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

CHAPTER 411
DIVISION 335

PROCTOR CARE RESIDENTIAL SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

411-335-0010 Statement of Purpose
(Effective 1/1/2007)

PURPOSE. These rules prescribe administrative, policy, procedure, documentation, and personnel requirements for Proctor agencies providing intensive, person focused services to individuals with developmental disabilities experiencing significant emotional, medical, or behavioral difficulties. Proctor providers are specially trained and supported by the proctor agency. Proctor providers assist the individual in a home environment, to make positive changes in his or her adaptive skills that will enable him or her to move to a less restrictive setting. These rules also prescribe standards and procedures by which the Department of Human Services certifies programs to safely operate and oversee Proctor care homes, and provide training and support to children with developmental disabilities.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0020 Definitions
(Temporary Effective 1/1/2010 – 6/30/2010)

(1) "Abuse" means abuse of a child as defined in ORS 419B.005, and for the purposes of this rule, abuse of a child is also abuse as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0260 through 407-045-0360 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0290.

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

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

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

(6) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's guardian 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.

(7) "Agency Staff" means a person responsible for providing services directly or indirectly to children in proctor care, and whose wages or fees are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

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

(9) "Appeal" is the process by which a licensed or certified provider may petition the suspension, denial or revocation of their license or certificate or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(10) "Applicant(s)" means a person, agency, corporation or governmental unit, who applies for a certificate to operate a proctor agency providing 24-hour intensive individually focused contracted services to children or adults with developmental disabilities experiencing emotional, medical, or behavioral difficulties.

(11) "Baseline Level of Behavior" means the frequency, duration or intensity of a behavior, objectively measured, described and documented

prior to the implementation of an initial or revised behavior support plan. This baseline measure serves as the reference point by which the ongoing efficacy of the support plan is to be assessed. A baseline level of behavior shall be reviewed and reestablished at minimum yearly, at the time of the individual's support plan team meeting.

(12) "Behavior Data Collection System" is the methodology specified within the individual's behavior support plan that directs the process for recording observation, intervention and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(13) "Behavior Data Summary" is a document composed by the provider agency to summarize episodes of physical intervention. This document serves as a substitution for the requirement of individual incident reports for each episode of physical intervention, only in circumstances when the physical intervention implemented is:

> (a) The Oregon Intervention System (OIS) defined technique of evasion; or
>
> (b) For episodes of physical positioning, as defined in 411-325-0020(50).

(14) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for service providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment and teach new skills.

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

(16) "Care" means supportive services, including but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation. Care also includes being aware of the individual's general whereabouts at all times, and monitoring the activities of the individual while at the proctor home to assure their health, safety and welfare.

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

(18) "Child" means an individual under the age of 18 and who has a provisional eligibility determination of developmental disability.

(19) "Choice" means the individual's and guardian'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 method.

(20) "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.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program which 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.

(22) "Competency Based Training Plan" means a written description of the agency's process for providing training to newly hired agency staff and proctor providers. At a minimum the plan must address health, safety, rights, values and personal regard, and the provider's mission. The plan shall describe competencies; training methods; timelines; how competencies of staff are determined and documented, including steps for remediation; and when a competency(ies) may be waived by the agency to accommodate a staff person's or proctor provider's specific circumstances.

(23) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken an

action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(24) "Condition" means a provision attached to a new or existing certificate, which limits or restricts the scope of the certificate or imposes additional requirements on the agency or proctor provider.

(25) "Contracting Entity" means the CDDP or agency contracting with the Department.

(26) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS 427 and an imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(27) "Denial" is the refusal of the Department of Human Services to issue a certificate to operate a Proctor Agency because the Department has determined that the agency is not in compliance with one or more of these administrative rules.

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

(29) "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 continued, or may be expected to continue, indefinitely; and
>
> (c) Constitutes a substantial impairment in adaptive behavior; and

(d) The condition or impairment must not otherwise primarily be attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) 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.

(30) "Developmental Disability" for children five years and younger means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely, and is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: Self care, receptive and expressive language, learning, mobility, and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that shall likely cause significant adaptive impairment in at least two of the areas listed in OAR 411-320-0020(5).

(31) "Developmental Disability" for children six years and older is always provisional and means:

(a) There is a diagnosis of mental retardation; OR

(b) There is a diagnosis of developmental disability; AND

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction; AND

(B) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(C) The individual is expected to need multiple, specialized supports indefinitely.

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

(33) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when the parent cannot be identified or located after reasonable efforts; when there is reasonable cause to believe that the child has a disability and is a ward of the state; or at the request of a parent or adult student.

(34) "Entry" means admission to a Department funded developmental disability service provider. For purposes of this rule entry means admission to a certified proctor provider home.

(35) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the administration of the program's services for individuals.

(36) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within the agency.

(37) "Foster Care" for the purpose of this rule means 24-hour substitute care for children in a certified foster home that is maintained and lived in by the person named on the foster home certificate, and contracted with the Proctor Agency.

(38) "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.

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

(40) "Guardian" means a parent of a child under the age of 18 years or a person or agency appointed by the courts that is authorized by the court to make decisions about services for either a child or an adult.

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

(42) "Incident Report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual, written by the proctor provider or agency representative involved in or witnessing the incident.

(43) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(44) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator.

(45) "Individualized Education Plan" (IEP) means a written plan of instructional goals and objectives in conference with the teacher, parent/guardian, student, and a representative of the school district.

(46) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for the individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(47) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, the foster provider, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian, if any, relatives of the individual, and the Services Coordinator and other persons who are well liked by the individual.

(48) "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 having 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. (See ORS 427.005.)

(49) "Legal Representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian.

(50) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team shall have the authority to make decisions for the team. Representatives from service provider(s), families, the Services Coordinator, or advocacy agencies shall be considered as one member of the ISP team for the purpose of reaching majority agreement.

(51) "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.

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

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

(54) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(55) "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.

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

(57) "Oregon Core Competencies" is:

> (a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and
>
> (b) The associated timelines in which newly hired staff must demonstrate competencies.

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

(59) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(60) "Physical Restraint" means a physical intervention that includes manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

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

(62) "Proctor Agency" means an entity or program certified by the Department of Human Services to provide contracted and supervised services in foster homes.

(63) "Proctor Care Services" means a comprehensive residential program certified by the Department of Human Services to provide intensive individually focused contracted foster care, training, and support to individuals with developmental disabilities, experiencing emotional, medical, or behavioral difficulties.

(64) "Proctor Provider" means the provider of the home who is either licensed as an adult foster home or certified as a child foster home individuals with developmental disabilities.

(65) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities that 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.

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

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

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

(69) "Respite Care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(70) "Revocation" is the action taken to rescind a proctor provider home or agency certificate after the Department has determined that the program is not in compliance with one or more of these administrative rules.

