Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services	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

DHS - Home and Community-Based (HCB) Services and Settings and Person-Centered Service Planning

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

October 19, 2015	1:00 p.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:

Rules in OAR chapter 411, division 004

AMEND:

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 409.050, 413.042

Other Auth.: 1915(c) HCBS Waivers, 1915(i) State Plan HCBS, 1915(k) Community First Choice (K State Plan Option)

Stats. Implemented: ORS 409.050, 413.042

RULE SUMMARY

To implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department of Human Services (Department) is proposing to adopt rules in OAR chapter 411, division 004 to provide a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon.

The proposed rules ensure individuals receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

- Seek employment and work in competitive integrated employment settings;
- Engage in community life;
- Control personal resources; and
- Receive services in the community.

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.

October 30, 2015 at 5 p.m.
Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signed Michael R. McCormick, Director, Aging and People with Disabilities 8/27/2015
Signature Date

Signed Lilia Teninty, Director, Developmental Disabilities 8/27/2015
Signature Date

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 411

Agency and Division Administrative Rules Chapter Number

DHS - Home and Community-Based (HCB) Services and Settings and Person-Centered Service Planning

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 004 relating to HCB Services and Settings and Person-Centered Service Planning

Statutory Authority: ORS 409.050, 413.042

Other Authority: 1915(c) HCBS Waivers, 1915(i) State Plan HCBS, 1915(k) Community First Choice (K State Plan Option)

Stats. Implemented: ORS 409.050, 413.042

Need for the Rule(s):

The rules in OAR chapter 411, division 004 need to be adopted to implement the regulations and expectations of CMS in the following areas:

- HCBS and HCB settings authorized under the following Medicaid authorities:
  - 1915(c) - HCBS Waivers;
  - 1915(i) - State Plan HCBS; or
  - 1915(k) - Community First Choice (K State Plan Option).
- HCBS and HCB settings delivered through the following program areas:
  - Aging and People with Disabilities;
  - Office of Developmental Disabilities Services; and
  - Oregon Health Authority (Authority).
- Programs, services, or settings designated as HCB and licensed, certified, or endorsed by, and receiving oversight from, the Authority or the Department's Office of Licensing and Regulatory Oversight;
- Alternative resources specifically authorized as HCB by the Authority or Department; and
- Person-centered service plans for individuals receiving HCBS.

The Department is proposing to adopt rules in OAR chapter 411, division 004 to implement the regulations and expectations of CMS by providing a foundation of

standards to support the network of Medicaid-funded and private pay residential and non-residential HCBS, HCB settings, and person-centered service planning for individuals receiving HCBS in Oregon. Additional standards are set forth in OAR chapters 309 and 411.

The proposed rules ensure that individuals receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

- Seek employment and work in competitive integrated employment settings;
- Engage in community life;
- Control personal resources; and
- Receive services in the community.

Documents Relied Upon, and where they are available:

1. Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers
Available at: https://www.federalregister.gov/articles/2014/01/16/2014-00487/medicaid-program-state-plan-home-and-community-based-services-5-year-period-for-waivers-provider

2. Oregon's HCBS Transition Plan
Available at: http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Pages/Transition-Plan.aspx

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)):

During the Rules Advisory Committee (RAC) process, the Department asked for both verbal and written feedback on the fiscal and economic impact. RAC participants confirmed that there will be a fiscal impact but quantifying the impact is difficult at this time.

If the Department, units of local government, and providers do not comply with the regulations and expectations of CMS, Oregon risks losing federal funding which covers approximately 70 percent of the cost of HCBS. Without this federal funding, Oregon could not fund the current HCB system, resulting in a significant impact to the Department, units of local government, service recipients, providers (including small businesses), and members of the public.

Additionally, the Department estimates the following impact:

State Agencies and Units of Local Government: The Department anticipates that due to the new regulatory compliance requirements, there may be additional costs. The Department is unable to quantify the fiscal impact at this time due to the newness of the regulations and the lack of available data that is needed to accurately predict future needs.

Service Recipients: The Department anticipates there will not be a fiscal impact to individuals eligible for Medicaid-funded HCBS. Private pay individuals may see slight cost increases should providers pass along any increased cost of doing business to the service recipient, but this is impossible to calculate.

