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

CHAPTER 411
DIVISION 328

SUPPORTED LIVING SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

411-328-0550 Statement of Purpose, Mission Statement, and Statutory Authority
(Renumbered from OAR 309-041-0550 12/9/2009)

(1) Purpose. These rules prescribe standards by which the Seniors and People with Disabilities Division approves programs that provide supported living services for individuals with developmental disabilities.

(2) The overall mission of the Seniors and People with Disabilities Division, Office of Developmental Disability Services is to provide support services that enhance the quality of life of persons with developmental disabilities.

(a) Supported living services are a key element in the service delivery system and are critical to achieving this mission.

(b) The goal of supported living is to assist individuals to live in their own homes, in their own communities.

(c) The term "Supported Living" refers to a service which provides the opportunity for persons with developmental disabilities to live in the residence of their choice within the community with recognition that needs and preferences may change over time. Levels of support are based upon individual needs and preferences as defined in the Individual Support Plan. Such services may include up to 24 hours per day of paid supports which are provided in a manner that protects individuals' dignity.

(d) The service provider is responsible for developing and implementing policies and procedures and/or plans that ensure that the requirements of this rule are met.

(e) In addition, the service provider must ensure services comply with all applicable local, state and federal laws and regulations.

(f) The purpose of this rule is to ensure that the service provider meets basic management, programmatic, health and safety, and human rights regulations for those individuals receiving supported living services funded by the Seniors and People with Disabilities Division.

(3) Statutory Authority. These rules are authorized by ORS 409.050 and 410.070 and carry out the provisions of ORS 430.610, 430.630, and 430.670.

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

411-328-0560 Definitions
(Temporary Effective 1/1/2010 – 6/30/2010)

As used in these rules, the following definitions apply:

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

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

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

(4) "Adult" means a person 18 years or older with developmental disabilities for whom services are planned and provided.

(5) "Advocate" means a person other than staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification

of needs and choices of services, especially when rights are at risk or have been violated.

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

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

(8) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide residential services for individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(9) "Case Manager" means an employee of the community mental health program or other agency which contracts with the County or Division, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(10) "Certificate" means a document issued by the Division to a provider of supported living services which certifies that the provider is eligible to receive State funds for these services.

(11) "Choice" means the individual's expression of preferences of activities and services through verbal, sign language or other communication method.

(12) "Community Mental Health Program" or "CMHP" means the organization of all services for individuals with mental or emotional disturbances, developmental disabilities or chemical dependency, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(13) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the service provider has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(14) "Controlled Substance" means any drug classified as Schedules 1 through 5 under the Federal Controlled Substance Act.

(15) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy and/or other neurological handicapping condition which requires training or support similar to that required by individuals with mental retardation, and the disability:

> (a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and
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> (b) Has continued, or may be expected to continue, indefinitely; and
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> (c) Constitutes a substantial handicap to the ability of the person to function in society; or
>
> (d) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior which are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification shall be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiencies, 1983 Revision. Mental retardation is synonymous with mental deficiency.

(16) "Director" means the individual responsible for administration of the supported living program and provision of support services for individuals.

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

(18) "Entry" means the admission to a Division funded service.

(19) "Exit" means either termination or transfer from one Division funded program to another. Exit from a program does not include transfer within a program.

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

(21) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

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

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

(24) "Independence" is defined as the extent to which persons with mental retardation or developmental disabilities, with or without staff assistance, exert control and choice over their own lives.

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

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

(27) "Individual Support Plan" or "ISP" means a written plan of support and training services for an individual covering a 12-month period which addresses the individual's support needs and the service provider's

program plan. This written plan of training and support services was formally referred to as Individual Habilitation Plan (IHP).

(28) "Individual Support Plan Team" or "ISP Team" means a team composed of the individual, the case manager, the individual's legal guardian, representatives of all current service providers, and advocate or others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership shall be determined by the ISP team members.

(29) "Integration" (defined in ORS 427.005) means that persons with mental retardation or other developmental disabilities live in the community and use the same community resources that are used by and available to other members of the community; and participate in the same community activities other community members participate in, and have contact with other community members.

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

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

(32) "Needs Meeting" means a process in which the ISP team defines the supports an individual shall need to live in his/her own home, and makes a determination as to the feasibility of creating such services. The information generated in this meeting(s) or discussion(s) shall be used by the supported living provider to develop the individual's transition plan.

(33) "Office of Developmental Disability Services" or "DD Office" means the Office of Developmental Disability Services of the Mental Health and Developmental Disability Services Division.

(34) "Personal Futures Planning" means an optional planning process for describing a desirable future for a person with developmental disabilities.

The planning process generally occurs around major life transitions (e.g. moving into a new home, graduation from high school, marriage, etc.). This process helps determine activities, supports, and resources which shall best create a desirable future for the individual.

(35) "Physical Restraint" means restricting the movement of an individual or restricting the movement or normal function of a portion of the individual's body.

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

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

(38) "Psychotropic Medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(39) "Self-administration of Medication" means the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his/her own body without staff assistance, upon written order of a physician, and safely maintaining the medication(s) without supervision.

