

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: Community Living Supports

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

May 18, 2016	3 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:

OAR chapter 411, division 450

Stat. Auth.: ORS 409.050, 430.662

Other Auth.:

Stats. Implemented: ORS 427.005, 427.007, 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 community living supports in OAR chapter 411, division 450 to include the eligibility requirements, service descriptions, service limits, and provider qualifications for attendant care, relief care, and skills training available under the Community First Choice 1915(k) funding authority. These rules were taken from portions of current rules located in OAR chapter 411, divisions 300, 308, 330, 340, 350, and 355. The relevant portions of those rules are being eliminated and consolidated into this new division. This will assure that variation within rules across program areas related to these services are eliminated.

The Department is also incorporating new sections into OAR chapter 411, division 450 that were not in prior rules, including:

- A financial eligibility requirement that an individual with a certain amount of home equity is ineligible for community living supports.
- Authority for the Department to deny services when the services are unable to adequately meet the needs of the individual or when the setting in which services are delivered is not safe for the individual or provider.
- Requiring agency providers to notify the Department when the provider intends to change operations in a way that multiple individuals will lose services.
- Adaptations to any rules that are impacted by OAR chapter 411, division 004 related to home and community-based requirements for facility-based services.
- The provision for these rules to be used as the basis for an agency endorsement as described in OAR chapter 411 division 323.

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)

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: Community Living Supports

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 chapter 411, division 450 relating to community living supports.**

Statutory Authority: **ORS 409.050, 430.662**

Other Authority:

Stats. Implemented: **ORS 427.005, 427.007, 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 450 to assure equitable access and service delivery. Currently, the requirements for attendant care, skills training, and relief care services available through the Community First Choice state plan amendment are interspersed through six OAR divisions. This has led to redundancies and discrepancies among the program and service rules promulgated by the Department, despite the services being drawn from the same funding authority.

The proposed rules alleviate this problem by taking the services out of the varying divisions they are currently in and putting them all in one place. OAR chapter 411, division 450 establishes the eligibility requirements, service descriptions and limits, provider types, and a standard by which a certified agency may be endorsed to deliver the services, all in one place. The rules in OAR chapter 411, division 450 apply regardless of the case management entity authorizing the service.

Adoption of these rules will also:

- Bring the Department into compliance with the Department-wide financial eligibility requirement for long-term services described in OAR 461-145-0220.
- Give the Department an additional way to keep individuals and providers safe.
- Assure that adequate time is available for adequate service planning when an agency changes its business in such a way as to impact its customers.

- Bring the Department into compliance with federal regulations related to HCBS.
- Assure uniform standards for all agencies delivering the supports described in the rules.

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 450 will have the following fiscal and economic impact:

State Agencies: The rules give the Department new conditions to base service denials, which leads to individuals having hearing rights. To the extent denials are appealed, the Department may incur costs. The Department has no data to estimate the number of denials that may be made or that might be appealed and proceed to hearing.

Units of Local Government: The rules give the Department new conditions to base service denials, which leads to individuals having hearing rights. To the extent denials are appealed, Community Developmental Disabilities Programs (CDDPs) (when considered units of local government), as the entity issuing the denial, may incur the costs associated with participating in hearings. The Department is unable to estimate the number of denials that may be made or that might be appealed and proceed to hearing.

Consumers: When a consumer is denied services based on financial eligibility criteria related to home equity, the cost for services may need to be paid by the consumer. The Department is unable to estimate the number of consumers or the cost of services the consumers may have to bear, as the amounts will vary between consumers due to varying service needs.

Providers: The rules give the Department new conditions to base service denials, which leads to individuals having hearing rights. To the extent denials are appealed, CDDPs (when they are not units of local government) and Brokerages, as the entities issuing the denial, may incur the costs associated with participating in hearings. The Department is unable to estimate the number of denials that may be made or that might be appealed and proceed to hearing.

Service providers will require an endorsement upon initial certification or the expiration of their current agency certification. Current agency providers that do not require staff to have six hours of pre-service training and have policies and procedures that adequately address the expectations for operating a program will need to make changes to comply with the rules. The Department is unable to estimate the number of

agencies or staff at each agency that may require training. The Department also is unable to estimate the number of providers that will need to update policies to comply with the rules or the costs associated with those updates as they will vary by provider.