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

(72) "Services Coordinator" means an employee of the CDDP or other agency which contracts with the County or Department, who is selected to plan, produce, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities as long as the Department holds the direct contract with the Proctor Agency.

(73) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider",

"proctor agency", "proctor agency staff", "applicant", "foster provider", "proctor provider", "alternative care-giver", "baby sitter", "respite provider", "crisis provider", "skill trainer" or "sub contractor" are synonymous with "service provider".

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

(75) "Specialized Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physicians order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast, and include fresh fruit with each meal.

(76) "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.

(77) "Support" means those services that assist the individual in maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services may include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individuals specified needs in the areas of integration and independence. Support also includes services the Proctor Agency provides to its contracted proctor providers. Provider support may include respite, individualized training, and consultation.

(78) "Suspension of Certificate" is an immediate withdrawal of the approval to operate a proctor provider home or agency when the Department determines that there is imminent danger to the health or safety of the individuals served.

(79) "Transfer" means movement of an individual from one proctor home to another within the same agency within the same county.

(80) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to assure health and safety, and the assessments and consultations necessary for the ISP development.

(81) "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.

(82) "Variance" means an exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the proctor provider or agency.

(83) "Volunteer" is any person assisting in a proctor home or the agency without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth.: ORS 409.050, 410.070, 427.007, & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0030 Program Management and Personnel Practices
(Temporary Effective 1/1/2010 – 6/30/2010)

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

(2) Basic personnel policies and procedures. The agency must have and implement personnel policies and procedures, which address suspension, increased supervision, or other appropriate disciplinary employment procedures when an agency staff member, or subcontractor, including respite providers and volunteers, has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated. Policy shall reflect that any incurred crime as described under the criminal records check rules in OAR 407-007-0200 to 407-007-0370 shall be reported to the agency.

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

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

(a) The program may not use public funds to support, in whole or in part, the employment in any capacity of a person who has been hired on or after January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 335-1;

(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 335-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 335-1.

(b) 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 January 1, 2010, or is subject to criminal records checks after January 1, 2010 as required by administrative rule, and who has been convicted:

(A) Of a crime listed in Exhibit 335-1;

(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 335-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 335-1.

(5) For investigations conducted by the Department or it's designee in homes certified for children, the definitions of abuse described in ORS 419B.005 and OAR 407-045-0260 shall apply.

(6) Prohibition against retaliation. The agency must not retaliate against any agency staff member, subcontractor including respite providers and volunteers, or proctors providers who report in good faith suspected abuse, or retaliate against the individual in care, with respect to any report. An accused person cannot self-report solely for the purpose of claiming retaliation.

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

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

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

(B) Discharge from or termination of employment;

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

(D) Restriction or prohibition of access to the program or the individuals served by the program.

(7) Responsibilities of Proctor Agency. The proctor agency must:

(a) Implement policies and procedures to assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure necessary training of agency staff and proctor providers.

(b) Implement policies and procedures to assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in the proctor care services. Policies and procedures must include frequency of review.

(c) Implement policies and procedures to assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to: respite care in the proctor provider's home during day hours only, respite care in the home of someone other than the proctor provider for day time only, overnight care in the proctor provider's home, and overnight care at someone other than the proctor provider's home.

(d) Implement policies and procedures to assure confidentiality of individuals in service and of family information.

(e) Implement policies and procedures to review and document that each child enrolled in proctor care services continues to require such services. Policies and procedures must include frequency of review and the criteria as listed below.

(A) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record (RTR) and functional assessment of the behavior.

(B) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(C) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(D) The child poses no significant risk to self or community.

(E) The proctor provider has not needed or utilized the agency crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(F) The proctor provider is successfully supporting the child over time, with a minimum of agency case management contact other than periodic monitoring and check in.

(G) The proctor provider does not require professional support for the child, and there has been or could be a reduction in ongoing weekly professional support for the child including consultation, skill training and staffing.

(H) The proctor agency is not actively working with the child's family to return the child to the family home.

(f) Adults in proctor services. The agency must develop and implement policies and procedures that the ISP Team evaluates annually the individual's support needs and need for proctor services.

(g) Assure that preliminary certification or licensing (whichever is appropriate) activities are completed per the relevant foster care statutes and OAR chapter 411, divisions 346 or 360. Such work is submitted to Department of Human Services Seniors and People with Disabilities Division for final review and approval.

(h) Complete an initial home study for all proctor provider applicants that are updated annually for all licensed or certified proctor providers.

(i) Provide and document training and support to agency staff, proctor provider, subcontractors, volunteers, and respite providers to maintain the health and safety of the individuals served.

(j) Provide and document training and support to the agency staff, proctor provider, subcontractors, volunteers, and respite providers to implement the ISP process, including completion of a Risk Tracking

Record development of protocols and BSP for each individual served and the development of the ISP.

(k) Have a plan for emergency back-up for home provider including but not limited to, use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(l) Coordinate and document entries, exits, and transfers.

(m) Report to the Department, and the CDDP, any placement changes due to a crisis plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(n) Assure that each proctor provider has a current emergency disaster plan on file in the proctor provider home, in the agency office and provided to the CDDP and any case manager of an individual who is not an employee of the local CDDP.

(o) Assure that emergency backup in the event the proctor provider is unavailable.

(8) General Requirements for Safety and Training. All volunteers having contact with the individual, proctor providers, substitute caregivers, respite providers, child care providers and agency staff, except for those providing services in a crisis situation must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS Certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification is required if it is unlikely that physical intervention shall be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age, and have a valid social security card.

(f) Be cleared by the DHS criminal records check requirements.

(g) Have a valid Oregon Driver's License, and proof of insurance.

(h) Receive training in applicable agency policies and procedures.

(9) In addition to the above general requirements, the following requirements must be met for each specific provider classification as listed below.

(a) Proctor Providers:

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411, divisions 335 and 346, or division 360 as appropriate to their license or certificate.

(b) Skills Trainers, Advisors, or other Agency Staff:

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411, divisions 335 and 346 or division 360.

(C) Anyone age 18 or older, living in an agency staff persons uncertified home must have an approved DHS criminal records check per OAR 407-007-0200 to 407-007-0370 and section (4) of this rule prior to any visit of an individual to the staff person's home.

(D) Must assure health and safety guidelines for alternative caregivers, including but not limited to the following:

(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport an individual.

(c) Respite Providers

(A) In Proctor Provider Home -- Day or Night

(i) Must be trained on basic health needs of the individuals in service.

(ii) Must be trained on basic safety in the home including, but not limited to first aid supplies, the emergency plan, and the fire evacuation plan.

