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

CHAPTER 411
DIVISION 330

COMPREHENSIVE IN HOME SUPPORT FOR ADULTS WITH DEVELOPMENTAL DISABILITIES

411-330-0010 Statement of Purpose and Statutory Authority
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Purpose. These rules prescribe standards, responsibilities, and procedures for Community Developmental Disability Programs providing comprehensive services to adults with developmental disabilities required for those adults to remain at home or in their family homes.

(2) Statutory authority. These rules are authorized by ORS 410.070 and 409.050 and carry out the provisions of 430.610 through 430.670, 427.005 through 427.007.

Stat. Auth.: ORS 410.070 & 409.050
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

411-330-0020 Definitions
(Temporary Effective 1/1/2010 – 6/30/2010)

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

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

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

(4) "Advocate" means a person other than paid staff who has been selected by the individual with developmental disabilities 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.

(5) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

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

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

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

(9) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(10) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(11) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Seniors and People with Disabilities Division:

(a) A 24-hour program, a foster home or a supported living program; or

(b) In-Home Supports costing more than $21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments provided to an individual in the individual's family home in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services or Children's Intensive In-Home Services.

(12) "Department" or "DHS" means the Department of Human Services.

(13) "Developmental Disability for Adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that 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

(b) Has continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that 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 classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(14) "Employer-Related Supports" means activities that assist individuals and, when applicable, their legal representatives or family members, with

directing and supervising provision of services described in the In-Home Support Plan. Supports to the employer include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

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

(16) "Exit" means termination from a Department-funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(17) "Family" for determining individual eligibility for In-Home Support Services as a resident in the family home, for identifying persons who may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

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

(b) In a domestic relationship where partners share:

(A) A permanent residence;

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

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

(18) "Fiscal Intermediary" means a person or agency that receives and distributes In-Home Support funds on behalf of an individual according to an In-Home Support Plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals, or their legal guardians, who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(19) "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.

(20) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with In-Home Support Services funds that:

> (a) Is primarily in business to provide the service to the general public and is chosen by the individual; and
>
> (b) Provides services for the individual through employees, contractors or volunteers.

(21) "Grievance" means a formal complaint by an individual or individual's legal representative about services or employees of a Community Developmental Disability Program.

(22) "Immediate Family," for the purposes of determining whether In-Home Support Services funds may be used to pay a family member to provide services, means the spouse of an adult.

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

(24) "Independence" means 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) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with In-Home Support Service funds who personally provides services to the individual.

(26) "Individual" means an adult with developmental disabilities for whom services are planned, provided and authorized by a qualified services coordinator.

(27) "In-Home Support" or "IHS" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

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

(c) Provided in accordance with an In-Home Support Plan.

(28) "In-Home Support Plan" or "IHS Plan" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The In-Home Support Plan is developed by the Community Developmental Disability Program and individual, the individual's legal representative, (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The In-Home Support Plan is the individual's Plan of Care for Medicaid purposes.

(29) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It

further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

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

(31) "Local Mental Health Authority" or "LMHA" means the County Court or Board of County Commissioners of one or more counties that operate a Community Mental Health and Developmental Disability Program, or in the case of a Native American Reservation, the Tribal Council, or if the county declines to operate or contract for all or part of a Community Mental Health and Developmental Disability Program, the Board of Directors of a public or private corporation.

(32) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(33) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(34) "Nursing Care Plan" means a plan of care developed by a Registered Nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. It includes which tasks shall be taught, assigned, and/or delegated to the qualified provider or family.

(35) "Oregon Intervention System" or "OIS" means an approach, which emphasizes a philosophy of individualized, non-aversive behavior support while constantly emphasizing dignity and respect for each individual.

(36) "Person-Centered Planning" means a process of gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle at home and in the community using individual strengths, relationships and resources. Person-centered planning is designed to build on and strengthen naturally occurring opportunities and relationships. A Community Developmental Disability Program representative shall gather information consistent with individual needs and preferences through conducting interviews with the individual, observation of the individual in various settings, and/or communication through a simple interview or formal group network process with persons selected by, or clearly significant to, the individual.

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

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

(b) Uses the least intervention possible;

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

(d) Evaluates the effectiveness of behavior interventions based on objective data. Behavior intervention is not undertaken unless the behavior:

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

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

(C) Interferes with community participation;

(D) Results in damage to property; or

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

(38) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement, or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(39) "Provider" means a person, organization or business that is selected by an individual or the individual's legal representative and paid with In-Home Support funds to provide support according to the individual's In-Home Support Plan.

(40) "Provider Organization" means an entity selected by an individual, the individual with the assistance of the individual's designee, or the individual's legal representative, and paid with In-Home Support Service funds that:

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

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

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

(41) "Seniors and People with Disabilities Division" or "SPD" means the Division within the Department of Human Services that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(42) "Services Coordinator" means an employee of the Community Developmental Disability Program or other agency that contracts with the County or Department, who is selected to plan, procure, coordinate, monitor Individual Support Plan Services and to act as a proponent for persons with developmental disabilities. For purposes of these rules the term Case Manager is synonymous with Services Coordinator.

(43) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of an individual of similar age and income who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an individual's current In-Home Support Plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability (e.g. public or parochial education for school-aged individuals, training for a specific job skill or trade that is not part of a vocational rehabilitation plan);

(b) Provide financial assistance with food, clothing, shelter and laundry needs common to individuals with or without disabilities;

(c) Replace other governmental or community services available to an individual or family; or

(d) Exceed the actual costs of supports that must be provided for the individual to be supported at home or in the family home.