(40) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability service(s) and is approved by the Division or other appropriate agency to provide these service(s). For the purpose of this rule "provider" or "Program" is synonymous with "service provider."

(41) "Significant Other" means a person selected by the individual to be his/her friend.

(42) "Staff" means a paid employee responsible for providing support services to individuals and whose wages are paid in part or in full with funds contracted through the Developmental Disability Services Office.

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

(44) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services may include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

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

(46) "Transfer" means movement of an individual from one type of service to another administered by the same service provider.

(47) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and the time when the individual's ISP is developed and approved by the ISP team. The plan shall include a summary of the services necessary to facilitate adjustment to supported living, ensure health and safety, and the assessments and/or consultations necessary for the ISP development.

(48) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the

services of a fire department, or any incident requiring an abuse investigation.

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

411-328-0570 Issuance of Certificate
(Renumbered from OAR 309-041-0570 12/9/2009)

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

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

(3) Terms of certificate. Each certificate is issued for a maximum of two years.

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

> (a) The service provider shall document the self-evaluation information on forms provided by the DD Office;
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> (b) The service provider shall develop and implement a plan of improvement based upon the findings of the self-evaluation; and
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> (c) The service provider shall submit these documents to the local CMHP with a copy to the DD Office.

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

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

411-328-0580 Application for Initial Certificate and Certificate Renewal
(Renumbered from OAR 309-041-0580 12/9/2009)

(1) Form. The application shall be on a form provided by the Division and shall include all information requested by the Division.

(2) Initial application. The applicant shall identify the number of individuals to be served.

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

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

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

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

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

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

411-328-0590 Certification Expiration, Termination of Operations, Certificate Return
(Renumbered from OAR 309-041-0590 12/9/2009)

(1) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a supported living program shall expire on the expiration date specified on the certificate.

(2) Termination of operation. If a supported living program operation is discontinued, the certificate terminates automatically on the date the operation is discontinued.

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

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

411-328-0600 Change of Ownership, Legal Entity, Legal Status, Management Corporation
(Renumbered from OAR 309-041-0600 12/9/2009)

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

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

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

411-328-0610 Inspections and Investigations
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Inspections and investigations required. All services covered by this rule shall allow the following types of investigations and inspections:

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

(b) Complaint investigations; and

(c) Abuse investigations.

(2) Inspections and investigations by the Division, its designee or proper authority. All inspections and investigations shall be performed by the Division, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule shall be:

(a) Open to inspection and investigation by the Division, its designee or proper authority; and

(b) Submitted to the Division within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Division and/or its designee has determined to initiate an investigation, the service provider shall not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

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

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

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

(d) What, if any, immediate personnel actions shall be taken.

(6) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(7) The Division or its designee shall complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(8) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation by the Division, its designee, or a law enforcement agency, a service provider may conduct an investigation without further Division approval to determine if any other personnel actions are necessary.

(10) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report which are public records and not exempt from disclosure under the public records law and in accordance with OAR 407-045-0330 shall be provided to the appropriate service provider. The service provider shall implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

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

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

411-328-0620 Alternative Methods, Variances
(Renumbered from OAR 309-041-0620 12/9/2009)

(1) Criteria for a variance. Variances may be granted to a service provider if the service provider lacks the resources needed to implement the standards required in this rule, if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules or if there are other extenuating circumstances.

(2) Variance application. The service provider requesting a variance shall submit, in writing, an application to the CMHP which 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) A plan and timetable for compliance with the section of the rule from which the variance is sought.

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

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

(5) Notification. The DD Office shall notify the provider and the CMHP of the decision. This notice shall be sent within 30 days of the receipt by the DD Office with a copy to other relevant sections of the Division.

(6) Appeal. Appeal of the denial of a variance request shall be made in writing to the Administrator of the Division, whose decision shall be final.

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

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

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

411-328-0630 Health: Medical Services
(Renumbered from OAR 309-041-0630 12/9/2009)

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

(2) Sufficient oversight and guidance. Individuals shall receive sufficient oversight and guidance by the program to ensure that their health and medical needs are adequately addressed.

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

(4) Written policies and procedures. The program shall have and implement written policies and procedures which maintain and/or improve the physical health of individuals. Policies and procedures shall address early detection and prevention of infectious disease; emergency medical intervention; treatment and documentation of illness and health care concerns; obtaining, administering, storing and disposing of prescription and non-prescription drugs including self administration; and confidentiality of medical records.

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

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

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

(a) Current health status;

(b) Changes in health status;

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

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

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

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

(8) Medical profile. Provider, before entry, shall obtain the most complete medical profile available, including:

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

(b) Findings of a TB test made within two weeks of entry;

(c) Results of any dental evaluation;

(d) A record of immunizations;

(e) Status of Hepatitis B screening;

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

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

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

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

(b) Be followed per written orders.

(10) PRN/Psychotropic medication prohibited. PRN orders shall not be allowed for psychotropic medication.

