

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division		Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	500 Summer Street NE, E-48 Salem, OR 97301-1074	(503) 945-6398
Rules Coordinator	Address	Telephone

RULE CAPTION

ODDS: Supported Living Programs for Adults with Intellectual or Developmental Disabilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

April 20, 2016	3:30 p.m.	Human Services Building 500 Summer Street NE, Rm. 160 Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>			

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:
411-328-0625

AMEND:
OAR chapter 411, division 328

REPEAL:
Temporary Rules: 411-328-0550(T); 411-328-0560(T); 411-328-0630(T);
411-328-0650(T); 411-328-0720(T); 411-328-0750(T); 411-328-0790(T)

Stat. Auth.: ORS 409.050, 430.662

Other Auth.:

Stats. Implemented: ORS 430.610, 430.662, 430.670

RULE SUMMARY

The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules in OAR chapter 411, division 328 for supported living programs for adults with intellectual or developmental disabilities.

These rules are being updated to --

- Make permanent temporary changes that became effective on January 1, 2016;
- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Provide clarity on the roles of supported living providers in entry, exit, and service planning;
- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004;
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services; and
- Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

When an individual resides in a dwelling that is owned, rented, or leased by an agency endorsed to provide supported living services and the same agency is authorized to provide services to the individual, the dwelling is considered a provider owned, controlled, or operated residential setting and must have all the following qualities:

- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;
- The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting;

- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;
- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;
- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;
- The setting is physically accessible to an individual;
- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;
- Each individual has privacy in his or her own unit;
- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;
- Individuals sharing units have a choice of roommates;
- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;
- Individuals may have visitors of their choosing at any time;
- Each individual has the freedom and support to control his or her own schedule and activities; and
- Each individual has the freedom and support to have access to food at any time.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

May 23, 2016 at 5:00 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division
Number

Administrative Rules Chapter

ODDS: Supported Living Programs for Adults with Intellectual or Developmental Disabilities

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The adoption of OAR 411-328-0625; amendment of OAR chapter 411, division 328; and repeal of temporary rules: OAR 411-328-0550(T); 411-328-0560(T); 411-328-0630(T); 411-328-0650(T); 411-328-0720(T); 411-328-0750(T); and 411-328-0790(T) relating to supported living programs for adults with intellectual or developmental disabilities.

Statutory Authority:

ORS 409.050, 430.662

Other Authority:

Stats. Implemented:

ORS 430.610, 430.662, 430.670

Need for the Rule(s):

Temporary to Permanent Rules

The Department needs to make permanent temporary changes that became effective January 1, 2016. The proposed rules reflect these changes.

Definitions

The Department needs to amend OAR 411-328-0560 (Definitions) to provide consistency and streamline definitions across services. OAR 411-328-0560 is being amended to remove terms included in OAR 411-317-0000 (General Definitions).

Supported Living Provider Roles in Entry, Exit, and Service Planning

The Department needs to amend the following:

- OAR 411-328-0700 (Incident Reports and Emergency Notifications), OAR 411-328-0750 (Personalized Plans), and OAR 411-328-0790 (Entry, Exit, and Transfer) to remove case management entity responsibilities from this rule; and

- OAR 411-328-0750 (Personalized Plans) to adopt standards related to Individual Support Plans for individuals receiving services from a supported living program, including the provider's responsibilities in service planning, information gathering, and developing documentation of supports to be delivered.

The proposed rules reflect these changes.

HCBS Services and Settings

The Department needs to permanently update the following rules to implement the regulations and expectations of CMS for Medicaid-funded and private pay residential and non-residential HCBS services and settings and person-centered service planning:

- OAR 411-328-0550 (Statement of Purpose);
- OAR 411-328-0560 (Definitions);
- OAR 411-328-0625 (Provider Owned, Controlled, or Operated Residential Settings);
- OAR 411-328-0650 (Physical Environment);
- OAR 411-328-0720 (Individual Rights, Complaints, Notification of Planned Action, and Hearings);
- OAR 411-328-0750 (Personalized Plans); and
- OAR 411-328-0790 (Entry, Exit, and Transfer).