(44) "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.

(45) "Support" means assistance individuals require--solely because of the effects of disability--to maintain or increase independence, achieve community presence and participation, and improve productivity. Support includes assistance families require to care for individuals residing in the family home or in the process of returning from out-of-home placement.

(46) "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 abuse investigation.

(47) "Variance" means a temporary exception from a regulation or provision of these rules, which may be granted by the Seniors and People with

Disabilities Division, upon written application by the Community Developmental Disability Program.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0030 Eligibility for In-Home Support Services
(Effective 12/28/2007)

(1) NON-DISCRIMINATION. Eligible individuals must not be denied In-Home Support Services or otherwise discriminated against on the basis of age or of diagnostic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, age, income or duration of Oregon residence.

(2) ELIGIBILITY. The CDDP of an individual's county of residence must find the individual eligible for the CDDP's In-Home Support Services when the individual has been determined eligible for developmental disability services by the CDDP and the individual is an adult living at home or in the family home whose In-Home Support Services, or whose combined In-Home Support Services and services regulated by the OAR's in chapter 411, division 345 (Employment and Alternative to Employment Services), cost more than $21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments and when part or all of the funds for these services have been designated by contract with the CDDP to support the individual because:

(a) SPD has determined the individual to be at imminent risk of civil commitment under ORS 427 and is providing diversion services according to the provisions of OAR 411-320-0160; or

(b) Funds previously used to purchase the individual's SPD-regulated residential, work, or day habilitation services have been made available within the guidelines published by SPD to purchase In-Home Services that cost more than $21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments; or

(c) SPD has found the individual eligible for Comprehensive 300 services as defined through the settlement agreement Staley v.

Kitzhaber (USDC CV00-0078-ST) and has made funds available to purchase In-Home Services that cost more than $21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments.

(3) CONCURRENT ELIGIBILITY. Individuals must not be found eligible for In-Home Support Service by more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0040 Service Entry and Exit
(Effective 12/28/2003)

(1) Providing basic information to individuals and legal representatives. The CDDP must make accurate, up-to-date written information about In-Home Support services available to eligible individuals and their legal representatives. These materials must include:

(a) Criteria for entry, conditions for exit, and how the limits of assistance with purchasing supports are determined;

(b) A description of processes involved in using In-Home Support services, including person-centered planning, evaluation, and how to raise and resolve concerns about IHS services;

(c) Clarification of CDDP employee responsibilities as mandatory abuse reporters;

(d) A brief description of individual and legal representative responsibility for use of public funds;

(e) An explanation of individual rights to select and direct providers of services authorized through the individual's IHS Plan and purchased with IHS funds from among those qualified according to OAR 411-330-0070, 411-330-0080, or 411-330-0090; and

(f) The CDDP must make information required in OAR 411-330-0040(1)(a) through (e) available using language, format, and presentation methods appropriate for effective communication according to individual needs and abilities.

(2) Entry into In-Home Support services. An individual will enter In-Home Support services at any time that funds are made available through a Department contract with the CDDP specifically to support the individual.

(3) Duration of In-Home Support services. An eligible individual who has entered a CDDP's In-Home Support service may continue to receive IHS services as long as the Department continues to provide funds specifically for that individual through contract with the CDDP and the individual continues to require the services to remain at home or in the family home.

(4) An individual must exit In-Home Support services:

(a) At the end of a service period agreed upon by all parties and specified in the In-Home Support Plan;

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

(c) When the individual moves from the CDDP's service area, unless as part of a time-limited plan for transition to a new county of residence;

(d) When funds to support the individual are no longer provided through the Department contract to the CDDP of the individual's county of residence;

(e) When the CDDP has sufficient evidence to believe that the individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the In-Home Support Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services; or

(f) No less than thirty (30) days after the CDDP has served written notice of intent to terminate services, when the individual or the individual's legal representative either cannot be located or has not responded to repeated attempts by CDDP staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

411-330-0050 Required In-Home Support Services
(Effective 12/28/2003)

(1) Each CDDP must provide or arrange for the following services as required to meet the support needs of eligible individuals:

(a) Assistance to determine needs and plan supports;

(b) Assistance to find and arrange resources and supports;

(c) Education and technical assistance to make informed decisions about support needs and direct support providers;

(d) Fiscal intermediary services;

(e) Employer-related supports; and

(f) Assistance to monitor and improve the quality of personal supports.

(2) Person-centered planning approach required. A CDDP must use a person-centered planning approach to assist individuals and their legal representatives to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process must address basic health and safety needs and supports, including informed decisions by the individual or the individual's legal representative regarding any identified risks.

(3) Written plan required. The individual's Services Coordinator must write an initial In-Home Support Plan that is signed by the individual (or the

individual's legal representative) and dated within 30 days of entry into IHS services. The plan or attached documents must include:

(a) Individual name and, if applicable, legal representative name;

(b) The purpose of plan activities, addressing one or more of the following:

(A) Independence, i.e. the degree of choice and control an individual hopes to achieve or maintain;

(B) Integration, i.e. the regular access to relationships and community resources the individual hopes to achieve or maintain;

(C) Productivity, i.e. the employment or other contributing roles an individual hopes to achieve or maintain; or

(D) Developing or maintaining the capacity of the family to continue to care for the individual in the family home.