(B) In other than Proctor Provider Home -- Day or Night. Must assure health and safety guidelines for alternative caregivers, including, but not limited to:

(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, have an openable window, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents an individual from accessing them.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations.

Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport individuals.

(d) Alternate Care Givers

(A) Day Care, Camp.

(i) When a child is cared for by a childcare provider, camp, or child care center, the Proctor agency must assure that the camp, provider home or center is certified, licensed, or registered as required by the State Individual Care Division (ORS 657A.280). The agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, childcare center, or childcare provider home.

(ii) Adults participating in employment or alternatives to employment must have such services addressed in their ISP. Any camping or alternative day service experience must be addressed in the ISP and approved by the ISP Team.

(B) Social Activities for less than 24 hours, including overnight arrangements.

(i) Proctor Agency must assure the person providing care is capable of assuming all care responsibilities, and must be present at all times.

(ii) Proctor Agency must assure that the ISP team is in agreement with the planned social activity.

(iii) Proctor agency must assure that the proctor provider maintains back-up responsibilities for the person in service.

(10) General Crisis Requirements for Individuals already in Proctor Agency Homes.

(a) Crisis Service Providers must:

(A) Be at least18 years of age.

(B) Have an initial and annual approval to work based on current Department policies and procedures for review of criminal records check per OAR 407-007-0200 to 407-007-0370 and section (4) of this rule prior to supervising any individual. Providers serving children must also have a Child Welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Training for the provider must include information on required documentation for health, safety, and behavioral needs of the individual.

(b) The Agency must:

(A) Make follow-up contact with the crisis providers within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(11) Mandatory abuse reporting personnel policies and procedures. Proctor agency staff and caregivers are mandatory abuse and neglect reporters under Oregon State law (ORS 419B.005 and ORS 430). Upon reasonable cause to believe that abuse or neglect has occurred, all members of the household and any proctor provider, substitute care givers, agency employees, independent contractors or volunteers must report pertinent information to DHS-CW, the CDDP, or law enforcement. For reporting purposes the following shall apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(12) Director qualifications. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services or a related field. Six years of additional experience in the identified fields may be substituted for a degree.

(13) Proctor agency staff and proctor providers, including subcontractors and volunteers qualifications. Any agency staff including skill trainers, respite providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age, and have a valid social security card.

(b) Have approval to work based on current Department policies and a criminal records check completed by the Department as described in section (4) of this rule.

(c) Disclosed any founded reports of child abuse or substantiated abuse allegations.

(d) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, Services Coordinators and appropriate others, and be able to respond to emergency situations at all times.

(e) Have met the basic qualification in the agency's training plan.

(f) Meet any additional qualifications specified for substitute caregivers in OAR 411-360-0110(3)(a-k) and 411-360-0120(3) if working in a home licensed as an AFH-DD.

(14) Personnel files and qualification records. The agency must maintain clear, written, signed, and up to date job descriptions and respite agreements when applicable, as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each agency employee. The record must include the following.

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

(b) Written documentation of an approved criminal records check by the Department as required by OAR 407-007-0200 to 407-007-0370.

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter.

(d) Written documentation of any founded reports of child abuse or substantiated abuse allegations.

(e) Written documentation kept current that the agency staff person has successfully completed competency-based training in areas identified by the agency's training plan as required by Oregon's Core Competencies defined in OAR chapter 411, division 325 and chapter 411, division 335 and that is appropriate to their job description.

(f) Written documentation of 12 hours of job-related in-service training annually.

(g) Proctor providers must meet all of the certification standards as written in the child foster certification OAR chapter 411, divisions 346 and 335 or the adult foster home licensing standards OAR Chapter 411, divisions 335 and 360 or Child Welfare administrative rules, chapter 413, divisions 200 and 220 whichever apply to the type of foster home.

(15) Agency documentation requirements. All documentation required by this rule must:

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

(b) Be accurate and contain no willful falsification.

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

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

(e) Be made readily available for the purposes of inspection.

(16) Dissolution of agency. Prior to the dissolution of an agency, a representative of the governing body or owner must notify the Department 30 days in advance in writing and make appropriate arrangement for the transfer of individual's records.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0040 Safety: Staffing Requirements
(Effective 1/1/2005)

General Staffing Requirements. Each proctor agency must assure that the appropriate number of agency staff, proctor providers, respite providers and support staff are available to meet the safety needs and identified ISP goals for individuals served.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0050 Issuance of Proctor Care Agency Certificate
(Effective 1/1/2007)

(1) Certificate. No person, agency or governmental unit acting individually or jointly with any other person, agency or governmental unit will establish, conduct, maintain, manage or operate Department funded Proctor Services in proctor provider homes for individuals with developmental disabilities without being certified by the Department for each home or facility.

(2) Not transferable. No certificate is transferable or applicable to any other agency, management agent or ownership other than that indicated on the application and certificate.

(3) Terms of certificate. The Department will issue a certificate to an agency found to be in compliance with these rules. The certificate will be in effect for two years from the date issued unless revoked or suspended.

(4) Any home managed and contracted to serve children with developmental disabilities by a proctor care agency under this certificate must be certified by the Department in accordance with Seniors and People with Disabilities Division's OAR for Children's Foster provider homes: OAR 411-346-0100 through 411-346-0230.

(5) Any home managed and contracted to serve adults with developmental disabilities must be licensed as an adult foster home for adults with developmental disabilities (AFH-DD) in accordance with OAR chapter 411, division 360.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0060 Application for Proctor Care Agency Certificate
(Effective 1/1/2007)

(1) Application. At least 60 days prior to anticipated certification the agency must submit an application on a Department approved form and must include all information required by the Department.

(2) Number of homes and individuals. The agency must identify the number of homes and children the agency is presently capable of managing at the time of application, considering ancillary service capability and the requirements as specified by these rules. For purposes of agency certification renewal, the number of homes to be certified or licensed and the number of individuals to be served must not exceed the number identified on the certificate to be renewed unless approved by the Department.

(3) Certification required prior to providing services. A Proctor Agency must not recruit, train, perform preliminary certification activities or provide any

proctor services prior to receiving a written confirmation of Proctor Agency Certification from the Department.

(4) Demonstrated Capability and Performance History

(a) If an agency fails to provide complete, accurate, and truthful information during the application and certification process the approval process may be delayed and the Department may deny the application or revoke the certificate.

(b) Any applicant(s) or person(s) with a controlling interest in an agency will be considered responsible for acts occurring during, and relating to, the operation of such agency for purpose of certification.

(c) The Department may consider the background and operating history of the agency, the Executive Director and each person with a having an incident of ownership in the facility of ten percent or more when determining whether to issue certificate.

(d) When an application for initial certification is made by an agency that manages, owns or operates other certified services or licensed facilities in Oregon, the Department may deny the certificate if the agency's existing home(s) or facility(ies) are not, or have not been, in substantial compliance with applicable Oregon Administrative Rules.

