

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

**CHAPTER 411
DIVISION 340**

**SUPPORT SERVICES FOR ADULTS WITH DEVELOPMENTAL
DISABILITIES**

411-340-0010 Statement of Purpose
(Amended 6/29/2008)

These rules prescribe standards, responsibilities, and procedures for support services brokerages, for purchase of individual supports with support services funds, and for providers paid with support services funds to provide services to adults with developmental disabilities so that those adults may live in their own homes or in family homes. Services provided under these rules are intended to identify, strengthen, expand and, where required, supplement private, public, formal and informal support available to these adults so that they may exercise self-determination in the design and direction of their lives.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0020 Definitions
(Amended 6/29/2008)

As used in OAR chapter 411, division 340:

(1) "Abuse" means:

(a) Except for services provided at sites owned or leased by provider organizations listed in section (1)(b) of this rule, one or more of the following:

(A) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program and an individual; or

(E) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being.

(b) Activities described in OAR 411-320-0020(2)(b) through (2)(c)(F) for provider organizations qualifying to be paid with support services funds as:

(A) 24-hour residential services licensed under OAR chapter 411, division 325;

(B) Adult foster homes licensed under OAR chapter 411, division 360.

(C) Employment and alternatives to employment services certified under OAR chapter 411, division 345; or

(D) Supported living services certified under OAR 309-041-0550 through OAR 309-041-0830.

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

(3) "Activities of Daily Living (ADL)" means those self-care activities that must be accomplished by an individual for continued well-being including

mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

(4) "Administration of Medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(5) "Administrative Review" means the process that occurs when a grievant is not satisfied with the decision made by the brokerage about a complaint involving the provision of services or a provider. The administrative review will result in a decision by the Seniors and People with Disabilities Division Assistant Director to either uphold the local decision, or recommend another course of action.

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

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

(8) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to brokerage services listed in OAR 411-340-0120(1)(a) through (1)(g) and, if required;

(b) Assistance with purchase of supports listed in OAR 411-340-0130(6)(a) through (6)(p) with no more than:

(A) An amount assigned and published by the Seniors and People with Disabilities Division, when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the support services waiver; and

(B) An amount based on the state's General Fund contribution to the maximum amount available per plan year to a Medicaid recipient per section (8)(b)(A) of this rule, and thereafter an

amount assigned and published by the Seniors and People with Disabilities Division, when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(9) "Basic Supplement" means the amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203. A basic supplement is subject to limitations outlined in OAR 411-340-0130(4)(a)(A) and (4)(a)(B).

(10) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for annual support services funds in excess of the basic benefit due to extraordinary long-term need.

(11) "Certificate" means a document issued by the Seniors and People with Disabilities Division to a brokerage or to a provider organization that certifies the brokerage or provider organization is eligible to receive state funds for support services.

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

(13) "Chore Services" mean services needed to maintain a clean, sanitary and safe environment in an individual's home. Chore services includes heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress. Chore services are provided when no one in the household is capable of either performing, or paying for the services, and when no other relative, caregiver, landlord, community or volunteer agency, or third-party payer is capable of or responsible for their provision.

(14) "Client Process Monitoring System (CPMS)" means the Department of Human Services computerized system for enrolling and terminating services for individuals with developmental disabilities.

(15) "Community Inclusion Supports" means services that may include instruction in skills an individual wishes to acquire, retain or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. These supports are provided:

(a) For an individual to participate in activities to facilitate independence and promote community inclusion and contribution;
and

(b) At any time in community settings of the individual's choice.

(16) "Community Living Supports" means services provided for the purpose of facilitating independence and promoting community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of community-based housing the individual chooses, consistent with the outcome for community living defined in the Individual's Support Plan. The type, frequency, and duration of direct support and other community living support is defined in the plan of care based on the individual's selected housing arrangement and assessed needs. Community living supports are available to individuals who live alone, with roommates, or with family. Community living supports include services designed to develop or maintain skills required for self-care, directing supports, and caring for the immediate environment such as:

(a) Personal skills, including eating, bathing, dressing, personal hygiene, and mobility;

(b) Socialization, including development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(c) Community participation, recreation or leisure, including the development or maintenance of skills to use generic community services, facilities, or businesses;

(d) Communication, including development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(e) Personal environmental skills including planning and preparing meals, budgeting, laundry, and housecleaning.

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

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

(19) "Comprehensive Services" means a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Seniors and People with Disabilities Division alone or in combination with any associated employment or community inclusion program regulated by the Seniors and People with Disabilities Division:

(a) 24-hour residential services including, but not limited to, services provided in a group home, in a foster home, or through a supported living program; or

(b) In-home supports costing more than \$21,119 per year plus application of any subsequent legislatively-approved cost-of-living increments provided to an individual in the individual or family home. Such services do not include support services for adults enrolled in brokerages or for children enrolled in child and family support services or children's intensive in-home services.

(20) "Department (DHS)" means the Department of Human Services.

(21) "Developmental Disability" 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 can be expected to continue, indefinitely; and

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

(d) Results in significant subaverage 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.

(22) "Emergent Status" means a temporary, unpredictable situation when an individual enrolled in a brokerage may be allowed to receive Seniors and People with Disabilities Division-paid support exceeding \$21,119 per year to remain in the individual's home or family home or to enter a short-term out-of-home residential placement without exiting support services.

(a) An individual will only be considered in emergent status if the individual is in jeopardy of losing his or her living situation due to inability or unavailability of the primary caregiver, when no alternative resources are available, and when the Community Developmental Disability Program of the individual's county of residence has determined that the individual meets criteria for crisis or diversion services according to OAR 411-320-0160.

(b) Services are provided while an individual is in emergent status to prevent the individual's civil court commitment under ORS chapter 427 and there is imminent risk of loss of the individual's community support system. Services to maintain the individual in the community and stabilize the situation are crisis or diversion services according to OAR 411-320-0160 that may include short-term residential placement

services indicated in the individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support in the individual's home as described in the Support Services Individual Support Plan.

(c) Length of emergent status may be authorized only by the Community Development Disability Program of the individual's county of residence, or the Regional Crisis Program responsible for the individual's county of residence, depending on the source of the crisis or diversion funds. In no case will emergent status for an individual exceed 270 consecutive days in 12 consecutive months.

(23) "Employer-Related Supports" means activities that assist individuals and, when applicable, their family members, with directing and supervising provision of services described in the Individual Support Plan. Supports to the employer include, but are not limited to:

- (a) Education about employer responsibilities;
- (b) Orientation to basic wage and hour issues;
- (c) Use of common employer-related tools such as job descriptions; and
- (d) Fiscal intermediary services.

(24) "Entry" means admission to a Seniors and People with Disabilities Division-funded developmental disability service provider.

(25) "Environmental Accessibility Adaptations" means physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

- (a) Examples of these services include, but are not limited to:
 - (A) Environmental modification consultation to determine the appropriate type of adaptation;
 - (B) Installation of shatter-proof windows;

- (C) Hardening of walls or doors;
- (D) Specialized, hardened, waterproof or padded flooring;
- (E) An alarm system for doors or windows;
- (F) Protective covering for smoke detectors, light fixtures and appliances;
- (G) Sound and visual monitoring systems;
- (H) Fencing;
- (I) Installation of ramps, grab-bars and electric door openers;
- (J) Adaptation of kitchen cabinets and sinks;
- (K) Widening of doorways;
- (L) Handrails;
- (M) Modification of bathroom facilities;
- (N) Individual room air conditioners for individuals whose temperature sensitivity issues create behaviors or medical conditions that put themselves or others at risk;
- (O) Installation of non-skid surfaces;
- (P) Overhead track systems to assist with lifting or transferring;
- (Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or
- (R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Examples of what these services do not include:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(26) "Environmental Modification Consultant" means either an independent provider or a provider organization paid with support services funds to provide advice to an individual, the individual's legal representative or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(27) "Exit" means either termination from a Seniors and People with Disabilities Division-funded program or transfer from one Seniors and People with Disabilities Division-funded program to another. Exit does not mean transfer within a provider's program.

(28) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that includes at least one individual with developmental disabilities where the primary caregiver is:

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

(b) In a domestic relationship where partners share:

(A) A permanent residence;

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

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

(29) "Family Training" means training and counseling services for the family of an individual to increase capabilities to care for, support and maintain the individual in the home.

(a) Family training includes:

(A) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(B) Information, education and training about the individual's disability, medical, and behavioral conditions; and

(C) Counseling for the family to relieve the stress associated with caring for an individual with disabilities.

(b) Family training is provided by licensed psychologists, professionals licensed to practice medicine, social workers, counselors, or in organized conferences and workshops that are limited to topics related to the individual's disability, identified support needs, or specialized medical or habilitative support needs. Family training is not provided to paid caregivers.