Providers: The Department anticipates a fiscal impact to providers but is unable to quantify the impact at this time due to these being new regulations in which the Department does not have available data to estimate what the costs will be. Below are some of the specific predicted areas of fiscal impacts to providers based on Rule Advisory Committee testimony and internal DHS and OHA review of the regulations.

One concrete area of agreement was that there is a cost to adding locks to doors for individual privacy. One written cost estimate received from a provider association estimated the cost at $110 per door lock. The Department is unable to estimate the overall impact because the Department is unable to quantify the number of rooms that will now need a lock.

Some providers anticipate needing to hire additional staff to meet the new regulations. If this occurs, a percentage of providers that are eligible to seek exceptional payments may have any costs offset through this process. Due to newness of rules, lack of available data, and variables in provider and resident needs, the Department is unable to estimate the overall impact.

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

Some providers have expressed concerns that facilities may need to close due to their inability to comply with the new regulations. The Department will be working with providers throughout the transition period to assist providers to come into compliance. If facilities are unable to meet the new rule expectations, or CMS determines that some settings are institutional and will no longer be funded, there would be a negative fiscal impact to those specific providers due to loss of income and loss of real estate and investment value. The Department is unable to quantify the number of providers that may be impacted in this way as these are new regulations and the Department does not have the data available to estimate the number of providers that would be negatively impacted.

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 approximately 2,375 adult foster homes subject to this rule, most of which are considered a small business as defined by ORS 183.310.

There are currently 492 assisted living or residential care settings. Of these, approximately 30 may be considered a small business as defined by ORS 183.310.

There are currently 132 memory care endorsed providers. Of these, 8 are considered small businesses as defined by ORS 183.310.

There are approximately 748 sites licensed to provide HCBS to individuals with intellectual or developmental disabilities in a 24-hour residential setting, some of which may be considered small businesses as defined in ORS 183.310.

There are approximately 51 agencies that provide HCBS to individuals in a supported living setting, some of which may be considered small businesses as defined in ORS 183.310.

There are approximately 152 geographic locations to provide employment services. The agencies and providers of employment services may be considered small businesses as defined in ORS 183.310.

There are approximately 275 child foster homes providing services to children with intellectual or developmental disabilities, all of which are considered a small business as defined by ORS 183.310.

There are approximately 749 licensed adult foster homes providing services to individuals with intellectual or developmental disabilities (AFH-DD), all of which are considered a small business as defined by ORS 183.310

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

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

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

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

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

Provider representatives and small business providers participated in the RAC and through regular stakeholder meetings. Small businesses as defined in ORS 183.310 will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The RAC met during the months of June and July to consider the proposed rule language and discuss the fiscal impact.

The RAC included HCBS providers; service recipients; representatives from AARP, Alzheimer's Association, Area Agencies on Aging, Association of Oregon Community Mental Health Programs, Columbia Care Services, Disability Rights Oregon, Governor's Commission on Senior Services, Lane County Legal Aid and Advocacy, LeadingAge Oregon, Marion County, Medicaid Long-Term Care Quality Reimbursement Advisory Council, Office of the Long-Term Care Ombudsman, Oregon Council on Developmental Disabilities, Oregon Health Care Association, Oregon Law Center, Oregon Rehabilitation Association, Partnerships for Community Living, SEIU 503, State Independent Living, and Yamhill County Health and Human Services; and various Department and Authority employees representing Addictions and Mental Health, Aging and People with Disabilities, Office of Adult Abuse Prevention and Investigation, Office of Developmental Disability Services, Office of Licensing and Regulatory Oversight, and Vocational Rehabilitation.

Signed Michael R. McCormick, Director, Aging and People with Disabilities 8/27/2015

Signature Date

Signed Lilia Teninty, Director, Developmental Disabilities 8/27/2015

Signature Date

DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
DEVELOPMENTAL DISABILITIES

OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 4

HOME AND COMMUNITY-BASED SERVICES AND SETTINGS AND PERSON-CENTERED SERVICE PLANNING

411-004-0000 Statement of Purpose

The rules in OAR chapter 411, division 4 provide a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon. Additional standards are set forth in OAR chapters 309 and 411.

(1) These rules are consistent with the missions and goals of the Department of Human Services (DHS) and the Oregon Health Authority (OHA) to help people achieve optimum physical, mental, and social well-being and independence.