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:

There are currently 248 provider agencies delivering services under these rule. The Department is unable to estimate the number of provider agencies considered a small business as defined by ORS 183.310.

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

The proposed changes impact certified provider agencies as described above in the Department's statement of cost of compliance.

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

The proposed changes impact certified provider agencies as 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 was invited to participate on the Administrative Rule Advisory Committee, but did not attend. 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: Partners in Community Living; Support Service Brokerages; Service Employees International Union; Oregon Home Care Commission; Dungarvin, Inc.; CDDPs; Oregon Rehabilitation Association.

Signed Lilia Teninty, Director, Developmental Disabilities

4/15/2016

Signature

Date

**DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 450**

COMMUNITY LIVING SUPPORTS

411-450-0010 Statement of Purpose

(1) The rules in OAR chapter 411, division 450 prescribe standards, responsibilities, and procedures for the delivery of community living supports. Supports are intended to permit individuals to live independently in a community-based setting.

(2) Community living supports are designed to prevent out-of-home placement of a child, or to return a child to the family home from a residential setting other than the family home.

(3) These rules prescribe service eligibility requirements for individuals receiving community living supports, and standards and procedures for agency providers operating a community living supports program.

(4) The rules in OAR chapter 411, division 450 effectuate Oregon's Employment First policy under which the employment of individuals with developmental disabilities in competitive integrated employment is the highest priority over unemployment, segregated employment, or other non-work day activities. The delivery of services provided under these rules presumes all individuals eligible for services are capable of working in an integrated employment setting and earning minimum wage or better.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0020 Definitions and Acronyms

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 450:

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

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

(3) "Facility-Based" means a service that is operated at a fixed site owned, operated, or controlled by a service provider where an individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

(4) "Family":

(a) Means a unit of two or more people that includes at least one individual, found to be eligible for developmental disabilities services, where the primary caregiver is:

(A) A family member as defined in OAR chapter 411, division 317; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of determining the service eligibility of an individual for community living supports as a resident in the family home.

(5) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

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

(B) Identifies risk factors and support needs; and

(C) Determines the service level as defined in OAR 411-317-0000, including the maximum number of hours that may be authorized.

(b) The functional needs assessment required for an adult to access community living supports is known as the Adult Needs Assessment (ANA). 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/>.

(c) The functional needs assessment required for a child to access community living supports is known as the Children's Needs Assessment (CNA). The Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/>.

(d) A printed copy of the assessment tool 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, OR 97301.

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

(7) "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.

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

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

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

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

(12) "Primary Caregiver" means the person identified in an ISP as providing the majority of service and support for an individual in the home of the individual.

(13) "PSW" means "Personal Support Worker".

(14) "These Rules" mean the rules in OAR chapter 411, division 450.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0030 Eligibility for Community Living Supports

(1) An individual may not be denied community living supports or otherwise discriminated against on the basis of age, diagnostic or disability category, race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) To be eligible for community living supports, an individual must:

(a) Be an Oregon resident;

(b) Be determined eligible for developmental disabilities services by the CDDP of the county of origin as described in OAR 411-320-0080, except for those enrolled in the Medically Involved Children's Waiver or the Medically Fragile Children's Program as described in OAR chapter 411, division 300;

(c) Choose to use a case management entity for assistance with design and management of developmental disabilities services;

(d) Be receiving a Medicaid Title XIX (OHP) benefit package through OSIPM or OCCS medical program;

(A) An adult is eligible for community living supports if the adult had been receiving community living supports as a child up to the 18th birthday and has not become ineligible due to section (2)(d)(B) of this rule.

(B) Eligibility for community living supports based on section (2)(d)(A) of this rule ends if:

(i) The individual does not apply for a disability determination and Medicaid within 10 business days of his or her 18th birthday;

(ii) The Social Security Administration or the Presumptive Medicaid Disability Determination Team of the Department finds that the individual does not have a qualifying disability; or

(iii) The individual is determined by the state of Oregon to be ineligible for a Medicaid Title XIX (OHP) benefit package through OSIPM or OCCS medical program.