(5) Admittance of individuals.

(a) No proctor agency or home contracted with the proctor agency will admit individuals to a home whose care needs or age, exceed the home's certificate or license, or would violate conditions on the certificate or license, without prior written consent of the Department or its designee.

(b) No proctor agency or home contracted with the proctor agency will admit or continue to serve children or adults whose numbers exceed the capacity on the proctor provider's Child Foster Home certificate or Adult Foster Home license without Department approval.

(c) No proctor agency or home contracted to provide proctor services, will admit or continue to provide proctor services to children who can

be safely and appropriately supported in foster care, if available, or the individual's family home, as outlined in this OAR 411-335-0030(5)(e)(A-H).

(d) No proctor agency or home contracted with the proctor agency will admit an individual from another funding source without first determining that the care and safety needs of all individuals in the home may be maintained, and that there is prior written approval from the placing agency(s) and the Community Developmental Disability Program (CDDP) where the foster home is located.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0070 Certificate Expiration, Termination of Operations, Certificate Return
(Effective 1/1/2007)

(1) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a proctor agency will expire two years following the date of issuance.

(2) Termination of operation. The certificate will be considered void immediately if the operation is discontinued for any reason by voluntary action of the agency or if there is a change in ownership.

(3) Return of certificate. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when the operation is voluntarily or involuntarily discontinued.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0080 Renewal of Certification
(Effective 1/1/2007)

(1) Renewal application required. A certificate is renewable upon submission of an application to the Department.

(2) Filing of application extends date of expiration. Filing of an application for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application is not submitted prior to the expiration date, the agency will be considered as not certified to provide Proctor Care Services for individuals with developmental disabilities funded by the Department.

(3) Certification review. The Department will conduct a certification review of the agency and agency services prior to the renewal of the certificate. The review may be unannounced, will be conducted prior to expiration of the certificate and will review compliance with OAR chapter 411, division 335 and where appropriate, chapter 411, divisions 346 or 360.

(4) Refusal to renew a certification. The Department will not renew a certificate if the agency or its services are not in substantial compliance with these rules.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0090 Change of Ownership, Legal Entity, Legal Status, Management Corporation
(Effective 1/1/2007)

Notice of pending change in ownership, legal entity, legal status, or management corporation: new certificate required. The agency must notify the Department in writing of any pending change in the program's ownership or legal entity, legal status, or management corporation and submit a certification application at least 30 days prior to change in ownership, legal entity or legal status.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0100 Inspections and Investigations
(Temporary Effective 1/1/2010 – 6/30/2010)

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

(a) Quality assurance, certificate renewal and onsite inspections; including a review of records at the agency office, as well as onsite review of at least one or more proctor provider home(s) as selected by the Department.

(b) Complaint investigations; and

(c) Abuse investigations. Priority review may be given when protective service investigations have taken place.

(2) Inspections and investigations by the Department, its designee or proper authority. The Department, its designee, or proper authority shall perform all inspections and investigations.

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

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

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

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee has determined to initiate an investigation, the provider must not conduct an internal investigation. 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 must be taken to assure individual safety.

(6) When an abuse investigation is initiated or completed by the Department or its designee, the Department or its designee shall provide notification in accordance with OAR 407-045-0290 and OAR 407-045-0320.

(7) The Department or its designee shall conduct investigations and complete reports in accordance with procedures prescribed in OAR chapter 407, division 045. The report must include the findings based upon the abuse investigation.

(8) Upon completion of the abuse investigation. Upon completion of the abuse investigation by the Department, its designee, or law enforcement agency, an agency may conduct an investigation to determine if any additional personnel actions are necessary.

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

(10) Plan of correction. A plan of correction must be submitted to the CDDP and the Department for any noncompliance found during an inspection under these rules.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0110 Mid-Cycle Review
(Effective 1/1/2007)

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the agency and its services nine to fifteen months after renewal of the agency's certificate under the following circumstances:

(a) Failure by the agency to successfully complete certificate renewal as evidenced by two of more follow-up reviews; or

(b) Failure by the agency to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or agency.

(2) Self-Assessment Required. As part of the mid-cycle process the agency must conduct a self-assessment based upon the requirements of this rule.

(a) The agency must document the findings of the self-assessment on forms provided by the Department;

(b) The agency must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The agency must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) Compliance with OAR chapter 411, division 335. The review will be conducted for compliance with OAR chapter 411, division 335 and where applicable, OAR chapter 411, divisions 346 or 360. The review may be announced or unannounced based on the discretion of the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0120 Variances
(Effective 1/1/2007)

(1) Criteria for a variance. The Department may grant a variance to these rules based upon a demonstration by the agency that the requested variance provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety or rights of individuals.

(2) Variance application. The agency requesting a variance must submit, in writing, a variance request on Department forms either to the SPD Residential Services Coordinator or the CDDP designee whichever entity holds the contract for proctor services. The representative for the entity holding the contract will review the request, make a recommendation for approval or denial and submit to the Department. Any variance that applies to a proctor provider home must be submitted in accordance with this rule OAR chapter 411, divisions 335 or 360 whichever rule apply to the home. Variance applications must at a minimum contain 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 that provides equal or greater program effectiveness that does not adversely impact health, safety or rights;

(d) Evidence, when appropriate, that the variance is consistent with a currently approved ISP according to OAR chapter 411, divisions 335 and 360; and

(e) Provide any supplementary information as may be required by the Department.

(3) Program review. The Manager or designee of the contracting entity will forward the signed variance request form with a recommendation for approval or denial to the Department within 30 days of receipt of the request indicating its position on the proposed variance. If variance affects more than one contracting entity the variance must be reviewed and signed by each.

(4) Department review. The Administrator or designee will approve or deny the request for a variance.

(5) Notification. The Department must notify the proctor agency and the contracting entity of the decision. The Department will send this notice within 30 calendar days of receipt of the request with a copy to other relevant Department programs or offices.

(6) Appeal. An Agency may appeal of the denial of a variance by submitting a request in writing to the Administrator or his designee within 10 days of the denial with a copy sent to the contracting entity. The Administrator's decision will be final.

(7) Duration of variance. The Department will determine the duration of the variance. A variance cannot extend beyond the term of the certificate.

(8) Written approval. The agency or proctor provider may implement a variance only after receiving written approval from the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0130 Direct Contracted Services
(Effective 1/1/2007)

For purposes of this rule OAR chapter 411, division, 335, Proctor Agencies directly contracting services with the Department will submit required documentation for children's services to the SPD Residential Services Coordinator, in addition to the CDDP services coordinator, unless otherwise specified.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0140 Individual/Family Involvement Policy
(Effective 1/1/2007)

Individual/family involvement policy needed. The agency must have and implement a written policy that addresses:

(1) Opportunities for the adult service recipients and guardians to participate in decisions regarding the operations of the agency;

(2) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the agency to interact;

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

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0150 Rights: General
(Effective 1/1/2007)

(1) Abuse prohibited. Individuals must not be abused, nor will abuse be tolerated by any foster provider, agency employee, alternate or substitute caregiver, respite provider, contractor or volunteer of the agency.

