) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(42) "Home" means "24-hour residential program" as defined in this rule.

(43) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(44) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

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

(46) "Individualized Education Plan" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.

(47) "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 people;

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

(48) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(49) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the legal or designated representative of the individual, has not given prior approval.

(50) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(51) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as service providers or family members.

(52) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.

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

(53) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.

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

(55) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Is a staff or volunteer working with a child who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) Is a staff or volunteer working who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, 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.

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

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

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

(59) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(60) "Natural Supports" means the parental responsibilities for a child and the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(61) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(62) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(63) "OIS" means "Oregon Intervention System". OIS is 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 protective physical intervention techniques that are used to maintain health and safety.

(64) "Oregon Core Competencies" means:

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

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

(65) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(66) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.

(b) Person centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, service providers, 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.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

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

(68) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(69) "Protective Services" means "protection" as defined in this rule.

(70) "Provider" means "service provider" as defined in this rule.

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

(72) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.

(73) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license after the Department has determined that the service provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(74) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(75) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(76) "Services" mean supportive services including, but not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also include being aware of the general whereabouts of an individual at all times and monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(77) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services.

(78) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.

(79) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

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

(81) "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.

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

(83) "These Rules" mean the rules in OAR chapter 411, division 325.

(84) "Transfer" means movement of an individual from one home to another home administered or operated by the same service provider.

(85) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into a particular service and the development of an ISP for the individual. The Transition Plan is approved by a 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 ISP development.

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

(87) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a service provider.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0025 Program Management
(Adopted 1/6/2012)

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

> (a) A certificate and an endorsement to provide 24-hour residential services as set forth in OAR chapter 411, division 323;

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

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

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

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

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

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

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

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

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

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

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

(b) Be accurate and contain no willful falsifications;

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

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

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

411-325-0030 Issuance of License
(Amended 12/28/2013)

(1) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate a residential home providing 24-hour support services without being licensed for each home.

(2) No license is transferable or applicable to any location, home, agency, management agent, or ownership other than that indicated on the application and license.

(3) The Department issues a license to an applicant found to be in compliance with these rules. The license is in effect for two years from the date issued unless revoked or suspended.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0040 Application for Initial License
(Amended 12/28/2013)

(1) At least 30 days prior to anticipated licensure, an applicant must submit an application and required non-refundable fee. The application is provided by the Department and must include all information requested by the Department.

(2) The application must identify the number of beds the residential home is presently capable of operating at the time of application, considering existing equipment, ancillary service capability, and the physical requirements as specified by these rules. For purposes of license renewal, the number of beds to be licensed may not exceed the number identified on the license to be renewed unless approved by the Department.

(3) The initial application must include a copy of any lease agreements or contracts, management agreements or contracts, and sales agreements or contracts, relative to the operation and ownership of the home.

(4) The initial application must include a floor plan of the home showing the location and size of rooms, exits, smoke alarms, and extinguishers.

(5) If a scheduled, onsite licensing inspection reveals that an applicant is not in compliance with these rules as attested to on the Licensing Onsite Inspection Checklist, the onsite licensing inspection may be rescheduled at the Department's convenience.

(6) Applicants may not admit any individual to the home prior to receiving a written confirmation of licensure from the Department.

(7) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed or may deny or revoke the license.

(8) Any applicant or person with a controlling interest in an agency is considered responsible for acts occurring during, and relating to, the operation of such home for the purpose of licensing.

(9) The Department may consider the background and operating history of each applicant and each person with a controlling ownership interest when determining whether to issue a license.

(10) When an application for initial licensure is made by an applicant who owns or operates other licensed homes or facilities in Oregon, the Department may deny the license if the applicant's existing home or facility is not, or has not been, in substantial compliance with the Oregon Administrative Rules.

(11) Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same management.

(12) A residential home may not admit an individual whose service needs exceed the classification on the home's license without prior written consent of the Department.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0050 License Expiration, Termination of Operations, and License Return
(Amended 12/28/2013)

(1) Unless revoked, suspended, or terminated earlier, each license to operate a residential home expires two years following the date of issuance.

(2) If the operation of a home is discontinued for any reason, the license is considered to have been terminated.

(3) Each license is considered void immediately if the operation of a home is discontinued by voluntary action of the licensee or if there is a change in ownership.

(4) The license must be returned to the Department immediately upon suspension or revocation of the license or when operation is discontinued.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0060 Conditions on License
(Temporary Effective 07/01/2014 to 12/28/2014)

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

(1) The Department may attach a condition to a license upon a finding that:

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

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

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

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

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

(2) Conditions that the Department may impose on a license include, but are not limited to:

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

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

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

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training;

(f) Restricting the service provider from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(g) Requiring additional documentation; or

(h) Restricting admissions.

(3) A written notice is issued to the service provider by the Department when the Department imposes a condition on the license. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions, or at a later date as indicated on the notice and are a final order of the Department unless later rescinded through the hearing process. The condition imposed remains in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(4) The service provider may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of conditions.

(a) The service provider must request a hearing within 21 days from the receipt of the written notice of conditions.

(b) In addition to, or in lieu of a hearing, a service provider may request an administrator review as described in section (5) of this rule. The administrator review does not diminish the right of the service provider to a hearing.

(5) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, a service provider may request an administrator review by the Director of the Department for imposition of conditions.

(b) The Department must receive a written request for an administrator review within 10 days from the receipt of the notice of conditions. The service provider may submit, along with the written request for an administrator review, any additional written materials the service provider wishes to have considered during the review.

(c) The determination of the administrator review is issued in writing within 10 days from the receipt of the written request for review, or by a later date as agreed to by the service provider.

(d) The service provider may request a hearing if the decision of the Department is to affirm the condition. The Department must receive a request for a hearing within 21 days from the receipt of the original written notice of conditions.