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

(31) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

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

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

(32) "Grievance" means a process by which a person may air complaints and seek remedies.

(33) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. These services include supported employment, community living supports and community inclusion supports.

(34) "Home" means an individual's primary residence that is not licensed, certified by, and under contract with, the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(35) "Homemaker Services" means support consisting of general household activities such as meal preparation and routine household services provided by a trained homemaker. Homemaker services are provided when the person regularly responsible for these activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual.

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

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

(38) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with support services funds who personally provides services to the individual.

(39) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(40) "Individual Support Plan (ISP)" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals. The Individual Support Plan is developed by the individual, the individual's personal agent, the individual's legal representative (if any), and other persons who have been invited to participate by the individual or individual's legal representative. The Individual Support Plan articulates decisions and agreements made through a person-centered process of planning and information-gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

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

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

(43) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties that operate a Community Developmental Disability Program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a Community Developmental Disability Program, the board of directors of a public or private corporation.

(44) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable

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

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

(46) "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.

(47) "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.

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

(49) "Occupational Therapy" means the services of a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(50) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for the services listed in OAR 411-340-0120(1), who meets the requirements of OAR 411-340-0150(5) and who is:

(a) A trained employee of a brokerage; or

(b) A person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(51) "Personal Emergency Response Systems" means electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(52) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

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

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

(c) Person-centered planning helps the individual and those significant to the individual to identify, use and strengthen naturally occurring opportunities for support at home and in the community. Methods for gathering information vary, but all are consistent with individual needs and preferences, ranging from simple interviews with the individual to informal observations in home and community settings to formally structured meetings.

(53) "Physical Therapy" means services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(54) "Plan Year" means 12 consecutive months used to calculate an individual's annual basic benefit. Unless otherwise set according to conditions of OAR 411-340-0120(5)(b) or OAR 411-340-0130(4)(b)(F), the initial plan year begins on the start date specified on the individual's first Individual Support Plan after enrollment in a brokerage after the initial Individual Support Plan is approved and signed by the Community Developmental Disability Program authorizing implementation. Subsequent plan years begin on the anniversary of the start date of the initial Individual Support Plan.

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

- (a) Emphasizes the development of functional alternative behavior and positive behavior intervention;
- (b) Uses the least intervention possible;
- (c) Ensures that abusive or demeaning interventions are never used; and
- (d) Evaluates the effectiveness of behavior interventions based on objective data.

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

(57) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual's home.

(58) "Productivity" means:

- (a) Engagement in income-producing work by an individual with mental retardation or developmental disabilities that is measured through improvements in income level, employment status or job advancement; or
- (b) Engagement by an individual with mental retardation or developmental disabilities in work contributing to a household or community.

(59) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with support services funds that:

- (a) Is primarily in business to provide supports for individuals with developmental disabilities;
- (b) Provides supports for the individual through employees, contractors or volunteers; and

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

(60) "Provider Organization Director" means the employee of a provider organization responsible for administration and provision of services according to these rules, or that person's designee.

(61) "Psychotropic Medication" is defined as a medication whose prescribed intent is to affect or alter thought processes, mood or behavior. Psychotropic medication 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.

(62) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency and appropriateness of services.

(63) "Respite Care" means short-term services and supervision provided because of the absence, or need for relief of, persons normally providing the services to individuals unable to care for themselves. Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence. Respite includes two types of care, neither of which can be characterized as eight-hours-a-day, five-days-a-week services or are provided to allow caregivers to attend school or work.

(a) Temporary respite care is provided on less than a 24-hour basis.

(b) 24-hour overnight care is provided in segments of 24-hour units that may be sequential.

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

(65) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance, upon written

order of a physician, and safely maintains the medication without supervision.

(66) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom -- The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority -- The ability for an individual with a developmental disability (with the help of a social support network if needed) to control a certain sum of resources in order to purchase support services;

(c) Autonomy -- The arranging of resources and personnel, both formal and informal, that will assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility -- The acceptance of a valued role in an individual's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals with developmental disabilities.

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

(68) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of a person who does not have such disability. Such a benefit or service does not:

(a) Duplicate benefits and services otherwise available to persons regardless of disability;

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

(c) Replace other governmental or community services available to an individual. Financial assistance provided as a social benefit or social services does not exceed the actual cost of the support required by an individual and must be either:

(A) Reimbursement for an expense authorized in a previously-approved plan of service; or

(B) An advance payment in anticipation of an expense authorized in a previously negotiated and approved Individual Support Plan.

(69) "Special Diet" means specially prepared food or particular types of food needed to sustain the individual in the family home.

(a) Special diets can include:

(A) High caloric supplements;

(B) Gluten-free supplements; and

(C) Diabetic, ketogenic or other metabolic supplements.

(b) Special diets are ordered by a physician and periodically monitored by a dietician.

(c) Special diets are supplements and are not intended to meet an individual's complete daily nutritional requirements.

(d) Special diets do not provide or replace the nutritional equivalent of meals and snacks normally required regardless of disability.

(70) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies does not include items not of direct medical or remedial benefit to the individual. All items must meet applicable standards of manufacture, design and installation.

(71) "Specialized Supports" mean treatment, training, consultation or other unique services necessary to achieve outcomes in the plan of care that are not available through State Medicaid Plan services or other support services listed in OAR 411-340-0130(6)(a) through (6)(p). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

- (a) Assess the needs of the individual and family, including environmental factors;
- (b) Develop a plan of support;
- (c) Train caregivers to implement the support plan;
- (d) Monitor implementation of plan; and
- (e) Revise the plan as needed.

(72) "Speech and Language Therapy Services" means the services of a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration and scope specified in the State Medicaid Plan do not apply.

(73) "Support" means assistance that individuals require, solely because of the effects of disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(74) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(75) "Support Services" means the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

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

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(76) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (1)(g) associated with planning and implementation of support services for individuals with developmental disabilities, using the principles of self-determination.

(77) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(78) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Seniors and People with Disabilities Division to be added to an Individual Support Plan to describe crisis or diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement. This short-term plan is coordinated by staff of the Community Developmental Disability Program of the individual's county of residence.

(79) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources and which meets the requirements of OAR 411-340-0150(1) for such groups.

(80) "Support Services Funds" means public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(81) "Support Specialist" means an employee of a Community Developmental Disability Program that performs the essential functions described in OAR chapter 411, division 320 necessary to ensure the proper use of support services resources for individuals served by a brokerage.

(82) "These Rules" means the rules in OAR chapter 411, division 340.

(83) "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.

(84) "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.

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411-340-0030 Certification of Support Services Brokerages and Provider Organizations

(Amended 6/29/2008)

(1) CERTIFICATE REQUIRED. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage or operate a brokerage without being certified under these rules. No person or governmental unit acting

individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under these rules or current SPD license or certification described in OAR 411-340-0170(1).

(a) Each certificate is issued only for the brokerage, or for the provider organization requiring certification under OAR 411-340-0170(2), and persons or governmental units named in the application and is not transferable or assignable.

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

(c) SPD will conduct a review of the brokerage or provider organization requiring certification under OAR 411-340-0170(2) prior to the issuance of a certificate.

(2) CERTIFICATION. A brokerage or a provider organization requiring certification under OAR 411-340-0170(2) must apply for initial certificate and for certificate renewal.

(a) The application must be on a form provided by SPD and must include all information requested by SPD.

(b) The applicant for certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage or provider organization requiring certification under OAR 411-340-0170(2) must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by SPD.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and will extend the effective date until SPD takes action upon such application.

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

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

(3) CERTIFICATION EXPIRATION, TERMINATION OF OPERATIONS, CERTIFICATE RETURN.

(a) Unless revoked, suspended or terminated earlier, each certificate to operate a brokerage or a provider organization requiring certification under OAR 411-340-0170(2) will expire on the expiration date specified on the certificate.

(b) If operation of a brokerage or provider organization requiring certification under OAR 411-340-0170(2) is discontinued, the certificate terminates automatically on the date the operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, MANAGEMENT CORPORATION. The brokerage or provider organization requiring certification under OAR 411-340-0170(2) must notify SPD in writing of any pending action resulting in a 5 percent or more change in ownership and of any pending change in the brokerage's or provider organization's legal entity, legal status or management corporation.

(5) NEW CERTIFICATE REQUIRED. A new certificate is required upon change in a brokerage's or provider organization's ownership or legal entity or legal status. The brokerage or provider organization must submit a certificate application at least 30 days prior to change in ownership or legal entity or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, REFUSAL TO RENEW. SPD may deny, revoke or refuse to renew a certificate when it finds the brokerage or provider organization, the brokerage or provider organization director, or any person holding 5 percent or greater financial interest in the brokerage or provider organization:

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

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

(c) Has been convicted of a felony;

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by SPD to be maintained or submitted regarding services of individuals, program finances or individuals' funds;

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

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION OR REFUSAL TO RENEW. Following a SPD finding that there is a substantial failure to comply with these rules such that the health, safety or welfare of individuals is jeopardized, or that one or more of the events listed in section (6)(a) through (6)(g) of this rule has occurred, SPD may issue a notice of certificate revocation, denial or refusal to renew.