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

(12) Administering prescribed medications and treatments with assistance. All prescribed medications and treatments shall be self-administered unless contraindicated by the ISP team. For individuals who require assistance in the administration of their own medications, the following shall be required:

> (a) That the ISP Team has recommended that the individual be assisted with taking their medication;
>
> (b) That there is a written training program for the self-administration of medication unless contraindicated by the ISP Team; and
>
> (c) That there is a written record of medications and treatments, that document physician's orders are being followed.

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

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

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

411-328-0640 Health: Dietary
(Renumbered from OAR 309-041-0640 12/9/2009)

(1) Identifying amount of support and guidance. The service provider shall be responsible for identifying the amount of support and guidance required to ensure that individuals are provided access to a nutritionally adequate diet.

(2) Written dietary supports. Written dietary supports shall be developed as required by the individual's ISP team and integrated into the transition plan or ISP. The plan shall be based on a review and identification of the individual's dietary service needs and preferences, and updated annually or as significant changes occur.

(3) Dietary policies and procedures. The program shall have and implement policies and procedures related to maintaining adequate food supplies, meal planning, preparation, service, and storage.

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

411-328-0650 Health: Physical Environment
(Renumbered from OAR 309-041-0650 12/9/2009)

(1) Maintained. All floors, walls, ceilings, windows, furniture and fixtures shall be maintained.

(2) Water and sewage. The water supply and sewage disposal shall meet the requirements of the current rules of the Oregon Public Health Division governing domestic water supply.

(3) Kitchen and bathroom. Each residence shall have:

(a) A kitchen area for the preparation of hot meals; and

(b) A bathroom containing a properly operating toilet, handwashing sink and bathtub or shower.

(4) Adequately heated and ventilated. Each residence shall be adequately heated and ventilated.

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

411-328-0660 Safety: General
(Renumbered from OAR 309-041-0660 12/9/2009)

(1) Employing means for protecting health and safety. The service provider shall employ means for protecting individuals health and safety which:

(a) Are not unduly restrictive;

(b) May include risks, but do not inordinately affect an individual's health, safety and welfare; and

(c) Are used by other individuals in the community.

(2) Written safety supports. Written safety supports shall be developed as required by the individual's ISP team and integrated into the transition plan or ISP. The plan shall:

(a) Be based on a review and identification of the person's safety needs and preferences;

(b) Be updated annually or as significant changes occur; and

(c) Identify how the individual will evacuate his/her residence, specifying at a minimum, routes to be used and the level of assistance needed.

(3) Policies and procedures related to safety, emergencies and disasters. The program shall have and implement policies and procedures that provide for the safety of individuals and for responses to emergencies and disasters.

(4) Smoke detectors. An operable smoke detector shall be available in each bedroom and in a central location on each floor.

(5) Fire extinguisher. An operable class 2A10BC fire extinguisher shall be easily accessible in each residence.

(6) First aid supplies. First aid supplies should be available in each residence.

(7) Emergency fire procedures. The need for emergency evacuation procedures and documentation thereof shall be assessed and determined by the individual's ISP team.

(8) Flashlight. An operable flashlight shall be available in each residence.

(9) Adaptations required for sensory or physically impaired. The service provider shall provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(10) Square footage requirement for bedrooms. Bedrooms shall meet minimum space requirements (single 60 square feet, double 120 square feet with beds located three feet apart).

(11) Window openings. Sleeping rooms shall have at least one window readily openable from the inside without special tools that provides a clear opening through which the individual can exit.

(12) Availability of emergency information. Emergency telephone numbers shall be available at each individual's residence as follows:

> (a) The telephone numbers of the local fire, police department and ambulance service, if not served by a 911 emergency service; and
>
> (b) The telephone number of the Director or designee, emergency physician and other persons to be contacted in case of an emergency.

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

411-328-0670 Safety: Personnel
(Temporary Effective 3/18/2010 – 6/30/2010)

(1) Basic personnel policies and procedures. The program shall have in place personnel policies and procedures which address suspension, increased supervision or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation. The program shall also have in place personnel policies and procedures which address disciplinary and/or termination of employment when the allegation of abuse has been substantiated.

(2) Mandatory abuse reporting personnel policies and procedures. Any employee of a private agency which contracts with a CMHP is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status shall be made at least annually to all employees on forms provided by the Division. All employees shall be provided with a Division-produced card regarding abuse reporting status and abuse reporting.

(3) Application for employment. An application for employment at the program must inquire whether an applicant has been found to have committed abuse.

(4) Criminal records checks. Any employee, volunteer, respite provider, advisor, skill trainer, or any subject individual as required under OAR 407-007-0200 to 407-007-0370, who has or will have contact with an individual of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534

(a) The program may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after July 28, 2009, or is subject to criminal records checks after July 28, 2009 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 328-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 328-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 328-1.

(b) A person does not meet the qualifications as described in this rule if the person has been hired on or after July 28, 2009, or is subject to

criminal records checks after July 28, 2009 as required by administrative rule, and has been convicted:

(A) Of a crime listed in Exhibit 328-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 328-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 328-1.

(5) Director qualifications. The program shall be operated under the supervision of a Director who has minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or six years of experience, including supervision, in the field of developmental disabilities or a social service/mental health field.