(C) 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:

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

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

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

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

(g) Participate in a functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment 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 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 supports and services under the family support program as described in OAR 411-305-0120 is not eligible to receive community living supports.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0040 Community Living Supports Entry and Exit

(1) A provider of community living supports must agree in writing to provide those supports identified in an ISP for the individual. Agreement may be shown by a signature on the ISP or on a service agreement. The agreement must include acknowledgement of:

(a) Limits of service that may be provided; and

(b) Payment rate.

(2) An individual must have community living supports terminated:

(a) At the end of a service period agreed upon by all parties and specified in the ISP;

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

(c) When the individual has been determined to no longer meet eligibility for community living supports as described in OAR 411-450-0030;

(d) When the case management entity has sufficient evidence to believe that an individual has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with these services; or

(e) When the individual either cannot be located or has not responded following 30 days of repeated attempts by staff of the case management entity to complete ISP development or monitoring activities, including participation in a functional needs assessment. An individual, and as applicable the legal or designated representative of the individual, must participate in a functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility.

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

(3) INVOLUNTARY REDUCTIONS AND EXITS.

(a) A provider agency must only reduce 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 when required to do so; or

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

(b) PROVIDER AGENCY NOTICE OF INVOLUNTARY REDUCTION OR EXIT. A provider agency 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 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 or Exit form approved by the Department and include:

(i) The reason for the reduction or exit; and

(ii) The right of the individual to a hearing as described in subsection (e) of this section.

(B) A Notice of Involuntary Reduction or Exit is not required when an individual requests the reduction 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 case manager immediately upon determination of the need for a reduction, transfer, or exit.

(d) NOTICE OF INVOLUNTARY GROUP REDUCTION, TRANSFER, OR EXIT. If an employment service provider reduces or transfers more than 10 individuals within any 30 calendar day period, the employment service provider must provide 60 days advance written notice to the individuals, the Department, the legal or designated representative of the individual (as applicable), and the case manager.

(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 (e) of this section.

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

(e) 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 or exit. If an 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.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0050 Minimum Standard for Community Living Supports

(1) ABUSE PROHIBITED. No adult or child shall be abused and abuse shall not be tolerated by any employee, staff, or volunteer of an individual, agency, or case management entity.

(2) Community living supports, purchased with Department funds, must be provided only as a social benefit.

(3) Community living supports must be delivered in a manner consistent with positive behavioral theory and practice, and where behavior intervention is not undertaken unless the behavior:

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

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

(C) Interferes with community participation;

(D) Results in damage to property; or

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

(4) Community living supports must be delivered in accordance with applicable state and federal wage and hour regulations.

(5) For a child, community living supports are considered to be for supports that are not typical for a parent or guardian to provide to a child of the same age.

(6) Community living supports may only be reimbursed when they are consistent with the In-Home Expenditure Guidelines.

(7) Community living supports shall only be reimbursed after community living supports are delivered as authorized in an ISP.

(8) Department funds may not be used for:

- (a) A reimbursement to an individual, legal or designated representative, or family member of the individual, for expenses related to services.
- (b) An advancement of funds to an individual, legal or designated representative, or family member of the individual, to obtain services.
- (c) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260 or OAR chapter 411, division 317.
- (d) Services that restrict the freedom of movement of an individual by seclusion in a locked room under any condition.
- (e) 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 ADL, IADL, or health related tasks in all home and community-based settings.
- (f) Rate enhancements to existing employment services under OAR chapter 411, division 345.
- (g) Services or supports that are not necessary as determined by a functional needs assessment or are not cost-effective.
- (h) Services that do not meet the description of community living supports as described in these rules, or that do not meet the definition of social benefits as defined in OAR 411-317-0000.
- (i) Educational services for school-age individuals, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills.
- (j) 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.

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

(l) Services in circumstances where the case management entity determines there is sufficient evidence to believe that the individual, the legal or designated representative of the individual (as applicable), legal representative, or provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with record keeping required to document use of Department funds, or otherwise knowingly misused public funds associated with community living supports.

(m) Services provided in a nursing facility, correctional institution, Behavioral Rehabilitation Services facility, Psychiatric Residential Treatment Services facility, or hospital.

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or provider agency charges for time or services when the individual is not present or available to receive services, including but not limited to hourly "no show" charge, and provider travel and preparation hours.

(o) Costs associated with training a PSW, other independent provider, or provider agency staff to deliver services.

(p) After September 1, 2018, services that are not delivered in a home and community-based setting.