(c) A description of the supports required to accomplish the purpose, with a brief statement of the nature of the disability that makes the support necessary;

(d) Projected dates of when specific supports are to begin and end, as well as the end date, if any, of the period of service covered by the plan;

(e) Projected costs, with sufficient detail to support estimates;

(f) A list of personal, community, and public resources that are available to the individual and how they will be applied to provide the required supports;

(g) Final In-Home Support fund costs; and

(h) Schedule of plan reviews.

(4) Nursing Care Plan. A Nursing Care Plan must be included in the In-Home Support planning when IHS funds are used to purchase care and services requiring the education and training of a licensed professional nurse.

(5) Review of plan and resources. The individual's Services Coordinator must conduct and document reviews of plans and resources with individuals and their legal representatives as follows:

(a) At least quarterly review and reconciliation of receipts and records related to purchases of supports with IHS funds;

(b) At least annually and as major activities or purchases are completed to:

(A) Evaluate progress toward achieving the purposes of the plan;

(B) Note effectiveness of purchases based on Services Coordinator observation as well as individual or legal representative satisfaction; and

(C) Determine whether changing needs or availability of other resources has altered the need for continued use of IHS funds to purchase supports.

(6) Transition to Another County. For an individual moving to another service area within Oregon, the CDDP must collaborate with the receiving CDDP to transfer funds designated for the individual to continue the plan for supports.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

411-330-0060 In-Home Support Fund Assistance with Purchasing Supports
(Temporary Effective 3/18/2010 – 6/30/2010)

(1) Plan required. A CDDP must only use In-Home Support funds to assist individuals and their legal representatives to purchase supports when the

individual's Services Coordinator has developed a written and approved IHS Plan which meets requirements for development and content in OAR 411-330-0050 and:

(a) Identifies supports that are necessary for an individual to live in his or her own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Identifies the resources needed to purchase the remainder of necessary supports; and

(d) Is the most cost-effective plan that may safely meet the goals of the plan.

(2) Assistance is a social benefit. Goods, and services purchased with In-Home Support funds must be provided only as social benefits as defined in OAR 411-330-0020(41).

(3) Amount, method and schedule of payment. IHS funds may be disbursed on behalf of individuals. The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and individual's legal representative, if any. The CDDP is specifically prohibited from reimbursement of individuals, individuals' legal representatives or families for expenses related to services and from advancing funds to individuals, individuals' legal representatives or families to obtain services.

(4) Supports purchased. Supports purchased for an individual with In-Home Support funds are limited to those described in OAR 411-330-0110. The CDDP must arrange for these supports to be provided:

(a) In settings and under contractual conditions that allow the individual or the individual's legal representative to freely redirect resources to purchase supports and services from another provider;

(b) In a manner consistent with positive behavioral theory and practice as defined in OAR 411-330-0020(36);

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

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

(e) According to Oregon Board of Nursing Administrative Rules 851 when services involve performance of nursing care or delegation, teaching, and assignment of nursing tasks.

(5) Provider responsibilities and agreements. When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify the individual's legal representative and family (if services are provided to an individual in the family home) and the CDDP of injury, illness, accidents, or any unusual circumstances which may have a serious effect on the health, safety, physical, emotional well being or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) IHS fund payments for the agreed-upon services must be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's legal representative, or the individual's family, or any other source.

(B) The provider must bill all third party resources before using IHS funds unless another arrangement is agreed upon by the CDDP in the IHS Plan.

(6) Use of IHS funds prohibited.

(a) IHS funds may not be used 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 330-1;

(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 330-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 330-1.

(b) IHS funds may not pay for:

(A) Services, materials, or activities that are illegal;

(B) Services or activities that are carried out in a manner that constitutes abuse of an adult as defined in OAR 411-330-0020(1);

(C) Notwithstanding abuse as defined in OAR 411-330-0020, services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;

(D) Notwithstanding abuse as defined in OAR 411-330-0020, services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;

(E) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(F) Individual or family vehicles;

(G) Health and medical costs that the general public normally must pay, including but not limited to: medications; health

insurance co-payments; mental health evaluation and treatment; dental treatments and appliances; medical treatments; dietary supplements; treatment supplies not related to nutrition, incontinence, or infection control;

(H) Basic or specialized food or nutrition essential to sustain the individual including but not limited to, high caloric supplements, gluten-free supplements; diabetic, ketogenic or other metabolic supplements.

(I) Ambulance services;

(J) Legal fees, including but not limited to costs of representation in educational negotiations, establishing trusts, and creating guardianships;

(K) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(L) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(M) Rate enhancements to an individual's existing Employment and Alternative to Employment Services for Individuals with Developmental Disabilities under OAR 411-345-0010 through 411-345-0310;

(N) Employee wages or contractor payments for services when the individual is not present or available to receive services, e.g. employee paid time off, hourly "no-show" charges, and contractor preparation hours;

(O) Services, activities, materials, or equipment that are not necessary or cost-effective, do not meet the definition of In-Home Supports as defined in OAR 411-330-0020(26), the definition of supports as defined in 411-330-0020(42), and the definition of social benefits as defined in 411-330-0020(41);

(P) Educational services for school-age adults, including professional instruction, formal training and tutoring in communication, socialization, and academic skills;

(Q) Services, activities, materials, or equipment that may be obtained by the individual or the individual's legal representative through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(R) Services or activities for which the Legislative or Executive Branch of Oregon government has prohibited use of public funds; or

(S) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the individual's legal representative, family, or service provider have engaged in fraud or misrepresentation, failed to use resources as agreed upon in the In-Home Support plan, refused to cooperate with record keeping required to document use of In-Home Support funds, or otherwise knowingly misused public funds associated with In-Home Support services.