(2) These rules ensure that individuals receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

(a) Seek employment and work in competitive integrated employment settings;

(b) Engage in community life;

(c) Control personal resources; and

(d) Receive services in the community.

(3) These rules implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) in the following areas:

(a) HCBS and HCB settings authorized under the following Medicaid authorities:

(A) 1915(c) - HCBS Waivers;

(B) 1915(i) - State Plan HCBS; or

(C) 1915(k) - Community First Choice (K State Plan Option).

(b) HCBS and HCB settings delivered through the following program areas:

(A) DHS, Aging and People with Disabilities;

(B) DHS, Office of Developmental Disabilities Services; and

(C) OHA.

(c) Programs, services, or settings designated as HCB and licensed, certified, or endorsed by, and receiving oversight from, the DHS, Office of Licensing and Regulatory Oversight or OHA;

(d) Alternative resources specifically authorized as HCB by DHS or OHA; and

(e) Person-centered service plans for individuals receiving HCBS. Person-centered service plans provide the written details of the supports, desired outcomes, activities, and resources required for individuals to achieve and maintain personal goals and health and safety.

Stat. Auth.: ORS 409.050, 413.042
Stats. Implemented: ORS 409.050, 413.042

411-004-0010 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 4:

(1) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(2) "Competitive Integrated Employment" means work that is performed on a full-time or part-time basis (including self-employment):

(a) For which an individual:

(A) Is compensated at a rate that:

(i) Is not less than the higher of the rate specified in federal, state, or local minimum wage law, and also is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(B) Is eligible for the level of benefits provided to other employees.

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(3) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:

(A) Chosen by the individual or, as applicable, the legal representative of the individual;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual or, as applicable, the legal representative of the individual to serve as the representative of the individual or, as applicable, the legal representative in connection with the provision of funded supports.

(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(b) An individual or the legal representative of the individual is not required to appoint a designated representative.

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

(5) "HCB" means "Home and Community-Based".

(6) "HCBS" means "Home and Community-Based Services". HCBS are services provided in the home or community of an individual.

(a) HCBS are authorized under the following Medicaid authorities:

(A) 1915(c) - HCBS Waivers;

(B) 1915(i) - State Plan HCBS; or

(C) 1915(k) - Community First Choice (K State Plan Option).

(b) HCBS are delivered through the following program areas:

(A) DHS, Aging and People with Disabilities;

(B) DHS, Office of Developmental Disabilities Services; and

(C) OHA.

(c) HCBS may include alternative resources specifically authorized as HCB by DHS or OHA.

(7) "HCB Setting" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives HCBS.

(8) "Heightened Scrutiny" is the process by which CMS determines, based on information presented by DHS, OHA, or other parties, that a setting has the qualities of an HCB setting, not the qualities of an institution.

(9) "Individual" means a person enrolled in or utilizing HCBS.

(10) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020(2)(c) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(11) "Informed Consent" means:

(a) Options, risks, and benefits have been explained to an individual and, as applicable, the legal representative of the individual, in a manner that the individual and, as applicable, the legal representative, comprehends; and

(b) The individual and, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to

implementation of the initial or updated person-centered service plan or any individually-based limitation.

(12) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian; or

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term “legal representative” is used in this rule.

(13) "OHA" means the Oregon Health Authority.

(14) "Person-Centered Service Plan" means, for Medicaid eligible individuals, the written details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030 as documented by the person-centered service plan coordinator.

(15) "Person-Centered Service Plan Coordinator" means case managers, service coordinators, personal agents, and other people designated by DHS or OHA to provide case management services or person-centered service planning for and with individuals.

(16) "Provider" means any person or entity providing HCBS.

(17) "Provider Owned, Controlled, or Operated Residential Setting" means:

(a) The residential provider is responsible for delivering HCBS to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.

(b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(18) "Residency Agreement" means the written, legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual, when the individual is receiving HCBS in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(19) "Room and Board" means compensation for the provision of meals, a place to sleep, and tasks, such as housekeeping and laundry.

(20) "These Rules" mean the rules in OAR chapter 411, division 4.

