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: Ancillary Services for Individuals Receiving Office of Developmental Disabilities Services

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

May 19, 2016	10:00 a.m.	Human Services Building 500 Summer Street NE, Rm. 160 Salem, Oregon 97301	Staff
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

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

ADOPT:

OAR chapter 411, division 435

Stat. Auth.: ORS 409.050, 427.104, 430.662

Other Auth.:

Stats. Implemented: ORS 427.005, 427.007, 427.115, 430.610, 430.620, 430.662-430.670

RULE SUMMARY

The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to adopt rules for ancillary services in OAR chapter 411, division 435 to include eligibility requirements, service descriptions, service limits, and provider qualifications for certain services available under the 1915(k) and 1915(c) funding authorities. These rules are drawn from portions of existing, almost identical, rules in OAR chapter 411 divisions 300, 308, 330, 340, 350, and 355. The relevant portions of those rules are being repealed and put into this new division. Adopting OAR chapter 411, division 435 will assure that variations in the present rules are eliminated.

The Department is also incorporating new sections into OAR chapter 411, division 435 that were not in prior rules, including:

- Department-wide financial eligibility requirements for long-term services as described in OAR 461-145-0220.
- A requirement that an individual must receive three bids before making an environmental modification or environmental safety modification.
- Clarify the policy requiring that purchases made to meet a single identified goal on an ISP must be considered together as one cost for the purpose of triggering a review by the Department prior to the purchase.
- Prohibiting, in most circumstances, providers who may have an advantage in being selected due to their relationship with the individual from providing services to the individual with which the relationship exists.

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.

June 10, 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 Administrative Rules Chapter Number

ODDS: Ancillary Services for Individuals Receiving Office of Developmental Disabilities Services

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 rules in OAR chapter 411, division 435 relating to ancillary services.

Statutory Authority: ORS 409.050, 427.104, 430.662

Other Authority:

Stats. Implemented: ORS 427.005, 427.007, 427.115, 430.610, 430.620, 430.662-430.670

Documents Relied Upon, and where they are available:

Need for the Rule(s):

The Department needs to adopt rules in OAR chapter 411, division 435 to assure uniformity across programs and services delivery and equitable access. Currently, provider requirements for ancillary services are located in varying rules. The Department is adopting the standards in OAR chapter 411, division 435 as they apply to varying programs, regardless of the case management entity authorizing the service (when more than one type of case management entity is able to authorize it). Having the standards exist in multiple rules created inconsistency, despite the services being drawn from the same funding authorities. The rules in OAR chapter 411, division 435 incorporate the standards for ancillary services that were in six different OAR divisions into one division.

The Department needs to adopt rules in OAR chapter 411, division 435 to ensure uniformity by identifying the services available through the Community First Choice state plan amendment and the 1915(c) waivers operated by the Department to include eligibility requirements, service descriptions, service limits, and provider qualifications for certain services available under the 1915(k) and 1915(c) funding authorities and put all of those requirements in one place. The Department also needs to include in these rules varying policies that are currently not found in rule including:

- Department-wide financial eligibility requirements for long-term services as described in OAR 461-145-0220. This includes a financial eligibility requirement in which home equity of a certain amount makes an individual ineligible for services.
- Requiring three bids for environmental modifications and environmental safety modifications.
- Requiring that purchases made to meet a single identified goal on an ISP must be considered together as one cost for the purposes of triggering a review by the Department prior to the purchase.
- Requiring that providers who may have an advantage in being selected due to the relationship with the individual are largely excluded as providers.

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 adopting OAR chapter 411, division 435 will have the following fiscal and economic impact:

State Agencies: The Department estimates there will be no fiscal or economic impact on state agencies.

Units of Local Government: The Department estimates there will be no fiscal or economic impact on units of local government.

Consumers: The Department estimates there will be no fiscal or economic impact on consumers.

Providers: The Department estimates there will be no fiscal or economic impact on providers.

Public: The Department estimates there will be no fiscal or economic impact on the public.

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 no small businesses will be impacted by this rule.

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

None

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

None

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

A representative of a small business as defined in ORS 183.310 participated in the rules advisory committee. Small businesses will be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from: CDDPs; Association of Oregon Community Mental Health Program Directors; Support Service Brokerages; Oregon Support Services Association; Oregon Rehabilitation Association, SEIU; and Partners for Community Living.