These rules are being amended to incorporate the standards for HCBS services and settings and person-centered planning adopted in OAR chapter 411, division 004 by the Department on January 1, 2016, including the following specific qualities for supported living programs that meet the definition of a provider owned, controlled, or operated residential setting:

- The setting is physically accessible to an individual;
- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;
- Each individual has privacy in his or her own unit;
- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;
- Individuals sharing units have a choice of roommates;
- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;
- Individuals may have visitors of their choosing at any time;
- Each individual has the freedom and support to control his or her own schedule and activities; and
- Each individual has the freedom and support to have access to food at any time.

Individual Rights

The Department needs to ensure uniform standards related to individual rights across all types of entities involved in the delivery of developmental disabilities services. The proposed rule changes incorporate the individual rights in OAR 411-318-0010 for individuals receiving services.

Documents Relied Upon, and where they are available:

1. OAR chapter 411, division 004 Home and Community-Based Services and Settings and Person-Centered Service Planning

Available at: http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_004.html

2. CFR 441.530

Available at: http://www.ecfr.gov/cgi-bin/text-idx?SID=bb475ef66c500d90c3f3469b6058bc13&mc=true&node=se42.4.441_1530&rgn=div8

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR chapter 411, division 328 will have the following fiscal and economic impact:

State Agencies and Units of Local Government: The Department anticipates that due to the new regulatory compliance requirements, there may be additional costs. Community Developmental Disabilities Programs (CDDP's) may see the level of case management, Individual Support Plans (ISP), and monitoring increase due to additional monitoring responsibilities for assessing individually-based limitations. The Department is unable to estimate the fiscal impact at this time due to these being new regulations and the Department does not have available data to estimate costs.

Service Recipients: The Department estimates there will not be a fiscal or economic impact to service recipients.

Providers: The Department anticipates a fiscal impact to providers, but is unable to estimate the impact at this time due to these being new regulations and the Department does not have available data to estimate costs.

Some predicted areas of fiscal and economic impact to providers include:

- The cost to adding locks to doors for individual privacy is estimated at \$110 per door lock. The Department is unable to estimate the overall impact because the Department is unable to quantify the number of rooms that need a lock.
- Some providers may need to hire additional staff to meet the new regulations. If this occurs, a percentage of providers that are eligible to seek exceptional

payments may have any costs offset through this process. Due to newness of rules, lack of available data, and variables in provider and service recipient needs, the Department is unable to estimate the overall impact.

- An increase in administrative cost to providers is also anticipated in order to engage in new planning discussions and documentation processes around person-centered service planning and limits to freedoms and rights of individuals receiving services. The Department is unable to calculate the variables necessary to estimate the cost due to providers differing needs.

Public: The Department estimates there will not be a fiscal or economic impact to the public, however, if there is a substantial lack of compliance with HCBS requirements there is a risk of loss of federal matching which could be significant. This could necessitate increased General Funds or cuts to programs.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The Department estimates that there are approximately 55 agencies that provide services in a supported living program, some of which may be considered small businesses as defined in ORS 183.310.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The impact is described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The impact is described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from the following: Self Advocates; Support Service Brokerages; SEIU 503; Advocacy Groups; Oregon Council on Developmental Disabilities; Disability Rights of Oregon; Oregon Rehabilitation Association; Association of Community Mental Health Program; and Residential and Supported Living Provider Partnerships for Community Living.

Signed Lilia Teninty, Director, Developmental Disabilities

Signature

3/9/2016

Date

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 328

SUPPORTED LIVING ~~SETTINGS~~PROGRAMS FOR ADULTS
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

411-328-0550 Statement of Purpose

(1) The rules in OAR chapter 411, division 328 prescribe standards for providers that support individuals with intellectual or developmental disabilities in a supported living setting- and the procedures for the certification and endorsement of supported living settings under the rules in OAR chapter 411, division 323.

(2) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

(23) Supported living provides the opportunity for an individual to live in the residence of his or her choice within the community with recognition that the needs and preferences of the individual may change over time. The levels of support for the individual are based upon individual needs and preferences as identified in a functional needs assessment and defined in an Individual Support Plan. Such services may include up to 24 hours per day of paid supports that are provided in a manner that protects the dignity of the individual.