(7) Documentation required. The CDDP must inform individuals and individuals' legal representatives in writing of records and procedures required in OAR 411-330-0140(3)(c) regarding expenditure of In-Home Support funds for direct assistance. During development of the IHS Plan, the individual's Services Coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must include delineations of responsibility for maintenance of records in the IHS Plan and any other written service agreements.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0070 Standards for Independent Providers Paid with In-Home Support Services Funds
(Temporary Effective 3/18/2010 – 6/30/2010)

(1) General independent provider qualifications. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by DHS in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a provider or meet 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 who has been convicted:

(A) Of a crime listed in Exhibit 330-1;

(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 330-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 330-1.

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual receiving services;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the In-Home Support Plan, with such demonstration confirmed in writing by the employing individual, individual's legal representative, family or designated advocate including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual;

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers;

(i) In the case of an agency, holds any license or certificate required by the State of Oregon or federal law or regulation to provide the services purchased by or for the individual; and

(j) If providing transportation, has a valid driver's license and proof of insurance, as well as other license or certificate that may be required under state and local law, depending on the nature and scope of the transportation service.

(2) Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Systems (OIS), behavior intervention system, and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Speech and Communication, Occupational Therapy, Recreation, Art or Music Therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) Social/sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social/sexual consultation services; and Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in Special Education, Psychology, Social Work, Counseling or other behavioral science field and at least one year of experience with people with developmental disabilities; or

(B) Three years experience with people with developmental disabilities who present social or sexual issues and at least one year of that experience must include providing the services of a social/sexual consultant.

(4) Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with State Law, including at least one year of experience with people with developmental disabilities.

(5) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of

the individual and developing cost-effective plans that shall make the home safe and accessible for the individual.

(6) Environmental accessibility adaptation providers must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(7) Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0080 Standards for Provider Organizations Paid with In-Home Support Services Funds
(Effective 12/28/2003)

(1) Provider Organizations with current license or certification. A provider organization licensed under OAR chapter 411, division 325 for 24-Hour Residential Programs or OAR 309-040-0300 through 309-040-0455 for Adult Foster Homes or certified under OAR chapter 411, division 305, Employment and Alternative to Employment Services for Individuals with Developmental Disabilities, OAR 309-041-0550 through 309-041-0830, Supported Living Services or OAR chapter 411, division 340, Support Services for Adults with Developmental Disabilities will not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, emergent services, or support services.

(a) Current license or certification will be considered sufficient demonstration of ability to:

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

(B) Provide services according to individual support plans; and

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

(b) All individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds must meet standards for qualification of independent providers outlined in OAR 411-330-0070.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

411-330-0090 Standards for General Business Providers
(Effective 12/28/2003)

(1) General Business Providers providing services to individuals and paid with in-home support services funds must hold any current license appropriate to function required by the State of Oregon or federal law or regulation, including but not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) A current license and bond as a building contractor as required by OAR chapter 812, Construction Contractor's Board and OAR chapter 808, Landscape Contractors for a provider of environmental accessibility adaptations;

(d) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon; and

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies,

including enrollment as Medicaid providers through the Oregon Office of Medical Assistance Program if vending medical equipment;

(2) Services provided and paid for with in-home support services funds must be limited to those within the scope of the general business provider's license.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.670

411-330-0100 Sanctions for Independent Providers, Provider Organizations, and General Business Providers
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Circumstances under which sanctions may be imposed. Sanction(s) may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with In-Home Support funds, the provider has:

(a) Been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service, including crimes listed in OAR 411-330-0070(1);

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

(c) Had his/her professional license suspended, revoked, or otherwise limited, or surrendered his/her license;

(d) Notwithstanding abuse as defined in OAR 407-045-0260, failed to safely and adequately provide the services authorized;

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

(f) Failed to cooperate with the Department or CDDP investigation and/or grant access to or furnish, as requested, records or documentation;

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

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

(i) Falsified required documentation;

(j) Not adhered to the provisions of OAR 411-330-0060(6) and 411-330-0070; or

(k) Been suspended or terminated as a provider by another office or program within the Department.

(2) Types of sanctions that may be imposed. The following sanctions may be imposed on a provider:

(a) The provider may no longer be paid with In-Home Support funds;

(b) The provider may not be allowed to provide services for a specified length of time and/or until specified conditions for reinstatement are met and approved by the CDDP or Department, as applicable;

(c) The CDDP may withhold payments to the provider.

(3) CDDP decision to sanction. If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 calendar days of the notice. The provider must appeal separately from any appeal of audit findings and overpayments.

(4) Appeal rights of a provider of Medicaid services. A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Administrator or designee.

(5) Written notice of appeal required. For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 calendar days of the date the sanction notice was mailed to the provider.

(6) Discretion of the Department. At the discretion of the Department, providers who have previously been terminated or suspended by the Department agency may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0110 Supports Purchased with In-Home Funds
(Effective 12/28/2003)

When conditions of purchase in OAR 411-330-0060 are met, In-Home Support funds may be used to purchase:

(1) Behavior Consultation. Behavior consultation consists of: assessment of the individual, the needs of the family and the environment; development of positive behavior support strategies including a behavior support plan if needed; implementation of the positive behavior support plan with the provider or family; and revision and monitoring of the plan as needed. Services may include training, modeling, and mentoring the family, development of visual communication systems as behavior support strategies, and communicating as authorized by the individual or their legal representative with school, medical or other professionals about the strategies and outcomes of the behavior support plan.