Signed Lilia Teninty, Director, Developmental Disabilities	4/15/2016
Signature	Date

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 435

ANCILLARY SERVICES

411-435-0010 Statement of Purpose

(1) These rules ensure individuals receiving services provided by the Department of Human Services, Office of Developmental Disabilities Services through the Community First Choice State Plan Amendment and 1915(c) waivers are able to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services.

(2) These rules ensure equal access to individuals who are eligible for the ancillary services provided through these rules.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-435-0020 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 435:

(1) "ADL" means "Activities of Daily Living".

(2) "Ancillary Services" mean the array of services described in these rules that may be authorized as stand-alone services, separate from attendant care, relief care, and skills training, and an all-inclusive rate paid to a residential program or a foster care provider.

(3) "Assistive Devices" mean the ancillary service that makes available devices, aids, controls, supplies, or appliances necessary to enable an

individual to increase the ability of the individual to perform ADL and IADLs or to communicate in the home and community. Assistive devices are available through the Community First Choice State Plan Amendment.

(4) "Assistive Technology" means the ancillary service that makes available devices, aids, controls, supplies, or appliances that are purchased to provide support for an individual and replace the need for direct interventions or to increase independence. Assistive technology is available through the Community First Choice State Plan Amendment.

(5) "CDDP" means "Community Developmental Disabilities Program".

(6) "Chore Services" mean the ancillary services that are needed to restore a hazardous or unsanitary situation in the home of an individual to a sanitary, safe environment. Chore services are available through the Community First Choice State Plan Amendment.

(7) "CIIS" means "Children's Intensive In-home Services". CIIS include the services authorized by the Department delivered through:

(a) The ICF/ID Behavioral Program;

(b) The Medically Fragile Children’s Program; and

(c) The Medically Involved Children’s Waiver.

(8) "Community Nursing Services" means the ancillary service that provides for the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851. Community nursing services are available through the Community First Choice State Plan Amendment.

(9) "Environmental Modifications" mean the ancillary service that provides for physical adaptations that are necessary to ensure the health, welfare, and safety of an individual in his or her own home, or that are necessary to enable the individual to function with greater independence around his or her own home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures may otherwise be made for human

assistance. Environmental modifications are available through the Community First Choice State Plan Amendment.

(10) "Environmental Safety Modifications" mean the ancillary service that provides for physical adaptations that are made to the exterior of the home of an individual or the home of the family of the individual as identified in the ISP for the individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around the home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures may otherwise be made for human assistance. Environmental safety modifications are available through a 1915(c) waiver.

(11) "Family Training" means the ancillary service that provides for the training services that are available to the family of an individual to increase the capacity of the family to care for, support, and maintain the individual in the home of the individual. Family training is available through a 1915(c) waiver.

(12) "IADL" means "Instrumental Activities of Daily Living".

(13) "Individual-Directed Goods and Services" means the ancillary service that provides for services, equipment, or supplies not otherwise provided through other waiver or state plan services, that address an identified need in an ISP. Individual-directed goods and services may include services, equipment, or supplies that maintain a child in the community. Individual-directed goods and services are available through a 1915(c) waiver.

(14) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for Department funds. Effective January 1, 2015, the Department incorporates Version 2.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf. A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(15) "ISP" means "Individual Support Plan".

(16) "OCCS" means the "Oregon Health Authority, Office of Client and Community Services".

(17) "OHP" means "Oregon Health Plan".

(18) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(19) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, any pertinent building permits, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in the ISP and relating to the ADL, IADL, and health-related tasks of the individual as discussed by the individual, designated representative, legal representative, homeowner, case manager, and ISP team.

(20) "Special Diets" means the ancillary service that provides for the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.

(21) "Specialized Medical Supplies" mean the ancillary service, available through a 1915(c) waiver, that provides for medical and ancillary supplies such as:

> (a) Necessary medical supplies specified in an ISP that are not available through state plan or alternative resources;
>
> (b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and
>
> (c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(22) "These Rules" mean the rules in OAR chapter 411, division 435.