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

(9) HEARING. Following issuance of a notice of certificate denial, revocation, refusal to renew, or suspension, SPD will provide the opportunity for a hearing.

(a) An applicant for a certificate, or certificate holder, upon written notice from SPD of denial, suspension, revocation or refusal to renew a certificate, may request a hearing pursuant to the contested case provisions of ORS chapter 183. In addition to, or in lieu of, a contested case hearing, the applicant or certificate holder may request a review by the Assistant Director of denial, suspension, revocation or refusal to renew a certificate. This review does not diminish the right of the applicant or certificate holder to a hearing.

(b) Upon written notification by SPD of revocation, denial or refusal to renew a certificate, pursuant to section (9)(a) of this rule, the applicant or certified program will be entitled to a hearing in accordance with ORS chapter 183 within 60 days of receipt of notice. The request for a hearing must include an admission or denial of each factual matter alleged by SPD and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certified program may have.

(c) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization will be entitled to an administrative review within 10 days after its written request to SPD for a review regarding certificate suspension. Any review requested after the end of the 30-day period following certificate suspension will be treated as a request for hearing under section (9)(b) of this rule. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0040 Abuse and Unusual Incidents in Support Services Brokerages and Provider Organizations
(Amended 6/29/2008)

(1) ABUSE PROHIBITED. Any adult or individual as defined in OAR 411-340-0020 will not be abused nor will abuse be condoned by any employee, staff or volunteer of the brokerage or provider organization.

(a) Brokerages and provider organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an alleged perpetrator in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) Any employee of a brokerage or provider organization is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by DHS. All employees must be provided with a DHS-produced card regarding abuse reporting status and abuse reporting.

(2) UNUSUAL INCIDENTS.

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

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

(B) A description of the incident;

(C) Staff response at the time; and

(D) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression or unusual incident.

(b) Copies of all unusual incident reports involving abuse that occurs while an individual is receiving brokerage or provider organization services must be sent to the CDDP support specialist. Copies of reports of all unusual incidents that occur while the individual is receiving services from a provider organization must be sent to the individual's brokerage within five working days of the incident.

(c) The brokerage must immediately report to the CDDP, and the provider organization must report to the CDDP with notification to the brokerage, any incident or allegation of abuse falling within the scope of OAR 411-340-0020(1). When the CDDP has initiated an abuse investigation, the CDDP must ensure that either the support specialist or the brokerage also immediately notify the individual's legal guardian or conservator. The parent, next of kin or other significant person may also be notified unless the individual requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

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

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

(B) The Community Developmental Disability Program;

(C) In the case of the provider organization, the individual's brokerage; and

(D) The Seniors and People with Disabilities Division.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0050 Inspections and Investigations in Support Services Brokerages and Provider Organizations
(Amended 6/29/2008)

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

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) DHS, CDDP, or proper authority will perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

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

- (a) Open to inspection and investigation by DHS, CDDP or proper authority; and
- (b) Submitted to DHS within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or DHS or CDDP has determined to initiate an investigation, the brokerage or provider organization must not conduct an internal investigation without prior authorization from DHS. For the purposes of this rule, an "internal investigation" is defined as:

- (a) Conducting interviews with the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;
- (b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or
- (c) Any other actions beyond the initial actions of determining:

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

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

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

(D) What, if any, immediate personnel actions must be taken.

(6) DHS or CDDP will conduct investigations as prescribed in OAR 407-045-0250 through OAR 407-045-0360, Abuse Reporting and Protective Services in Community Programs and Community Facilities, and will complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report will include the findings based upon the abuse investigation.

(a) "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(b) "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse or attributable to the person alleged to have engaged in such conduct.

(c) "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the persons alleged to have engaged in the conduct.

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

(8) Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report that are public records and not exempt from

disclosure under the public records law will be provided to the appropriate brokerage or provider organization.

(9) A plan of improvement must be submitted to SPD for any noncompliance found during an inspection pursuant to section (1)(a) of this rule.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610 – 430.670

411-340-0060 Complaints and Grievances in Support Services Brokerages

(Amended 6/29/2008)

(1) COMPLAINTS. Brokerages must develop and implement written policies and procedures regarding individual complaints and a formal grievance process. These policies and procedures must at minimum address:

(a) Receipt of complaints. If a complaint is associated in any way with abuse, the recipient of the complaint must immediately report the issue to the CDDP and notify the brokerage director and, if applicable, the provider organization director. The brokerage must maintain a log of all complaints received regarding the brokerage, provider organization or independent provider from individuals and others acting on the behalf of individuals and from provider organizations acting in accordance with OAR 411-340-0170(2)(a)(C)(v).

(A) The complaint log must, at a minimum, include the following:

- (i) The date the complaint was received;
- (ii) The person taking the complaint;
- (iii) The nature of the complaint;

(iv) The name of the person making the complaint, if known; and

(v) The disposition of the complaint.

(B) Brokerage personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint resulted in disciplinary action against a staff member, the documentation must include a statement that disciplinary action was taken.

(b) Informal complaint resolution. An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any allegation that a brokerage, provider organization or independent provider has taken action that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(c) Investigation of the facts supporting or disproving the complaint.

(d) Taking appropriate actions. Steps to resolve the complaint must be taken within five working days following receipt of the complaint. If the complaint cannot be resolved informally, or if the individual making the complaint so chooses at any time, the individual may request a formal resolution of the complaint and, if needed, must be assisted by the brokerage with initiating the formal grievance process.

(e) Review by the brokerage director. If a complaint involves brokerage staff or services and if the complaint is not resolved according to section (1)(b) through (1)(d) of this rule, or if the person making the complaint requests one, a formal review must be completed by the brokerage director and a written response to the grievant provided within 30 days following receipt of the complaint.

(f) Agreement to resolve the complaint. Any agreement to resolve a complaint that has been formally reviewed by the brokerage director must be committed to writing and must be specifically approved by

the grievant. The grievant must be provided with a copy of the agreement

(g) Administrative review. Unless the grievant is a Medicaid recipient who has elected to initiate the Medicaid Fair Hearing process according to section (3) of this rule, when a complaint cannot be resolved by the brokerage and the complaint involves the provision of service or a provider, the complaint may be submitted to SPD for administrative review.

(A) Following a decision by the brokerage director regarding a complaint, the grievant may request an administrative review by the Assistant Director of SPD.

(B) The grievant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the brokerage director.

(C) Upon receipt of a request for an administrative review, the Assistant Director will appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee will be comprised of a representative of SPD, a CDDP representative and a brokerage representative. Committee representatives will not have any direct involvement in the provision of services to the grievant or have a conflict of interest in the specific case being grieved.

(D) The Administrative Review Committee will review the complaint and the decision by the brokerage director and make a recommendation to the Assistant Director within 45 days of receipt of the complaint unless the grievant and the Administrative Review Committee mutually agree to an extension.

(E) The Assistant Director will consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision will be made in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision will contain the rationale for the decision.

(F) The decision of the Assistant Director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review in the Marion County Circuit Court.

(h) Documentation of complaint. Documentation of each complaint and its resolution must be filed or noted in the grievant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, and when a complaint is not resolved according to section (1)(b) through (1)(d) of this rule, the brokerage must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate to the individual's needs and abilities, of the following:

(a) Brokerage grievance policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a Medicaid Fair Hearing as per section (3) of this rule and of the method to obtain a Medicaid Fair Hearing.

(3) DENIAL, TERMINATION, SUSPENSION OR REDUCTION OF SERVICES FOR INDIVIDUAL MEDICAID RECIPIENTS.

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

(A) The brokerage must use SDS 0947, Notice of Hearing Rights, or a comparable SPD-approved form for such notification.

(B) This notification requirement will not apply if an action is part of, or fully consistent with, the ISP and the individual, or the

individual's legal representative, has agreed with the action by signature to the plan.

(b) A notice required by section (3)(a) of this rule must be served upon the appealing party personally or by certified mail. The notice must state:

(A) What action the brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a Medicaid Fair Hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

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

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

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

(H) An explanation of the circumstances under which brokerage services will be continued if a Medicaid Fair Hearing is requested.

(c) If the individual or the individual's legal representative disagrees with a decision or proposed action by the brokerage to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid, the party may request a Medicaid Fair

Hearing. DHS must receive the signed form within 45 days after the brokerage mailed the notice of action.