(21) "Unit" means the personal space and bedroom of an individual receiving HCBS in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

Stat. Auth.: ORS 409.050, 413.042
Stats. Implemented: ORS 409.050, 413.042

411-004-0020 Home and Community-Based Services and Settings

(1) Residential and non-residential HCB settings must have all of the following qualities:

(a) The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

(A) Seek employment and work in competitive integrated employment settings;

(B) Engage in community life;

(C) Control personal resources; and

(D) Receive services in the community.

(b) The residential or non-residential setting is selected by an individual or, as applicable, the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:

(A) Identified and documented in the person-centered service plan for the individual;

(B) Based on the needs and preferences of the individual;

(C) For residential settings, based on the available resources of the individual for room and board; and

(D) For employment and non-residential day services, a non-disability specific setting option must be presented and documented in the person-centered service plan.

(c) The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint.

(d) The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact.

(e) The setting facilitates individual choice regarding services and supports, and who provides the services and supports.

(2) Provider owned, controlled, or operated residential settings must have all of the following qualities:

(a) The setting meets all the qualities in section (1) of this rule.

(b) The setting is physically accessible to an individual.

(c) The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement. The individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord tenant law of the state, county, city, or other designated entity. For a setting in which landlord tenant laws do not apply, the Residency Agreement must provide protections for the individual and address eviction and appeal processes. The eviction and appeal processes must be substantially equivalent to the processes provided under landlord tenant laws.

(d) Each individual has privacy in his or her own unit.

(e) Units must have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit.

(f) Individuals sharing units must have a choice of roommates.

(g) Individuals must have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.

(h) Each individual may have visitors of his or her choosing at any time.

(i) Each individual has the freedom and support to control his or her own schedule and activities.

(j) Each individual has the freedom and support to have access to food at any time.

(3) The qualities of an HCB setting described in sections (2)(c) to (2)(j) of this rule apply to children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities. Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, shall be addressed through a person-centered service planning process and documented in the person-centered service plan for the child. Limitations which deviate from and are more restrictive than what is typical for children of the same age without disabilities, must comply with OAR 411-004-0040.

(4) When conditions under sections (2)(c) to (2)(j) of this rule may not be met due to threats to the health and safety of the individual or others, the person-centered service plan may apply an individually-based limitation with the consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(5) Providers initially licensed, certified, or endorsed by DHS or OHA on or after January 1, 2016 must meet the requirements in this rule prior to being licensed, certified, or endorsed.

(6) Providers licensed, certified, or endorsed prior to January 1, 2016 must make measurable progress toward compliance with these rules and be in full compliance with these rules by September 1, 2018.

(7) HCB settings do not include the following:

(a) A nursing facility;

(b) An institution as outlined in ORS 426.010;

(c) An intermediate care facility for individuals with intellectual disabilities;

(d) A hospital providing long-term care services; or

(e) Any other setting that has the qualities of an institution.

(A) The following settings are presumed to have the qualities of an institution:

(i) A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;

(ii) A setting that is located in a building on the grounds of, or immediately adjacent to, a public institution; or

(iii) A setting that has the effect of isolating individuals receiving HCBS from the broader community.

(B) In addition to the qualities under subsection (A) above, non-residential settings that isolate individuals receiving HCBS from the broader community and are presumed to have the qualities of an institution also include:

(i) Facility-based prevocational settings that do not, at minimum, provide interaction with the general public; or

(ii) Facility or site-based non-residential day service settings that do not, at minimum, facilitate going out into the broader community.

(C) A setting presumed to have the qualities of an institution, as described in this section, may be subject to a heightened scrutiny process at the discretion of DHS or OHA. DHS or OHA may determine a setting presumed to have the qualities of an institution is not HCB, and therefore, not submit the setting for the federal heightened scrutiny review process conducted by CMS.

Stat. Auth.: ORS 409.050, 413.042
Stats. Implemented: ORS 409.050, 413.042

411-004-0030 Person-Centered Service Plans

(1) PERSON-CENTERED SERVICE PLANNING PROCESS. A person-centered service plan must be developed through a person-centered service planning process. The person-centered service planning process:

(a) Is driven by the individual;

(b) Includes people chosen by the individual;

(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;

(e) Reflects the cultural considerations of the individual;

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the legal or designated representative of the individual;

(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as;

(A) Discussing the concerns of the individual and determining acceptable solutions;

(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;

(C) Utilizing any available community conflict resolution resources; or

(D) Referring concerns to the Office of the Long-Term Care Ombudsman.