(23) "Transition Costs" means the ancillary service that provides for expenses such as rent and utility deposits, first month’s rent and utilities,

bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from residing in a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities to residing in a community-based home. Transition costs are available through the Community First Choice State Plan Amendment

(24) "Vehicle Modifications" means the ancillary service that provides for the adaptations or alterations that are made to the vehicle that is the primary means of transportation for an individual in order to accommodate the service needs of the individual. Vehicle modifications are available through a 1915(c) waiver.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-435-0030 General Eligibility for Ancillary Services

(1) To be eligible for ancillary services an individual must:

(a) Be an Oregon resident.

(b) Be enrolled at a CDDP, a Brokerage, or a CIIS program.

(c) Be receiving Medicaid Title XIX (OHP) benefit package through OSIPM or OCCS medical program. 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.

(d) Be determined to meet the level of care as defined in OAR 411-415-0020.

(e) Demonstrate a need for the ancillary service.

(f) POST ELIGIBILITY TREATMENT OF INCOME. For individuals with excess income, contribute to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(g) For services available through the Community First Choice State Plan Amendment, participate in a functional needs assessment and provide information necessary to complete the functional needs assessments and reassessments within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or to provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(B) The Department may allow additional time if circumstances beyond the control of the individual or legal representative prevent timely participation in the functional needs assessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(h) A child receiving direct assistance funds under family support as described in OAR 411-305-0120 is not eligible to receive ancillary services.

(2) Additional service limits are described in these rules.

(3) Individuals who meet the general eligibility criteria described in this rule may be eligible for services equivalent to the services described in these rules from a residential program when the individual is enrolled to one through the program's all inclusive rate.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-435-0040 Conditions of Purchase

(1) Ancillary services must be authorized in an ISP consistent with OAR 411-415-0070.

(2) All ancillary services purchased must be in accordance with the In-home Expenditure Guidelines.

(3) Department funds may not be used for:

(a) A reimbursement to an individual, or the legal or designated representative or family of the individual, for expenses related to ancillary services.

(b) An advance payment of funds to an individual, or the legal or designated representative or family of the individual, to obtain ancillary services.

(c) Services, materials, or activities that are illegal.

(d) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260.

(e) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies.

(f) The purchase of a vehicle.

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

(A) Medications;

(B) Health insurance co-payments;

(C) Mental health evaluation and treatment;

(D) Dental treatments and appliances;

(E) Medical treatments;

(F) Dietary supplements; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance services.

(i) Legal fees including, but not limited to, costs of representation in educational negotiations, establishing trusts, or creating guardianships.

(j) Vacation costs that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the individual for personal assistance in all home and community-based settings.

(k) Services or supports that are not necessary or cost-effective.

(l) Services that do not meet the description of ancillary services as described these rules, or that do not meet the definition of social benefits as defined in OAR 411-317-0000.

(m) Services, activities, materials, or equipment that may be obtained by the individual through other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services.

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

(o) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need.

(p) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child or consumer safety agencies.

(q) Services provided in a nursing facility, correctional institution, or hospital.

(r) Services, activities, materials, or equipment that may be obtained by the individual or the individual's family through alternative resources or natural supports.

(s) Services when there is sufficient evidence to believe that an individual or legal representative, or a provider chosen by an individual, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP, refused to accept or delegate record keeping required to document use of Department funds.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-435-0050 Developmental Disabilities Community First Choice Ancillary Services

The ancillary services described in this rule are available through the Community First Choice state plan amendment.

(1) COMMUNITY NURSING SERVICES.

(a) In addition to the general eligibility criteria listed in OAR 411-435-0030, to access community nursing services an individual may not be enrolled in a 24 hour residential program under OAR chapter 411, division 325. An individual enrolled in a supported living program under OAR chapter 411, division 328 is eligible to access community nursing services when the cost of the service is not included in the rate paid to the provider.

(b) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of the provider and primary caregiver and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(G) Collateral contact with a case manager regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(c) Community nursing services exclude direct nursing services as described in OAR chapter 411, division 380 and private duty nursing described in OAR chapter 411, division 300.

(d) A Nursing Service Plan must be present when Department funds are used for community nursing services. A case manager must authorize the provision of community nursing services as identified in an ISP.

(e) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(2) ENVIRONMENTAL MODIFICATIONS.

(a) In addition to the general eligibility criteria stated in OAR 411-435-0030, an individual may access this service if:

(A) Environmental modification may be reasonably expected to reduce the need for human assistance or increase an individual’s independence with meeting an identified support need related to the completion of an ADL, IADL, or health related task; and

(B) The individual is not enrolled in a residential program, unless the enrollment is in a supported living program described in OAR chapter 411, division 328 and the dwelling is not a provider owned, controlled, or operated setting.