(2) Protection and well-being. The agency must assure the health and safety of individuals from abuse including the protection of individual's rights, as well as, encouraging and assisting individuals through the ISP process to understand and exercise these rights. With the exception of individuals under the age of 18, where a parent or guardian has placed reasonable limitations, these rights must, at a minimum, provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order;

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

(c) Visits and communication with family members, guardians, friends, advocates and others of the individual's choosing, as well as legal and medical professionals; unless limited due to legal process;

(d) Confidential communication including personal mail and telephone;

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

(f) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

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

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

(i) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(j) Expression of sexuality within the framework of State and Federal Laws, and, for adults over the age of 18, the freedom to marry and to have children;

(k) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities and health care resources;

(l) Individual choice for children and adults that allows for decision-making and control of personal affairs appropriate to age;

(m) Services, which promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult;

(n) Individual choice for adults to consent to or refuse treatment unless incapable and then an alternative decision maker is allowed to consent or refuse. For children, consent to or refusal of treatment by the child's parent or guardian except as defined in statute (ORS 109.610) or limited by court order;

(o) Individual choice to participate in community activities, except where limited by a court order;

(p) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(3) Policies and procedures. The agency must have and implement written policies and procedures that protect an individual's rights as listed in OAR chapter 411, division 335.

(4) Notification of policies and procedures. The agency must inform each individual and parent or guardian orally and in writing of their rights and a description of how to exercise these rights. This must be completed at entry to the program and in a timely manner thereafter as changes occur. Information must be presented using language, format, and methods of communication appropriate to the individual's and family/guardian's needs and abilities.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0160 Rights: Behavior Support
(Effective 1/1/2007)

(1) Written policy required. The agency must implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) Development of an individualized plan to alter an individual's behavior. A decision to develop a plan to alter an individual's behavior must be made by the ISP team, and must be based on the Risk Tracking Record. Documentation of the ISP team decision must be maintained by the agency.

(3) Functional assessment required. The agency must conduct a functional assessment of the behavior, which must be based upon information provided by one or more persons who know the individual. The functional assessment must include:

> (a) A clear, measurable description of the behavior that includes frequency, duration and intensity of the behavior;
>
> (b) A clear description and justification of the need to alter the behavior;

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

(A) An effort to communicate;

(B) The result of medical conditions;

(C) The result of psychiatric conditions; and

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

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

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

(4) BSP requirements. The BSP must include:

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

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

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

(d) Prevention strategies including environmental modifications and arrangement(s);

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

(f) A general crisis response plan that is consistent with the Oregon Intervention System (OIS).

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the plan that includes a method of collecting and reviewing data on frequency, duration and intensity of the behavior;

(i) Specific instructions for agency staff to follow regarding the implementation of the plan; and

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

(5) Additional documentation requirements for implementation of behavioral support plans. The agency must maintain the following additional documentation for implementation of behavioral support plans:

(a) Written evidence that the individual, guardian or legal representative (if applicable) and the ISP team are aware of the development of the plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the BSP; and

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

(6) Notification of policies and procedures. The agency must inform each individual and guardian of the behavior support policy and procedures at the time of entry to the program and as changes occur.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0170 Rights: Physical Intervention
(Effective 1/1/2007)

(1) Circumstances allowing the use of physical intervention. The agency must assure that agency staff and foster providers employ only physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Physical intervention techniques must only be applied:

(a) When the health and safety of the individual or others is at risk, and the ISP team has authorized the procedures as documented by

an ISP team decision, included in the ISP and the procedures are intended to lead to less restrictive intervention strategies; or

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

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

(2) Staff and training. Agency staff members and foster providers who support individuals with a history of behavior that may require the application of physical intervention, and the ISP team has determined that there is probable cause for future application of physical intervention, must be trained by an instructor certified in the Oregon Intervention System (OIS). Documentation verifying such training must be maintained in the personnel file.

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

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

(a) Be reviewed by the agency's executive director or designee within one hour of application. Review will verify the following:

(A) The physical intervention was used in an emergency and only until the individual was no longer an immediate threat to self or others.

(B) An incident report is prepared and submitted within one working day to the Services Coordinator and the individual's guardian.

(C) Determine the need for an ISP team meeting if the emergency intervention is used three times in a six-month period.

(5) Incident report. Any use of any physical intervention must be documented in an incident report. Agency staff or proctor providers or other support staff who are involved in the incident, or who have witnessed the event, must write the report. The report must include:

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

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

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

(d) Documentation of any injury;

(e) The name and position of the agency staff member(s) or proctor provider(s) applying the physical intervention;

(f) The name(s) and position(s) of the agency staff or proctor provider(s) witnessing the physical intervention;

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

(h) Documentation of an administrative review that includes the follow-up to be taken to prevent a recurrence of the incident by the director or his/her designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) Copies submitted. A copy of the incident report must be forwarded to the Services Coordinator and the legal guardian within five working days of the incident,

(a) Copies of incident reports will not be provided to a legal guardian, personal or other service providers, when the report is part of an abuse or neglect investigation.

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

(c) All interventions resulting in injuries must be documented in an incident report and forwarded to the Services Coordinator and the legal guardian within one working day of the incident.

(7) Behavior data summary. The program may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others.

(b) The intervention utilized is not a physical restraint.

(c) There is a formal written functional assessment and written behavioral support plan.

(d) The individual's behavior support plan defines and documents the baseline level of behavior.

(e) The physical intervention technique(s), and the behavior(s) for which they are applied remain within the parameters outlined in the individual’s behavior support plan and OIS curriculum.

(f) The behavior data collection system for recording observation, intervention and other support information critical to the analysis of the efficacy of the behavior support plan, is also designed to record items as required in support in OAR 411-325-0350(5)(a)-(c) and (e)-(h).

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

(8) Copy to Services Coordinator. A copy of the behavior data summary must be forwarded to the Services Coordinator, Department designee, and the individual's legal guardian every thirty days.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007, 430.215
Stats. Implemented: ORS 430.021(4), 430.610-430.670

411-335-0180 Rights: Psychotropic Medications and Medications for Behavior
(Effective 1/1/2005)

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

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

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

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

(3) Documentation requirements. The provider must keep signed copies of these forms in the individual's medical record for seven years.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0190 Safety: Incident Reports and Emergency Notifications
(Effective 1/1/2007)

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual must be placed in the individual's record. The agency staff or proctor provider who was involved in the incident must write the incident report. Someone who witnessed the event may also write the report. The report must include:

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

(b) A description of the incident.