(q) Services available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. § 701-796l, as amended.

(r) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended.

(s) Notwithstanding abuse as defined in ORS 419B.005, services that the case management entity determines are characterized by failure to act or neglect that leads to, or is in imminent danger of causing, physical injury through negligent omission, treatment, or maltreatment of an individual. Examples include, but are not limited to, the failure to

provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person.

(t) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members.

(u) Supports and services that are funded by child welfare in the family home.

(v) Educational and supportive services provided by schools as part of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act.

(w) Home schooling.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0060 Community Living Supports

(1) Department funds may be used to purchase community living supports available through the Community First Choice state plan that include:

(a) Attendant care as described in section (2) of this rule;

(b) Skills training as described in section (3) of this rule; and

(c) Relief care as described in section (4) of this rule.

(2) ATTENDANT CARE SERVICES. Attendant care services include direct support provided to an individual in the home of the individual or community by a qualified provider. ADL and IADL services provided through attendant care must be needed to permit individuals to live independently in a community-based setting.

(a) ADL services include, but are not limited to:

(A) Basic personal hygiene - providing or assisting with needs such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene.

(B) Toileting, bowel, and bladder care - assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care.

(C) Mobility, transfers, and repositioning - assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises.

(D) Eating - assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating.

(E) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability - helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(b) IADL services include, but are not limited to:

(A) Light housekeeping tasks necessary to maintain an individual in a healthy and safe environment - cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry.

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks.

(C) Meal preparation and special diets.

(D) Support with participation in the community:

(i) Support with community participation - assisting an individual in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses, and improving self-awareness and self-control; and

(ii) Support with communication - assisting an individual in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language, social responsiveness, social amenities, and interpersonal skills, and the functional application of acquired reading and writing skills.

(c) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(d) For a child, the primary caregiver is expected to be present or available during the provision of attendant care. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child and support, but not supplant, the family in their primary caregiver role.

(3) **SKILLS TRAINING.** Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and permit an individual to live independently in a community-based setting.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcomes are measured and the measurements are evaluated by a case manager no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the case manager must reassess or redefine the use of skills training with the individual for that particular goal.

(d) For a child, the primary caregiver is expected to be present or available during the provision of skills training. ADL and IADL services provided through skills training must support the child to live as independently as appropriate for the age of the child and support, but not supplant, the family in their primary caregiver role.

(e) Skills training may not replace or supplant the services of the educational system in fulfilling its obligation to educate an individual.

(4) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential. Daily relief care delivered by a PSW may not exceed seven consecutive days without permission from the Department.

(b) Relief care may be provided in:

(A) The home of the individual;

(B) A licensed setting;

(C) The home of a qualified provider, chosen by the individual or the representative of the individual, that is a safe setting for the individual; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the individual.

(c) No other community living supports may be provided to an individual during the 24-hour unit of daily relief care.

(5) Community living supports may be delivered:

(a) Individually or in a group as indicated by the outcome of the person centered planning process for the individual.

(b) In the home, community, or a facility.

(A) Community living supports are facility-based if delivered at a fixed site outside of the home of the individual that is operated, owned, or controlled by the service provider.

(B) Facility based community living supports must, at minimum, provide on-going opportunities and encouragement to individuals for going out into the broader community. Providers initially certified or endorsed by the Department or the Oregon Health Authority on or after January 1, 2016, must comply with this requirement prior to being certified and endorsed to provide services under these rules. Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a department approved transition plan, and be in full compliance with these rules by September 1, 2018.

(6) SETTING LIMITATIONS.

(a) An individual who lives in their own or family home is eligible for community living supports described in these rules for which the individual has an assessed need and the person centered planning process determines to be appropriate unless:

(A) The Department determines that the health and safety of the individual cannot be reasonably assured through the delivery of community living supports; or

(B) Dangerous conditions in the service setting jeopardize the health or safety of the individual or provider, and the individual, or the legal or designated representative of the individual, is unable or unwilling to implement necessary safeguards to minimize the dangers.

(b) An individual enrolled to a residential program, an adult foster home licensed under OAR chapter 411, division 050, or an assisted living facility licensed under OAR chapter 411, division 054 is not eligible for:

(A) Community living supports provided by a personal support worker.