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

(e) If the individual or individual's legal representative requests a Medicaid Fair Hearing before the effective date of the proposed action and requests that the existing services be continued, DHS will continue the services.

(A) DHS will continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and DHS renders a final order about the complaint; or

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

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

(f) DHS will reinstate services if:

(A) DHS takes an action without providing the required notice and the individual or individual's legal representative requests a Medicaid Fair Hearing;

(B) DHS fails to provide the notice in the time required in this rule and the individual or individual's legal representative

requests a Medicaid Fair Hearing within 10 days of the mailing of the notice of action; or

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

(g) DHS will promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the Medicaid Fair Hearing decision is favorable to the individual, or DHS decides in the individual's favor before the Medicaid Fair Hearing.

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

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

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

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

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

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

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

(G) Give DHS an opportunity to review its action or the action of the brokerage.

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

(j) DHS may provide the individual or individual's legal representative the relief sought at any time before the final order is issued.

(k) An individual or the individual's legal representative may withdraw a Medicaid Fair Hearing request at any time. The withdrawal will be effective on the date DHS or the Office of Administrative Hearings receives it. DHS will issue a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or the individual's legal representative may cancel the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order on the individual and DHS.

(B) If the administrative law judge issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by DHS. The exceptions must be in writing and must be received by DHS no later than 10 days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless DHS grants prior approval.

(C) After receiving the exceptions, if any, DHS may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, DHS may issue an amended proposed order.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

**411-340-0070 Support Services Brokerage and Provider Organization
Personnel Policies and Practices**

(Amended 6/29/2008)

(1) Brokerages and provider organizations must maintain up-to-date written position descriptions for all staff as well as a file available to SPD or CDDP for inspection that includes written documentation of the following for each staff:

- (a) Reference checks and confirmation of qualifications prior to hire;
- (b) Written documentation of a criminal history check by DHS;
- (c) Satisfactory completion of basic orientation, including instructions for mandatory abuse reporting and training specific to developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;
- (d) Written documentation of employee notification of mandatory abuse reporter status;
- (e) Written documentation of any substantiated abuse allegations;
- (f) Written documentation of any complaints filed against the staff and the results of the complaint process, including, if any, disciplinary action; and
- (g) Legal U.S. worker status.

(2) Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.

(3) Each brokerage and provider organization regulated by these rules must be a drug-free workplace.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0080 Support Services Brokerage and Provider Organization Records

(Amended 6/29/2008)

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

(2) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, brokerages and provider organizations requiring certification under OAR 411-340-0170(2) will be considered "providers" as defined in ORS 179.505(1), and 179.505 will be applicable. Access to records by DHS does not require authorization by the individual or family. 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) GENERAL FINANCIAL POLICIES AND PRACTICES. The brokerage or provider organization must:

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

(b) As a provider organization, or as a brokerage offering services to the general public, establish and revise as needed a fee schedule identifying the cost of each service provided. Billings for Title XIX funds must not exceed the customary charges to private individuals for any like item or service charged by the brokerage or provider organization.

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

(4) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, Secretary of State, Archives Division. Financial records, supporting documents, statistical records and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period. Individual records must be kept for a minimum of seven years.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610 – 430.670

411-340-0090 Common Standards: Variances
(Amended 6/29/2008)

(1) Variances may be granted to a brokerage or provider organization if the brokerage or provider organization:

(a) Lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) OAR 411-340-0130 and OAR 411-340-0140 are specifically excluded from variance.

(3) The brokerage or provider organization requesting a variance must submit, in writing, an application to SPD that contains the following:

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

(b) The reason for the proposed variance;

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

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's services, evidence that the variance is consistent with a currently-approved ISP according to OAR 411-340-0120(7).

(4) The Assistant Director may approve or deny the request for a variance.

(5) SPD will notify the brokerage or the provider organization and the CDDP of the decision. This notice will be sent within 45 calendar days of the receipt of the request by SPD with a copy sent to all relevant SPD programs or offices.

(6) Appeal of the denial of a variance request must be made in writing to the Assistant Director, whose decision is final.

(7) SPD will determine the duration of the variance.

(8) The brokerage may implement a variance only after written approval from SPD.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0100 Eligibility for Support Services Brokerage Services
(Amended 6/29/2008)

(1) NON-DISCRIMINATION. Individuals determined eligible according to section (2)(a) through (2)(e) of this rule must not be denied brokerage services or otherwise discriminated against on the basis of age or diagnostic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, income or duration of Oregon residence.

(2) ELIGIBILITY. The CDDP of an individual's county of residence may find the individual eligible for a brokerage when:

(a) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(b) The individual is an adult living in the individual's own home or family home and not receiving other SPD-paid in-home or community living support other than State Medicaid Plan services;

(c) The individual is not enrolled in comprehensive services;

(d) At the time of initial proposed enrollment in the brokerage, the individual is not receiving short-term services from SPD because the individual is eligible for, and at imminent risk of, civil commitment under ORS chapter 427; and

(e) The individual or the individual's legal representative has chosen to use a brokerage for assistance with design and management of personal supports.

(3) CONCURRENT SERVICES. Individuals must not be eligible for service by more than one brokerage unless the concurrent service:

(a) Is necessary to effect transition from one brokerage to another; and

(b) Is part of a collaborative plan between the affected brokerages in which services and expenditures are not duplicated.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0110 Standards for Support Services Brokerage Entry and Exit

(Amended 6/29/2008)

(1) The brokerage must make accurate, up-to-date information about the program available to individuals referred for services. This information must include:

(a) A declaration of program philosophy;

(b) A brief description of the services provided by the program, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of individual rights, including rights to:

(A) Choose a brokerage among SPD contracted brokerages in an individual's county of residence;

(B) Choose a personal agent among those available in the selected brokerage;

(C) Select providers among those qualified according to OAR 411-340-0160, OAR 411-340-0170, and OAR 411-340-0180 to provide supports authorized through the ISP;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060(3) when services covered under Medicaid are denied, terminated, suspended or reduced.

(g) Indication that additional information about the brokerage is available on request. The additional information must include, but not be limited to:

(A) A description of the brokerage's organizational structure;

(B) A description of any contractual relationships the brokerage has in place or can establish to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and its Policy Oversight Group.

(2) The brokerage must make information required in section (1)(a) through (1)(g) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) An individual must enter brokerage services within 90 calendar days of the date the CDDP has completed processes of eligibility determination, selection of brokerage, application, and referral except during the period of statewide brokerage development July 1, 2001 through June 30, 2009. During that period, and unless SPD has implemented statewide changes in the order of group enrollments according to section (3)(b) of this rule, individuals who have been determined eligible, selected the brokerage, and completed CDDP processes for application and referral to the brokerage will enter in the following order:

(A) First, and continuing through June 30, 2009, individuals who are not receiving any SPD-funded developmental disability services as of the date the brokerage is certified to provide services, entering according to priorities and characteristics described in written SPD guidelines, and in order of date of formal application made during the CDDP referral process; and

(B) Second, beginning while enrollment of individuals per section (3)(a)(A) of this rule is still in progress and continuing through June 30, 2009, individuals receiving only employment and alternative to employment services, regulated by OAR chapter 411, division 345 in the brokerage's area of service, as of the date the brokerage is certified to provide services.

(b) Notwithstanding the order of group enrollments indicated in sections (3)(a)(A) through (3)(a)(B) of this rule, SPD may implement changes in the order of enrollment on a statewide basis when SPD has determined that such changes are prudent and necessary for the continued development and operation of brokerages.

(c) The brokerage must not accept individuals for entry beyond the total number of individuals specified in its current contract with SPD.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

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

(B) No less than 30 days after the brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by brokerage staff to complete plan development and monitoring activities and, further, does not respond to the notice of intent to terminate; or

(C) Whenever the individual's emergent status exceeds 270 days in 12 consecutive months.

(b) Each brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when that individual plans to exit, or exits, brokerage services. Notification method, timelines and content must be based on agreements between the brokerage and CDDP's of each county in which the brokerage provides services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0120 Support Service Brokerage Services

(Amended 6/29/2008)

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(e) Fiscal intermediary activities in the receipt and accounting of support services funds on behalf of an individual in addition to making payment with the authorization of the individual;

(f) Employer-related supports, assisting individuals to fulfill roles and obligations as employers of support staff when plans call for such arrangements; and

(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) Brokerages must apply the principles of self-determination to provision of services required in sections (1)(a) through (1)(g) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports, including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(5) WRITTEN PLAN REQUIRED.