(c) Agency staff or proctor provider response at the time.

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

(2) Sent to guardian and Services Coordinator. Copies of all unusual incident reports must be sent to the individual's Services Coordinator within five working days of the incident. Upon request of the guardian, copies of incident reports will be sent to the guardian within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of incident reports will not be provided to a guardian when the report is part of an abuse or neglect investigation.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CDDP or the Department, if the Department holds the direct contract, immediately of an incident or allegation of abuse falling within the scope of OAR 411-320-0020(1)(a)(A)-(G), (b)(A)-(E), and (c)(A)-(H). When an abuse investigation has been initiated, the contracting entity will assure that either the Services Coordinator or the program will also immediately notify the individual's legal guardian or conservator. The parent who is not the guardian, next of kin or other significant person may also be notified unless the adult requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

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

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

(b) The CDDP and the Department, if the Department holds the direct contract.

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

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

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

(b) The individual's designated contact person;

(c) The local police department; and

(d) The CDDP and the Department, if the Department holds the direct contract.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0200 Rights: Individuals' Personal Property
(Effective 1/1/2007)

Record of personal property. The program must ensure that individual written records of personal property are prepared and accurately maintained for each individual of personal property that has significant monetary value or is important to the individual as determined by a documented ISP team or guardian decision. The record must include:

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

(2) Date of inclusion in the record;

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

(4) Signature of agency staff or proctor provider making each entry; and

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

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0210 Rights: Handling and Managing Individuals' Money
(Effective 1/1/2007)

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

(a) Safeguarding of the individual's funds;

(b) Individuals receiving and spending their money; and

(c) Taking into account the individual's interests and preferences.

(2) Individual written record. The agency must assure that documentation of the individual's financial plan is completed II as part of the Proctor Care Individual Support Plan for each individual served.

(3) Reimbursement to individual. The agency must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of any agency staff member or proctor provider, for any funds within the custody of the agency that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing. Where appropriate the agency will ensure that the proctor provider reimburses any funds missing due to theft or mismanagement on the part of the proctor provide.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0220 Safety: Individual Summary Sheets
(Effective 1/1/2007)

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

(1) The individual's name, current and previous address, date of entry into the program, date of birth, sex, religious preference, preferred hospital, medical prime number and private insurance number where applicable, and guardianship status.

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

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

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

(c) The individual's preferred dentist.

(d) The individual's identified pharmacy.

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

(f) The individual's CDDP Services Coordinator, and for Department direct contracts, a Department representative.

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

(3) Any court ordered or guardian authorized contacts or limitations.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0230 Individual Support Plan
(Effective 1/1/2007)

(1) Department Individual Support Plan required. A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the proctor provider home within 60 days of entry and annually thereafter. The agency must assure that agency staff

and proctor providers are trained to implement the Proctor ISP in a manner consistent with the Department prescribed process.

(2) Preparation for ISP. The following required documents must be completed and summarized within 45 days prior to the ISP meeting for an individual:

(a) Risk Tracking Record;

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

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

(d) Other documents required by the ISP team.

(e) Personal Focus Worksheet.

(3) Content of Individual Support Plan. A completed ISP must be documented on the Department required form. Documentation of ISP Team members' signatures must be attached to the ISP.

(4) Any protocols as required by the Risk Tracking Record must be available for the proctor provider and any other caregivers.

(5) Availability and Implementation of ISP. The ISP and all documents of support must be available in the home for the provider(s) and any staff. The provider(s) and any staff must be trained in the ISP and it be implemented as written. Implementation must occur within the month of the expiration of the current ISP.

(6) Documentation required. The agency must maintain documentation of implementation of each support and service noted in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP and Department representatives.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0240 Health: Medical
(Effective 1/1/2007)

(1) Written policies and procedures. The agency must assure implementation of policies and procedures that maintain and protect the physical health of individuals placed in certified proctor provider homes operated and overseen by the Proctor Agency. Policies and procedures must address the following:

(a) Each individual's health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if needed;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) Individual health care. Each individual receiving proctor provider services must receive care that promotes their health and well-being as follows:

(a) The agency must assure each individual has a primary physician or qualified health care provider that the individual or guardian chooses from among qualified providers;

(b) The agency must assure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by a physician;

(c) The agency must assure that the health status and physical conditions of each individual is monitored, and take action in a timely

manner in response to identified changes or conditions that could lead to deterioration or harm;

(d) The agency must assure that a physician's or qualified health care providers written, signed order is obtained prior to the usage or implementation of all of the following:

(A) Prescription medications;

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

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The agency must maintain a copy of the order in the individual's central record, and assure that the original is maintained in the proctor provider home.

(f) The agency must assure that its contracted proctor provider, their designee, or proctor agency staff implements orders by a physician or qualified health care provider's as written.

(3) Required documentation. The agency must maintain records on each individual to aid physicians, licensed health professionals and proctor providers in understanding the individual's medical history. Such documentation must include:

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

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

(c) A record of known hospitalizations and surgeries.

(4) Medication procurement and storage. All medications must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer or physician, as specified per the physician's or licensed health care practitioner's written order; and

(c) Kept in a secured locked container and stored as indicated by the product manufacturer, or as identified and outlined in the ISP.

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

(a) The name of the individual;

(b) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency and method of administration;

(c) For topical medications and treatments without a physician's order, a transcription of the printed instructions from the package;

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

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

(f) Method of administration;

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

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

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

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

(6) Self-administration of medication. For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(7) Self-administration medications unavailable to other individuals. The program must assure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same proctor provider home, and store them as recommended by the product manufacturer.

(8) PRN/Psychotropic medication prohibited. PRN (i.e., as needed), orders will not be allowed for psychotropic medication.

(9) Adverse medication affects safeguards. Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible, all prescription medication except samples provided by the health care provider, for an individual from a single pharmacy that maintains a medication profile for him or her;

(b) Maintaining information about each medication's desired effects and side effects;

(c) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual, proctor provider, or respite provider.

(d) Documentation in the individual's record of reason why all medications should not be provided through a single pharmacy.