(B) Community living supports delivered in the home of the individual, whether the home is a licensed setting or not.

(C) Relief care.

(c) A child living in a Behavior Rehabilitation Services (BRS) program as described in OAR 410-170-0000 through 410-170-0120, or Psychiatric Residential Treatment Services (PRTS) as defined in OAR 309-022-0100 is not eligible for community living supports.

(7) SERVICE LIMITS.

(a) All community living supports must be authorized in an ISP as described in OAR 411-415-0070.

(b) For an individual residing in their own or family home, the amount of community living supports in any plan year is limited to the service level determined by a functional needs assessment. The functional needs assessment determines:

(A) The total number of hours available to meet identified needs. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include:

(i) Attendant care;

(ii) Skills training; and

(iii) State plan personal care service hours as described in OAR chapter 411, division 034.

(B) The need for two staff to be available simultaneously to provide community living supports to the individual. When such a need is identified, the functional needs assessment determines the maximum number of hours two staff may be simultaneously available.

(c) For an individual enrolled in a residential program, an adult foster home licensed under OAR chapter 411, division 050, or an assisted living facility licensed under OAR chapter 411, division 054, any combination of job coaching, supported employment - small group employment support, employment path services, and community living supports must not exceed an average of 25 hours per week.

(d) No more than 14 days of relief care in a plan year are allowed without approval from the Department. Each day of respite services described in and provided under OAR 411-070-0043(5) contributes to the 14-day limit for relief care.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0070 Community Living Supports Providers and Provider Requirements

Delivery of community living supports is limited to the following provider types:

(1) A PSW who meets the standards described in OAR chapter 411, division 375.

(a) Except for a PSW delivering supports to a child in a CIIS program, a PSW may not provide more than 50 hours of community living supports per work week, as defined in OAR 411-375-0020, per individual unless the case management entity or the Department has approved an exception. A PSW delivering supports to a child in a CIIS program may not provide more than 40 hours per work week. The 24 hour relief care service does not contribute to the weekly hour limit.

(b) A PSW is not an available provider type when there is not a common law employer as described in OAR 411-375-0070.

(c) A PSW may not provide community living supports to an individual when the PSW and individual reside together unless:

- (A) The PSW is a family member;
- (B) The PSW does not own or control the property; or
- (C) The individual and the PSW have equal homeowner or rental property rights.

(2) A provider agency certified according to OAR chapter 411, division 323 with an endorsement to these rules.

(3) A home health agency with a current license issued under ORS 443.015.

(4) An in-home care agency with a current license issued under ORS 443.315.

(5) A provider organization currently certified under OAR chapter 411, division 340 whose certificate was issued or applied for prior to January 1, 2016.

(6) A provider agency certified under OAR chapter 411, division 323 and endorsed to OAR 411-340-0170 between January 1, 2016 and the adoption of these rules.

(7) An agency certified under OAR chapter 411, division 323 and endorsed to OAR chapter 411, division 328 for supported living programs or to OAR chapter 411, division 325 for 24-hour residential programs or OAR chapter 411, division 345 for employment may provide community living supports without an endorsement to these rules until the agency's certification is renewed following the adoption of these rules.

(8) An adult foster home licensed under OAR chapter 411, division 360. This provider type may only deliver community living supports:

(a) When they are in or based out of the licensed setting. An adult foster home provider may not provide community living supports to an individual in or based out of the individual's home.

(b) To an adult.

(9) A child foster home licensed under OAR chapter 411, division 346. This provider type may only deliver community living supports:

(a) When they are in or based out of the licensed setting. A child foster home provider may not provide community living supports to a child in or based out of the child's home.

(b) To a child.

(10) An agency certified under OAR chapter 411, division 323 and endorsed to OAR chapter 411, division 325 for 24-hour residential programs does not require endorsement to these rules to deliver community living supports when they are in or based out of the licensed setting. A provider of a 24-hour residential program may not provide community living supports to an individual in or based out of the individual's home.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0080 Standards for Provider Agencies Delivering Community Living Supports

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To be endorsed to operate a community living support program, the agency must have:

(a) A certificate and an endorsement to operate a community living support program as set forth in OAR chapter 411, division 323; and

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) MANAGEMENT AND PERSONNEL PRACTICES. The provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) PERSONNEL FILES AND QUALIFICATION RECORDS. The provider must maintain written documentation of six hours of pre-service training prior to supervising individuals that includes mandatory abuse reporting training, ISPs, and service agreements.