(a) The personal agent must write an initial ISP that is signed by the individual (or the individual's legal representative) and, unless circumstances allow exception under section (5)(b) of this rule, dated within 90 days of entry into brokerage services and at least annually thereafter. When an individual's legal representative must sign the plan, the individual's personal agent must also work with the legal representative to inform the individual as completely as possible of the contents of the plan and to obtain, to the degree possible, the individual's agreement to the plan. The plan or attached documents must include:

(A) The individual's name;

(B) A description of the supports required, including the reason the support is necessary;

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

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

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

(F) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general provider) of supports to be purchased with support services funds; and

(G) Schedule of plan reviews.

(b) The schedule of the first new support services ISP developed in compliance with section (3) of this rule after an individual enters a brokerage may be adjusted to promote continuity of services one time for any individual entering a brokerage in certain circumstances. Such an adjustment will interrupt any plan year in progress and establish a new plan year for the individual beginning on the date the first new ISP is approved and signed by the CDDP authorizing implementation. Circumstances where this adjustment is permitted include:

(A) Transition of individuals receiving self-directed support services governed by OAR 309-041-1110 through OAR 309-041-1170 to support services between November 1, 2001, through June 30, 2002. The date of the individual's first ISP after enrollment in a brokerage may be adjusted to correspond to the expiration date of the individual's Self-Directed Support Plan in place at the time of transition to the brokerage if the Self-Directed Support Plan otherwise meets the requirements of sections (5)(a)(A) through (5)(a)(G) of this rule, has been approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage, and does not authorize support services fund expenditures in

excess of the average monthly amount available through the basic benefit;

(B) Transition of individuals receiving employment and alternative to employment services regulated by OAR chapter 411, division 345, without SPD-paid residential services, to support services July 1, 2003. The date of the individual's first new support services ISP after enrollment in the brokerage may be adjusted to correspond to the expiration date of the individual's ISP in place at the time of transition or to October 1, 2003, whichever is later, when the individual is among those required to transition into support services from employment and alternative to employment services July 1, 2003, and when the ISP developed while the individual is still enrolled in employment and alternative to employment services has been approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage;

(C) Transition of individuals receiving family support services for children with developmental disabilities, regulated by OAR chapter 411, division 305, children's intensive in-home services (CIIS), regulated by OAR chapter 411, division 300, or medically fragile children (MFC) services, regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of the individual's first new support services ISP after enrollment in the brokerage may be adjusted to correspond to the expiration date of the individual's annual plan (Child and Family Support Plan (Family Support), Complete Plan of Care (CIIS), or Comprehensive Plan of Care (MFC)) in place at the time the individual turns 18 years of age when the annual plan developed while the individual is still receiving family support, CIIS, or MFC services has been approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage; or

(D) Transition of individuals receiving other SPD-paid services who are required by SPD to transition to support services. The date of the individual's first support services ISP may be adjusted to correspond to the expiration date of the individual's plan for services that has been developed according to

regulations governing SPD-paid services the individual receives prior to transition, is current at the time designated by SPD for transition to support services, and is approved for implementation by the CDDP support specialist prior to or upon the individual's enrollment in the brokerage.

(6) PROFESSIONAL OR OTHER SERVICE PLANS. When applicable:

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase services requiring the education and training of a licensed professional nurse; and

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by SPD for use in these circumstances, must be attached when an individual enrolled in a brokerage:

(A) Has been determined eligible for crisis or diversion services according to OAR 411-320-0160 by the CDDP of the individual's county of residence; and

(B) The individual is in emergent status in a short-term out-of-home residential placement as part of the individual's crisis or diversion services.

(7) CDDP SUPPORT SPECIALIST APPROVAL.

(a) With the exception of circumstances indicated in section (7)(b) of this rule, the brokerage must obtain written CDDP support specialist approval prior to implementation of:

(A) Initial and annual Individual Support Plans; and

(B) Significant changes in the ISP that include, but are not limited to, changes in the types of support purchased with support services funds and changes in supports that will cause total plan year expenses to exceed original estimates by more than 10 percent, but which do not include changes in the providers chosen to provide direct assistance to the individual.

(b) When immediate, unexpected, and significant change in the type of support purchased with support services funds is necessary outside of the normal hours of CDDP operation and to prevent injury or harm to the individual, the brokerage may implement the change but must obtain written confirmation within 10 calendar days from the date of the change from the CDDP specialist indicating that the change was appropriate and, if applicable, that ongoing change in services is approved.

(8) PERIODIC REVIEW OF PLAN AND RESOURCES. The personal agent will conduct and document reviews of plans and resources with the individual and the individual's legal representative as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the ISP;

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

(A) Evaluate progress toward achieving the purposes of the plan, assessing and revising goals as needed;

(B) Record final support services fund costs;

(C) Note effectiveness of purchases based on personal agent observation as well as individual satisfaction; and

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

(9) TRANSITION TO ANOTHER BROKERAGE. At the request of an individual enrolled in brokerage services who has selected another brokerage, the brokerage must collaborate with the receiving brokerage and the CDDP of the individual's county of residence to effect transition of support services.

(a) If SPD has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify SPD to

consider transfer of the funds for the individual to the receiving brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after enrollment in the new brokerage while a new plan is negotiated and approved.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0130 Using Support Services Funds to Purchase Supports
(Amended 6/29/2008)

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP that:

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

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

(c) Projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports and that are within the basic benefit limits, unless authorized for supplement to the basic benefit according to section (4)(a) through (4)(e) of this rule; and

(d) Has been approved for implementation by the CDDP support specialist.

(2) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(3) LIMITS OF FINANCIAL ASSISTANCE. Assistance with purchase of individual supports in any plan year is limited to the basic benefit unless

individual circumstances meet the conditions of the exceptions indicated in sections(4)(a) through (4)(g) of this rule.

(a) Basic benefit distribution for full plan year. Individuals must have access throughout the plan year to the total annual amount of support services funds determined necessary to implement an approved ISP, even if there is a delay in implementation of the plan, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) Basic benefit distribution adjustments. SPD may require that annual basic benefit amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year or when, for any reason, an individual's ISP is developed and written to be in effect for less than 12 months.

(A) In the case of an individual whose Medicaid eligibility changes, the monthly basic benefit limit will be 1/12 of the annual basic benefit amount for which the individual would be eligible should the change in Medicaid status remain in effect for 12 calendar months. The monthly basic benefit limit will be applied each month for the remainder of the plan year in which the individual's change in Medicaid eligibility occurred, from the date the change occurred.

(B) In the case of an individual with an ISP developed for a partial plan year, the monthly basic benefit limit will be 1/12 of the annual basic benefit amount for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly basic benefit limit will be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Individual plan costs. Estimates of individual plan costs must be based on written guidelines for costs of frequently used services published and updated periodically by SPD.

(A) SPD guidelines notwithstanding, final costs must not exceed local usual and customary charges for these services as evidenced by the brokerage's own documented survey.

(B) The brokerage must establish a process for review and approval of all budgets based on estimates exceeding published guidelines and must monitor the approved individual plans involved for continued cost effectiveness.

(4) EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS. Exceptions to the basic benefit annual support services fund limit may be only as follows.

(a) Extraordinary long-term need. Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory, Form DHS 0203 may have access to more than the basic benefit support services fund limit in order to purchase necessary supports. The Basic Supplement Criteria Inventory, Form DHS 0203, specifies scoring levels and applicable maximum available funding.

(A) For Medicaid recipients choosing services under the Support Services Waiver, the supplement to the basic benefit must result in a plan year cost that is less than the minimum allowable plan year cost for comprehensive in-home support services in the same biennium.

(B) For individuals who are not Medicaid recipients choosing services under the Support Services Waiver, the supplement to the basic benefit must result in a plan year cost that is less than the state's General Fund contribution to the minimum allowable plan year cost for in-home comprehensive services in the same biennium, calculated according to the Medicaid match rate current at the beginning of the plan year and adjusted annually to correspond to changes in the Medicaid match rates.

(C) The brokerage director, or a designee from brokerage management and administration, must administer the basic supplement criteria only after receiving SPD-approved training. The brokerage director or designee must score basic supplement criteria according to written and verbal instruction received from SPD.

(D) The trained brokerage director must administer the basic supplement criteria within 30 calendar days of the written request of the individual or the individual's legal representative.

(E) The brokerage director or designee must send written notice of findings regarding eligibility for a supplement to the basic benefit to the individual and the individual's legal representative within 45 calendar days of the written request for a supplement. This written notice must include:

(i) An offer for the individual and individual's legal representative to discuss the findings in person with the director and with the individual's personal agent in attendance if desired; and

(ii) A notice of grievance processes under OAR 411-340-0060.

(F) Annual ISP reviews for recipients of the supplement must include a review of circumstances and resources to confirm continued need.