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

(7) Conditions must be posted with the license in a prominent location and be available for inspection at all times.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0070 Renewal of License
(Amended 12/28/2013)

(1) A license is renewable upon submission of an application to the Department and the payment of the required non-refundable fee, except that no fee is required of a governmental owned home.

(2) Filing of an application and required fee for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application and fee are not submitted prior to the expiration date, the home or facility is treated as an unlicensed home subject to civil penalties as described in OAR 411-325-0460.

(3) The Department shall conduct a licensing review of the home prior to the renewal of the license. The review shall be unannounced, conducted 30-120 days prior to expiration of the license, and review compliance with these rules.

(4) The Department may not renew a license if the home is not in substantial compliance with these rules or if the State Fire Marshal or the State Fire Marshal's authorized representative has given notice of noncompliance pursuant to ORS 479.220.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0080 Mid-Cycle Review *(Repealed 1/6/2012)*

411-325-0090 Change of Ownership, Legal Entity, Legal Status, and Management Corporation
(Amended 12/28/2013)

(1) The service provider must notify the Department in writing of any pending change in ownership or legal entity, legal status, or management corporation.

(2) A new license is required upon change in ownership, legal entity, or legal status. The service provider must submit a license application and required fee at least 30 days prior to change in ownership, legal entity, or legal status.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0100 Inspections and Investigations
(Repealed 1/6/2012 – See OAR 411-323-0040)

411-325-0110 Variances
(Temporary Effective 07/01/2014 to 12/28/2014)

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

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

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

(b) The reason for the proposed variance;

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

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

(3) The CDDP must forward the signed variance request form to the Department within 30 days from the receipt of the request indicating the position of the CDDP on the proposed variance.

(4) The request for a variance is approved or denied by the Department.

(5) The decision of the Department is sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(6) The service provider may request an administrator review of the denial of a variance request. The Department must receive a written request for an administrator review within 10 working days from the receipt of the denial. The service provider must send a copy of the written request for an administrator review to the CDDP. The decision of the Director is the final response from the Department.

(7) The duration of the variance is determined by the Department.

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

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0120 Medical Services
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The service provider must have and implement policies and procedures that maintain and protect the physical health of individuals. Policies and procedures must address the following:

(a) Individual health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if provided;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) INDIVIDUAL HEALTH CARE.

(a) An individual must receive care that promotes the health and well-being of the individual as follows:

(A) The service provider must ensure each individual has a primary physician or primary health care provider whom the individual, or as applicable the parent or legal representative of the individual, has chosen from among qualified providers;

(B) The service provider must ensure each individual receives a medical evaluation by a qualified health care provider no fewer than every two years or as recommended by a physician;

(C) The service provider must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm;

(b) A written, signed order from a physician or qualified health care provider is required prior to the usage or implementation of all of the following:

(A) Prescription medications;

(B) Non prescription medications except over the counter topical;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(c) The service provider must implement the order of a physician or qualified health care provider.

(d) The service provider must maintain records on each individual to aid physicians, licensed health professionals, and the service provider in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, known allergies, and immunizations;

(B) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(C) A record of known hospitalizations and surgeries.

(3) MEDICATION.

(a) All medications must be:

(A) Kept in their original containers;

(B) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the written order of a physician or qualified health care provider; and

(C) Kept in a secured locked container and stored as indicated by the product manufacturer.

(b) All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of a physician or qualified health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For topical medications and treatments without the order of a physician or qualified health care provider, a transcription of the printed instructions from the package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (i.e., as needed) medication was administered;

(H) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(I) An explanation of any medication administration irregularity; and

(J) Documentation of any known allergy or adverse drug reaction.

(c) Self-administration of medication.

(A) For individuals who independently self-administer medications, the ISP team must determine a plan for the

periodic monitoring and review of the self-administration of medications.

(B) The service provider must ensure that individuals able to self-administer medications keep the medications in a secure locked container unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(d) PRN (i.e., as needed) orders are not allowed for psychotropic medication.

(e) Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by a health care provider, from a single pharmacy which maintains a medication profile for the individual;

(B) Maintaining information about the desired effects and side effects of each medication;

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and

(D) Documentation in the record for an individual of the reason why all medications are not provided through a single pharmacy.

(f) All unused, discontinued, outdated, recalled, and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of the medication. A written record of the disposal of the medication must be maintained and include documentation of:

(A) Date of disposal;

(B) Description of the medication, including dosage strength and amount being disposed;

(C) Individual for whom the medication was prescribed;

(D) Reason for disposal;

(E) Method of disposal;

(F) Signature of the person disposing of the medication; and

(G) For controlled medications, the signature of a witness to the disposal.

(4) DIRECT NURSING SERVICES. When direct nursing services are provided to an individual, the service provider must:

(a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(5) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a service provider in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

(a) The delegation process includes:

(A) Assessing an individual in a specific situation;

(B) Evaluating the ability of the service provider to perform the nursing task;

(C) Teaching the nursing task;

(D) Ensuring supervision of the service provider; and

(E) Re-evaluating the nursing task at regular intervals.

(b) The service provider performs nursing tasks under the delegated authority of a registered nurse.

(6) When the medical, behavioral, or physical needs of an individual change to a point that they may not be met by the service provider, the services coordinator must be notified immediately and notification must be documented.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0130 Food and Nutrition
(Amended 12/28/2013)

(1) The service provider must provide access to a well balanced diet in accordance with the U.S. Department of Agriculture.

(2) For an individual with a physician or health care provider ordered modified or special diet, the service provider must:

(a) Have menus for the current week that provide food and beverages that consider the individual's preferences and are appropriate to the modified or special diet; and

(b) Maintain documentation that identifies how modified texture or special diets are prepared and served for the individual.

(3) At least three meals must be made available or arranged for daily.

(4) Foods must be served in a form consistent with an individual's needs and provide opportunities for choices in food selection.

(5) Unpasteurized milk and juice or home canned meats and fish may not be served or stored in the home.