(b) Environmental modifications include, but are not limited to:

(A) Installation of shatter-proof windows;

(B) Hardening of walls or doors;

(C) Specialized, hardened, waterproof, or padded flooring;

(D) An alarm system for doors or windows;

(E) Protective covering for smoke alarms, light fixtures, and appliances;

(F) Installation of ramps, grab-bars, and electric door openers;

(G) Adaptation of kitchen cabinets and sinks;

(H) Widening of doorways;

(I) Handrails;

(J) Modification of bathroom facilities;

(K) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(L) Installation of non-skid surfaces;

(M) Overhead track systems to assist with lifting or transferring;

(N) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and

(O) Adaptations to control the home environment including lights and heat.

(c) Environmental modifications exclude:

(A) Adaptations or improvements to the home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP for the individual as the most cost effective solution;

(B) Adaptations that add to the total square footage of the home except for ramps that attach to the home for the purpose of entry or exit;

(C) Except for ramps, adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the home.

(d) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the needs assessment and ISP for an individual.

(e) Environmental modifications are limited to $5,000 per modification. A case manager must request approval for additional expenditures through the Department prior to authorization of the service in an ISP. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(f) Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental modifications must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(j) For all environmental modifications, a case management entity must assure a minimum of three written bids from qualified providers as described in OAR 411-435-0080 are acquired. When it is not possible to reasonably obtain three written bids, exceptions to this requirement may be granted by the Department.

(k) A case manager must assure the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work are followed.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may not be in foreclosure or be the subject of legal proceedings regarding ownership.

(n) Environmental modifications must only be completed to the primary residence of the individual.

(o) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(p) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials, manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(3) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device with Department funds must be limited to the types of equipment and accessories that are not excluded under OAR 410-122-0080. An individual who meets the general eligibility criteria in OAR 411-435-0030 may access this service when assistive devices may be reasonably expected to reduce the need for human assistance, or increase an individual's independence, with meeting an identified support need related to the completion of an ADL, IADL, or health related task.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the ability of the individual to perform and support ADLs and IADLs or to communicate in the home and community .

(b) Assistive devices may be purchased with Department funds when the intellectual or developmental disability of an individual otherwise prevents or limits the independence of the individual in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual.

(d) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 or any combination of items that meet a single assessed need totaling more than $500, must be approved by the Department prior to expenditure. A case manager must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet the assessed need of an individual.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) Assistive devices exclude:

(A) Items that do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are unsafe for an individual;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(4) ASSISTIVE TECHNOLOGY Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, or increase independence. An individual who meets the general eligibility criteria in OAR 411-435-0030 may access this service when assistive technology may be reasonably expected to reduce the need for human assistance, or increase an individual’s independence, with meeting an identified support need related to the completion of an ADL, IADL, or health related task.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500, or any combination of items that meet a single assessed need totaling more than $500, must be approved by the Department prior to expenditure. A case manager must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(c) Assistive technology includes, but is not limited to:

(A) Motion or sound sensors;

(B) Two-way communication systems;

(C) Automatic faucets and soap dispensers;

(D) Incontinence and fall sensors;

(E) Devices to secure assistance in an emergency in the community;

(F) Medication minders;

(G) Alert systems for ADL or IADL supports; or

(H) Mobile electronic devices or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology.

(5) CHORE SERVICES.

(a) To be eligible to access chore services an individual must:

(A) Meet the general eligibility criteria in OAR 411-435-0030; and

(B) Not be enrolled in a residential program, unless the enrollment is in a supported living program described in OAR chapter 411, division 328 and the dwelling is not a provider owned, controlled, or operated setting.

(b) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(c) Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(d) Chore services may be provided only in situations where no one else is responsible to perform or pay for the services.

(6) COMMUNITY TRANSPORTATION.

(a) Community transportation may only be authorized on an ISP when an individual meets the general eligibility criteria in OAR 411-435-0030, voluntary natural supports or volunteer services are not available, when the individual is not enrolled in a residential program, when it is not the responsibility of the parent of a child, and one of the following is identified in the ISP of the individual:

(A) The individual has an assessed need for ADL, IADL, or health-related task during transportation; or

(B) The individual has either an assessed need for ADL, IADL, or health-related task at the destination or a need for waiver funded services at the destination.