(10) Unused, discontinued, outdated, recalled and contaminated medications. All unused, discontinued, outdated, recalled and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:

(a) Date of disposal;

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

(c) Individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

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

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

(11) Direct nursing services. When direct nursing services are provided to an individual, the agency must:

(a) Coordinate with the nurse or nursing service and the ISP team to assure that the services being provided are sufficient to meet the individual's health needs; and

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

(12) Notification. When the individual's medical, behavioral or physical needs change to a point that they cannot be met by the agency, the Services Coordinator must be notified immediately and that notification documented.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0250 Health: Food and Nutrition
(Effective 1/1/2005)

(1) Modified or special diets. For individuals with physician or health care provider ordered modified or special diets the agency must assure that the proctor provider:

(a) Maintains menus for the current week that provide food and beverages that consider the individuals preferences and are appropriate to the modified or special diet; and

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

(2) Supply of food. The agency must assure that each proctor provider maintains in their home: adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0260 Safety: Transportation
(Effective 1/1/2005)

(1) Vehicles operated to transport individuals. Proctor providers, agency employees and volunteers, that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

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

(d) Carry a first aid kit in vehicles.

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

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

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0270 Emergency Plan and Safety Review
(Effective 1/1/2007)

(1) Written emergency plan. The agency must write an emergency plan to include instructions for the proctor provider and agency staff in the event of a fire, explosion, earthquake, accident, or other emergency including evacuation, if appropriate, of individuals served at the proctor provider home. The plan will be available at the Agency offices and the proctor home. A copy shall also be provided to the CDDP.

(2) Emergency telephone numbers. Emergency telephone numbers must be readily available in each proctor provider home, in close proximity to phone(s):

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

(3) Monthly safety review. A documented safety review that is specific to each proctor provider home must be conducted monthly to assure that the home is free of hazards. The agency must keep these reports for three years and make them available upon request to the Services Coordinator and Department representatives.

(4) Provider Absence. There must be a written contingency plan for each child that is available for substitute caregivers and agency staff in the event of an emergency absence of the proctor provider.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0280 Safety: Assessment of Fire Evacuation Assistance Required
(Effective 1/1/2005)

(1) Assessment of level of evacuation assistance required. The agency must assure that the proctor provider and agency staff assess the individual's ability to evacuate the home in response to an alarm or simulated emergency within 24 hours of entry to the home.

(2) Documentation of level of assistance required. The agency must assure documentation of the level of assistance needed by each individual to safely evacuate the residence. The documentation must be maintained in the individual's entry records.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0290 Safety: Individual Fire Evacuation Safety Plans
(Effective 1/1/2005)

(1) Written fire safety evacuation plans are required for all individuals residing in proctor provider homes who are unable to evacuate the home in three minutes or less. For individuals who are unable to evacuate the proctor provider home within the required evacuation time, or who the ISP team determines should not participate in fire drills, the agency must develop a written safety plan that includes the following:

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

(b) Identification of the alternative practices used to evacuate his/her home including level of support needed;

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

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan will be practiced and reviewed by the individual, the proctor provider, and any staff working in the proctor provider home.

(f) Approval of the plan by the individual's guardian, Service Coordinator and the program director.

(g) A plan to encourage the individual's future participation.

(2) Required documentation of practice and review of safety plans. The agency must maintain documentation of the practice and review of the safety plan by the individual and the proctor provider.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0300 Rights: Confidentiality of Records
(Effective 1/1/2007)

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

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

(2) 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).

(3) The proctor agency, proctor provider and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 410-014-0020(1-5) only on a need to know basis to law enforcement, Services Coordinator, DHS-CW child protective services staff, SOSCF DHS-CW caseworker, CDDP or OIT investigators, and medical professionals who are treating or providing

services to the child. The information shared must be limited to the health and safety, and service needs of the individual.

(4) The proctor agency, proctor provider and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 410-014-0020(1-5) and therefore may use or disclose an individual's protected health information as defined in OAR 410-014-0000(33) only:

(a) To law enforcement, CDDP, SPD, or DHS-CW staff;

(b) As authorized by the child or adults personal representative, including but not limited to a guardian appointed under ORS 125.305, 419C.481 or 419C.555;

(c) For purposes of obtaining healthcare and treatment of the individual;

(d) For purposes of obtaining payment for health care treatment; or

(e) As permitted or required by state or federal law or by order of a court.

(5) The proctor agencies and the proctor providers must keep all written records for each individual in a manner that assures their confidentially.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0310 Rights: Informal Complaints and Formal Grievances
(Effective 1/1/2005)

(1) Grievances. The agency must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) Informal complaint resolution. This provides an opportunity for an individual or guardian to informally discuss and resolve any allegation that an agency has taken action on which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation.

Choosing this opportunity will not preclude the individual or guardian to pursue resolution through formal grievance processes.

(b) Formal grievances and grievance log must include a description of how the agency receives and documents grievances from individuals or guardians. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Services Coordinator from the agency that holds the contract, and the Executive Director or designee. The formal grievance policies and procedures must require:

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

(B) That the Executive Director or designee provide a formal written response to the grievance within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant's satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant:

(i) Of the right to appeal an adverse decision to the CDDP and how to do so, including the name, address, and phone number of the person at the CDDP to whom the appeal should be submitted;

(ii) Of the availability of assistance in appealing the grievance and how to access that assistance.

(C) That the Executive Director or Designee will submit to the CDDP and Services Coordinator for review, grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or Designee believes that the grievant may not have the capability to appeal an adverse decision to the CDDP.

(D) The CDDP will address the appeal as provided in the Community Developmental Disability Program's Administrative Rule, OAR 411-320-0170.

(E) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. In addition, the agency must maintain a grievance log, which will, at a minimum, identify the person making the grievance, the date of the grievance, and the nature of the grievance, the resolution, and the date of the resolution.

(2) Notification of policies and procedures. The program must inform each individual and guardian orally and in writing, of its grievance policy and procedures. This must be done at entry to the agency and in a timely manner thereafter as changes occur. Information must be presented using language, format and methods of communication appropriate to the individuals and family/guardians needs and abilities.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0320 Rights: Medicaid Fair Hearings
(Effective 1/1/2007)

Medicaid service recipient's policy and procedure. The program must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, parent or guardian requests a fair hearing. The policy and procedure must include immediate notice to the individual, parent or guardian of the right to a Medicaid fair hearing each time a program takes action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0330 Entry, Exit and Transfer: General
(Effective 1/1/2007)

(1) Qualifications for Department funding. All individuals considered for Department funded services must:

(a) Be referred through the CDDP;

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

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

(d) For children, be in the custody of the State of Oregon, DHS Child Welfare, or OYA; or have a Developmental Disabilities Individual Placement Agreement with the Department signed by the child's parent or guardian.

(2) Authorization of Services. The Department must authorize admission into Children's Residential Services. The CDDP services coordinator for the adult will authorize admission into an adult proctor service.

(3) Information required for entry meeting. The agency must acquire the following information prior to or upon entry ISP team meeting:

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

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

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

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

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

(B) Results of any dental evaluation;

(C) A record of immunizations;

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

(E) A record of major illnesses and hospitalizations.