(6) Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days must be maintained on the premises.

(7) Food must be stored, prepared, and served in a sanitary manner.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0140 Physical Environment
(Amended 12/28/2013)

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be kept in good repair, clean, and free from odors. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting.

(2) The water supply and sewage disposal must meet the requirements of the current rules of the Oregon Health Authority governing domestic water supply.

(3) A public water supply must be utilized if available. If a non-municipal water source is used, a sample must be collected yearly by the service provider, sanitarian, or a technician from a certified water-testing laboratory. The water sample must be tested for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(4) Septic tanks or other non-municipal sewage disposal systems must be in good working order. Incontinence garments must be disposed of in closed containers.

(5) The temperature within the home must be maintained within a normal comfort range. During times of extreme summer heat, the service provider must make reasonable effort to keep individuals comfortable using ventilation, fans, or air conditioning.

(6) Screening for workable fireplaces and open-faced heaters must be provided.

(7) All heating and cooling devices must be installed in accordance with current building codes and maintained in good working order.

(8) Handrails must be provided on all stairways.

(9) Swimming pools, hot tubs, saunas, or spas must be equipped with safety barriers and devices designed to prevent injury and unsupervised access.

(10) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of current rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and may not present a danger or health risk to individuals residing at the home or the individuals' guests.

(11) All measures necessary must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects.

(12) The interior and exterior of the residence must be kept free of litter, garbage, and refuse.

(13) Any work undertaken at a residence, including but not limited to demolition, construction, remodeling, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes appropriate to the individuals served.

(14) Service providers must comply with all applicable legal zoning ordinances pertaining to the number of individuals receiving services at the home.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0150 General Safety
(Amended 12/28/2013)

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

(a) Properly labeled;

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

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

(2) All flammable and combustible materials must be properly labeled, stored, and locked in accordance with state fire code.

(3) For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.

(4) Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) Hot water in bathtubs and showers may not exceed 120 degrees Fahrenheit. Other water sources, except the dishwasher, may not exceed 140 degrees Fahrenheit.

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

(7) Sleeping rooms must have 60 square feet per individual with beds located at least three feet apart.

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

(9) First-aid kits and first-aid manuals must be available to staff within each home in a designated location. First aid kits must be locked if, after evaluating any associated risk, items contained in the first aid kit present a hazard to individuals living in the home. First aid kits containing any medication including topical medications must be locked.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0160 Program Management and Personnel Practices
(Repealed 1/6/2012 – See OAR 411-323-0050)

411-325-0170 Staffing Requirements
(Amended 12/28/2013)

(1) Each residence must provide staff appropriate to the number of individuals served as follows:

(a) Each home serving five or fewer individuals must provide at a minimum one staff on the premises when individuals are present; and

(b) Each home serving five or fewer individuals in apartments must provide at a minimum one staff on the premises of the apartment complex when individuals are present; and

(c) Each home serving six or more individuals must provide a minimum of one staff on the premises for every 15 individuals during awake hours and one staff on the premises for every 15 individuals during sleeping hours, except residences licensed prior to January 1, 1990; and

(d) Each home serving children, for any number of children, must provide at a minimum one awake night staff on the premises when children are present.

(2) A home is granted an exception to the staffing requirements in sections (1)(a), (1)(b), and (1)(c) for adults to be home alone when the following conditions have been met:

(a) No more than two adults are to be left alone in the home at any time without on staff supervision;

(b) The amount of time any adult individual may be left alone may not exceed five hours within a 24-hour period and an adult individual may not be responsible for any other adult individual or child in the home or community;

(c) An adult individual may not be left home alone without staff supervision between the hours of 11:00 P.M. and 6:00 A.M.;

(d) The adult individual has a documented history of being able to do the following safety measures or there is a documented ISP team decision agreeing to an equivalent alternative practice:

(A) Independently call 911 in an emergency and give relevant information after calling 911;

(B) Evacuate the premises during emergencies or fire drills without assistance in three minutes or less;

(C) Knows when, where, and how to contact the service provider in an emergency;

(D) Before opening the door, check who is there;

(E) Does not invite strangers to the home;

(F) Answer the door appropriately;

(G) Use small appliances, sharp knives, kitchen stove, and microwave safely;

(H) Self-administer medications, if applicable;

(I) Safely adjust water temperature at all faucets; and

(J) Safely takes a shower or bathe without falling.

(e) There is a documented ISP team decision annually noting team agreement that the adult individual meets the requirements of subsection (d) of this section.

(3) If at any time an adult individual is unable to meet the requirements in section (2)(d)(A)-(J) of this rule, the service provider may not leave the adult individual alone without supervision. In addition, the service provider must notify the adult individual's services coordinator within one working

day and request that the ISP team meet to address the adult individual's ability to be left alone without supervision.

(4) Each home must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0180 Individual Summary Sheets
(Amended 12/28/2013)

A current one to two page summary sheet must be maintained for each individual receiving services from the service provider. The record must include:

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

(2) The name, address, and telephone number of:

(a) The individual's legal or designated representative, family, or other significant person (as applicable), and for children, the child's parent and educational surrogate (if applicable);

(b) The individual's preferred physician, secondary physician, or clinic;

(c) The individual's preferred dentist;

(d) The individual's identified pharmacy;

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

(f) The individual's services coordinator and Department representative for Department direct contracts; and

(g) Other agencies and representatives providing services and supports to the individual.

(3) For children under the age 18, any court ordered or legal representative authorized contacts or limitations must also be included on the individual summary sheet.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0185 Emergency Information
(Amended 12/28/2013)

(1) Effective September 1, 2009, a service provider must maintain emergency information for each individual receiving services from the home in addition to the individual summary sheet described in OAR 411-325-0180.