(5) CONFIDENTIALITY OF RECORDS. The provider must ensure the confidentiality of the records for individuals as described in OAR 411-323-0060.

(6) DOCUMENTATION REQUIREMENTS. Unless stated otherwise, all entries required by these rules must:

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

(b) Be accurate and contain no willful falsifications;

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

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

(7) Providers must maintain progress notes regarding the community living supports provided. The progress note must include, at minimum, the following information regarding the service rendered:

(a) The date and time the service was provided;

(b) The personnel involved; and

(c) Information regarding the nature of the support provided and how the support met an identified ADL or IADL support need or was a health related task.

(8) Progress notes must be made available monthly and upon request by a case management entity.

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

(10) Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(a) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for at least three years after the close of the contract period.

(b) Individual records must be kept for at least seven years.

(11) UNUSUAL INCIDENTS.

(a) A written report that describes any injury, accident, act of physical aggression, or unusual incident involving an individual and a provider agency employee must be prepared at the time of the incident and placed in the individual's service record. The 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) Administrative review and follow-up to be taken to prevent recurrence of the injury, accident, physical aggression, or unusual incident.

(b) The agency must notify the case management entity immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(c) In the case of a serious illness, injury, or death of an individual, an agency must immediately notify the individual's legal or designated representative, parent, next of kin, and designated contact person, as applicable.

(d) An agency must send copies of incident reports of all potential or suspected abuse or unusual incidents that occur while the individual is receiving services from an agency to the individual's case management entity within five working days of the potential or suspected abuse or unusual incident.

(12) The agency must develop and implement policies and procedures required for administration and operation in compliance with these rules, including but not limited to:

(a) Individual rights. The agency must have, and implement, written policies and procedures that protect the individual rights described in OAR 411-318-0010 and that:

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

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

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

(II) Witnessing wills in which the staff or agency may benefit directly or indirectly; or

(III) Adding the name of the staff member or agency to the bank account or other personal property of the individual without approval of the individual or the legal representative of the individual (as applicable).

(b) Policies and procedures appropriate to scope of service including, but not limited to, those required to meet minimum standards set forth in sections (15) to (22) of this rule and consistent with written service agreements for individuals currently receiving services.

(13) The agency must deliver services according to an ISP or written service agreement.

(14) Service rates as authorized in Department payment and reporting systems for individuals authorized to receive in community living supports and paid to providers for delivering services, as described in these rules, shall be based upon the agency fee schedule published by the Department. For an agency offering services to the general public, billings for Medicaid funds may not exceed the customary charges to private individuals for any like item or services charged by the agency.

(15) The agency must maintain a current record for each individual receiving services. The record must include:

(a) The name, current home address, and home phone number of the individual;

(b) A current ISP or written service agreement;

(c) Contact information for the legal or designated representative of the individual (as applicable) and any other people designated by the individual to be contacted in case of incident or emergency;

(d) Contact information for the case management entity assisting the individual to obtain services; and

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

(16) The agency must ensure that employees, contractors, and volunteers receive appropriate and necessary training.

(17) Each agency regulated by these rules must be a drug-free workplace.

(18) Agencies that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites, must meet the following minimum requirements:

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

(b) Posting of emergency information:

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

(B) The telephone numbers of the agency director and other people to be contacted in case of emergency must be posted by designated telephones.

(c) A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. Safety review reports must be kept in a central location by the agency for three years.

(d) The agency must train all individuals when the individuals begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(A) Each agency must conduct an unannounced evacuation drill each month when individuals are present.

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

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

(D) Written documentation must be made at the time of the drill and kept by the agency for at least two years following the drill. The written documentation must include:

(i) The date and time of the drill;

(ii) The location of the simulated fire;

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

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

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

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

(i) Be developed with the local fire authority, the individual or the individual's legal or designated representative (as applicable), and the agency director; and

(ii) Be submitted as a variance request according to OAR 411-450-0170.

(e) The agency must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(f) At least once every three years, the agency must conduct a health and safety inspection.

