

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Developmental Disabilities

411

Agency and Division	Administrative Rules Chapter Number
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Rules Coordinator	Address	Telephone
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to become effective [January 1, 2016] through [June 28, 2016].
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

ODDS: 24-Hour Residential Settings for Children and Adults with Intellectual or Developmental Disabilities

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

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

411-325-0010; 411-325-0020; 411-325-0040; 411-325-0130; 411-325-0140;
411-325-0150; 411-325-0170; 411-325-0220; 411-325-0300; 411-325-0390;
411-325-0430.

SUSPEND:

Stat. Auth.: **ORS 409.050, 443.450, 443.455**

Other Auth.:

Stats. Implemented: **ORS 443.400-455**

RULE SUMMARY

The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities. These rules are being temporarily amended to --

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004; and
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services.

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

Under the HCB setting standards, 24-hour residential settings meet the definition of a provider owned, controlled, or operated residential setting. A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

By September 1, 2018, all provider owned, controlled, or operated residential settings must have all the following qualities:

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

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

Signed Lilia Teninty, Director, Developmental Disabilities
Signature

12/21/2015
Date

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The temporary amendment of OAR 411-325-0010; 411-325-0020; 411-325-0040; 411-325-0130; 411-325-0140; 411-325-0150; 411-325-0170; 411-325-0220; 411-325-0300; 411-325-0390; and 411-325-0430 relating to 24-hour residential settings for children and adults with intellectual or developmental disabilities.

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

ODDS: 24-Hour Residential Settings for Children and Adults with Intellectual or Developmental Disabilities

Statutory Authority:

ORS 409.050, 443.450, 443.455

Other Authority:

Stats. Implemented:

ORS 443.400-455

Need for the Temporary Rule(s):

Definitions

The Department needs to amend OAR 411-325-0020 (Definitions) to provide consistency and streamline definitions across services. OAR 411-325-0020 is being amended to remove terms included in OAR 411-317-0000 (General Definitions).

HCB Services and Settings

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

- OAR 411-325-0010 (Statement of Purpose);
- OAR 411-325-0020 (Definitions);
- OAR 411-325-0040 (Application for Initial License);
- OAR 411-325-0130 (Food and Nutrition);
- OAR 411-325-0140 (Physical Environment);
- OAR 411-325-0150 (General Safety);
- OAR 411-325-0170 (Staffing Requirements);

- OAR 411-325-0220 (Individual Furnishings);
- OAR 411-325-0300 (Individual Rights, Complaints, Notification of Planned Action, and Hearings);
- OAR 411-325-0390 (Entry, Exit, and Transfer); and
- OAR 411-325-0430 (Individual Support Plan).

These rules are being amended to incorporate the standards for HCB services and settings and person-centered planning adopted in OAR chapter 411, division 004 by the Department on January 1, 2016, including the following specific qualities for provider owned, controlled, or operated residential settings:

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

A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

Documents Relied Upon, and where they are available:

Justification of Temporary Rule(s):

Failure to act promptly and immediately update the rules in OAR chapter 411, division 325 will result in serious prejudice to --

- Individuals receiving developmental disability services;
- The parents, guardians, family members, and representatives of individuals receiving services;
- Providers; and

- The Department.

These rules need to be updated promptly to --

- Remove terms included in the general definitions rule, OAR 411-317-0000;
- Align with the new CMS standards relating to HCB services and settings and person-centered service planning adopted by the Department in OAR chapter 411, division 004; and
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services.

Failure to immediately update these rules --

- Prevents these rules from aligning with the rules in OAR chapter 411, division 004 (HCB Services and Settings and Person-Centered Service Planning), OAR 411-317-0000 (Definitions), and OAR 411-318-0010 (Individual Rights);
- Prevents the Department from streamlining operations to provide consistency across services; and
- Risks non-compliance with the new CMS standards relating to HCB services and settings and person-centered service planning.