(6) Staff qualifications. Any staff who supervise individuals shall be at least 18 years of age and capable of performing the duties of the job as described in a current job description which he/she signed and dated.

(7) Personnel files and qualifications records. The program shall maintain a personnel file for each staff person. In addition, the program shall maintain the following for each staff person in a file available to the Division or its designee for inspection:

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

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training, training on individual profiles and transition plan or ISP;

(c) Documentation that CPR and first aid certification were obtained from a recognized training agency within three months of employment and are kept current;

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of a criminal record check by the Division;

(f) Written documentation of a TB test within two weeks of hire;

(g) Written documentation of employee notification of mandatory abuse reporter status;

(h) Written documentation of any substantiated abuse allegations; and

(i) Written documentation of any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action.

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

411-328-0680 Safety: Staffing Requirements
(Renumbered from OAR 309-041-0680 12/9/2009)

(1) On-call staff. The program shall provide responsible persons or agency, on-call and available to individuals by telephone at all times.

(2) General staffing requirements. The program shall provide staff appropriate to the number and needs of individuals served as specified in each individual's support plan.

(3) Contract requirements for support staff ratios. Each program shall meet all requirements for staff ratios as specified by contract requirements.

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

411-328-0690 Safety: Individual Summary Sheets
(Renumbered from OAR 309-041-0690 12/9/2009)

Current record. A current record shall be maintained by the program for each individual receiving services. The record shall include:

(1) The individual's name, current address, home phone number, date of entry into the program, date of birth, sex, marital status, social security number, social security beneficiary account number, religious preference, preferred hospital, where applicable the number of the Disability Services Office (DSO) or the Multi-Service Office (MSO) of the Division, guardianship status; and

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

(a) The individual's legal representative, family, advocate, or other designated contact person;

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

(c) The individual's preferred dentist;

(d) The individual's day program, or employer, if any;

(e) The individual's case manager; and

(f) Other agency representatives providing services to the individual.

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

411-328-0700 Safety: Incident Reports and Emergency Notifications
(Renumbered from OAR 309-041-0700 12/9/2009)

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual shall be placed in the individual's record. Such description shall 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 and follow-up to be taken to prevent a recurrence of the injury, accident, physical aggression or unusual incident.

(2) Sent to case manager. Copies of all unusual incident (as defined by OAR 411-328-0560) reports shall be sent to the case manager within five working days of the incident.

(3) Immediate notification of allegations of abuse and abuse investigations. The program shall notify the CMHP immediately of an incident or allegation of abuse falling within the scope of OAR 411-328-0560(1)(a) through (d). When an abuse investigation has been initiated, the CMHP shall ensure that either the case manager or the program shall also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification. In the case of a serious illness, injury or death of an individual, the program shall immediately notify:

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

(b) The Community Mental Health Program; and

(c) Any other agency responsible for the individual.

(5) Missing person notification. In the case of an individual who is missing beyond the timeframes established by the ISP team, the program shall immediately notify:

(a) The individual's designated contact person;

(b) The individual's guardian, if any, or nearest responsible relative;

(c) The local police department; and

(d) The Community Mental Health Program.

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

411-328-0710 Safety: Vehicles and Drivers
(Renumbered from OAR 309-041-0710 12/9/2009)

(1) Vehicles operated to transport individuals. Service providers that own or operate vehicles that transport individuals shall:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Driver and Motor Vehicle Services Division laws;

(c) Maintain insurance coverage on the vehicles and all authorized drivers; and

(d) Carry in vehicles a fire extinguisher and first aid kit.

(2) Drivers. Drivers operating vehicles to transport individuals must meet applicable Driver and Motor Vehicle Services Division requirements.

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

411-328-0715 Rights: Financial
(Renumbered from OAR 309-041-0715 12/9/2009)

(1) Written individual financial supports. Written individual financial supports shall be developed as required by the individual's ISP team and integrated into the transition plan or ISP. The plan shall be based on a review and identification of the individual's financial support needs and preferences, and be updated annually or as significant changes occur.

(2) Financial policies and procedures. The program shall have and implement written policies and procedures related to the oversight of the individual's financial resources.

(3) Reimbursement to individual. The program shall reimburse to the individual any funds that are missing due to theft and/or mismanagement on the part of any staff of the program, and/or of any funds within the custody of the program that are missing. Such reimbursement shall be made within 10 working days of the verification that funds are missing.

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

411-328-0720 Rights: General
(Renumbered from OAR 309-041-0720 12/9/2009)

(1) Abuse prohibited. Any adult or any individual as defined at OAR 411-328-0560 shall not be abused nor shall abuse be condoned by an employee, staff or volunteer of the program.