(34) These rules ensure that providers meet basic management, programmatic, health and safety, and human rights regulations for **adults individuals** receiving services funded by the Department in supported living settings. The provider is responsible for developing and implementing

policies and procedures that ensure that the requirements of these rules are met and ensuring services comply with all applicable local, state, and federal laws and regulations.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0560 Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 328:

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

~~(2) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is reviewed and reestablished at least yearly, at the time of an ISP team meeting.~~

~~(3) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.~~

~~(4) "Behavior Data Summary" means the document composed by a provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.~~

~~(5) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.~~

~~(61) "Board of Directors" means the group of people formed by the provider agency to set policy and give directions to a provider delivering supports to individuals in a community-based service setting. A board of directors may include local advisory boards used by multi-state organizations "board of directors" as defined in OAR 411-323-0020.~~

~~(7) "Career Development Plan" means the part of an ISP that identifies:~~

~~(a) The employment goals and objectives for an individual;~~

~~(b) The services and supports needed to achieve those goals;~~

~~(c) The people, agencies, and providers assigned to assist the individual to attain those goals;~~

~~(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and~~

~~(e) The services and supports necessary to overcome those obstacles.~~

~~(82) "CDDP" means "eCommunity dDevelopmental dDisability pProgram" as defined in OAR 411-320-0020.~~

(93) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of services in an endorsed supported living setting.

~~(10) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.~~

~~(11) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.~~

~~(12) "Department" means the Department of Human Services.~~

~~(13) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.~~

~~(14) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(15) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.~~

(164) "Endorsement" means the authorization to provide services in a supported living setting that is issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

~~(17) "Entry" means admission to a Department-funded developmental disability service.~~

(185) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of services in a supported living setting.

~~(19) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department-licensed or certified provider.~~

(206) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

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

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an adult is known as the Adult Needs Assessment (ANA). ~~Effective December 31, 2014, t~~The Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/ANAAadultInhome.xls> <http://www.dhs.state.or.us/spd/tools/dd/cm>. A printed copy of a blank ANA may be obtained by calling (503) 945-6398 or writing to the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

~~(21) "Guardian" means the person or agency appointed and authorized by a court to make decisions about services for an individual.~~

~~(22) "Health Care Representative" means:~~

~~(a) A health care representative as defined in ORS 127.505; or~~

~~(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.~~

~~(23) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.~~

~~(24) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.~~

~~(25) "Independence" means the extent to which an individual exerts control and choice over his or her own life.~~

~~(267) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded developmental disabilities services. Unless otherwise specified, references to individual also include the legal or designated representative of the~~

~~individual, who has the ability to act for the individual and exercise the rights of the individual.~~

(278) "Individual Profile" means the written profile that describes an individual entering into a supported living setting. The profile may consist of materials or assessments generated by a provider or other related agencies, consultants, family members, or the legal or designated representative of the individual (as applicable).

~~(28) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(29) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.~~

~~(30) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.~~

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

~~(32) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, such as providers and family members.~~

~~(33) "Legal Representative" means an attorney at law who has been retained by or for an individual, a power of attorney for an individual, or a~~

~~person or agency authorized by a court to make decisions about services for an individual.~~

~~(34) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around and that restricts freedom of movement or access to the body of the individual.~~

~~(35) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.~~

~~(36) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.~~

~~(37) "Natural Supports" mean the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.~~

~~(38) "Needs Meeting" means a process in which an ISP team identifies the services and supports an individual needs to live in his or her own home and makes a determination as to the feasibility of creating such services.~~

~~(39) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.~~

~~(4010) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques used to maintain health and safety.~~

~~(4411) "OSIPM" means "Oregon Supplemental Income Program-Medical", as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance~~

coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

~~(42) "Person-Centered Planning":~~

~~(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.~~

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

~~(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;~~

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

~~(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.~~

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

~~(43) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:~~

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

~~(b) Uses the least intrusive intervention possible;~~

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

~~(d) Evaluates the effectiveness of behavior interventions based on objective data.~~

~~(44) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.~~

(45~~12~~) "Provider" means a public or private community agency or organization that provides recognized developmental ~~disability~~ disabilities services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

~~(46) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.~~

~~(47) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.~~

~~(48) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.~~

(49~~13~~) "Supported Living" means the endorsed setting program that provides the opportunity for individuals to live in the residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

(50~~14~~) "These Rules" mean the rules in OAR chapter 411, division 328.