Signed Lilia Teninty, Director, Developmental Disabilities

12/21/2015

Signature

Date

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 325

24-HOUR RESIDENTIAL SETTINGS FOR CHILDREN AND ADULTS
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

411-325-0010 Statement of Purpose

(1) The rules in OAR chapter 411, division 325 prescribe standards, responsibilities, and procedures for 24-hour residential ~~programs~~ settings providing home and community-based services to individuals with intellectual or developmental disabilities.

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

(a) A service provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed.

(b) A service provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

(3) These rules also prescribe the standards and procedures ~~by which the Department of Human Services licenses a~~ for the licensure of 24-hour residential settings. A 24-hour residential setting must also be certified and endorsed to provide home and community-based services under the rules in OAR chapter 411, division 323. ~~program to provide residential care and training to individuals with intellectual or developmental disabilities.~~

Stat. Auth.: ORS 409.050, 443.450, ~~and 443.455~~
Stats. Implemented: ORS 443.400 ~~to 443.455~~

411-325-0020 Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 325:

(1) "24-Hour Residential Setting" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide ~~residential care and training home and community-based services~~ to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in these rules.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

~~(3) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.~~

~~(4)~~ "Agency" means "provider" as defined in this rule.

~~(5) "Alternative Resources" mean possible resources, not including developmental disability services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.~~

(64) "Apartment" means "24-hour residential setting" as defined in this rule.

(75) "Appeal" means the process under ORS chapter 183 that a provider may use to petition a civil penalty.

(86) "Applicant" means a person, agency, corporation, or governmental unit who applies for a license to operate a residential home providing comprehensive home and community-based services in a 24-hour residential program setting.

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

~~(10) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.~~

~~(11) "Behavior Data Summary" means the document composed by a provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.~~

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

~~(13) "Brokerage" means "Brokerage" as defined in OAR 411-340-0020.~~

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

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

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

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

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

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

~~(159) "CDDP" means "cCommunity dDevelopmental dDisability pProgram" as defined in OAR 411-320-0020.~~

~~(1610) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed program services in an endorsed 24-hour residential setting.~~

~~(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.~~

~~(18) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.~~

~~(19) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.~~

~~(2011) "Competency Based Training Plan" means the written description of the process of the provider for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:~~

(a) Addresses health, safety, rights, values and personal regard, and the mission of the provider; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency may be waived by a provider to accommodate the specific circumstances of a staff member.

(2112) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

~~(22) "Crisis" means "crisis" as defined in OAR 411-320-0020.~~

(2313) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential setting because the Department has determined the provider or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(2414) "Department" means the Department of Human Services.

~~(25) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.~~

~~(26) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

(2815) "Director" means:

(a) †The Director of the Department of Human Services, Office of Developmental ~~Disability~~ Disabilities Services, or the designee of the Director; or

(b) The Director of the Department of Human Services, Office of Licensing and Regulatory Oversight, or the designee of the Director.

~~(2916)~~ "Domestic Animals" means the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

~~(3017)~~ "Duplex" means "24-hour residential setting" as defined in this rule.

~~(3418)~~ "Educational Surrogate" means the person who acts in place of the parent of a child in safeguarding the rights of the child in the public education decision-making process:

(a) When the parent of the child cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the parent of the child or young adult student.

~~(3219)~~ "Endorsement" means the authorization to provide program services ~~in a 24-hour residential setting that is~~ issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

~~(33) "Entry" means admission to a Department-funded developmental disability service.~~

~~(3420)~~ "Executive Director" means the person designated by a board of directors or corporate owner responsible for the administration of services in a 24-hour residential setting.

~~(35) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.~~

~~(3621)~~ "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.

(b) The functional needs assessment for an individual less than 18 years of age receiving, or targeted to receive, services in a 24-hour residential setting for children is known as the Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at <http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx>.