(2) Policies and procedures. The program shall have and implement written policies and procedures which protect individual's rights and encourage and assist individuals to understand and exercise these rights. These policies and procedures shall at a minimum provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens;

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

(c) Visits to and from family members, friends, advocates, and when necessary legal and medical professionals;

(d) Private communication, including personal mail and telephone;

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

(f) Privacy;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical/mechanical restraints;

(h) Freedom from unauthorized personal restraints;

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

(j) The opportunity to vote and training in the voting process if desired;

(k) Expression of sexuality, to marry and to have children;

(l) Access to community resources, including recreation, agency services, employment and alternatives to employment programs, educational opportunities and health care resources;

(m) Transfer of individuals within a program;

(n) Individual choice that allows control and ownership of their personal affairs;

(o) Appropriate services which promote independence, dignity and self-esteem and are also appropriate to the age and preferences of the individual;

(p) Individual choice to consent to or refuse treatment; and

(q) Individual choice to participate in community activities.

(3) Notification of policies and procedures. The program shall inform each individual and parent/guardian/advocate orally and in writing of its rights policy and procedures and a description of how to exercise them at entry to the program and, in a timely manner, as changes occur.

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

411-328-0730 Rights: Confidentiality of Records
(Renumbered from OAR 309-041-0730 12/9/2009)

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

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules shall be considered "providers" as defined in ORS 179.505(1), and all of ORS 179.505 shall be applicable.

(2) For the purposes of disclosure from nonmedical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

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

411-328-0740 Rights: Grievances
(Renumbered from OAR 309-041-0740 12/9/2009)

(1) Policies and procedures. The program shall implement written policies and procedures for individuals' grievances. These policies and procedures shall, at a minimum, provide for:

(a) Receipt of grievances from individual(s) or others acting on his/her behalf. If the grievance is associated in any way with abuse or the violation of the individual's rights, the recipient of the grievance shall immediately report the issue to the program's director or designee and the CMHP;

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

(c) Taking appropriate actions on grievances within five working days following receipt of the grievance;

(d) Submission to the program's director. If the grievance is not resolved it shall be submitted to the program's director for review. Such review shall be completed and a written response provided within 15 days;

(e) Submission to the Community Mental Health Program. If the grievance is not resolved by the program's director it shall be submitted to the Community Mental Health Program for review. Such

review shall be completed and a written response provided within 30 days;

(f) Submission to the Administrator. If the grievance is not resolved by the Community Mental Health Program, it may be submitted to the Administrator for review. Such review shall be completed and a written response provided within 45 days of submission. The decision of the Administrator or designee shall be final; and

(g) Documentation of each grievance and its resolution in the grievant's record. If a grievance resulted in disciplinary action against a staff member, the documentation shall include a statement that disciplinary action was taken.

(2) Copies of all grievances to case manager. Copies of the documentation on all grievances shall be sent by the program to the case manager within 15 working days of initial receipt of the grievance.

(3) Notification of policy and procedures. The program shall inform each individual and parent/guardian/advocate orally and in writing at entry to the program and as changes occur in the program's grievance policy and procedures and a description of how to utilize them.

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

411-328-0750 Rights: Personalized Plans
(Renumbered from OAR 309-041-0750 12/9/2009)

(1) Team process. The decision to support an individual so that he/she can live in and maintain his/her own home requires significant involvement from the individual and his/her ISP team. In supported living, this process is characterized by a series of team meetings or discussions to determine what personalized supports the individual will need to live in his/her home, a determination as to the feasibility of creating such supports, and the development of a written plan which describes services the individual will receive upon entry into supported living.

(2) Needs meeting. Prior to moving into his/her own home, the ISP team shall meet to discuss the individual's projected service needs in a needs meeting. This meeting shall:

(a) Review information related to the individual's health and medical, safety, dietary, financial, social, leisure, staff, mental health and behavioral support needs and preferences;

(b) Include any potential providers, the individual and other ISP team members;

(c) Result in a written list of supports and services needed; and

(d) Discuss the selection of potential providers based on list of support and services needed.

(3) Transition plan. The provider will be required to spend time getting to know the individual personally before working on the development of the transition plan. The individual, provider, and other ISP team members shall participate in an entry meeting prior to the initiation of services. The outcome of this meeting shall be a written transition plan which shall take effect upon entry and shall:

(a) Address the individual's health and medical, safety, dietary, financial, staffing, mental health and behavioral support needs and preferences as required by the ISP team;

(b) Indicate who is responsible for providing the supports described in the plan;

(c) Be based on the list of supports identified in the needs meeting and other assessments and/or consultation required by the ISP team; and

(d) Be in effect and available at the site until the ISP is developed and approved by the ISP team.

(4) Individual support team membership. The team shall include the individual, the case manager, the individual's legal guardian, representatives of all current service providers, the provider who will

provide supported living services, and advocate or others determined appropriate by the individual receiving services.

(5) Individual support plan. A copy of each individual's Individual Support Plan shall be developed and approved by the ISP team within 90 days of entry and shall be available at the individual's home within 30 days of development and approval. The plan shall:

(a) Be based on a review and identification of the individual's service needs and preferences;

(b) Include a summary of the services related to the individual's health and medical, safety, dietary, financial and mental health and behavioral needs and preferences as determined by the ISP team;

(c) Identify who is responsible for providing the services and supports described in the plan; and

(d) Be updated as significant changes occur and/or at least annually.