~~(51) "Transfer" means movement of an individual from one service setting to another service setting administered or operated by the same provider.~~

~~(52) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The~~

~~Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.~~

(15) "Unit" means the personal space and bedroom of an individual receiving home and community-based services in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

~~(53) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.~~

~~(54) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.~~

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0625 Provider Owned, Controlled, or Operated Residential Settings

(1) When an individual resides in a provider owned, controlled, or operated residential setting, the provider must assure that the setting complies with the qualities in OAR 411-004-0020 no later than September 1, 2018.

(2) Settings are considered provider owned, controlled, or operated when the provider authorized to deliver services to the individual --

(a) Owns, rents, leases, or co-leases the setting where the services are delivered; or

(b) Has a direct or indirect financial relationship with the owner of the property.

(3) RESIDENCY AGREEMENTS.

(a) The provider must enter into a written Residency Agreement with each individual specifying, at a minimum, the following:

(A) The rights and responsibilities of the individual and the provider; and

(B) The eviction process, notice requirements, and appeal rights available to each individual.

(b) The Residency Agreement may not violate the rights of an individual as stated in OAR 411-318-0010.

(c) The Residency Agreement may not be in conflict with any of these rules, the certification and endorsement rules in OAR chapter 411, division 323, or the home and community-based services and settings rules in OAR chapter 411, division 004.

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement may be subject to review and approval by the Department or the designee of the Department.

(e) The provider must review the Residency Agreement with and provide a copy to each individual and the legal representative of the individual, as applicable, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or the legal representative of the individual, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the record for the individual.

(4) INDIVIDUALLY-BASED LIMITATIONS.

(a) For an initial or annual ISP authorized to begin on or after January 1, 2017, the provider must identify any individually-based limitations to the following freedoms:

(A) Support and freedom to access the individual's personal food at any time;

(B) Visitors of the individual's choosing at any time;

(C) A lock on the individual's unit, lockable by the individual;

(D) Choice of a roommate, if sharing a bedroom;

(E) Freedom to furnish and decorate the individual's bedroom as the individual chooses in accordance with the Residency Agreement; and

(F) Freedom and support to control the individual's schedule and activities.

(b) After January 1, 2018, all individually-based limitations must be included in the ISP.

(c) An individually-based limitation to any freedom in subsection (a) of this section must be supported by a specific assessed need due to threats to the health and safety of the individual or others. The provider must incorporate and document all applicable elements identified in OAR 411-004-0040, including:

(A) The specific and individualized assessed need justifying the individually-based limitation;

(B) The positive interventions and supports used prior to any individually-based limitation;

(C) Less intrusive methods that have been tried but did not work;

(D) A clear description of the condition that is directly proportionate to the specific assessed need;

(E) Regular reassessment and review to measure the ongoing effectiveness of the individually-based limitation;

(F) Established time limits for periodic review of the individually-based limitation to determine if the individually-based limitation

should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(G) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(H) An assurance that the interventions and support do not cause harm to the individual.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0640 Dietary

(1) The provider is responsible for providing the support and guidance **as** identified in ~~individuals~~ the ~~ISPs~~ to ensure ~~that~~ individuals are provided access to a nutritionally adequate diet.

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

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

(4) The provider must support the freedom of the individual to have access to the individual's personal food at any time.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0650 Physical Environment

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be maintained. The interior and exterior must be safely maintained and accessible according to the needs of the individuals.

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

(3) Each residence must have:

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

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

(4) Each residence must be adequately heated and ventilated.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0700 Incident Reports and Emergency Notifications

(1) An incident report, as defined in OAR 411-328-0560, must be placed in the record for an individual upon injury, accident, act of physical aggression, or unusual incident. The incident report 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) Follow-up to be taken to prevent a recurrence of the incident.