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

(B) The inspection must be performed by:

(i) The Oregon Occupational Safety and Health Division;

(ii) The agency's worker's compensation insurance carrier;

(iii) An appropriate expert, such as a licensed safety engineer or consultant as approved by the Department; and

(iv) The Oregon Health Authority, Public Health Division, when necessary.

(C) The inspection must cover:

- (i) Hazardous material handling and storage;
- (ii) Machinery and equipment used at the service site;
- (iii) Safety equipment;
- (iv) Physical environment; and
- (v) Food handling, when necessary.

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

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

(h) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present. When individuals are present, staff must have the following minimum skills and training:

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

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

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

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

(19) Agencies providing services to individuals that involve assistance with meeting health and medical needs must:

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

(A) Emergency medical intervention;

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

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

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

(E) Confidentiality of medical records.

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

(A) Health status;

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

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

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

(c) If providing medication administration when an individual is unable to self-administer medications and there is no other responsible person present who may lawfully direct administration of medications, the agency must:

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

(B) Administer medications per written orders;

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

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

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

(F) Not administer unused, discontinued, outdated, or recalled drugs; and

(G) Not administer PRN psychotropic medication. PRN orders may not be accepted for psychotropic medication.

(d) Maintain a MAR (if required). The MAR must include:

(A) The name of the individual;

(B) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(C) Times and dates the administration or self-administration of the medication occurs;

(D) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(E) Method of administration;

(F) Documentation of any known allergies or adverse reactions to a medication;

(G) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(H) An explanation of any medication administration irregularity with documentation of a review by the agency director.

(e) Provide safeguards to prevent adverse medication reactions, including:

(A) Maintaining information about the effects and side-effects of medications the agency has agreed to administer;

(B) Communicating any concerns regarding any medication usage, effectiveness, or effects to the individual or the individual's legal or designated representative (as applicable); and

(C) Prohibiting the use of one individual's medications by another individual or person.

(f) Maintain a record of visits to medical professionals, consultants, or therapists if facilitated or provided by the agency.

(20) Agencies that own or operate vehicles that transport individuals must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain insurance coverage on the vehicles and all authorized drivers;

(d) Carry a first aid kit in each vehicle; and

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

(21) If assisting with management of funds, the agency must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(a) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the agency's or another individual's funds, or the agency becoming an individual's legal or designated representative.

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

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

(a) The agency must have, and implement, a written policy concerning behavior intervention procedures. The agency must inform the individual, and as applicable the individual's legal or designated representative, of the behavior intervention policy and procedures prior to entry into the community living supports program.

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

(A) Approved in writing by the individual or the individual's legal or designated representative (as applicable); and

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

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

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

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

(23) Additional standards for supports that involve protective physical intervention.

(a) The agency must only employ protective physical intervention:

(A) As part of an individual's ISP;

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

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

(b) Agency staff members who need to apply protective physical intervention under an individual's service agreement must be trained by a Department-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(c) Protective physical intervention in emergency situations must:

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

(B) Be authorized by the agency director or the physician of the individual within one hour of application of the protective physical intervention;

(C) Result in the immediate notification of the individual's legal or designated representative (as applicable); and

(D) Prompt a review of the individual's written service agreement, initiated by the agency, if protective physical intervention is used more than three times in a six month period.

(d) Protective physical intervention must be designed to avoid physical injury to an individual or others and to minimize physical and psychological discomfort.

(e) All use of protective physical intervention must be considered an unusual incident and result in the completion of an incident report as described in OAR 411-450-0080. The report must include:

(A) The name of the individual to whom the protective physical intervention is applied;

(B) The date, type, and length of time of the application of protective physical intervention;

(C) The name and position of the person authorizing the use of the protective physical intervention;

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

(E) Description of the incident.

Stat. Auth.: ORS 409.050, 430.662

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

411-450-0100 Variances

(1) The Department may grant a variance to these rules based upon a demonstration by an agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws.

(2) The agency requesting a variance must submit a written application to the Department that contains the following:

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

(b) The reason for the proposed variance;

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

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

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

(3) The Department's director may approve or deny the request for a variance. The director's decision is final.

(4) The Department must notify the agency of the Department's decision. The decision notice must be sent within 45 calendar days of the receipt of the request by the Department with a copy sent to all relevant Department programs or offices.

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

Stat. Auth.: ORS 409.050, 430.662

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