(c) The functional needs assessment for an individual 16 years of age and older receiving, or targeted to receive, services in a 24-hour residential setting for adults is known as the Supports Intensity Scale (SIS). The Department incorporates the SIS into these rules by this reference.

(d) 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, OR 97301.

~~(37) "Guardian" means the parent of an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.~~

~~(38) "Health Care Representative" means:~~

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

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

~~(39) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.~~

~~(4022) "Home" means "24-hour residential setting" as defined in this rule.~~

~~(41) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.~~

~~(42) "Independence" means the extent to which an individual exerts control and choice over his or her own life.~~

~~(43) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual~~

~~(44) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.~~

~~(23) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 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 411-325-0430 and OAR 411-004-0040.~~

~~(45) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(46) "Involuntary Reduction" means a provider has made the decision to reduce the services provided to an individual without prior approval from the individual.~~

~~(47) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.~~

~~(4824) "ISP" means "Individual Support Plan". An ISP includes written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering driven by the individual. The ISP reflects services and supports important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.~~

~~(49) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, such as providers and family members.~~

~~(50) "Legal Representative" means a person who has the legal authority to act for an individual.~~

~~(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.~~

~~(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or the person or agency authorized by a court to make decisions about services for the adult.~~

~~(5125) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.~~

~~(5226) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.~~

~~(53) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the~~

~~individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the body of the individual.~~

(~~5427~~) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.

(~~5528~~) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(~~5629~~) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

~~(57) "Natural Support" means:~~

~~(a) For a child, the parental responsibilities and the voluntary resources available to the child from the relatives, friends, neighbors, and the community of the child that are not paid for by the Department.~~

~~(b) For an adult, the voluntary resources available to an adult from the relatives, friends, significant others, neighbors, roommates, and the community of the adult that are not paid for by the Department.~~

(~~2730~~) "~~Direct~~ Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. ~~Direct n~~Nursing services differs from administrative nursing services. ~~Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health-related agency policies and procedures, or providing general training for staff.~~

~~(58) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.~~

~~(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.~~

~~(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.~~

(5931) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

~~(6032) "OIS" means "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.~~

(6133) "Oregon Core Competencies" means:

(a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the mission of the provider; and

(b) The associated timelines in which newly hired staff must demonstrate the competencies.

(6234) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

~~(63) "Person-Centered Planning":~~

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

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

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

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

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

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

~~(64) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.~~

~~(6535) "Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.~~

~~(36) "Provider Owned, Controlled, or Operated Residential Setting" means:~~

~~(a) The residential provider is responsible for delivering home and community-based services 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.

~~(66) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.~~

~~(67) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.~~

(37) "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 home and community-based services 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.

~~(6838) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license after the Department has determined that a provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.~~

~~(69) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.~~

~~(70) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.~~

(7139) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet where extra or additional food is offered without the order of a physician but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

~~(72) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.~~

(7340) "Suspension" means an immediate temporary withdrawal of the approval to operate a 24-hour residential setting after the Department determines a provider or 24-hour residential setting is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(7441) "These Rules" mean the rules in OAR chapter 411, division 325.

~~(75) "Transfer" means movement of an individual from one home to another home administered or operated by the same provider.~~

~~(76) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.~~

~~(77) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.~~

(7842) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

411-325-0040 Application for Initial License

(1) At least 30 days prior to anticipated licensure, an applicant must submit an application and required non-refundable fee. The application is provided by the Department and must include all information requested by the Department.

(2) The application must identify the number of beds the residential home is presently capable of operating at the time of application, considering existing equipment, ancillary service capability, and the physical requirements as specified by these rules. For purposes of license renewal, the number of beds to be licensed may not exceed the number identified on the license to be renewed unless approved by the Department.

(3) The initial application must include ~~---~~

~~(a) a~~ A copy of any lease agreements or contracts, management agreements or contracts, and sales agreements or contracts, relative to the operation and ownership of the home~~;~~

~~(4b) The initial application must include a~~ A floor plan of the home showing the location and size of rooms, exits, smoke alarms, and extinguishers~~;~~ and

~~(c) A copy of the standard Residency Agreement as described in~~ OAR 411-325-0300.