> (a) Providers may include, but are not limited to, licensed psychologists, behavioral specialists, autism specialists, or other communication specialists who meet the requirements in OAR 411-330-0070(1)(a) through (j) and (2)(a) through (c).
>
> (b) Behavior consultation does not include: mental health therapy or counseling; health or mental health plan coverage; educational services, including, but not limited to, consultation and training for classroom staff, adaptations to meet needs of the individual at school, assessment in the school setting, or any service identified by the school as required to carry out the person's Individual Education Plan.

(2) Community inclusion services. Community inclusion services assist an individual to acquire, retain or improve physical or mental skills, which

enhance integration, independence and/or productivity and take place separate from the home in which the individual lives and occur on a regularly scheduled basis. Community Inclusion Supports include assistance to participate in generic community services, facilities, businesses, recreation and leisure. These supports are provided for an individual to participate in activities to facilitate independence and promote community inclusion in settings chosen by the individual and the individual's legal representative.

(a) Community inclusion services include, but are not limited to: assistance in use of community resources (e.g. shopping, transportation systems; personal assistance to attend local interest clubs, gym or sports events; assistance to build relationships with non-disabled individuals in community settings capable of providing natural support; opportunities for activities and socialization with other people with disabilities; and/or assistance with eating, toileting, mobility during recreational activities); and the cost of daily care and supervision.

(b) Examples of what community inclusion services do not provide include, but are not limited to: fees for attending local clubs, gyms or sporting events; secondary and post-secondary education services; tuition to private schools; services provided by a spouse of the individual; illegal activities; legal fees; vacation costs that would normally be incurred by anyone on vacation regardless of disability; supports that have not been arranged according to applicable state and federal wage and hour regulations; services that are not necessary or cost-effective; and services or activities carried out in a manner that constitutes abuse of an adult.

(3) Supported employment services. Supported employment services assist an individual to choose, get and keep a paid job in an integrated community business setting.

(a) Supported employment services include job development, training and on-going supervision to obtain paid employment. Training may focus on the individual worker and co-workers without disabilities capable of providing natural support.

(b) Examples of what supported employment services do not provide include, but are not limited to the following: support provided by someone who does not meet the minimum independent provider qualifications as specified in OAR 411-330-0070; illegal activities; legal fees; services or activities carried out in a manner that constitutes abuse of an adult; care, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations; rate enhancements to an individual's existing employment/community inclusion service under OAR 309-047-0000 through 309-047-0140; payment for the supervisory activities rendered as a normal part of the business setting; incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program; payments for vocational training that is not directly related to an individual's supported employment program; and services that are not necessary or cost-effective. For purposes of this rule:

(A) Supported employment services must not replace services available under a program funded under the Rehabilitation Act of 1973, or P.L. 94-142.

(B) Supported employment services under this rule must not replace or duplicate services that the individual currently receives through the Department-contracted Employment and Alternative to Employment Services governed by OAR 411-345-0010 through 411-345-0310.

(4) Environmental Accessibility Adaptations. Environmental accessibility adaptations are physical adaptations to an individual's home, which are necessary to ensure the health, welfare, and safety of the individual in the home, or which enable the individual to function with greater independence around the home.

(a) Examples of environmental accessibility adaptations include, but are not limited to: environmental modification consultation to determine the appropriate type of adaptation; installation of ramps and grab-bars; removing or widening of doorways; handrails; electric door openers; adaptations of kitchen cabinet/sinks; modifications of bathroom facilities; hardening the environment; protective fencing; individual room air conditioners to maintain stable temperature as

required by the individual's medical condition; overhead track systems to assist with lifting or transferring of individuals; installation of specialized electric and plumbing systems which are necessary to accommodate medical equipment; and supplies necessary for the welfare of the individual.

(b) Examples of what environmental accessibility supports do not provide include, but are not limited to: generic fire safety equipment; generic household maintenance and repair; adaptations or improvements to the home which are of general utility, and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, adaptations or improvements to the home which add to the total square footage of the home; adaptations and modifications not constructed in accordance with applicable State or local codes; adaptations and improvements not necessary or cost-effective; and materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies.

(c) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans to make homes safe and accessible.

(d) Providers of environmental accessibility adaptation involving building modifications or new construction must be building contractors licensed under OAR 812-001-0000 through 812-010-0500 and 808-001-0000 through 808-005-0030.

(5) Family Caregiver Supports. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for the individual. These services are fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family.

(6) Family Training. Family training services are training and counseling services provided to the family of an individual with developmental disabilities to increase their capabilities to care for, support and maintain the individual in the home.

(a) Family training services include, but are not limited to: instruction about treatment regimens and use of equipment specified in the In-Home Support Plan; information, education and training about the individual's disability, medical, and behavioral conditions. Family training services may be provided in various settings by various means, including but not limited to: psychologists licensed under ORS 675.030; professionals licensed to practice medicine under 677.100 or nursing under 678.040; social workers licensed under 675.530; counselors licensed under 675.715; organized conferences and workshops specifically related to the individual's disability, identified support needs, or specialized medical or behavioral support needs.

(b) Examples of what family training services do not provide include, but are not limited to: mental health counseling, treatment, or therapy; training for paid caregivers; legal fees; training for families to carry out educational activities in lieu of school; vocational training for family members; and paying for training to carry out activities that constitute abuse of an adult.

(c) Prior authorization by the CDDP is required for attendance by family members at organized conferences and workshops funded with In-Home Support Services funds.

(7) In-Home Support. In-Home Support services are care, training, supervision and protection provided based on the needs of the individual that must be met for the individual to live in the family home.