(2) The emergency information must be kept current and must include:

(a) The individual's name;

(b) The service provider's name, address, and telephone number;

(c) The address and telephone number of the home where the individual lives;

(d) The individual's physical description, which may include a picture and the date the picture was taken, and identification of:

(A) The individual's race, sex, height, weight range, hair, and eye color; and

(B) Any other identifying characteristics that may assist in identifying the individual if the need arises, such as marks or scars, tattoos, or body piercings.

(e) Information on the individual's abilities and characteristics including:

(A) How the individual communicates;

(B) The language the individual uses or understands;

(C) The ability of the individual to know and take care of bodily functions; and

(D) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(f) The individual's health support needs including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

(C) Health issues that a person needs to know when taking care of the individual;

(D) Special dietary or nutritional needs such as requirements around the textures or consistency of foods and fluids;

(E) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(F) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(G) Physical limitations that may affect the individual’s ability to communicate, respond to instructions, or follow directions; and

(H) Specialized equipment needed for mobility, positioning, or other health related needs.

(g) The individual's emotional and behavioral support needs including:

(A) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(B) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(h) Any court ordered or legal representative authorized contacts or limitations;

(i) The individual's supervision requirements and why; and

(j) Any additional pertinent information the provider has that may assist in the care and support of the individual if a natural or man-made disaster occurs.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0190 Incident Reports and Emergency Notifications
(Amended 12/28/2013)

(1) An incident report, as defined in OAR 411-325-0020, must be placed in an individual's record and include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) A copy of all unusual incident reports must be sent to the individual's services coordinator within five working days of the unusual incident. Upon request of the individual's legal representative, copies of unusual incident reports must be sent to the legal representative within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of unusual incident reports may not be provided to an

individual's legal representative when the report is part of an abuse or neglect investigation.

(3) The service provider must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR chapter 407, division 045.

(a) When an abuse investigation has been initiated, the Department or the Department's designee must provide notice to the service provider according to OAR chapter 407, division 045.

(b) When an abuse investigation has been completed, the Department or the Department's designee must provide notice of the outcome of the investigation according to OAR chapter 407, division 045.

(c) When a service provider receives notification of a substantiated allegation of abuse of an adult as defined in OAR 407-045-0260, the service provider must provide written notification immediately to:

(A) The person found to have committed abuse;

(B) Residents of the home;

(C) Residents' services coordinators; and

(D) Residents' legal representatives.

(d) The service provider's written notification must include:

(A) The type of abuse as defined in OAR 407-045-0260;

(B) When the allegation was substantiated; and

(C) How to request a copy of the redacted Abuse Investigation and Protective Services Report.

(e) The service provider must have policies and procedures to describe how the service provider implements notification of

substantiated abuse as listed in subsections (3)(c) and (d) of this section.

(4) In the case of a serious illness, injury, or death of an individual, the service provider must immediately notify:

(a) The individual's legal representative or conservator, parent, next of kin, designated representative, or other significant person;

(b) The CDDP; and

(c) Any agency responsible for, or providing services to, the individual.

(5) In the case of an individual who is away from the residence without support beyond the time frames established by the ISP team, the service provider must immediately notify:

(a) The individual's legal or designated representative or nearest responsible relative (as applicable);

(b) The local police department; and

(c) The CDDP.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0200 Transportation
(Amended 12/28/2013)

(1) Service providers, including employees and volunteers who own or operate vehicles that transport individuals, must:

(a) Maintain the vehicle in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain or assure insurance coverage including liability, on all vehicles and all authorized drivers; and

(d) Carry a first aid kit in the vehicle.

(2) When transporting, the driver must ensure that all individuals use seat belts. Individual car or booster seats must be used for transporting all children as required by law. When transporting individuals in wheel chairs, the driver must ensure that wheel chairs are secured with tie downs and that individuals wear seat belts.

(3) Drivers operating vehicles that transport individuals must meet applicable Department of Motor Vehicles requirements as evidenced by a driver's license.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0210 Individual/Family Involvement Policy
(Repealed 1/6/2012 – See OAR 411-323-0060)

411-325-0220 Individual Furnishings
(Amended 12/28/2013)

(1) Bedroom furniture must be provided or arranged for each individual and include:

(a) A bed including a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, a waterproof mattress cover if the individual is incontinent, and a pillow;

(b) A private dresser or similar storage area for personal belongings that is readily accessible to the individual; and

(c) A closet or similar storage area for clothing that is readily accessible to the individual.

(2) Two sets of linens must be provided or arranged for each individual and include:

(a) Sheets and pillowcases;

(b) Blankets appropriate in number and type for the season and the individual's comfort; and

(c) Towels and washcloths.

(3) Each individual must be assisted in obtaining personal hygiene items in accordance with individual needs and items must be stored in a sanitary and safe manner.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0230 Emergency Plan and Safety Review
(Amended 12/28/2013)

(1) Effective September 1, 2009, service providers must provide the emergency plan and safety review requirements as described in this rule.

(2) EMERGENCY PLANNING.

(a) Service providers must post the following emergency telephone numbers in close proximity to all phones used by staff.

(A) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency services; and

(B) The telephone number of the service provider's executive director, emergency physician, and additional people to be contacted in the case of an emergency.

(b) If an individual regularly accesses the community independently, the service provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(3) Providers must develop, maintain, update, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster.

(a) The emergency plan must:

(A) Be practiced at least annually. The emergency plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise.

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the home such as a pandemic or an earthquake.

(C) Include provisions and sufficient supplies, such as sanitation supplies, to shelter in place, when unable to relocate, for a minimum of three days under the following conditions:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food or supplies; and

(iv) Staff unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of staff during evacuation, transporting, and housing of individuals, including instructions to staff to notify the Department, local office, or designee of the plan to evacuate or the evacuation of the home as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the home;

(iv) A method that provides a person unknown to the individual the ability to identify each individual by the individual's name and to identify the name of the individual's supporting provider; and

(v) A method for tracking and reporting to the Department, local office, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals, including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheets described in OAR 411-325-0180 and the emergency information described in OAR 411-325-0185 and other information necessary to obtain care, treatment, food, and fluids for the individuals.