~~(54)~~ If a scheduled, onsite licensing inspection reveals that an applicant is not in compliance with these rules as attested to on the Licensing Onsite Inspection Checklist, the onsite licensing inspection may be rescheduled at the ~~Department's~~ convenience of the Department.

~~(65)~~ Applicants may not admit any individual to the home prior to receiving a written confirmation of licensure from the Department.

(76) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed or may deny or revoke the license.

(87) Any applicant or person with a controlling interest in an agency is considered responsible for acts occurring during, and relating to, the operation of such home for the purpose of licensing.

(98) The Department may consider the background and operating history of each applicant and each person with a controlling ownership interest when determining whether to issue a license.

(409) When an application for initial licensure is made by an applicant who owns or operates other licensed homes or facilities in Oregon, the Department may deny the license if the applicant's existing home or facility is not, or has not been, in substantial compliance with the Oregon Administrative Rules.

(4110) Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same management.

(4211) A residential home may not admit an individual whose service needs exceed the classification on the ~~home's~~ license of the home without prior written consent of the Department.

Stat. Auth.: ORS 409.050, 443.450, ~~and~~ 443.455
Stats. Implemented: ORS 443.400 ~~to~~ ~~443.~~ 455

411-325-0130 Food and Nutrition

~~(1) The service provider must provide access to a well-balanced diet in accordance with the U.S. Department of Agriculture.~~

(1) The provider must support the freedom of the resident to have access to his or her personal food at any time. Limitations may only be used when there is a health or safety risk, as described in OAR 411-325-0430 and OAR 411-004-0040, and when a written informed consent is obtained.

(2) Three nutritious meals and two snacks must be provided. Meals must be served daily at times consistent with those in the community.

(a) Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA) and include fresh fruit and vegetables when in season, unless otherwise specified in writing by a physician.

(b) Food preparation must include consideration of cultural and ethnic backgrounds, as well as, the food preferences of individuals. Special consideration must be given to individuals with chewing difficulties and other eating limitations.

(3) A schedule of meal times and menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and the families of the individuals. Menu substitutions in compliance with subsection (a) of this section are acceptable. If an individual misses a meal at a scheduled time, an alternative meal must be made available.

(a) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(b) Access to food beyond the required three meals and snacks are the responsibility of the individual.

(4) Food may not be used as an inducement to control the behavior of an individual.

(25) MODIFIED OR SPECIAL DIETS. For an individual with a physician or health care provider ordered modified or special diet, the service provider must:

(a) Have menus for the current week that provide food and beverages that consider the ~~individual's~~ preferences of the individual and are appropriate to the modified or special diet; and

(b) Maintain documentation that identifies how modified ~~texture~~ or special diets are prepared and served ~~for the~~ to individuals.

~~(3) At least three meals must be made available or arranged for daily.~~

~~(4) Foods must be served in a form consistent with an individual's needs and provide opportunities for choices in food selection.~~

(56) Unpasteurized milk and juice or home canned meats and fish may not be served or stored in the home.

(67) Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days must be maintained on the premises.

(78) Food must be stored, prepared, and served in a sanitary manner.

Stat. Auth.: ORS 409.050, 443.450, ~~and 443.455~~
Stats. Implemented: ORS 443.400 ~~to 443.455~~

411-325-0140 Physical Environment

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be kept in good repair, clean, and free from odors. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. The interior and exterior must be well maintained and accessible according to the needs of the individuals.

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

(3) A public water supply must be utilized if available. If a non-municipal water source is used, a sample must be collected yearly by the service provider, sanitarian, or a technician from a certified water-testing laboratory. The water sample must be tested for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(4) Septic tanks or other non-municipal sewage disposal systems must be in good working order. Incontinence garments must be disposed of in closed containers.