(a) In-Home Support services include, but are not limited to: providers who come into the family home and assist the individual with: activities of daily living; medical and physical health care including performance or delegation of nursing tasks; behavior management; maintenance of expressive and receptive skills in verbal and non-verbal language; functional application of acquired reading and writing skills; training and support in personal environmental skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Examples of what In-Home Support services do not provide include, but are not limited to: services provided by the spouse of the

individual; services available through private insurance or health plan; services provided by someone who does not meet the minimum provider qualifications of this rule; behavior management not based on positive behavioral theory and practice; legal fees; care, training or supervision that has not been arranged according to applicable state and federal wage and hour regulations; health and medical costs that the general public normally must pay; educational services for school-age individuals; and replacing support normally provided to the individual by a family member. For individuals who live in the family home, family members are expected to provide a minimum of 8 hours of support daily with the exception of respite.

(8) Occupational Therapy. Occupational therapy services are the services of a professional licensed under ORS 675.240 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Occupational therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified occupational therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Occupational therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(9) Physical Therapy. Physical therapy services are the services of a professional licensed under ORS 688.020 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope in the plan will not apply. These services are available to maintain an individual's skills or physical condition

when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Physical therapy services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified physical therapist when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Physical therapy services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools.

(10) Respite Care. Respite care services are short-term care provided on an hourly or daily basis because of the absence, or need for relief of, persons normally providing the care to an individual with developmental disabilities.

(a) Temporary or overnight respite services may be provided in a variety of settings, including, but not limited to: the home of the individual; a licensed group home or foster home; a licensed day care center; or a community care facility that is not a private residence.

(b) Respite services do not include: ongoing services which occur on a regular schedule such as 8-hours-a-day, 5-days-a-week or are provided to allow the individual's family to attend school or work; vacation travel and lodging expenses; cost of the individual's meals unless part of a short-term stay in a licensed facility, group home or foster home.

(11) Specialized Equipment and Supplies. Specialized equipment and supplies are devices, controls, or appliances specified in the In-Home Support Plan, which enable an individual to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service includes items

necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment permitted under the Medicaid State Plan after the scope and limits of the State Medicaid Plan have been reached.

(a) Examples of specialized equipment and supplies include, but are not limited to: mobility, communication, incontinence, and positioning devices; age-appropriate hospital beds; continuous positioning airway pressure, apnea monitors; generators for technology-dependent individuals; equipment required to obtain urgent medical assistance; a manual wheelchair to use while power chair is being repaired; a second wheelchair that can fit into interior doors while larger power chair remains outside; latex gloves and similar supplies used in personal care; and equipment such as plates, bowls, utensils, glasses, trays that allow an individual to eat independently or with minimum assistance

(b) Examples of items that are not Specialized Equipment and Supplies include, but are not limited to: work-related clothing; generic household furnishings; personal clothing for the individual or family, and other purchases made because of financial need; any equipment or supplies that can be purchased by the individual through the Oregon Health Plan or private insurance, or obtained through other resources; illegal substances or materials; materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies; items which are needed solely to allow an individual to participate in school; items not of direct medical or remedial benefit to the individual; and equipment that is not necessary or cost-effective, experimental, not generally-accepted, or absolutely prohibited by the Oregon Health Plan.

(12) Speech, Hearing, and Language Services. Speech, hearing and language services are the services of a professional licensed under ORS 681.250 that are defined and approved for purchase under the approved State Medicaid Plan, except that the limitation on amount, duration and scope specified in the plan will not apply. These services are available to maintain an individual's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan have been reached, either through private or public resources.

(a) Speech, hearing, and language services include assessment, family training, consultation, and hands-on direct therapy provided by an appropriately licensed or certified speech therapy professional when there is written proof that the Oregon Health Plan service limits have been reached.

(b) Speech, hearing, and language services do not include: goods and services available through either public programs (e.g. OHP, schools, or Federal assistance programs) for which an individual is eligible, or through an individual's private insurance; experimental therapy or treatments; health and medical costs that the general public must pay; legal fees; and education services for an individual such as tuition to schools. Educational services for school age individuals, such as: professional instruction, formal training, and tutoring in communication, socialization, and academic skills are not allowable expenses covered by In-Home Support Services funds.

(13) Transportation services. Transportation services are services that provide training or support in public or private transportation required for the individual to attend recreation, day programs, appointments, and related services according to an In-Home Support Plan.

(a) Transportation services include, but are not limited to: transportation provided by common carriers, taxicab or bus in accordance with standards established for these entities; reimbursement on a per-mile basis for transporting an individual in a rural area into the nearest town once a week for shopping and recreational opportunities; assistance with purchase of a bus pass; and reimbursement of operational expenses of agency/staff vehicles used for transporting individuals not to exceed established rates.

(b) Transportation services do not include: medical transportation; purchase of individual or family vehicles; routine vehicle maintenance and repair; ambulance services; payment to a spouse of an individual recipient of In-Home Support services; costs for transporting someone other than the individual with disabilities.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

411-330-0120 Abuse and Unusual Incidents
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Abuse prohibited. No adult or individual as defined by OAR 411-330-0020shall be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the individual, provider organization, or CDDP.

(a) Basic personnel policies and procedures. The CDDP must have in place personnel policies and procedures addressing 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 CDDP must also have in place personnel policies and procedures addressing disciplinary action, including conditions for termination of employment when the allegation of abuse has been substantiated.

(b) Mandatory abuse reporting personnel policies and procedures. Any employee of a CDDP 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 must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) Unusual Incidents.