(h) Offers choices to the individual regarding the services and supports the individual receives, and from whom, and records the alternative HCB settings that were considered by the individual;

(i) Provides a method for the individual or, as applicable, the legal or designated representative of the individual, to request updates to the person-centered service plan for the individual, as needed;

(j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;

(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;

(l) May include, whether and what services are self-directed;

(m) Includes, but is not limited to, individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, and education;

(n) Includes risk factors and plans to minimize any identified risk factors; and

(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual or, as applicable, the legal or designated representative of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in section (2)(d) of this rule. The person-centered service plan is distributed to the individual, and, as applicable, the legal or designated representative of the individual, and other people involved in the person-centered service plan as described below in section (2)(d) of this rule.

(2) PERSON-CENTERED SERVICE PLANS.

(a) For individuals receiving Medicaid:

(A) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible.

(B) The person-centered service plan must be developed by the individual and, as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the legal or designated representative.

(C) To avoid conflict of interest, the person-centered service plan may not be developed by the provider of HCBS for individuals receiving Medicaid. Exceptions may be granted when DHS or OHA has determined that the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area also provides HCBS.

(b) For private pay individuals, a person-centered service plan may be developed by the individual, and, as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers may assist private pay individuals in developing person-centered service plans when no alternative resources are available.

(c) The written person-centered service plan reflects:

(A) HCBS and setting options based on the needs and preferences of the individual, and for residential settings, the available resources of the individual for room and board;

(B) The HCBS and settings are chosen by the individual and are integrated in, and support full access to, the greater community;

(C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option must be presented and documented in the person-centered service plan;

(D) Opportunities to engage in community life, control personal resources, and receive services in the community to the same degree of access as people not receiving HCBS;

(E) The strengths and preferences of the individual;

(F) The service and support needs of the individual;

(G) The goals and desired outcomes of the individual;

(H) The providers of services and supports, including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People who are important in supporting the individual;

(L) The person responsible for monitoring the person-centered service plan;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and, as applicable, the legal or designated representative of the individual;

(N) The written informed consent of the individual or, as applicable, the legal or designated representative of the individual;

(O) Signatures of the individual or, as applicable, the legal or designated representative of the individual, participants in the person-centered service planning process, and all people and

providers responsible for the implementation of the person-centered service plan as described below in subsection (d) of this section;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(d) The individual or, as applicable, the legal or designated representative of the individual, decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers must have access to the portion of the person-centered service plan that the provider is responsible for implementing.

(e) The person-centered service plan is distributed to the individual and, as applicable, the legal or designated representative of the individual, and other people involved in the person-centered service plan as described above in subsection (d) of this section.

(f) The person-centered service plan must justify and document an individually-based limitation as described in OAR 411-004-0040 when conditions under OAR 411-004-0020(2)(c) to (2)(j) may not be met due to threats to the health and safety of the individual or others.

(g) The person-centered service plan must be reviewed and revised:

(A) Upon reassessment of functional needs as required every 12 months;

(B) When the circumstances or needs of the individual change; or

(C) At the request of the individual or, as applicable, the legal or designated representative of the individual.

Stat. Auth.: ORS 409.050, 413.042
Stats. Implemented: ORS 409.050, 413.042

411-004-0040 Individually-Based Limitations

(1) When conditions under OAR 411-004-0020(2)(c) to (2)(j) may not be met due to threats to the health and safety of an individual or others, provider owned, controlled, or operated residential settings must apply individually-based limitations as described in this rule.

(2) An individually-based limitation must be supported by a specific assessed need and documented in the person-centered service plan by completing and signing a program approved form documenting the consent to the appropriate limitation. The form identifies and documents:

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

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

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

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

(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;

(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

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

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

(3) Providers are responsible for:

(a) Maintaining a copy of the completed and signed form documenting the consent to the appropriate limitation. The form must be signed by the individual, or, if applicable, the legal representative of the individual;

(b) Regular collection and review of data to measure the ongoing effectiveness of and the continued need for the individually-based limitation; and

(c) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.

Stat. Auth.: ORS 409.050, 413.042
Stats. Implemented: ORS 409.050, 413.042