(6) Distribution of ISP document. The case manager shall ensure distribution of a copy of the ISP to all team members within 30 calendar days of the ISP team meeting.

(7) Individual Profile. The program shall develop a written profile which describes the individual. This information shall be used in training new staff. The profile shall be completed within 90 days of entry. The profile shall include information related to the individual's history or personal highlights, lifestyle and activity choices and preferences, social network/significant relationships, and other information that helps describe the individual.

(8) Profile composition. The profile shall be composed of written information generated by the program. It may include reports of assessments or consultations; historical or current materials developed by the CMHP, training centers, and/or nursing homes; material/pictures from the family and/or advocates; newspaper articles; and other relevant information.

(9) Profile maintained. The profile shall be maintained at the service site and updated as significant changes occur.

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

411-328-0760 Rights: Behavior Intervention
(Renumbered from OAR 309-041-0760 12/9/2009)

(1) Written policy. The service provider shall have and implement a written policy concerning behavior intervention procedures. The service provider shall inform the individual and his/her legal guardian of the behavior intervention policy and procedures at the time of entry and as changes occur.

(2) Implementation of a program to alter an individual's behavior. A decision to implement a program to alter an individual's behavior shall be made by the ISP team and the program shall be described fully in the individual's ISP. The program shall:

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

(b) Use the least intervention possible;

(c) Ensure that abusive or demeaning intervention shall never be used; and

(d) Be evaluated by the service provider through timely review of specific data on the progress and effectiveness of the procedure.

(3) Documentation requirements. Documentation regarding the behavior program shall include:

(a) Documentation that the individual, the guardian, and ISP team are fully aware of and consent to the program in accordance with the ISP process as defined in the Case Management Services Rule OAR 411-320-0120;

(b) Documentation of all prior programs used to develop an alternative behavior; and

(c) A functional analysis of the behavior which has been completed prior to developing the behavior program by a trained staff member and/or consultant. This written record shall include:

(A) A clear, measurable description of the behavior to include frequency, duration, intensity and severity of the behavior;

(B) A clear description of the need to alter the behavior;

(C) An assessment of the meaning of the behavior, which includes the possibility that the behavior is:

(i) An effort to communicate;

(ii) The result of medical conditions;

(iii) The result of environmental causes; or

(iv) The result of other factors;

(d) A description of the conditions which precede the behavior in question;

(e) A description of what appears to reinforce and maintain the behavior; and

(f) A clear and measurable procedure which will be used to alter the behavior and develop the functional alternative behavior.

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

411-328-0770 Rights: Physical Restraints
(Renumbered from OAR 309-041-0770 12/9/2009)

(1) Circumstances when physical restraint allowed. The service provider shall only employ physical restraint:

(a) As part of an Individual Support Plan that meets OAR 411-328-0760 of this rule;

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

(c) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(2) Staff training. Staff members who need to apply restraint as part of an individual's ongoing training program shall be trained by a Division approved trainer. Documentation verifying such training shall be maintained in his/her personnel file.

(3) Physical restraints in emergency situations. Physical restraints in emergency situations shall:

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

(b) Be authorized by the program's director or designee, or physician;

(c) Be authorized within one hour of application of restraint;

(d) Result in the immediate notification of the individual's case manager or CMHP designee; and

(e) Prompt an ISP meeting, initiated by the service provider, if used more than three times in a six month period.

(4) Avoid physical injury. Physical restraint shall be designed to avoid physical injury to the individual or others, and to minimize physical and psychological discomfort.

(5) Incident report. All use of physical restraint shall be documented in an incident report. The report shall include:

(a) The name of the individual to whom the restraint is applied;

(b) The date, type and length of time, of restraint application;

(c) The name and position of the person authorizing the use of the restraint;

(d) The name of the staff member(s) applying the restraint; and

(e) Description of the incident.

(6) Copy to CMHP. A copy of the incident report shall be forwarded within five working days of the incident to the Community Mental Health Program.

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

411-328-0780 Rights: Psychotropic Medications and Medications for Behavior
(Renumbered from OAR 309-041-0780 12/9/2009)

(1) Requirements. Psychotropic medications and medications for behavior shall be:

(a) Prescribed by physician through a written order; and

(b) Included on the individual's ISP.

(2) Balancing test. The use of psychotropic medications and medications for behavior shall be based on a physician's decision that the harmful effects without the medication clearly outweigh the potentially harmful effects of the medication. Service providers must present the physician with a full and clear written description of the behavior and symptoms to be addressed, as well as any side effects observed, to enable the physician to make this decision.

(3) Monitoring and review. Psychotropic medications and medications for behavior shall be:

(a) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences; and

(b) Reviewed to determine the continued need and/or lowest effective dosage in a carefully monitored program.