(2) A copy of all incident reports must be sent or made electronically available to the ~~services coordinator~~case manager within five business days of the incident.

(3) Upon request of the legal representative, a copy of the incident report must be sent or made electronically available to the legal representative within five business days of the incident. If a copy of the incident report is sent or made electronically available to the legal representative of an individual, any confidential information about other individuals must be

removed or redacted as required by federal and state privacy laws. A copy of an incident report may not be provided to the legal representative of an individual when the report is part of an abuse or neglect investigation.

(4) The provider must immediately notify the CDDP immediately case management entity if an incident or allegation falls within the scope of abuse as defined in OAR 407-045-0260. ~~When an abuse investigation has been initiated, the CDDP must ensure that either the services coordinator or the provider also immediately notifies the legal or designated representative of the individual (as applicable). The parent, next of kin, or other significant person of the individual may also be notified unless the individual requests the parent, next of kin, or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.~~

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

- (a) The legal or designated representative, parent, next of kin, and other significant person of the individual (as applicable);
- (b) The CDDP case management entity; and
- (c) Any other agency responsible for the individual.

(6) In the case of an individual who is missing beyond the timeframes established by the ISP team, the provider must immediately notify:

- (a) The designated representative of the individual;
- (b) The legal representative of the individual, if any, or nearest responsible relative;
- (c) The local police department; and
- (d) The CDDP case management entity.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0720 Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL RIGHTS.

(a) A provider must protect the rights of individuals described in ~~subsection (c) of this section~~ OAR 411-318-0010 and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and request and annually thereafter, the individual rights described in ~~subsection (c) of this section~~ OAR 411-318-0010 must be provided to an individual and the legal or designated representative of the individual.

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

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

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

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

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

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

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

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

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

~~(I) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;~~

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

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

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

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

~~(N) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs~~

~~assessment and enjoying the benefits of community involvement and community integration:~~

~~(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and~~

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

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

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

~~(Q) Request a change in the plan for services and a reassessment of service needs;~~

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

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

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

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

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

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

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

~~(Y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and~~

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

~~(d) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.~~

~~(e) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to~~

~~determine the location of the individual and to be informed of the name and contact information of the family member, if known.~~

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

~~(g) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).~~

(2) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

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

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

(4) HEARINGS.

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

(b) An individual or the legal or designated representative of the individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination of a developmental disability service or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

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

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0750 Personalized Plans

(1) The following information must be collected and summarized by the provider prior to any ISP meeting:

(a) One page profile reflecting, at a minimum, information gathered by the site where the individual receives services;

(b) Person-centered information reflecting, at a minimum, information gathered by the site where the individual receives services; and

(c) Information about known, identified serious risks.

(2) The following information must be developed by the provider and shared with the case manager and the individual, or if applicable the legal or designated representative of the individual, as directed by the ISP or Services Agreement.

(a) Implementation strategies, such as action plans, for desired outcomes or goals.

(b) Necessary protocols or plans that address health, behavioral, safety, and financial supports.

(c) A summary of the provider risk management strategies in place, including title of document, date, and where it is kept.

(d) A Nursing Service Plan, if applicable.

(e) Other documents required by the ISP team.

(3) The provider must maintain a copy of the ISP or Service Agreement provided the case management entity.

(4) The provider must participate in ISP team meetings as requested by the individual or the legal or designated representative of the individual (if applicable).

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

~~The decision to support an individual so that the individual may live in and maintain his or her own home requires significant involvement from the individual and the ISP team for the individual. In supported living, this process is characterized by a functional needs assessment and a series of team meetings or discussions to determine what personalized supports the individual needs to live in his or her own home, a determination as to the feasibility of creating such supports, and the development of a written plan that describes services the individual must receive upon entry into supported living.~~

~~(2) NEEDS MEETING. An ISP team must meet to discuss the projected service needs of an individual prior to the individual receiving services in a supported living setting. The needs meeting must:~~

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

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

~~(c) As part of a functional needs assessment, identify the supports required for the individual to live in his or her own home; and~~

~~(d) Discuss the selection of potential providers based on the service needs of the individual.~~