(b) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities.

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish ADL, IADL, a health-related task, or employment goal identified in an ISP.

(C) The purchase of a bus pass.

(c) Community transportation must be provided in the most cost effective manner which meets the needs identified in the ISP for the individual.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a case manager and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the case manager and documented in the ISP. Personal support workers who use their own personal vehicle for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Mileage reimbursement for community transportation is only authorized when a provider is also being paid for delivering community living supports or job coaching. Mileage may not be authorized as a stand-alone payment.

(g) Community transportation services exclude:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the individual;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the individual;

(H) Transportation as part of a vacation or trips for relaxation purposes;

(I) Transportation provided by family members who are not personal support workers;

(J) Reimbursement for out-of-state travel expenses;

(K) Mileage reimbursement to the individual or a personal support worker when the individual owns the vehicle doing the transportation;

(L) Transportation normally provided by schools;

(M) Transportation normally provided by a primary caregiver for a child of similar age without disabilities; and

(N) Transportation for a child that is typically the responsibility of a parent. Transportation for a child that is not typically a parental responsibility is limited to transportation:

(i) Concurrent with the delivery of relief care as described in OAR 411-450-0060; or

(ii) Included in a Behavior Support Plan.

(7) TRANSITION COSTS.

(a) To be eligible to access transition costs an individual must meet the general eligibility criteria in OAR 411-435-0030 and not be enrolled in a residential program.

(b) Transition costs are limited to an individual transitioning from residing in a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities to residing in a community-based home when the cost for the service is not included in the rate paid to the provider.

(c) Transition costs are based on an the assessed need of an individual determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of an individual and the determination by the Department of appropriateness and cost-effectiveness.

(d) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(e) Transition costs are provided no more than twice annually.

(f) Transitions costs for basic household furnishings and other items are limited to one time per year.

(g) Transition costs may not supplant the legal responsibility of the parent or guardian of a child. In this context, the term parent or guardian does not include a designated representative.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-435-0060 Developmental Disabilities Waiver Services

The ancillary services described in this rule are available through the ICF/IDD Comprehensive Waiver, ICF/IDD Support Services Waiver, Medically Involved Children's Waiver, Medically Fragile (Hospital) Model Waiver, and Behavioral (ICF/IDD) Model Waiver.

(1) FAMILY TRAINING.

(a) To be eligible to access family training an individual must meet the general eligibility criteria in OAR 411-435-0030 and:

(A) Be enrolled in OSIPM; and

(B) Not be enrolled in a residential program.

(b) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

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

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the individual or the identified, specialized, medical, or behavioral support needs of the individual.

(i) Conferences and workshops must be prior authorized by a case manager, directly relate to the intellectual or developmental disability of the individual, and increase

the knowledge and skills of the family to care for and maintain the individual in the home of the individual.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for individual family members who are employed to care for the individual.

(c) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider, including a paid family member;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(d) Prior authorization by the case manager is required for attendance by family members at organized conferences and workshops funded with Department funds.

(2) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) To be eligible to access environmental safety modifications an individual must meet the general eligibility criteria in OAR 411-435-0030 and:

(A) Be enrolled in OSIPM; and

(B) Not enrolled in a residential program, unless the enrollment is in a supported living program described in OAR chapter 411, division 328 and the dwelling is not a provider owned, controlled, or operated setting.

(b) Environmental safety modifications must be made using materials of the most cost effective type and may not include decorative additions.

(c) Fencing may not exceed 200 linear feet without approval from the Department.

(d) Environmental safety modifications exclude:

(A) Large gates, such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the home that are of general utility and are not for the direct safety or long-term benefit to the individual or do not address the underlying environmental need for the modification;

(D) Adaptations that add to the total square footage of the home; and

(E) Adaptations that are prohibited by local codes and ordinances or neighborhood Covenants, Conditions, and Restrictions (CCR).

(e) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(f) Environmental safety modifications are limited to $5,000 per modification. A case manager must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety

modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the home and may not add to the square footage of the home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work as defined in OAR 411-435-0020 must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(k) For all environmental safety modifications, a minimum of three written bids from qualified providers as described in OAR 411-435-0080 are required

(l) A case manager must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental safety modifications must only be completed to the primary residence of the individual.