(ii) Continued access to life-sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(b) The service provider must instruct and provide training to all staff about the staffs' duties and responsibilities for implementing the emergency plan.

(c) The service provider must re-evaluate and revise the emergency plan at least annually or when there is a significant change in the home.

(d) The emergency plan summary must be sent to the Department annually and upon change of ownership.

(e) Applicable parts of the emergency plan must coordinate with each applicable employment and alternative to employment provider to address the possibility of an emergency or disaster during work hours.

(4) A documented safety review must be conducted quarterly to ensure that each home is free of hazards. The service provider must keep the quarterly safety review reports for three years and must make them available upon request by the CDDP or the Department.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0240 Assessment of Fire Evacuation Assistance
(Amended 12/28/2013)

(1) The service provider must assess, within 24 hours of an individual's entry to the home, the individual's ability to evacuate the home in response to an alarm or simulated emergency.

(2) The service provider must document the level of assistance needed by each individual to safely evacuate the home and the documentation must be maintained in the individual's entry records.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0250 Fire Drill Requirements and Fire Safety
(Amended 12/28/2013)

(1) The service provider must conduct unannounced evacuation drills when individuals are present, one per quarter each year with at least one drill per year occurring during the hours of sleep. Drills must occur at different times during day, evening, and night shifts with exit routes being varied based on the location of a simulated fire.

(2) Written documentation must be made at the time of the fire drill and kept by the service provider for at least two years following the drill. Fire drill documentation must include:

(a) The date and time of the drill or simulated drill;

(b) The location of the simulated fire and exit route;

(c) The last names of all individuals and staff present on the premises at the time of the drill;

(d) The type of evacuation assistance provided by staff to individuals' as specified in each individual's safety plan;

(e) The amount of time required by each individual to evacuate or staff simulating the evacuation; and

(f) The signature of the staff conducting the drill.

(3) Smoke alarms or detectors and protection equipment must be inspected and documentation of inspections maintained as recommended by the local fire authority or State Fire Marshal.

(4) The service provider must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0260 Individual Fire Evacuation Safety Plans
(Amended 12/28/2013)

(1) For individuals who are unable to evacuate the residence within the required evacuation time or who with concurrence of the ISP team request not to participate in fire drills, the service provider must develop a written fire safety and evacuation plan that includes the following:

(a) Documentation of the risk to the individual's medical, physical condition, and behavioral status;

(b) Identification of how the individual evacuates his or her residence, including level of support needed;

(c) The routes to be used to evacuate the residence to a point of safety;

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan is to be practiced and reviewed by the individual and staff;

(f) The alternative practices;

(g) Approval of the plan by the individual's legal or designated representative (as applicable), case manager, and the service provider's executive director; and

(h) A plan to encourage future participation.

(2) The service provider must maintain documentation of the practice and review of the safety plan by the individual and the staff.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0270 Fire Safety Requirements for Homes on a Single Property or on Contiguous Property Serving Six or More Individuals
(Amended 12/28/2013)

(1) The home must provide safety equipment appropriate to the number and level of individuals served and meet the requirements of the State of Oregon Structural Specialty and Fire Code as adopted by the state:

(a) Each home housing six or more but fewer than 11 individuals or each home that houses five or fewer individuals but is licensed as a single facility due to the total number of individuals served per the license or meets the contiguous property provision, must meet the requirements of a SR 3.3 occupancy and must:

(A) Provide and maintain permanent wired smoke alarms from a commercial source with battery back-up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor;

(B) Provide and maintain a 13D residential sprinkler system as defined in the National Fire Protection Association standard; and

(C) Have simple hardware for all exit doors and interior doors that may not be locked against exit that has an obvious method of operation. Hasps, sliding bolts, hooks and eyes, double key deadbolts, and childproof doorknobs are not permitted. Any other deadbolts must be single action release so as to allow the door to open in a single operation.

(b) Each home housing 11 or more but fewer than 17 individuals must meet the requirements of a SR 3.2 occupancy.

(c) Each home housing 17 or more individuals must meet the requirements of a SR 3.1 occupancy.

(2) The number of individuals receiving services may not exceed the licensed capacity, except that one additional individual may receive relief care services not to exceed two weeks. Relief care supports may not violate the safety and health sections of these rules.

(3) The service provider may not admit individuals functioning below the level indicated on the license for the home.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0280 Fire Safety Requirements for Homes or Duplexes Serving Five or Fewer Individuals
(Amended 12/28/2013)

(1) The home or duplex must be made fire safe.

(a) A second means of egress must be provided.

(b) A class 2A10BC fire extinguisher that is easily accessible must be provided on each floor in the home or duplex.

(c) Permanent wired smoke alarms from a commercial source with battery back up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor must be provided and maintained.

(d) A 13D residential sprinkler system in accordance with the National Fire Protection Association Code must be provided and maintained. Homes or duplexes rated as "Prompt" facilities per Chapter 3 of the 2000 edition NFPA 101 Life Safety Code are granted an exception from the residential sprinkler system requirement.

(e) Hardware for all exit doors and interior doors must be simple hardware that may not be locked against exit and must have an obvious method of operation. Hasp, sliding bolts, hooks and eyes, double key deadbolts, and childproof doorknobs are not permitted. Any other deadbolts must be single action release so as to allow the door to open in a single operation.

(2) A home or duplex is granted an exception to the requirements in sections (1)(c) and (d) of this rule under the following circumstances:

(a) All individuals residing in the home or duplex have demonstrated the ability to respond to an emergency alarm with or without physical assistance from staff to the exterior and away from the home or duplex in three minutes or less, as evidenced by three or more consecutive documented fire drills;

(b) Battery operated smoke alarms with a 10 year battery life and hush feature have been installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes or duplexes at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be mounted as per the manufacturer's instructions. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition; and

(c) A written fire safety evacuation plan is implemented that assures that staff assist all individuals in evacuating the premises safely during an emergency or fire as documented by fire drill records.