(a) Written report. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual and a CDDP employee must be prepared at the time of the incident and placed in the individual's record. Such description must 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 recurrence of the injury, accident, physical aggression or unusual incident.

(b) Immediate notification of allegations of abuse and abuse investigations. The CDDP must notify the Department immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260. When an abuse investigation has been initiated and completed, the CDDP must provide notification in accordance with OAR 407-045-0290 and OAR 407-045-0320.

(c) Immediate notification. In the case of a serious illness, injury or death of an individual, the CDDP must immediately notify the individual's legal representative or conservator, parent, next of kin, designated contact person.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0130 Grievances and Appeals
(Effective 12/28/2003)

(1) Grievances. The CDDP must implement written policies and procedures for individuals', their legal representatives and families' grievances. These policies and procedures must, at a minimum, provide for:

(a) Notification. The CDDP must inform each individual, each individual's legal representative, and family members orally and in writing of the CDDP's grievance policy and procedures and of the right to move directly to hearing according to OAR 411-330-0130(2) in the case of certain circumstances involving Medicaid services.

(b) Receipt of grievances from individuals, individuals' legal representatives, others acting on the behalf of individuals, and families;

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

(d) Taking appropriate actions on grievances by the CDDP Program Manager within five working days following receipt of grievance;

(e) Submission to the CDDP director. If the grievance is not resolved, it must be submitted to the CDDP director for review. Such review must be completed and a written response to the grievant provided within 30 days;

(f) Submission to the Department. If the grievance is not resolved by the CDDP Director, it must be submitted to the Administrator or designee for review. Such review must be completed and a written response to the grievant provided within 45 days of submission to the Department. The decision of the Administrator or designee will be final. Any further review is pursuant to the provisions of ORS 183.484 for judicial review to the Marion County Circuit Court; and

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

(2) Denial, termination, suspension, or reduction of services.

(a) Each time the CDDP takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the CDDP must notify the individual or the individual's legal representative(s) of the right to a hearing and the method to obtain a hearing. The CDDP must mail the notice, or personally serve it to the individual or the individual's legal representative(s) ten (10) days or more prior to the effective date of an action.

(A) The CDDP must use the Division of Medical Assistance Programs (DMAP) 3030 form, Notice of Hearing Rights, or comparable Department-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the IHS Plan and the individual, or the individual's legal representative(s), has agreed with the action by signature to the plan.

(b) The adult individual or the adult individual's legal representative may appeal a denial of a request for additional or different services

only if the request has been made in writing and submitted to the CDDP. At the time the CDDP denies a written request for additional or different services, it must notify the appealing party, in writing, of the information specified in section (2)(c) of this rule.

(c) A notice required by sections (2)(a) or (2)(b) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the CDDP intends to take;

(B) The reasons for the intended action;

(C) The specific regulations that support, or the change in Federal or State law that requires, the action;

(D) The appealing party's right to a contested case hearing in accordance with OAR Chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) That the CDDP's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of making a prima facie case;

(F) That the actions specified in the notice will take effect by default if the Department representative does not receive a request for a hearing from the party within 45 days from the date that the CDDP mails the notice of action;

(G) In circumstances of an action based upon a change in law, the circumstances under which a hearing will be granted; and

(H) An explanation of the circumstances under which CDDP services will be continued if a hearing is requested.

(d) If the individual or the individual's legal representative(s) disagree with a decision or proposed action by the CDDP, the party may request a contested case hearing. The Department representative must receive the signed form within 45 days after the CDDP mailed the notice of action.

(e) The individual or the individual's legal representative(s) may request an expedited hearing if he or she feels that there is immediate, serious threat to the individual's life or health should he or she follow the normal timing of the hearing process.

(f) If the individual or individual's legal representative(s) requests an administrative hearing before the effective date of the proposed actions and requests that the existing services be continued, the Department must continue the services. The Department will continue the services until whichever of the following occurs first, but in no event will services be continued in excess of ninety days from the date of the individual's (or individual's legal representative's) request for an administrative hearing:

(A) The current authorization expires;

(B) The hearings officer or the Department renders a decision about the complaint; or

(C) The individual is no longer eligible for Medicaid benefits.

(D) The Department must notify the individual or individual's legal representative(s) that it is continuing the service. The notice must inform the individual or individual's legal representative that, if the hearing is resolved against him or her, the Department may recover the cost of any services continued after the effective date of the continuation notice.

(g) The Department must reinstate services if:

(A) The Department takes an action without providing the required notice and the individual or individual's legal representative requests a hearing;

(B) The Department does not provide the notice in the time required in this rule and the individual or individual's legal representative requests a hearing within ten days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(D) The Department must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or the Department decides in the individual's favor before the hearing.

(h) The Department representative and the individual or the individual's legal representative(s) may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the individual or individual's legal representative to settle the matter;

(B) Ensure the individual or individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and the Department the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give the Department an opportunity to review its action or the action of the CDDP.

(i) The individual or individual's legal representative(s) may, at any time prior to the hearing date, request an additional conference with the Department representative. At his or her discretion, the Department representative may grant such a conference if it will facilitate the hearing process.

(j) The Department may provide to the individual or individual's legal representative the relief sought at any time before the final order is served.

(k) Withdrawals: An individual or the individual's legal representative may withdraw a hearing request at any time. The withdrawal will be effective on the date the Department or the hearings officer receives it. The hearings officer must send a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or individual's legal representative may cancel the withdrawal up to the tenth work day following the date such an order is issued.