(o) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(p) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on

industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(3) VEHICLE MODIFICATIONS.

(a) To be eligible to access vehicle modifications an individual must meet the general eligibility criteria in OAR 411-435-0030 and:

(A) Be enrolled in OSIPM; and

(B) Not be enrolled in a residential program.

(b) Vehicle modifications may only be made to the vehicle primarily used by an individual to meet the unique needs of the individual. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the individual safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(c) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to the individual or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(d) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(4) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services. To be eligible to access specialized medical supplies an individual must meet the general eligibility criteria in OAR 411-435-0030 and be enrolled in OSIPM.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-435-0070 Developmental Disabilities Other Waiver Services.

(1) SPECIAL DIET. Special diets are specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to the medical condition or diagnosis of an individual that are needed to sustain the individual in the home of the individual. Special diets are supplements and are not intended to meet the complete daily nutritional requirements of the individual. Special diet supplies must be supported by an evidence-based treatment regimen. This ancillary service

is available through the ICF/IDD Support Services Waiver, Medically Involved Children's Waiver, Medically Fragile (Hospital) Model Waiver, and Behavioral (ICF/IDD) Model Waiver.

(a) Specials diets are available to only individuals who meet the general eligibility criteria in OAR 411-435-0030 and are enrolled in OSIPM and a Brokerage or a CIIS program.

(b) A special diet is a supplement and is not intended to meet complete, daily nutritional requirements.

(c) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(d) The maximum monthly purchase for special diet supplies for a child in a CIIS program may not exceed $100 per month.

(e) Special diet supplies must be in support of an evidence-based treatment regimen.

(f) A special diet excludes restaurant and prepared foods, vitamins, and supplements.

(2) INDIVIDUAL-DIRECTED GOODS AND SERVICES. This ancillary service is available through the Medically Involved Children's Waiver, Medically Fragile (Hospital) Model Waiver, and Behavioral (ICF/IDD) Model Waiver.

(a) Only a child who meets the general eligibility criteria in OAR 411-435-0030 and is enrolled in CIIS may access individual-directed goods and services.

(b) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services or state plan services.

(c) Authorization of individual directed goods and services must be based on an assessed need.

(d) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(e) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(f) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment; or

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age.

(g) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670

411-435-0080 Ancillary Service Provider Requirements

(1) Providers of community nursing services.

(a) Independent providers are not personal support workers and must meet the minimum qualifications of an independent provider described in OAR chapter 411 division 375 and:

(A) Have a current Oregon nursing license;

(B) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048; and

(C) Submit a resume to the case management entity indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law.

(b) Agency providers must be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048.

(2) Providers delivering goods or services to individuals and paid with Department 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) For providers of environmental modifications or environmental safety modifications involving building modifications or new construction, a current license and bond as a building contractor as required by OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board) with a minimum of $1,000,000 liability insurance.

(b) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of an individual, and developing cost-effective plans to make homes safe and accessible.

(c) For public transportation providers, the established standards.

(d) For private transportation providers other than personal support workers, a business license and a license to drive in Oregon.

(e) For vendors and medical supply companies providing assistive devices or specialized medical supplies, a current retail business license, including enrollment as Medicaid providers through the Oregon Health Authority if vending medical equipment.

(f) Retail business licenses for vendors and supply companies providing special diets.

(3) Services provided and paid for with Department funds must be limited to the services within the scope of the license of the general business provider.

(4) A provider who is a writer of a scope of work, a contractor who is chosen to complete environmental modifications or environmental safety modifications, a contractor completing a vehicle modification, or a provider of chore services cannot have a conflict of interest associated with the delivery of the service unless the conflict is waived by the Department prior to delivering the service. A conflict of interest exists when the provider is:

(a) Related by blood or marriage to the individual, or to any paid caregiver of the individual.

(b) Financially responsible for the individual.

(c) Empowered to make financial or health-related decisions on behalf of the individual.

(d) May benefit financially from the provision of the environmental or vehicle modification.

(5) Payment by the Department for ancillary services is considered full payment for the services rendered under Medicaid. A provider may not demand or receive additional payment for ancillary services from the individual, legal representative, or any other source, under any circumstances.

(6) Medicaid funds are the payer of last resort. A provider must bill all third party resources until all third party resources are exhausted.

(7) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider.

Stat. Auth.: ORS 409.050, 427.104, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-430.670