(3) The number of individuals receiving services at the home or duplex may not exceed the maximum capacity of five individuals, including individuals receiving relief care services. An individual may receive relief care services not to exceed two weeks. Relief care services may not violate the safety and health sections of these rules.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0290 Fire Safety Requirements for Apartments Serving Five or Fewer Individuals
(Amended 12/28/2013)

(1) The apartment must be made fire safe by:

(a) Providing and maintaining in each apartment, battery-operated smoke alarms with a 10-year life in each bedroom and in a central location on each floor;

(b) Providing first floor occupancy apartments. Individuals who are able to exit in three minutes or less without assistance may be granted a variance from the first floor occupancy requirement;

(c) Providing a class 2A10BC portable fire extinguisher easily accessible in each apartment;

(d) Providing access to telephone equipment or intercom in each apartment usable by the individual receiving services; and

(e) Providing constantly usable unblocked exits from the apartment and apartment building.

(2) The number of individuals receiving services at the apartment may not exceed the maximum capacity of five including relief care services. An individual may receive relief care services not to exceed two weeks. Relief care services may not violate the safety and health sections of these rules.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0300 Individual Rights, Complaints, Notification of Planned Action, and Hearings
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) INDIVIDUAL RIGHTS.

(a) The service provider must protect the rights of individuals described in subsection (d) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.

(c) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(B) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(C) Individual choice for an adult to consent to or refuse treatment, unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the

adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(E) Informed, voluntary, written consent prior to participating in any experimental programs;

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

(I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

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

(N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:

> (i) Services must promote independence and dignity and reflect the age and preferences of the individual; and
>
> (ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(V) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(Y) Be informed of, and have the opportunity to assert complaints as described in OAR 411-318-0015 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 complaint procedure without any form of retaliation or punishment; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens, including but not limited to the right to exercise religious freedom, 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 less than 18 years of age.

(f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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 of the family member, if known.

(g) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(i) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult 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 adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

(2) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The service provider must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon entry, request, and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(3) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is involuntarily denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(4) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations or OAR 411-318-0030 for involuntary transfers or exits.

(c) Upon entry, request, and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0310 Rights: Confidentiality of Records
(Repealed 1/6/2012 – See OAR 411-323-0060)

411-325-0320 Informal Complaints and Formal Grievances
Suspended 07/01/2014
(Temporary Effective 07/01/2014 to 12/28/2014)

411-325-0330 Medicaid Fair Hearings
Suspended 07/01/2014
(Temporary Effective 07/01/2014 to 12/28/2014)

411-325-0340 Behavior Support
(Amended 12/28/2013)

(1) The service provider must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) A decision to develop a plan to alter a person's behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the service provider.

(3) The service provider must conduct a functional behavioral assessment of the behavior that is based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior, including (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, including the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) The Behavior Support Plan must include:

(a) An individualized summary of the individual's needs, preferences, and relationships;

(b) A summary of the function of the behavior, as derived from the functional behavioral assessment;

(c) Strategies that are related to the function of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with (OIS);

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan, including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Providers must maintain the following additional documentation for implementation of a Behavioral Support Plan:

(a) Written evidence that the individual and the individual's parent (if applicable), legal or designated representative (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

(6) The service provider must inform each individual, and as applicable the individual's parent or legal or designated representative, of the behavior support policy and procedures at the time of entry to the home and as changes occur.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0350 Protective Physical Intervention
(Amended 12/28/2013)

(1) A service provider must only employ protective physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

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

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure or for the individual's protection during the time that a medical condition exists.

(2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention.

Documentation verifying OIS training must be maintained in the staff person's personnel file.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of a protective physical intervention technique must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Use of protective physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the service provider's executive director or the executive director's designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Submit an incident report to the CDDP services coordinator or other Department designee (if applicable) and the individual's legal representative (if applicable), no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if emergency protective physical intervention is used more than three times in a six-month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances described in section (7) of this rule. The report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the protective physical intervention;

(f) The name and position of the staff witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of an administrative review including the follow-up to be taken to prevent a recurrence of the incident by the service provider's executive director or the executive director's designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) A copy of the incident report must be forwarded within five working days of the incident to the CDDP services coordinator and the individual's legal representative (when applicable).

(a) The services coordinator or the Department designee (when applicable) must receive complete copies of incident reports.

(b) Copies of incident reports may not be provided to a legal representative or other service providers when the report is part of an abuse or neglect investigation.

(c) Copies provided to a legal representative or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(d) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the CDDP services coordinator or other Department designee (if applicable) within one working day of the incident.

(7) Behavior data summary.

(a) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

(A) There is no injury to the individual or others;

(B) The intervention utilized is not a protective physical intervention;

(C) There is a formal written functional assessment and a written Behavioral Support Plan;

(D) The individual's Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(E) The protective physical intervention technique and the behavior for which the protective physical intervention techniques are applied remain within the parameters outlined in the individual's Behavior Support Plan and the OIS curriculum;

(F) The behavior data collection system for recording observations, interventions, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record the items described in sections (5)(a)-(c) and (e)-(h) of this rule; and

(G) There is written documentation of an ISP team decision that a behavior data summary has been authorized for substitution in lieu of incident reports.

(b) A copy of the behavior data summary must be forwarded every 30 days to the CDDP services coordinator or other Department designee (if applicable) and the individual's legal representative (if applicable).

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0360 Psychotropic Medications and Medications for Behavior
(Amended 12/28/2013)

(1) Psychotropic medications and medications for behavior must be:

(a) Prescribed by a physician or health care provider through a written order; and

(b) Monitored by the prescribing physician, ISP team, and service provider for desired responses and adverse consequences.