(b) Transfers from employment and alternative to employment, and self-directed support services according to SPD-designated schedule of group enrollments under OAR 411-340-0110(3). Support service fund expenditures for individuals enrolled in these services prior to the designated date of group enrollment in brokerages may, for a limited amount of time, exceed the basic benefit financial limits. To qualify, individuals must be enrolled in employment and alternative to employment services regulated by OAR chapter 411, division 345, or receive self-directed support services during the month prior to enrollment in a brokerage and SPD's annual cost of this previous service must exceed the financial assistance available through the basic benefit.

(A) Each qualified individual transferring from employment and alternative to employment services beginning November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to SPD's previous cost for the individual in these services, as negotiated according to SPD

guidelines, for no more than 365 calendar days from date of enrollment in the brokerage.

(B) Each qualified individual transferring from employment and alternative to employment services beginning July 1, 2003, and who does not have any other SPD-paid residential support services prior to that date, may have access to support services funds in an amount each month equal to SPD's previous employment and alternative to employment monthly costs for the individual, as negotiated according to SPD guidelines:

(i) For 365 days, if the individual is a Medicaid recipient eligible for waiver services; or

(ii) For 180 days, if the individual is not a Medicaid recipient eligible for waiver services.

(C) Each qualified individual transferring from self-directed support services beginning November 1, 2001, through June 30, 2002, may have access to support services funds in an amount equal to financial assistance authorized by the individual's current Self-Directed Support Plan for no more than 365 calendar days from date of enrollment in the brokerage when the individual is a Medicaid recipient choosing to receive waiver services and for no more than 90 calendars days from date of enrollment in the brokerage when the individual is not Medicaid-eligible or does not otherwise receive Medicaid benefits.

(D) Upon individual enrollment in the brokerage, the brokerage must fully inform the individual and the individual's legal representative of the time limit for the supplement to the basic benefit.

(E) The brokerage must complete an assessment, identify resources and develop a new individualized plan and budget during this period with a goal of reducing support services fund annual costs to less than or equal to financial assistance available in the basic benefit.

(F) At any point during the individual's first year of enrollment in the brokerage that annual plan costs are successfully reduced to a cost less than or equal to that available in the basic benefit, the individual's new plan year will begin on the date the revised ISP is authorized for implementation by the individual's CDDP support specialist.

(c) Prior-authorized crisis or diversion services. Individuals who have been assessed as in need of, and meeting criteria for, crisis or diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160 may receive short-term assistance with purchase of support in excess of the basic benefit. Use of crisis or diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Program responsible for the individual's county of residence.

(A) Funds associated with crisis or diversion services may be used to pay the difference in cost between the authorized ISP and budget in place at the time the individual is determined eligible for crisis or diversion services, and the supports authorized by either the CDDP of the individual's county of residence, or the Regional Crisis Program responsible for crisis or diversion services in the individual's county of residence, depending on the source of crisis or diversion services funds, to meet the short-term need.

(B) Although costs for crisis or diversion services may bring the individual's total plan year cost temporarily at or above the minimum allowable plan year cost of in-home comprehensive services in the same biennium, in no case may the individual's costs exceed the state's current ICF/MR daily cost per individual nor may plan year expenses at or above the minimum for comprehensive services make the individual eligible for comprehensive services.

(i) Individuals placed in emergent status due to receiving crisis or diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive support services from, the brokerage while both crisis or diversion services and support services are

required to stabilize and maintain the individual at home or in the family home. In no case, however, may the individual remain enrolled in the brokerage under emergent status for more than 270 consecutive days in any 12-month period.

(ii) The individual's personal agent must participate with CDDP or regional crisis or diversion staff in efforts to stabilize supports and return costs to the basic benefit or approved supplement levels, documenting reviews of effectiveness at least every 90 days while the individual is receiving crisis or diversion services.

(d) Conversions from other SPD-regulated services. Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through SPD contract from a SPD-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to enrollment in a brokerage, may have access to the amount specified in the SPD contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions described in section (4)(b) of this rule.

(A) Individual plan year costs must always be less than the minimum allowable plan year cost for in-home comprehensive services in the same biennium; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(e) Funds designated for services to individuals eligible for, and at imminent risk of, civil commitment under ORS chapter 427. Individuals whose support funds were specifically assigned through SPD contract to self-directed support services prior to the date designated by SPD for transfer of the individual from self-directed

support services to a brokerage may have access to the amount specified in the SPD contract as available for the individual's use.

(A) Individual plan year costs must always be less than the minimum allowable plan year cost for in-home comprehensive services in the same biennium; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and, if applicable, the individual's legal representative at least annually, and must make budget reductions when allowed by the ISP.

(f) Individuals transferring from SPD waiver services for the Aged and Adults with Physical Disabilities. Individuals transferring from SPD's Home and Community-Based Waiver services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds, in accordance with OAR 411-015-0015(4)(c) will have limited access to support services funds, as described in these rules. The amount of support services funds available will be equal to SPD's previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins the date the individual starts receiving support services exclusively through a brokerage.

(g) Supplemental needs for activities of daily living (ADL). For Medicaid recipients eligible for and choosing services under the Support Services Waiver, individuals with additional assistance needs in ADLs may have access to an additional \$2,605 per year, prorated as needed, to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. The services include:

(i) Basic personal hygiene;

(ii) Toileting, bowel and bladder care;

(iii) Mobility, transfers and comfort;

(iv) Planning and preparing nutritious meals and assuring adequate fluid intake;

(v) Assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions and reminding appropriate persons when prescriptions need to be filled;

(vi) Maintaining clean oxygen equipment and supply; and

(vii) Delegated nursing tasks.

(B) Incidental activities. ADL services may include the following activities if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

(i) Light housekeeping tasks necessary to maintain a healthy and safe environment;

(ii) Arranging for necessary medical appointments;

(iii) Observation of an individual's status and reporting of significant changes to appropriate people;

(iv) First aid and handling emergencies; and

(v) Extra support due to mental retardation or developmental disability.

(C) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(D) Planned expenses must be based upon the least costly means of providing adequate services, and must only be to the extent necessary to meet the documented ADL needs.

(E) Supplemental needs for ADL's cannot cause the cost per any plan year to exceed the minimum allowable plan year cost for comprehensive in-home support services in the same biennium, except individuals receiving both support services under these rules as of June 30, 2005 and state plan personal care services under OAR chapter 411, division 034 whose total combined annual costs exceed the minimum allowable plan year cost for comprehensive in-home support services in the same biennium may continue to develop future annual ISPs based on the budgeted annual cost amount until the individual terminates their receipt of support services.

(F) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural support system of relatives, friends, neighbors or other available sources of support.

(G) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Resource Assessment Plan and Authorization, Form MSC 0531, will serve as the individual's approved plan of care for a period not to exceed 90 days.

(5) AMOUNT, METHOD AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an ISP that has been signed by the individual or the individual's legal representative and approved for implementation by the CDDP support specialist. The brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with support services funds are:

- (a) Chore services;
- (b) Community inclusion supports;
- (c) Community living supports;
- (d) Environmental accessibility adaptation;
- (e) Family training;
- (f) Homemaker services;
- (g) Occupational therapy services;
- (h) Personal emergency response systems;
- (i) Physical therapy services;
- (j) Respite care;
- (k) Special diets;
- (l) Specialized medical equipment and supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, then purchase, rental, or repair with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and, specifically, those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by the State

Medicaid Plan or private insurance, and the denial has been upheld in an applicable Medicaid Fair Hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that can be purchased for this purpose must be of direct benefit to the individual and include:

- (i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);
- (ii) Adaptive beds;
- (iii) Positioning devices;
- (iv) Specially designed clothes to meet the unique needs of the individual with the disability, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);
- (v) Assistive technology items;
- (vi) Computer software used by the individual to express needs, control supports, plan and budget supports;
- (vii) Augmentative communication devices;
- (viii) Environmental adaptations to control lights, heat, stove, etc.; or
- (ix) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity or safely

channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

- (m) Specialized supports;
- (n) Speech and language therapy services;
- (o) Supported employment; and
- (p) Transportation.

(7) **CONDITIONS OF PURCHASE.** The brokerage must arrange for supports purchased with support services funds to be provided:

- (a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;
 - (A) Individuals who choose to combine support services funds to purchase group services must receive written instruction about the limits and conditions of such arrangements;
 - (B) Combined support services funds cannot be used to purchase existing, or create new, comprehensive services;
 - (C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements and timekeeping for staff working with more than one individual;
 - (D) Combined arrangements for community inclusion or supported employment services that result in creation of a provider organization must be certified according to these rules; and
 - (E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

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

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

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing or vocation.

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

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

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through OAR 411-340-0180 governing provider qualifications and responsibilities.