(5) The temperature within the home must be maintained within a normal comfort range. During times of extreme summer heat, the service provider must make reasonable effort to keep individuals comfortable using ventilation, fans, or air conditioning.

(6) Screening for workable fireplaces and open-faced heaters must be provided.

(7) All heating and cooling devices must be installed in accordance with current building codes and maintained in good working order.

(8) Handrails must be provided on all stairways. Yard and exterior steps must be accessible and appropriate to the needs of the individuals.

(9) Swimming pools, hot tubs, saunas, or spas must be equipped with safety barriers ~~and or~~ devices designed to prevent accidental injury and unsupervised access.

(10) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of current rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and may not present a danger or health risk to individuals ~~residing at the home or the individuals'~~ guests.

(11) All measures necessary must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects.

(12) The interior and exterior of the residence must be kept free of litter, garbage, and refuse.

(13) Any work undertaken at a residence, including but not limited to demolition, construction, remodeling, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes appropriate to the individuals served.

(14) Service providers must comply with all applicable legal zoning ordinances pertaining to the number of individuals receiving services at the home.

Stat. Auth.: ORS 409.050, 443.450, ~~and 443.455~~
Stats. Implemented: ORS 443.400 ~~to 443.455~~

411-325-0150 General Safety

(1) All toxic materials, including but not limited to poisons, chemicals, rodenticides, and insecticides must be:

(a) Properly labeled;

(b) Stored in the original container separate from all foods, food preparation utensils, linens, and medications; and

(c) Stored in a locked area unless the Risk Tracking records for all individuals residing in the home document that there is no risk present.

(2) All flammable and combustible materials must be properly labeled, stored, and locked in accordance with state fire code.

(3) For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.

(4) Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) Hot water in bathtubs and showers may not exceed 120 degrees Fahrenheit. Other water sources, except the dishwasher, may not exceed 140 degrees Fahrenheit.

(6) ~~Sleeping rooms~~Bedrooms.

(a) Bedrooms on ground level must have at least one window that opens from the inside without special tools that provides a clear opening of not less than 821 square inches, with the least dimension not less than 22 inches in height or 20 inches in width. Sill height may not be more than 44 inches from the floor level. Exterior sill heights may not be greater than 72 inches from the ground, platform, deck, or landing. There must be stairs or a ramp to ground level. Those homes previously licensed having a minimum window opening of not

less than 720 square inches are acceptable unless through inspection it is deemed that the window opening dimensions present a life safety hazard.

~~(7b) Sleeping rooms~~Bedrooms must have 60 square feet per individual with beds located at least three feet apart.

(c) If an individual chooses to share a bedroom with another individual, the individuals must be afforded an opportunity to have a choice of roommates.

(d) Single Action Locks.

(A) A 24-hour residential setting licensed on or after January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys.

(B) A 24-hour residential setting licensed prior to January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys by September 1, 2018.

(C) Limitations may only be used when there is a health or safety risk and when a written informed consent is obtained as described in OAR 411-325-0430 and OAR 411-004-0040.

~~(87)~~ Operative flashlights, at least one per floor, must be readily available to staff in case of emergency.

~~(98)~~ First-aid kits and first-aid manuals must be available to staff within each home in a designated location. First aid kits must be locked if, after evaluating any associated risk, items contained in the first aid kit present a hazard to individuals living in the home. First aid kits containing any medication including topical medications must be locked.

Stat. Auth.: ORS 409.050, 443.450, ~~and 443.455~~
Stats. Implemented: ORS 443.400 ~~to 443.-455~~

411-325-0170 Staffing Requirements

(1) Each residence must provide staff appropriate to the number of individuals served as follows:

(a) Each home serving five or fewer individuals must provide at a minimum one staff on the premises when individuals are present; and

(b) Each home serving five or fewer individuals in apartments must provide at a minimum one staff on the premises of the apartment complex when individuals are present; and

(c) Each home serving six or more individuals must provide a minimum of one staff on the premises for every 15 individuals during awake hours and one staff on the premises for every 15 individuals during sleeping hours, except residences licensed prior to January 1, 1990; and

(d) Each home serving children, for any number of children, must provide at a minimum one awake night staff on the premises when children are present.