(2) When medication is first prescribed and annually thereafter, the service provider must obtain a signed balancing test from the prescribing health care provider using the Department's Balancing Test Form or by inserting the required form content into the service provider's agency forms. Service providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(3) The provider must keep signed copies of the forms required in section (2) of this rule in the individual's medical record for seven years.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0370 Individuals' Personal Property
(Amended 12/28/2013)

(1) The service provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or legal representative decision.

(2) The record must include:

(a) The description and identifying number, if any;

(b) Date of inclusion in the record;

(c) Date and reason for removal from the record;

(d) Signature of staff making each entry; and

(e) A signed and dated annual review of the record for accuracy.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0380 Handling and Managing Individuals' Money
(Amended 12/28/2013)

(1) The service provider must have and implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his or her own funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

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

(2) For those individuals not yet capable of managing their own money, as determined by the ISP Risk Tracking Record or the individual's legal representative, the service provider must prepare and maintain an accurate written record for each individual of all money received or disbursed on behalf of or by the individual. The record must include:

(a) The date, amount, and source of income received;

(b) The date, amount, and purpose of funds disbursed; and

(c) Signature of the staff making each entry.

(3) The service provider must reimburse the individual any funds that are missing due to theft or mismanagement on the part of any staff member of the home or for any funds within the custody of the service provider that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0390 Entry, Exit, and Transfer
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters 24-hour residential services is subject to eligibility as described in this section.

(a) To be eligible for 24-hour residential services, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020; and

(E) Be an individual who is not receiving other Department-funded in-home or community living support.

(b) To be eligible for Department-funded relief care, an individual must:

(A) Meet the criteria in subsection (a)(A-D) of this section;

(B) Be referred by a CDDP or support services brokerage; and

(C) Not be receiving supported living services for adults with intellectual or developmental disabilities as described in OAR chapter 411, division 328.

(c) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIP-M. This includes, but is not limited to, the following assets:

(i) An annuity that is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate that is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual that is evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

(B) When an individual is disqualified for a transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIP-M.

(C) An individual found to have transferred assets is not eligible for 24-hour residential services.

(3) ENTRY.

(a) The Department authorizes entry into residential services for children and stabilization and crisis units.

(b) The CDDP services coordinator authorizes entry into 24-hour residential programs, except in the cases of residential services for children and stabilization and crisis units.

(4) DOCUMENTATION UPON ENTRY.

(a) A service provider must acquire the following information prior to or upon an entry ISP team meeting:

(A) A copy of the eligibility determination document for the individual;

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

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

(D) The medical history of the individual and information on health care supports that includes when available:

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

(ii) The 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 for the individual;

(F) Copies of documents relating to the guardianship or conservatorship of the individual, health care representative for the individual, or any other legal restrictions on the rights of the individual (if applicable);

(G) Written documentation that the individual is participating in out of residence activities, including public school enrollment for individuals less than 21 years of age; and

(H) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Plan (if applicable).

(b) If an individual is being admitted from the family home of the individual and the information required in subsection (a) of this section is not available, the service provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

(5) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. Findings of the entry meeting must be recorded in the file for the individual and include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting;

(c) The date determined to be the date of entry of the individual;

(d) Documentation of the participants included in the meeting;

(e) Documentation of the pre-entry information required by section (4)(a) of this rule;

(f) Documentation of the decision to serve the individual requesting services; and

(g) A written Transition Plan for no longer than 60 days after entry that includes all medical, behavior, and safety supports needed by the individual.

(6) VOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must promptly notify a services coordinator if an individual, or as applicable the legal or designated representative of the individual, gives notice of the intent of the individual to exit or the individual abruptly exits services.

(b) A service provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(d) A service provider is responsible for the provision of services until an individual exits the home.

(7) INVOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must only transfer or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the service provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the service provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered or the license for the home is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider must not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Transfer or Exit form approved by the Department and include:

(i) The reason for the transfer or exit; and

(ii) The right of the individual to a hearing as described in subsection (e) of this section.

(B) A notice is not required when an individual, or as applicable the individual's legal or designated representative, requests a transfer or exit.

(c) A service provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a transfer or exit.

(d) A service provider is responsible for the provision of services until an individual exits the home.

(e) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 to dispute an involuntary transfer or exit as described in OAR 411-318-0030. If an individual or the legal or designated representative of an individual (as applicable) requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written

notice of a transfer or exit as described in subsection (c) of this section and the individual or the legal or designated representative of the individual (as applicable) has requested a hearing, the service provider must reserve the room of the individual until receipt of the final order.

(8) EXIT MEETING.

(a) An ISP team must meet before any decision to exit is made. Findings of the exit meeting must be recorded in the file for the individual and include at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the meeting;

(C) Documentation of the participants included in the meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual, or as applicable the legal or designated representative of the individual, is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Transfer or Exit; and

(G) Documentation of the proposed plan for services for the individual after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

(A) The individual, or as applicable the legal or designated representative of the individual, requests an immediate move from the home; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention for an individual less than 18 years of age.

(9) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for an individual and include at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call;

(c) Documentation of the participants included in the meeting or telephone call;

(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 as applicable the legal or designated representative of the individual, parent, or family members, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Transfer or Exit; and

(h) The written plan for services for the individual after transfer.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0400 Grievance of Entry, Exit and Transfer
Suspended 07/01/2014
(Temporary Effective 07/01/2014 to 12/28/2014)

411-325-0410 Relief Care Services
(Amended 12/28/2013)

(1) All individuals considered for relief care services funded through 24-hour residential services must:

(a) Be referred by the CDDP or Department;

(b) Be determined to have an intellectual or developmental disability by the Department or the Department's designee; and

(c) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) The individual, service provider, legal or designated representative (as applicable), parent, and family or other ISP team members (as available) must participate in an entry meeting prior to the initiation of relief care services. The meeting may occur by phone and the CDDP or Department must ensure that any critical information relevant to the individual's health and safety, including physicians' orders, is made immediately available. The outcome of the meeting must be a written Relief Care Plan that takes effect upon entry and is available on site. The Relief Care Plan must:

(a) Address the individual's health, safety, and behavioral support needs;

(b) Indicate who is responsible for providing the supports described in the Relief Care Plan; and

(c) Specify the anticipated length of stay at the home up to 14 days.