(8) INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES. When support services funds are used to purchase services, training, supervision or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse;

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision

and that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP;

(d) The provisions of section (9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;

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

(C) Surrendered their professional license or had his or her professional license suspended, revoked or otherwise limited;

(D) Failed to safely and adequately provide the services authorized;

(E) Had an allegation of abuse or neglect substantiated against him or her;

(F) Failed to cooperate with any DHS or brokerage investigation, or grant access to or furnish, as requested, records or documentation;

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

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

(I) Falsified required documentation;

(J) Not adhered to the provisions of section (8) of this rule or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by another division within DHS.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

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

(C) The brokerage may withhold payments to the provider.

(c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 days of the date of the

notice. The provider must appeal this action separately from any appeal of audit findings and overpayments.

(d) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Assistant Director of SPD.

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

(f) At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610 – 430.670

411-340-0140 Using Support Services Funds for Certain Purchases Is Prohibited

(Amended 6/29/2008)

Support services funds must not be used to pay for:

- (1) Services, materials, or activities that are illegal;
- (2) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 411-340-0020;
- (3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation by threatening injury or withholding of services or supports;
- (4) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;
- (5) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;

(6) Individual or family vehicles;

(7) Health and medical costs that the general public normally must pay, including:

(a) Medications;

(b) Health insurance co-payments;

(c) Dental treatments and appliances;

(d) Medical treatments;

(e) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

(f) Treatment supplies not related to nutrition, incontinence, or infection control;

(8) Ambulance services;

(9) Legal fees;

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

(11) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(12) Services, activities, materials, or equipment that are not necessary or cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(13) Educational services for school-age individuals over the age 18, including professional instruction, formal training and tutoring in communication, socialization, and academic skills, and post-secondary

educational services such as those provided through two- or four-year colleges for individuals of all ages;

(14) Services, activities, materials, or equipment that can be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;

(15) Unless under certain conditions and limits specified in rate-setting guidelines published by SPD, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(16) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(17) Services when there is sufficient evidence to believe that the individual or individual's representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services; or

(18) Services that, in the opinion of the individual's personal agent, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an individual, including but not limited to the failure to provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person. However, no individual may be deemed neglected for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

**411-340-0150 Standards for Support Services Brokerage
Administration and Operations**
(Amended 6/29/2008)

(1) **POLICY OVERSIGHT GROUP.** The brokerage must develop and implement procedures for incorporating the direction, guidance and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint or grievance resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) **FULL-TIME BROKERAGE DIRECTOR REQUIRED.** The brokerage must employ a full-time director who is responsible for daily brokerage operations in compliance with these rules and has authority to make budget, staffing, policy and procedural decisions for the brokerage.

(3) **DIRECTOR QUALIFICATIONS.** In addition to the general staff qualifications of OAR 411-340-0070(1) through (2), the brokerage director must have:

(a) A minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health or a related field; or

(b) Six years of experience, including supervision, in the field of developmental disabilities or a social service or mental health field.

(4) FISCAL INTERMEDIARY REQUIREMENTS.

(a) Persons or entities providing fiscal intermediary services must:

(A) Demonstrate a practical understanding of laws, rules and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to effectively manage the brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in ISPs;

(b) Contractor and employee qualifications. The brokerage must obtain and maintain written evidence that:

(A) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(B) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively

and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training and experience.

(5) PERSONAL AGENT QUALIFICATIONS. Each personal agent must have:

(a) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(b) Five years of equivalent training and work experience related to developmental disabilities; and

(c) Knowledge of the public service system for developmental disability services in Oregon.

(A) Alternative plan to meet qualifications. Persons who do not meet the minimum qualifications set forth in sections (5)(a) through (5)(c) of this rule may perform those functions only with prior approval of a variance by SPD. Prior to employment of a person not meeting minimum qualifications for personal agent, the brokerage must submit a written variance request to SPD. The request must include:

(i) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(ii) A proposed alternative plan for education and training to correct the deficiencies. The proposal must specify activities, timelines and responsibility for costs incurred in completing the plan.

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

(6) SEPERATION OF DUTIES. When a CDDP operates a brokerage:

(a) Support specialist and personal agent activities, responsibilities, and costs must be clearly separated and delineated in individual files, staff job descriptions, and CDDP financial and service reports; and

(b) The individual's personal agent must not also be the individual's support specialist.

(7) **PERSONAL AGENT TRAINING.** The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including, but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary functions;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support budgets; and

(i) Assisting individuals to judge and improve quality of personal supports.

(8) **INDIVIDUAL RECORD REQUIREMENTS.** The brokerage must maintain current, up-to-date records for each individual served and must make these records available on request for SPD review. These records must include, at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including individual name, family name (if applicable), individual's legal

guardian or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and plan year anniversary date;

(c) Documents related to determining eligibility for brokerage services and the amount of support services funds available to the individual, including basic supplement criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports and verification that providers meet the requirements of OAR 411-340-0160 through OAR 411-340-0180;

(e) Documentation, signed by the individual or individual's legal representative, that the individual or individual's legal representative has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

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

(h) Individual Support Plan and reviews;

(i) Personal agent correspondence and notes related to resource development and plan outcomes; and

(j) Information about individual satisfaction with personal supports and the brokerage services.

(9) SPECIAL RECORDS REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES. The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include, but may not be limited to:

(a) Minimum acceptable records of expenditures;

(A) Itemized invoices and receipts to record purchase of any single item that costs \$25.00 or more;

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

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

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

(b) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations.

(A) When equipment is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

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

(C) The brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5,000 or more per single instance or cumulatively over several modifications:

(i) Are approved by SPD before work begins and before final payment is made;

(ii) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(iii) That steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

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

(c) Return of purchased goods. Any goods purchased with support services funds that are not used according to an ISP or according to an agreement securing the state's use may be immediately recovered. Failure to furnish written documentation upon written request from SPD, the Oregon Department of Justice, Medicaid Fraud Centers for Medicare and Medicaid Services, or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

(10) QUALITY ASSURANCE.

(a) The brokerage Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The plan must include a written statement of values, organizational outcomes, activities and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports,

responsiveness of the brokerage to changing needs and preferences of individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by SPD.

(11) BROKERAGE REFERRAL TO AFFILIATED ENTITIES.

(a) When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services an individual may purchase with private or support services funds, brokerage staff must not refer, recommend or otherwise support the individual to utilize this entity to provide services unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services will be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity of which the brokerage is a part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the brokerage and the potential provider;

(B) Provision of information about all other potential providers to the individual without bias;

(C) A process for arriving at the option for selecting the provider;

(D) Verification of the fact that the providers were freely chosen among all alternatives;

(E) Collection and review of data on services, purchased by an individual enrolled in the brokerage, by an entity of which the brokerage is a part or otherwise directly affiliated; and

(F) Training of personal agents and individuals in issues related to selection of providers.

(12) GENERAL OPERATING POLICIES AND PRACTICES. The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610 – 430.670

411-340-0160 Standards for Independent Providers Paid with Support Services Funds

(Amended 6/29/2008)

(1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative to provide homemaker, respite, habilitation, transportation, chore, family training, occupational therapy, physical therapy, speech and language, dietician, or specialized supports must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current DHS policy and procedures for review of criminal history;

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

- (d) Not be a spouse of the individual;
- (e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the ISP, with such demonstration confirmed in writing by the individual or individual's legal representative and including:
 - (A) Ability and sufficient education to follow oral and written instructions and keep any records required;
 - (B) Responsibility, maturity, and reputable character exercising sound judgment;
 - (C) Ability to communicate with the individual; and
 - (D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for;
- (f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training and skill;
- (g) Understand requirements of maintaining confidentiality and safeguarding individual information;
- (h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and
- (i) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized supports must:

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

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

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

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

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

(3) SOCIAL OR SEXUAL CONSULTANTS. Social or sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social or sexual consultation services; and

(b) Submit a resume to the brokerage indicating at least one of the following:

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

(B) Three years experience with people with developmental disabilities who present social or sexual issues and at least one

year of that experience must include providing the services of a social or sexual consultant.

(4) NURSING CONSULTANTS. Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

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

(5) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual and developing cost-effective plans that will make the home safe and accessible for the individual.

(6) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(7) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(8) DIETICIANS. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0170 Standards for Provider Organizations Paid with Support Services Funds

(Amended 6/29/2008)

(1) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization's license under OAR chapter 411, division 325 for 24-hour residential services, or OAR chapter 411, division 360 for adult foster homes, or certified under OAR chapter 411, division 345, employment and alternatives to employment services, or OAR 309-041-0550 through OAR 309-041-0830, supported living services, may not require additional certification as an organization to provide respite, supported employment, community living, community inclusion, or emergent services.

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

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

(B) Provide services according to Individual Support Plans; and

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

(b) Provider organizations must assure that all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet standards for qualification of independent providers outlined in OAR 411-340-0160.