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

(f) Copies of documents relating to guardianship or conservatorship or any other legal restrictions on the rights of the individual, if applicable;

(g) Written documentation that the individual is participating in out of residence activities including school enrollment until the age of 21; and

(h) A copy of the most recent Functional Assessment, BSP, ISP and IEP.

(i) The entry agreement for family contact and visits that includes, but is not limited to, the names of the family members who can visit, with the level of agency staff supervision needed during visits; and any limitations on location or length of visits.

(j) Medical insurance information and medical card.

(4) Crisis entries from family homes. If the individual is being admitted from his or her family home and the information required in OAR 411-335-0330(3) is not available the agency will assure that they assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than thirty days after entry. This must include a written justification as to why the information is not available.

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

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

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting.

(d) Documentation of the pre-entry information required by 411-335-0330(3)(a-j).

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

(f) A written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(6) Exit meeting. Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

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

(b) The date of the meeting;

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

(d) Documentation of the circumstances leading to the planned exit;

(e) Documentation of the discussion of strategies to prevent an unplanned exit from service (unless the individual, individuals parent or guardian is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and documentation of discussion and criteria, as outlined in section (6) of this rule if applicable.

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

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

(a) The individual and his/her guardian or legal representative requests an immediate move from the home; or

(b) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention;

(8) Transfer meeting. A meeting of the ISP team must precede transfer of an individual before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

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

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

(c) Documentation of the participants included in the meeting or telephone call(s) including, a parent or guardian who is participating to sign documents;

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

(e) Documentation of the alternatives considered instead of transfer;

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

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

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

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0340 Entry, Exit and Transfer Appeals
(Effective 1/1/2007)

(1) Appeals. In cases where the adult, or the parent or guardian objects to, or the ISP team cannot reach majority agreement regarding an entry refusal, a request to exit the program or a transfer within a program, an appeal may be filed by any member of the ISP team.

(2) In cases where the ISP team cannot reach majority agreement or when the parent or guardian objects to an entry refusal, a request to exit the program or a transfer within a program, and an appeal has been filed the following requirements apply.

> (a) In the case of a refusal to serve, the program vacancy may not be permanently filled until the appeal is resolved.
>
> (b) In the case of a request to exit or transfer, the individual must continue to receive the same services until the appeal is resolved.

(3) Appeal to the CDDP. All appeals must be made to the CDDP Director or designee in writing, in accordance with the CDDPs dispute resolution policy. The CDDP will provide written response to the individual making the appeal within the timelines specified in the CDDPs dispute resolution policy.

(4) Appeal to Department. In cases where the CDDPs decision is in dispute written appeal must be made to the Department within ten days of receipt of the CDDPs decision.

(5) Department appeal process. The Administrator or designee will review all unresolved appeals. Such review will be completed and a written response provided within 45 days of receipt of written request for Department review. The decision of the Administrator or designee will be final.

(6) Documentation required. Documentation of each appeal and its resolution must be filed or noted in the individual's record.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0350 Respite Care Services
(Effective 1/1/2007)

(1) The proctor agency may provide respite services in a proctor home to an individual not enrolled in proctor services.

(2) Qualifications for respite care services. All individuals not currently enrolled in proctor services with the agency and who are being considered for respite care services to be provided by the Proctor Agency and proctor home must:

(a) Be referred by the Department or by the CDDP whichever entity holds the contract for the services;

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

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

(3) Respite care plan. The individual and the guardian and services coordinator, or other ISP team members (as available) must participate in an entry meeting prior to the initiation of respite care services in a proctor provider's home. This meeting may occur by phone and the Services Coordinator or Proctor Agency will assure that any critical information relevant to the individual's health and safety, including physicians' orders, will be made immediately available to the provider. The outcome of this meeting will be a written respite care plan which must take effect upon entry and be available on site, and must:

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

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

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

(4) Waiver of exit meeting requirement. Exit meetings are waived for individuals receiving respite care services.

(5) Waiver of appeal rights for entry, exit and transfer. Individuals receiving respite care services do not have appeal rights regarding entry, exit or transfer.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0360 Crisis Services
(Effective 1/1/2007)

(1) Proctor Agency Responsibilities in Provision of Crisis Services. All individuals considered for crisis services funded through the Department must:

(a) Be referred by the Department or designee;

(b) Be determined to have a developmental disability by the Department or its designee.

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

(2) In-Home Support Services Plan, ISP or Plan of Care, and Crisis Addendum required. Individuals receiving CDDP in-home supports or foster care who require crisis services must have a crisis addendum to their current plan of care upon entry to proctor care services.

(3) Plan of Care required for individuals not enrolled in CDDP in-home support services. Individuals not enrolled in CDDP support services, receiving crisis services for less than 90 consecutive days must have a plan of care on entry that addresses any critical information relevant to the individual's health and safety including current physician's orders.

(4) Risk Tracking Record required. Individuals not enrolled in CDDP in-home support services, receiving crisis services for 90 days or more must have a completed Risk Tracking Record and a Plan of Care that addresses all identified health and safety supports as noted in the Risk Tracking Record.

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

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

(7) Waiver of appeal rights for entry, exit and transfers. An individual or a guardian of an individual receiving crisis services does not have appeal rights regarding entry, exit or transfers.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0370 Conditions on Certificate
(Effective 1/1/2005)

Attaching conditions to a certificate. The Department may attach conditions to the certificate, which limit, restrict or specify other criteria for operation of the agency and its proctor service.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0380 Conditions
(Effective 1/1/2007)

(1) Circumstances under which conditions may be applied to a certificate. Conditions may be attached to a certificate upon a finding that:

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

(b) There exists a threat to the health, safety, and welfare of individuals;

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

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

(e) The proctor provider is certified to care for a specific person(s) only and further placements must not be made into that home or facility.

(2) Imposing conditions. Conditions that may be imposed on a certificate include, include but not limited to:

(a) Restricting the total number of individuals;

(b) Restricting the number and support level of individuals allowed within a certified classification level based upon the capacity of the proctor provider and agency staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional agency staff or agency staff qualifications;

(e) Requiring additional training of proctor providers and agency staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) Written notification. The agency will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.310 to 183.502.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, an agency may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the agency's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the duration of the certificate period (two years) or limited to some other shorter period of time. If the condition corresponds to the certification period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the certificate.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

411-335-0390 Certificate Denial, Suspension, Revocation, Refusal to Renew
(Effective 1/1/2007)

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

(2) Imminent danger to individuals. The Department will immediately suspend the home or agency certificate where imminent danger to health or safety of individuals exists.

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

(4) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with these rules and ORS Chapter 183.

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

(6) Failure to implement a plan of correction or comply with a final order. The Department will deny, suspend, revoke or refuse to renew a certificate if the agency fails to implement a plan of correction or comply with a final order of the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Exhibit 335-1
(Temporary Effective 1/1/2010 – 6/30/2010)

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