(l) Proposed and final orders.

(A) In a contested case, the hearings officer must serve a proposed order on the individual and the Department. The proposed order will become a final order if no exceptions are filed within the time specified in subsection (2)(l)(B) of this rule;

(B) If the hearings officer issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by the Department. The exceptions must be in writing and must reach the Department no later than ten days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless the Department prior-approves. After receiving the exceptions, if any, the Department may adopt the proposed order as the final order or may prepare

a new order. Prior to issuing the final order, the Department may issue an amended proposed order.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

411-330-0140 In-Home Support Service Operation
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Personnel Policies and Practices.

(a) Personnel files and qualifications records. The CDDP must maintain up-to-date written position descriptions for all Services Coordinators coordinating In-Home support services that includes written documentation of the following for each staff person:

(A) Reference checks and confirmation of qualifications prior to hire;

(B) Satisfactory completion of basic orientation, including mandatory abuse reporting training;

(C) Satisfactory completion of job-related inservice training;

(D) Department of Human Services approval to work based on a criminal records check;

(E) Notification and acknowledgement of mandatory abuse reporter status;

(F) Any founded reports of child abuse or substantiated abuse allegations;

(G) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(H) Legal U.S. worker status.

(2) Services Coordinator training. The CDDP must provide or arrange for Services Coordinators to receive training needed to provide or arrange for the IHS services.

(3) Record requirements. The CDDP must maintain records in compliance with this rule, applicable state and federal law, other state rules regarding audits and clinical records, and the most current edition of the Mental Health and Developmental Disability Services Division Handbook on Confidentiality.

(a) Disclosure and confidentiality. For the purpose of disclosure from individual medical records under these rules, the CDDPs are considered "providers" as defined in ORS 179.505(1), and 179.505 is applicable. Access to records by the Department does not require authorization by the individual or individual's legal representative. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(b) Abuse. CDDP and provider organizations must maintain documentation in a separate provider file of inquiry into, and subsequent answer of, whether an independent provider or an employee of a provider organization has been found to have committed abuse. Records must also include any founded reports of child abuse or substantiated allegations of abuse against the independent provider or employee of a provider organization.

(c) Individual records. The CDDP must maintain and make available on request for Department review up to date records for each individual receiving In-Home services. These records must include:

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

(B) Records related to receipt and disbursement of public and private support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-330-0070 and documentation that individual and individual's legal representative understand and accept or delegate record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

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

(E) IHS Plan and reviews;

(F) Services Coordinator correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(d) Special requirements for IHS direct assistance expenditures. The CDDP must develop and implement written policies and procedures concerning use of IHS funds to purchase goods and services that are described in the IHS Plan as required to meet the support needs of individuals. These policies and procedures must include, but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records may be maintained by the individual or family:

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

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

(iii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

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

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

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

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

(iii) The CDDP must obtain prior authorization from the Department for environmental accessibility adaptations to the home costing more than $1500;

(iv) The CDDP must ensure that projects for environmental accessibility adaptations to the home costing $5000 or more are:

(I) Reviewed and approved by the Department before work begins and before final payment is made;

(II) Completed or supervised by a contractor licensed and bonded in the State of Oregon; and

(III) That steps are taken as prescribed by the Department for protection of State's interest through liens or other legally available means; and

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

(C) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to IHS plan or according to an agreement securing the State's use may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or Centers for Medicare and Medicaid Services or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(e) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rule pertaining to fraud and embezzlement.

(f) Records retention. Records must be retained in accordance with OAR Chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records, and all other records (except client records) must be retained for a minimum of three years after the close of the contract period, or until audited. Client records must be kept for a minimum of seven years.

(4) Other operating policies and practices. The CDDP must develop and implement such written statements of policy and procedure in addition to

those specifically required by this rule as are necessary and useful to enable the agency to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0150 Quality Assurance
(Effective 12/28/2003)

The CDDP must participate in statewide evaluation and regulation activities as directed by the Department.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

411-330-0160 Inspections and Investigations
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) Inspections and investigations required. The CDDP must allow the following types of investigations and inspections to be performed by the Department, or other proper authority:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

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

(3) Required documentation. All documentation and written reports required by this rule must be:

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

(b) Submitted to the Department, or other proper authority within the time allotted.

(4) Priority of investigation under Section (1)(c) of this rule. When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Department has determined to initiate an investigation, the CDDP must not conduct an internal investigation without prior authorization from the Department. 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.

(5) Investigations must be completed as prescribed by OAR 407-045-0250 through OAR 407-045-0360, Abuse Reporting and Protective Services in Community Programs and Community Facilities, and must include an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report must include the findings based upon the abuse investigation.

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

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

(8) Plan of improvement. A plan of improvement must be submitted to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.670

411-330-0170 Variances
(Effective 12/28/2003)

(1) Criteria for a variance. Variances may be granted to a CDDP if the CDDP lacks the resources needed to implement the standards required in OAR chapter 411, division 330, 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. OAR 411-330-0060(6)(a) through (r) and 411-330-0110 are specifically excluded from variance.

(2) Variance application. The CDDP requesting a variance must submit a written application to the Department 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) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's service, evidence that the variance is consistent with the individual's current IHS Plan.

(3) Department review. The Administrator or designee may approve or deny the request for a variance. This decision will be final.

(4) Notification. The Department must notify the CDDP of the decision. This notice must be sent within 45 calendar days of the receipt of the request by

the Department with a copy sent to all relevant Department programs or offices.

(5) Written approval. The CDDP may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.670

Exhibit 330-1

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