(c) Provider organizations developing new sites, owned or leased by the provider organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly

present and receiving services purchased with support services funds, must meet the conditions of section (2)(f) of this rule in each such site.

(2) PROVIDER ORGANIZATIONS REQUIRING CERTIFICATION. A provider organization without current license under OAR chapter 411, division 325 for 24-hour residential services, or OAR chapter 411, division 360 for adult foster homes, or current certification under OAR chapter 411, division 345, employment and alternatives to employment services, or OAR 309-041-0550 through OAR 309-041-0830, supported living services, must be certified as a provider organization according to these rules prior to selection for providing services listed in OAR 411-340-0130(6)(a) through (6)(p) and paid for with support services funds.

(a) Basic policies and procedures required. The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including, but not limited to:

(A) Policies and procedures required in OAR 411-340-0040, OAR 411-340-0050, OAR 411-340-0070, OAR 411-340-0080 and OAR 411-340-0090 related to abuse and unusual incidents, inspections and investigations, personnel policies and practices, records, and variances.

(B) Individual rights. The provider organization must have and implement written policies and procedures that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation that may include, but is not limited to:

(I) Staff borrowing from or loaning money to individuals;

(II) Witnessing wills in which the staff or provider organization is beneficiary; or

(III) Adding the staff member or provider organization name to the individual's bank account or other personal property without approval of the individual or individual's legal representative.

(C) Complaints. The provider organization must implement written policies and procedures for individuals' complaints. These policies and procedures must, at a minimum, provide for:

(i) Receipt of complaints from an individual or others acting on the individual's behalf. If the complaint is associated in any way with abuse or the violation of the individual's rights, the recipient of the complaint must immediately report the issue to the provider organization director and the CDDP;

(ii) Investigation of the facts support or disproving the complaint;

(iii) Taking appropriate actions on complaints within five working days following receipt of the complaints;

(iv) Submission to the provider organization director. If the complaint is not resolved it must be submitted to the provider organization director for review. Such review must be completed and a written response provided within 15 days;

(v) Submission to the brokerage. All complaints received from an individual or others acting on the individual's behalf must be reported to the appropriate brokerage; and

(vi) Notification. Upon entry into the program and annually thereafter, the provider organization must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate for the individual's needs and

abilities, of the provider organization complaint policy and procedures.

(D) Policies and procedures appropriate to scope of service, including but not limited to those required to meet minimum standards set forth in sections (2)(f) through (2)(k) of this rule and consistent with written service agreements for individuals currently receiving services.

(b) Written service agreement. The provider organization must develop a written service agreement with the individual or individual's legal representative and must deliver services according to that agreement. The written service agreement must be consistent with the ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services and expected outcomes of services; and

(C) Any specific individual health, safety and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the provider organization.

(c) Individual records. The provider organization must maintain a current record for each individual receiving services. The record must include:

(A) The individual's name, current home address and home phone number;

(B) Current written service agreement, signed and dated by the individual or individual's legal representative;

(C) Contact information for the legal representative and any other persons designated by the individual or individual's representative to be contacted in case of incident or emergency;

(D) Contact information for the brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors or volunteers must have:

(A) Current CPR and first aid certification, obtained from a recognized training agency prior to working alone with an individual; and

(B) Written documentation of a TB test within two weeks of being engaged by the provider organization to provide services.

(e) General training requirements. The provider organization must ensure that employees, contractors and volunteers receive training appropriate to scope of the provider organization's services.

(f) Additional standards for services provided in provider organization owned or leased site. Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites must meet the following minimum requirements:

(A) Written Plan. A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information.

(i) The telephone numbers of the local fire, police department and ambulance service, or "911" service where available, must be posted by designated telephones; and

(ii) The telephone numbers of the provider organization director, and other persons to be contacted in case of emergency must be posted by designated telephones.

(C) Quarterly safety review. A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. These reports must be kept in a central location by the provider organization for three years.

(D) Emergency evacuations. The provider organization must train all individuals when they begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each provider organization must conduct an unannounced evacuation drill each month when individuals are present.

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the provider organization for at least two years following the drill. It must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

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

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

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

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or individual's legal representative and the provider organization director; and

(II) Be presented as a variance request per OAR 411-340-0090.

(E) Adaptations required for sensory or physically impaired. The provider organization must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) Health and safety inspections. The provider organization must assure that at least once every three years a health and safety inspection is conducted.

(i) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices and storage areas.

(ii) The inspection must be performed by:

(I) The Oregon Occupational Safety and Health Department;

(II) The provider organization's worker's compensation insurance carrier; or

(III) An appropriate expert such as a licensed safety engineer or consultant as approved by the SPD;
and

(IV) The Oregon Public Health Division, when necessary.

(iii) The inspection must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used by the service;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

(G) Fire and life safety inspections for owned, leased, or rented buildings and property. The provider organization must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Staffing requirements.

(i) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present.

(ii) When individuals are present, staff must have the following minimum skills and training:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical needs identified in the individual service agreement; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention needs as identified in individual service agreements.

(g) Additional standards for assisting individuals with health and medical needs. Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing:

(i) Emergency medical intervention;

(ii) Treatment and documentation of illness and health care concerns;

(iii) Administering, storing and disposing of prescription and non-prescription drugs including self administration;

(iv) Emergency medical procedures including the handling of bodily fluids; and

(v) Confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes:

(i) Health status;

(ii) Changes in health status observed during hours of service;

(iii) Any remedial and corrective action required and when such actions were taken if occurring during hours of service; and

(iv) A description of any restrictions on activities due to medical limitations.

(C) If providing medication administration when the individual is unable to self-administer medications and there is no other responsible person present who can lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed;

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders; and

(vi) Not administer unused, discontinued, outdated or recalled drugs.

(D) If required to maintain a MAR, the MAR must include:

- (i) The name of the individual;
- (ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;
- (iii) Times and dates the administration or self-administration of the medication occurs;
- (iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;
- (v) Method of administration;
- (vi) Documentation of any known allergies or adverse reactions to a medication;
- (vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and
- (viii) An explanation of any medication administration irregularity with documentation of administrative review by the provider organization director.

(E) Safeguards to prevent adverse medications reactions must be utilized that include:

- (i) Maintaining information about the effects and side-effects of medications the provider organization has agreed to administer;
- (ii) Communicating any concerns regarding any medication usage, effectiveness or effects to the

individual, individual's designee, or individual's legal representative; and

(iii) Prohibiting the use of one individual's medications by another.

(F) A record of visits to medical professionals, consultants or therapists if facilitated or provided by the provider organization.

(h) Additional standards for providing transportation. Provider organizations 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 insurance coverage on the vehicles and all authorized drivers;

(D) Carry in vehicles a fire extinguisher and first aid kit; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) Additional standards for assisting an individual to manage personal funds. If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the provider organization or another individual's funds, or the provider organization becoming an individual's guardian or conservator; and

(B) The provider organization's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the provider organization, or of any funds within the custody of the provider organization that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) Written policy. The provider organization must have and implement a written policy concerning behavior intervention procedures. The provider organization must inform the individual and individual's legal representative of the behavior intervention policy and procedures prior to finalizing the written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice and must be:

(i) Approved in writing by the individual or the individual's legal representative; and

(ii) Described in detail in the individual's record.

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

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

(ii) Monitored by the prescribing physician for desired responses and adverse consequences.

(k) Additional standards for supports that involve restraints.

(A) The provider organization must only employ physical restraint:

(i) As part of an ISP;

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

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

(B) Staff training. Provider organization staff members who need to apply restraint under an individual's service agreement must be trained by a SPD-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(C) Physical restraints in emergency situations. Physical restraints in emergency situations must:

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

(ii) Be authorized by the provider organization director , or individual's physician;

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

(iv) Result in the immediate notification of the individual's designee or legal representative; and

(v) Prompt a review of the written service agreement, initiated by the provider organization, if used more than three times in a six month period.

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

(E) Incident report. All use of physical restraint must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

- (i) The name of the individual to whom the restraint is applied;
- (ii) The date, type and length of time, of restraint application;
- (iii) The name and position of the person authorizing the use of the restraint;
- (iv) The name of the staff member applying the restraint; and
- (v) Description of the incident.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670

411-340-0180 Standards for General Business Providers

(Amended 6/29/2008)

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

- (a) A license under ORS 443.015 for a home health agency;
- (b) A license under ORS 443.315 for an in-home care agency;
- (c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board or OAR chapter 808, Landscape Contractors, as applicable, for a provider of environmental accessibility adaptations;
- (d) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon;

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment;

(f) A current business license for providers of personal emergency response systems; and

(g) Retail business licenses for vendors and supply companies providing specialized diets.

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

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007 & 430.610
– 430.670