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

411-328-0790 Entry, Exit and Transfer: General
(Renumbered from OAR 309-041-0790 12/9/2009)

(1) Qualifications for Division funding. All individuals considered for Division-funded services shall:

(a) Be referred by the Community Mental Health Program;

(b) Be determined to have a developmental disability by the Division or its designee; and

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

(2) Information required for entry meeting. The program shall acquire the following information prior to an entry ISP meeting:

(a) Written documentation that the individual has been determined to have a developmental disability;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device and adjusting water temperature;

(c) A brief written history of any medical conditions or behavioral challenges;

(d) Information related to the individual's lifestyle, activities, and other choices and preferences;

(e) Documentation of the individual's financial resources;

(f) Documentation from a physician of the individual's current physical condition, including a written record of any current or recommended medications, treatments, diet and aids to physical functioning;

(g) Documentation of any guardian or conservator, or any other legal restriction on the rights of the individual, if applicable; and

(h) A copy of the most recent ISP, if applicable.

(3) Entry meeting. An entry ISP team meeting shall be conducted prior to the initiation of services to the individual. The findings of the entry meeting shall be recorded in the individual's file and include at a minimum:

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

(b) The date of the meeting;

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

(d) Documentation of the participants at the meeting;

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

(f) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(g) Documentation of the proposed transition plan as defined in the Case Management Services Rule OAR 411-320-0020 for services to be provided if the decision was made to serve.

(4) Exit meeting. Each individual considered for exit shall have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting shall be recorded in the individual's file 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 an exit from services (unless the individual is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

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

(5) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the program under the following conditions:

(a) The individual and his/her guardian requests an immediate removal from the program; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(6) Transfer meeting. A decision to transfer an individual within a service provider shall be made by the ISP team. Findings of the ISP team shall be recorded in the individual's file and include at a minimum:

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

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

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

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternative considered, including transfer;

(f) Documentation of the reasons why any preferences of the individual, legal representative and/or family members cannot be honored;

(g) Documentation of a majority agreement of the participants regarding the decision; and

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

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

411-328-0800 Rights: Entry, Exit and Transfer: Appeal Process
(Renumbered from OAR 309-041-0800 12/9/2009)

(1) Procedures. In cases where the individual and parent/guardian/advocate object to or the ISP team cannot reach majority agreement regarding an admission refusal, a request to exit the program, or a transfer within a program, an appeal may be filed by any member of the ISP team.

(a) In the case of a refusal to admit, the slot shall be held vacant but the payment for the slot shall continue.

(b) In the case of request to exit or transfer, the individual shall continue to receive the same services received prior to the appeal until the appeal is resolved.

(2) Appeal to the County. All appeals must be made in writing to the Community Mental Health Program Director or his/her designee for decision using the county's appeal process. The Community Mental Health Program Director or designee shall make a decision within 30 working days of receipt of the appeal and notify the appellant of the decision in writing.

(3) Appeal to Division. The decision of the Community Mental Health Director may be appealed by the individual, his/her parent, guardian, advocate or the provider by notifying the Office of Developmental Disability Services in writing within ten working days of receipt of the county's decision.

(a) A committee shall be appointed by the Administrator or the Administrator's designee in the Office of Developmental Disability Services every two years and shall be composed of a Division representative, a residential service representative and a DD case management representative;

(b) In case of a conflict of interest, as determined by the Administrator or designee, alternative representatives will be temporarily appointed by the Administrator or designee to the committee;

(c) The committee will review the appealed decision and make a written recommendation to the Administrator or designee within 45 working days of receipt of the notice of appeal;

(d) The Administrator or designee shall make a decision on the appeal within ten working days after receipt of the recommendation from the committee; and

(e) If the decision is for admission or continued placement and the provider refuses admission or continued placement, the funding for the slot may be withdrawn by the contractor.

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

411-328-0805 Individual/Family Involvement
(Renumbered from OAR 309-041-0805 12/9/2009)

Policy needed. The program shall have a policy that addresses:

(1) Opportunities for the individual to participate in decision regarding the operation of the program;

(2) Opportunities for families, guardians, and/or significant others of the individuals served by the program to interact; or

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

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

411-328-0810 Program Management
(Renumbered from OAR 309-041-0810 12/9/2009)

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

(2) Prohibition against retaliation. A community program or service provider shall not retaliate against any staff who reports in good faith suspected abuse or retaliate against the adult with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

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

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

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

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the community program or the resident(s) served by the program.

(3) Documentation requirements. All entries required by this rule, unless stated otherwise, shall:

(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(s) making the entry; and

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

(4) Dissolution of program. Prior to the dissolution of a program, a representative of the governing body or owner shall notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individuals' records.

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

411-328-0820 Certificate Denial, Suspension, Revocation, Refusal to Renew
(Renumbered from OAR 309-041-0820 12/9/2009)

(1) Conditions. The Division may deny, revoke or refuse to renew a certificate when it finds the program, the program's director, or any person holding five percent or greater financial interest in the program:

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

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an on-site review of the service site by the Division for the purpose of investigation or certification);

(c) Has demonstrated a failure to comply with applicable laws relating to safety from fire;

(d) Has been convicted of a felony;

(e) Has been convicted of a misdemeanor associated with the operation of a residential program;

(f) Falsifies information required by the Division to be maintained or submitted regarding care of individuals, supported living program finances, or individuals' funds; or

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

(2) Immediate suspension of certificate. In any case where the Division finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Division may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(3) Notice of certificate revocation or denial. Following a Division finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individual is jeopardized, or that one or more of the events listed in section (1) of this rule has occurred, the Division may issue a notice of certificate revocation, denial or refusal to renew.