~~(3) TRANSITION PLAN. The individual, provider, and other ISP team members must participate in an entry meeting prior to the initiation of services. The outcome of the entry meeting must be a written Transition Plan that takes effect upon entry. The Transition Plan must:~~

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

~~(b) Indicate who is responsible for providing the supports described in the Transition Plan;~~

~~(c) Be based on the list of supports identified in the functional needs assessment and consultation required by the ISP team; and~~

~~(d) Be developed and approved by the ISP team and available at the service site.~~

~~(4) INDIVIDUAL SUPPORT PLAN (ISP).~~

~~(a) An ISP must be developed and approved by an ISP team consistent with OAR 411-320-0120 and reviewed and updated as necessary within 60 days of implementation of the Transition Plan, as changes occur, and annually thereafter.~~

~~(b) The ISP or attached documents must include:~~

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

~~(B) A description of the supports required that is consistent with the support needs identified in the assessment of the individual;~~

~~(C) The projected dates of when specific supports are to begin and end;~~

~~(D) A list of personal, community, and alternative resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;~~

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

~~(F) Provider type;~~

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

~~(H) The strengths and preferences of the individual;~~

~~(I) Individually identified goals and desired outcomes;~~

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

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

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

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

~~(N) The alternative settings considered by the individual.~~

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

(56) INDIVIDUAL PROFILE.

(a) The provider must develop a written profile within 90 days of entry. The profile is used to train new staff. The profile must include information related to the history or personal highlights, lifestyle and activity choices and preferences, social network and significant relationships, and other information that helps describe an individual.

(b) The profile must be composed of written information generated by the provider. The profile may include:

(A) Reports of assessments or consultations;

(B) Historical or current materials developed by the CDDP-case management entity or nursing facility;

(C) Material and pictures from the family and friends of the individual;

(D) Newspaper articles; and

(E) Other relevant information.

(c) The profile must be maintained at the service site and updated as significant changes occur.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0760 Behavior Support

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

(2) The provider must inform an individual and, as applicable, the legal or designated representative of the individual, of the behavior support policy and procedures at the time of entry and as changes occur.

(3) A decision to develop a plan to alter a behavior must be made by the ISP team. ~~Documentation of the ISP team decision must be maintained by the provider.~~

(4) The behavior consultant or a trained staff member must conduct a functional behavioral assessment of the behavior that is based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

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

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

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

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

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

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

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

(5) The Behavior Support Plan must include:

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

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

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

- (d) Prevention strategies, including environmental modifications and arrangements;
- (e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;
- (f) A general crisis response plan that is consistent with OIS;
- (g) A plan to address post crisis issues;
- (h) A procedure for evaluating the effectiveness of the Behavior Support Plan, including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;
- (i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and
- (j) Positive behavior supports that includes the least intrusive intervention possible.

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

- (a) Written evidence that the individual, the legal or designated representative of the individual (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;
- (b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and
- (c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0770 Protective Physical Intervention

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

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

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

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

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

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

(4) Use of protective physical intervention techniques that are not part of an approved Behavior Support Plan in emergency situations must:

(a) Be reviewed by the Executive Director or the designee of the Executive Director within one hour of application;

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

(c) Result in the submission of an incident report to the ~~services coordinator~~ case manager or other Department designee (if applicable) and the legal or designated representative of the individual (if applicable), no later than one business day after the incident has occurred ; and

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

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

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

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

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

(d) Documentation of any injury;

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

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

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

(h) Documentation of a review by the Executive Director or the designee of the Executive Director who is knowledgeable in OIS, as evident by a job description that reflects this responsibility. The

review must include the follow-up to be taken to prevent a recurrence of the incident.

(6) A copy of the incident report must be sent or made electronically available within five business days of the incident to the ~~services coordinator~~ case manager and the legal or designated representative of the individual (when applicable).

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

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

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

(d) All protective physical interventions resulting in injuries must be documented in an incident report and sent or made electronically available to the ~~services coordinator~~ case manager or other Department designee (if applicable) within one business day of the incident.

(7) BEHAVIOR DATA SUMMARY.