(2) A home is granted an exception to the staffing requirements in sections (1)(a), (1)(b), and (1)(c) for adults to be home alone when the following conditions have been met:

(a) No more than two adults are to be left alone in the home at any time without on staff supervision;

(b) The amount of time any adult individual may be left alone may not exceed five hours within a 24-hour period and an adult individual may not be responsible for any other adult individual or child in the home or community;

(c) An adult individual may not be left home alone without staff supervision between the hours of 11:00 P.M. and 6:00 A.M.;

(d) The adult individual has a documented history of being able to do the following safety measures or there is a documented ISP team decision agreeing to an equivalent alternative practice:

(A) Independently call 911 in an emergency and give relevant information after calling 911;

(B) Evacuate the premises during emergencies or fire drills without assistance in three minutes or less;

(C) Knows when, where, and how to contact the service provider in an emergency;

(D) Before opening the door, check who is there;

~~(E) Does not invite strangers to the home;~~

(~~F~~E) Answer the door appropriately;

(~~G~~F) Use small appliances, sharp knives, kitchen stove, and microwave safely;

(~~H~~G) Self-administer medications, if applicable;

(~~I~~H) Safely adjust water temperature at all faucets; and

(~~J~~I) Safely takes a shower or bathe without falling.

(e) There is a documented ISP team decision annually noting team agreement that the adult individual meets the requirements of subsection (d) of this section.

(3) If at any time an adult individual is unable to meet the requirements in section (2)(d)(A)-(~~J~~I) of this rule, the service provider may not leave the adult individual alone without supervision. In addition, the service provider must notify the adult individual's services coordinator within one working day and request that the ISP team meet to address the adult individual's ability to be left alone without supervision.

(4) Each home must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 409.050, 443.450, ~~and~~ 443.455
Stats. Implemented: ORS 443.400 ~~to 443.-~~455

411-325-0220 Individual Furnishings

(1) Bedroom furniture must be provided or arranged for each individual and include:

(a) A bed including a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, a waterproof mattress cover if the individual is incontinent, and a pillow;

(b) A private dresser or similar storage area for personal belongings that is readily accessible to the individual; ~~and~~

(c) A closet or similar storage area for clothing that is readily accessible to the individual.; and

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

(2) Two sets of linens must be provided or arranged for each individual and include:

(a) Sheets and pillowcases;

(b) Blankets appropriate in number and type for the season and the individual's comfort; and

(c) Towels and washcloths.

(3) Each individual must be assisted in obtaining personal hygiene items in accordance with individual needs and items must be stored in a sanitary and safe manner.

Stat. Auth.: ORS 409.050, 443.450, ~~and~~ 443.455
Stats. Implemented: ORS 443.400 ~~to 443.-~~455

411-325-0300 Residency Agreements, Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) RESIDENCY AGREEMENTS.

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

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

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

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

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

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement must be reviewed and approved by the Department.

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

(12) INDIVIDUAL RIGHTS.

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

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

(c) The individual rights ~~described in this rule~~ apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

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

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

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

~~(C) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;~~

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

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

~~(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the~~

~~individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, personal agent, and others chosen by the individual through personal visits, mail, telephone, or electronic means;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(f) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.~~

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

~~(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.~~

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

(23) COMPLAINTS.

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

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

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

(45) HEARINGS.

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

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

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

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

411-325-0390 Entry, Exit, and Transfer

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

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters a 24-hour residential setting is subject to eligibility as described in this section.

(a) To be eligible for services in a 24-hour residential setting, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

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

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

(E) Be an individual who is not receiving other Department-funded in-home or community living support.