(3) Exit meetings are waived for individuals receiving relief care services.

(4) Individuals receiving relief care services do not have appeal rights regarding entry, exit, or transfer.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0420 Crisis Services

(Amended 12/28/2013)

(1) All individuals considered for crisis services funded through 24-hour residential services must:

(a) Be referred by the CDDP or Department;

(b) Be determined to have an intellectual or developmental disability by the Department or the Department's designee;

(c) Be determined to be eligible for developmental disability services as defined in OAR 411-320-0080; and

(d) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) Individuals receiving support services under OAR chapter 411, division 340 and receiving crisis services must have a Support Services Plan of Care and a Crisis Addendum upon entry to the home.

(3) An ISP is required for individuals not enrolled in support services. Individuals not enrolled in support services receiving crisis services for less than 90 consecutive days must have an ISP on entry that addresses any critical information relevant to the individual's health and safety, including current physicians' orders.

(4) Individuals not enrolled in support services receiving crisis services for 90 days or more must have a completed Risk Tracking Record and an ISP that addresses all identified health and safety supports as noted in the Risk Tracking Record.

(5) Entry meetings are required for individuals receiving crisis services.

(6) Exit meetings are required for individuals receiving crisis services.

(7) Individuals receiving crisis services do not have appeal rights regarding entry, exit, or transfer.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0430 Individual Support Plan
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) A copy of each ISP for an individual and supporting documentation on the required Department forms must be available at the home within 60 days of entry and annually thereafter.

(2) The following information must be collected and summarized prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

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

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

(e) Other documents required by the ISP team; and

(f) The functional needs assessment of an individual.

(3) A completed ISP must be documented on the Department required form and include the following:

(a) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(b) A description of the supports required that is consistent with the functional needs assessment of the individual, including the reason the support is necessary;

(c) The 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 the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;

(e) The manner in which services are delivered and the frequency of services;

(f) Service provider type for each person responsible for providing services and supports;

(g) The setting in which the individual resides as chosen by the individual;

(h) The strengths and preferences of the individual;

(i) The clinical and support needs as identified through the functional needs assessment;

(j) Individually identified goals and desired outcomes;

(k) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(l) The risk factors and the measures in place to minimize the risk factors, including back up plans;

(m) The identity of the person responsible for case management and monitoring the ISP;

(n) A provision to prevent unnecessary or inappropriate care; and

(o) The alternative settings considered by the individual.

(4) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(5) The provider must maintain documentation of implementation of each support and services specified in sections (2)(c) to (2)(e) of this rule in the ISP for the individual. This documentation must be kept current and be available for review by the individual, the legal representative of the individual, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0440 Children's Direct Contracted Services
(Amended 12/28/2013)

Any documentation or information required for children's direct contracted developmental disability services to be submitted to the CDDP services coordinator must also be submitted to the Department's residential services coordinator assigned to the home.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0450 Conditions
(Repealed 1/6/2012 – See OAR 411-325-0060)

411-325-0460 Civil Penalties
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) For purposes of imposing civil penalties, 24-hour residential programs licensed under ORS 443.400 to 443.455 and ORS 443.991(2) are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) The Department issues the following schedule of penalties applicable to 24-hour residential programs as provided for under ORS 441.705 to 441.745:

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

(A) 411-325-0025(3), (4), (5), (6), and (7);

(B) 411-325-0120(2), and (4);

(C) 411-325-0130;

(D) 411-325-0140;

(E) 411-325-0150;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), and (2);

(J) 411-325-0230;

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

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

(M) 411-325-0360;

(N) 411-325-0380;

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

(P) 411-325-0440.

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

(3) Monitoring occurs when a 24-hour residential program is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department considers the following factors:

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

(b) Any prior violations of statutes or rules pertaining to 24-hour residential programs;

(c) The economic and financial conditions of the service provider incurring the penalty; and

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

(5) Any civil penalty imposed under ORS 443.455 and 441.710 becomes due and payable when the service provider incurring the penalty receives a notice in writing from the Director of the Department. The notice referred to in this section of this rule is sent by registered or certified mail and includes:

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

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

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

(d) A statement of the right of the services provider to request a hearing.

(6) The person representing the service provider to whom the notice is addressed has 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

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

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

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

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

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

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

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

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0470 License Denial, Suspension, Revocation, and Refusal to Renew

(Amended 12/28/2013)

(1) The Department shall deny, suspend, revoke, or refuse to renew a license where the Department finds there has been substantial failure to comply with these rules or where the State Fire Marshal or the State Fire Marshal's representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) The Department shall suspend the home license where imminent danger to health or safety of individuals exists.

(3) The Department shall deny, suspend, revoke, or refuse to renew a license where it finds that a provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension, or denial is done in accordance with the rules of the Department and ORS chapter 183.

(5) Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application constitutes grounds for denial or revocation of the license.

(6) The Department shall deny, suspend, revoke, or refuse to renew a license if the licensee fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455

411-325-0480 Criminal Penalties
(Amended 12/28/2013)

(1) Violation of any provision of ORS 443.400 to 443.455 is a Class B misdemeanor.

(2) Violation of any provision of ORS 443.881 is a Class C misdemeanor.

Stat. Auth.: ORS 409.050, 443.450, and 443.455
Stats. Implemented: ORS 443.400 to 443.455