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

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

(B) There is a formal written functional behavioral assessment and a written Behavior Support Plan;

(C) The Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

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

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

(b) A copy of the behavior data summary must be forwarded or made electronically available every 30 days to the ~~services coordinator~~case manager or other Department designee (if applicable) and the legal or designated representative of the individual (if applicable).

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0780 Psychotropic Medications and Medications for Behavior

(1) Psychotropic medications and medications for behavior must be: prescribed by a physician through a written order.

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

~~(b) Included in the ISP.~~

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

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

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

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

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0790 Entry, Exit, and Transfer

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

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters supported living is subject to eligibility as described in this section. ~~(a)~~ To be eligible for supported living, an individual must:

~~(Aa)~~ Be an Oregon resident;

~~(bB)~~ Be receiving a Medicaid Title XIX (OHP) benefit package through OSIPM or OCCS medical program eligible for OHP Plus; Individuals receiving Medicaid OHP under OCCS medical coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if they were requesting these services under OSIPM, including the rules regarding:

(A) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300; and

(B) The equity value of a home which exceeds the limits as set forth in OAR 461-145-0220.

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

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

~~(eE)~~ Be an individual who is not receiving other Department-funded in-home or community living support;

~~(fF)~~ Have access to the financial resources to afford living expenses, such as food, utilities, rent, and other housing expenses; and

~~(gG)~~ Be eligible for Community First Choice state plan services.

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

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

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

~~(iii) A loan evaluated according to OAR 461-145-0330; or~~

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

~~(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.~~

(3) ENTRY.

(a) A provider must participate in an entry meeting prior to the onset of services to an individual.

(ab) Prior to or upon an entry ISP team meeting, a provider must demonstrate effort to acquire the following individual information from the referring case management entity:

(A) A copy of the eligibility determination document;

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

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

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

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

(v) A record of major illnesses and hospitalizations.

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

(F) A copy of the most recent needs assessment. If the needs of the individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if available);

(H) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney,

court orders, probation and parole information, or any other legal restriction on the rights of the individual (if applicable);

(I) Written documentation to explain why preferences or choices of the individual may not be honored at that time;

(J) A copy of the most recent ISP or Service Agreement, and Behavior Support Plan and assessment (if available);

(K) Information related to the lifestyle, activities, and other choices and preferences; and

(L) Documentation of financial resources.

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

~~(A) The name of the individual proposed for services;~~

~~(B) The date of the entry meeting;~~

~~(C) The date determined to be the date of entry;~~

~~(D) Documentation of the participants included in the entry meeting;~~

~~(E) Documentation of the pre-entry information required by subsection (a) of this section;~~

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

~~(G) The written Transition Plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.~~

(4) VOLUNTARY TRANSFERS AND EXITS.

(a) A provider must promptly notify ~~a services coordinator~~ the case manager if an individual or the legal or designated representative of the individual gives notice of the intent to exit or abruptly exits services.

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

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

(5) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

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

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

(B) The individual experiences a medical emergency;

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

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

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

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

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

- (i) The reason for the reduction, transfer, or exit; and
- (ii) The right of the individual to a hearing as described in subsection (d) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

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

(d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual or the legal or designated representative of the individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the provider must reserve service availability for the individual until receipt of the Final Order.

(6) EXIT MEETING. A provider must participate in an exit meeting before any decision to exit an individual is made if required by the case management entity.

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

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

~~(B) The date of the exit meeting;~~

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

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

~~(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual is requesting the exit);~~

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

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

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

~~(A) The individual requests an immediate removal from services; or~~

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

~~(7) TRANSFER MEETING. An ISP team A provider must meet to discuss any proposed participate in a transfer of an individual meeting before any decision to transfer an individual is made if required by the case management entity. Findings of the transfer meeting must be recorded in the file for the individual and include, at a minimum:~~

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

~~(b) The date of the transfer meeting;~~

- ~~(c) Documentation of the participants included in the transfer meeting;~~
- ~~(d) Documentation of the circumstances leading to the proposed transfer;~~
- ~~(e) Documentation of the alternatives considered instead of transfer;~~
- ~~(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, may not be honored;~~
- ~~(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and~~
- ~~(h) The written plan for services after the transfer.~~

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670