(b) To be eligible for Department-funded relief care, an individual must:

(A) Meet the criteria in subsection (a)(A-D) of this section;

(B) Be referred by a CDDP or Brokerage; and

(C) Not be receiving services in a supported living setting as described in OAR chapter 411, division 328.

(c) TRANSFER OF ASSETS.

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

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

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

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

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

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

(3) ENTRY.

(a) The Department authorizes the entry of children into 24-hour residential settings and stabilization and crisis units.

(b) The CDDP services coordinator authorizes entry into 24-hour residential settings, except in the cases of residential services for children and stabilization and crisis units.

(4) DOCUMENTATION UPON ENTRY.

(a) Prior to or upon an entry ISP team meeting, a provider must acquire the following individual information:

(A) A copy of the eligibility determination document;

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

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

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

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

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

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

(v) A record of major illnesses and hospitalizations.

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

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

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

(H) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual (if applicable);

(I) Written documentation that the individual is participating in out of residence activities, including public school enrollment for individuals less than 21 years of age;

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

(K) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Program (if available).

(b) If an individual is being admitted from the family home of the individual and the information required in subsection (a) of this section is not available, the provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

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

(a) A Residency Agreement as described in OAR 411-325-0300;

(ab) The name of the individual proposed for services;

- | (~~b~~c) The date of the entry meeting;
- | (~~e~~d) The date determined to be the date of entry;
- | (~~d~~e) Documentation of the participants included in the entry meeting;
- | (~~e~~f) Documentation of the pre-entry information required by section (4)(a) of this rule;
- | (~~f~~g) Documentation of the decision to serve the individual requesting services; and
- | (~~g~~h) The written Transition Plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(6) VOLUNTARY TRANSFERS AND EXITS.

- (a) A provider must promptly notify a services coordinator if an individual gives notice of the intent to exit or abruptly exits services.
- (b) A provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.
- (c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.
- (d) A provider is responsible for the provision of services until an individual exits the home.

(7) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

- (a) A provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:
 - (A) The behavior of the individual poses an imminent risk of danger to self or others;
 - (B) The individual experiences a medical emergency;

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

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

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

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. A provider must not reduce services, transfer, or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, 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 in the home as described in subsection (c) of this section.

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

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

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

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

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

(d) A provider is responsible for the provision of services until an individual exits the home.

(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, transfer, 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 the room of the individual until receipt of the Final Order.

(8) EXIT MEETING.

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

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

(B) The date of the exit meeting;

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

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

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

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

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

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

(A) The individual requests an immediate move from the home;
or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention for an individual less than 18 years of age.

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

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

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative of the individual, parent, or family members, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services after the transfer.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

411-325-0430 Individual Support Plan

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

(2) To effectively provide services, providers must have access to the portion of ISP for which the provider is responsible for implementing.

(3) For a new or renewed ISP with an effective date of July 1, 2016 or later, the ISP must justify and document any individually-based limitations as described in section (5) of this rule and OAR 411-004-0040.

(24) The following information must be collected and summarized prior to the ISP meeting:

- (a) Personal Focus Worksheet;
- (b) Risk Tracking Record;
- (c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;
- (d) A Nursing Service Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record;
- (e) Other documents required by the ISP team; and
- (f) The functional needs assessment.

~~(3) A completed ISP must be documented on the Department required form and include the following:~~

- ~~(a) The name of the individual and the name of the legal or designated representative of the individual (as applicable);~~
- ~~(b) A description of the supports required that is consistent with the support needs identified in an assessment of the individual;~~

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

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

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

~~(f) Provider type;~~

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

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

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

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

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

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

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

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

~~(4) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.~~

(5) INDIVIDUALLY-BASED LIMITATIONS.

(a) Effective July 1, 2016, the provider must identify any individually-based limitations to the following freedoms:

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

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

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

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

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

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

(G) Privacy in the individual's bedroom.

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455