(4) Informal process. Following the notice issued pursuant to section (3) of this rule, the Division shall provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice.

(5) Hearing. Following issuance of a notice of certificate revocation, denial or refusal to renew, the Division shall provide the opportunity for a hearing pursuant to OAR 411-328-0830.

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

411-328-0830 Hearings
(Renumbered from OAR 309-041-0830 12/9/2009)

(1) Hearings rights. An applicant for a certificate, or certificate holder, upon written notice from the Division of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the Contested Case Provisions of ORS Chapter 183.

(2) Request for hearing. Upon written notification by the Division of revocation, denial or refusal to renew a certificate, pursuant to OAR 411-328-0830(1), the applicant/certified program shall be entitled to a hearing in accordance with ORS Chapter 183 within 60 days of receipt of notice. The request for a hearing shall include an admission or denial of each factual matter alleged by the Division and shall affirmatively allege a short plain statement of each relevant, affirmative defense the applicant/certified program may have.

(3) Hearing rights under OAR 411-328-0820(2). In the event of a suspension pursuant to OAR 411-328-0820(2) and during the first 30 days after the suspension of a certificate, the certified program shall be entitled to a fair hearing within 10 days after its written request to the Division for a hearing regarding certificate suspension. Any hearing requested after the end of the 30 days period following certificate suspension shall be treated as a request for hearing under section (2) of this rule.

(4) Issue at hearing on denial or revocation pursuant to OAR 411-328-0820(1)(a). The issue at a hearing on certification, denial, revocation, suspension or refusal to renew a certificate pursuant to OAR 411-328-0820(1)(a) is limited to whether the program was/is in compliance at the end of the 30 calendar days following written notice of non-compliance.

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

Exhibit 328-1

ORS 163.095 Aggravated murder
ORS 163.115 Murder
ORS 163.118 Manslaughter I
ORS 163.125 Manslaughter II
ORS 163.145 Criminally negligent homicide
ORS 163.149 Aggravated vehicular homicide
ORS 163.165 Assault III
ORS 163.175 Assault II
ORS 163.185 Assault I
ORS 163.187 Strangulation
ORS 163.200 Criminal mistreatment II
ORS 163.205 Criminal mistreatment I
ORS 163.225 Kidnapping II
ORS 163.235 Kidnapping I
ORS 163.263 Subjecting another person to involuntary servitude II
ORS 163.264 Subjecting another person to involuntary servitude I
ORS 163.266 Trafficking in persons
ORS 163.275 Coercion
ORS 163.355 Rape III
ORS 163.365 Rape II
ORS 163.375 Rape I
ORS 163.385 Sodomy III
ORS 163.395 Sodomy II
ORS 163.405 Sodomy I
ORS 163.408 Unlawful sexual penetration II
ORS 163.411 Unlawful sexual penetration I
ORS 163.415 Sexual Abuse III
ORS 163.425 Sexual Abuse II
ORS 163.427 Sexual Abuse I
ORS 163.432 Online sexual corruption of a child II, if the offender reasonably believed the child to be more than five years younger than the offender
ORS 163.432 Online sexual corruption of a child I, if the offender reasonably believed the child to be more than five years younger than the offender
ORS 163.435 Contributing to the sexual delinquency of a minor
ORS 163.445 Sexual misconduct, if the offender is at least 18 years of age
ORS 163.465 Public Indecency
ORS 163.467 Private Indecency
ORS 163.525 Incest with a child victim
ORS 163.535 Abandonment of a child
ORS 163.537 Buying or selling a person under 18 years of age
ORS 163.670 Using a child in display of sexually explicit conduct
ORS 163.680 Paying for viewing a child's sexually explicit conduct
ORS 163.684 Encouraging child sexual abuse I
ORS 163.686 Encouraging child sexual abuse II
ORS 163.687 Encouraging child sexual abuse III
ORS 163.688 Possession of materials depicting sexually explicit conduct of a child I
ORS 163.689 Possession of materials depicting sexually explicit conduct of a child II
ORS 163.700 Invasion of personal privacy
ORS 164.055 Theft I
ORS 164.057 Aggravated Theft I
ORS 164.098 Organized retail theft
ORS 164.125 Theft of services, if charged as a felony
ORS 164.215 Burglary II
ORS 164.225 Burglary I
ORS 164.325 Arson I
ORS 164.377 Computer crime, if charged with a felony
ORS 164.405 Robbery II
ORS 164.415 Robbery I
ORS 165.022 Criminal possession of a forged instrument I
ORS 165.032 Criminal possession of a forgery device
ORS 165.800 Identity theft
ORS 165.803 Aggravated identity theft
ORS 167.012 Promoting prostitution
ORS 167.017 Compelling prostitution
ORS 167.054 Furnishing sexually explicit material to a child
ORS 167.057 Luring a minor
ORS 181.594 Sex crimes, including: Transporting child pornography into the state