

ROBERT TAYLOR
DEPUTY SECRETARY OF STATE



SECRETARY OF STATE
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February 26, 2015

To: Steve Bender, Legislative Fiscal Office
CC: Clair Clark, DAS, Chief Financial Budget Office and Management Section
From: Jeff Morgan, Director, Business Services
Re: Request for Information- Secretary of State Budget Hearings

Steve,

We want to thank the General Government Subcommittee on Ways and Means for the opportunity to present the 2015-17 Secretary of State, Agency Request Budget. The information provided below is in response to requests for additional information from committee members during our budget hearings from February 23-25, 2015.

CORPORATION DIVISION:

- 1. Senator Steiner Hayward wanted to know of the 139 cases worked, 28% we're OHA, is there a problem with OHA? Or does the 28% represented in Ruth's report reflect a small percentage overall licensing activity for OHA?**

Response: Ruth Miles is working to get more information related to this question. Once we get this information we will sent it on to Steve Bender to share with committee members

- 2. Office of Small Business Assistance: Senator Johnson requested us to provide information to her regarding businesses we have helped in her district.**

Response: The following information is provided from Ruth Miles:

Thanks so much for your questions and comments. I will be able to quickly make a number of changes that will vastly improve the operations and effectiveness of the Office of Small Business Assistance.

The Office currently has a [standard intake form](#). When businesses or legislative staff fill out that online form, a case is automatically created in my case management system. Though

we've provided you with a direct link to the form, anyone can click the "Need Help?" box on the Office's website at <http://sos.oregon.gov/BusinessSOS>.

I particularly appreciate the note that legislators need to know when I'm going to be in their district. I will make prior notification a regular part of my scheduling process. So you know about my outreach efforts thus far, I visited all but one of the SBDCs in the state; and that one (Klamath Falls) is on my schedule for this spring. I have visited 83 Chambers, 38 non-government partners, 62 government entities (including our entire congressional delegation and many of the tribes' economic development offices); and I have done town halls for 14 legislators – and I would be happy to participate in town halls with any interested legislator.

Below is a list of my specific outreach to Senator Johnson's district over the past year. My apologies for not notifying you in advance of these visits. That won't happen again.

4/25/14: Attended Seaside Chamber breakfast w/ Rep. Boone; addressed Oregon Plumbing, Heating & Cooling Contractors at their Seaside convention; met w/ Kevin Leahy (Clatsop SBDC); met with Dan Biggs (then-Tillamook SBDC); met with Justin Aufdermauer (Tillamook Chamber) at the Tillmook Airport expansion event

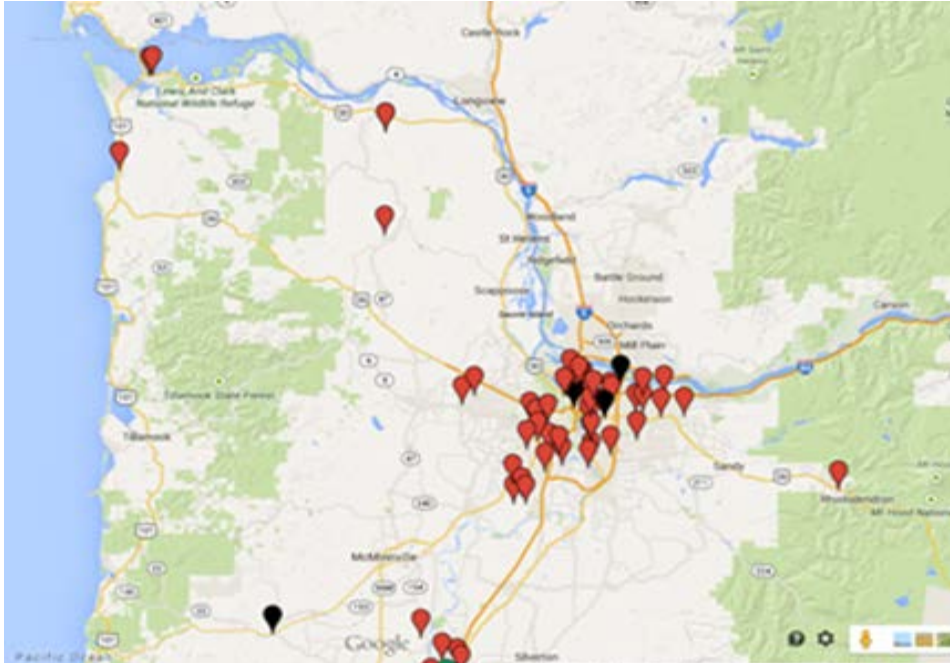
6/5/14: Spoke at Clatskanie Chamber membership meeting; met with Vernonia Chamber President

6/19/14: Met w/ South Columbia County Chamber (Linda Cheval, ED & Melanie Steward, President) and Columbia County Economic Development Team (Chuck Daugherty); met w/ City Manager, City of Clatskanie; Attended women in business luncheon w/ then-Secretary Brown; editorial boards at the Daily Astorian with then Secretary Brown; met with Craft3 President John Berdes and then-Secretary Brown; attended Astoria-Warrenton Business After Hours Social (Lucy's Books)

8/20-21/14: Oregon Coast Economic Summit

9/25/14: Speak at Clatsop County OEC Seminar

As to cases from your district, there have been a few in addition to Linda Dugan Insurance. Until we have a better system in place, I am plotting all Oregon cases on a map - here's a screen shot that shows your district:



The list of cases from your district includes:

- Linda Dugan Insurance (Cover Oregon)
- J & H Boatworks (OSHA issues - federal)
- John L. Scott Real Estate (State Fire Marshall)
- Institute for Alternative Medicine Research (OLCC - Marijuana Division)

I will be happy to give you a quick review of the issues involved in each case if you like.

3. Senator Johnson asked if we can negotiate merchant fees

Response: The following is provided by the Oregon State Treasury regarding what is and is not negotiable in Merchant Fees:

- **Interchange:** A percentage fee set by the card associations (for example, Visa and MasterCard). Rates will vary by card type and how the transaction is processed. This fee component is non-negotiable.
- **Per Tran Fee:** Set amount per transaction established by card associations. This fee is non-negotiable.
- **Assessment Fee:** A percentage fee set by the card associations. This fee component is non-negotiable.
- **Processing fee by Merchant Services Provider:** This is the portion of the fee negotiated by Treasury with our Merchant Services Provider."

ARCHIVES DIVISION

4. **Senator Whitsett asked Mary Beth Herkert to provide a breakdown on rule actions filed for the following:**
- a. **Rules filed by agencies with Input from the Rules Advisory Committee**
 - b. **Rules filed by Agencies that allowed for public comment**
 - c. **Rules made by agencies period**

Response:

The total rulemaking actions are as follows: 11,108 permanent rules; 3,166 temporary rules and 1,388 notices filed which equals 15,662 actions. Listed below is the breakdown based on Senator Whitsett's request:

- **Number of Rules filed using a Rules Advisory committee:**
Of the 1,388 notices filed, 603 indicated that they used a Rules Advisory Committee which is 43%. The law does not require an agency to use an advisory committee but does require a justification of why they did not use a committee.
- **Number of Rules Filed using Public Comment or Public Hearing:**
All of the 11,108 permanent rules filed allowed for public comment. If we look at the notices, 912 of the 1,388 notices filed included a public hearing which is about 66%.
- **Total Number of Rules:**
Permanents – 11,108 permanent rules filed. All required to file a "Notice" either with a hearing or not, but all must have a period of time to receive public comment before they become permanent rules.

Temporary Rules – 3,166 temporary rules filed. Temporary rules are exceptions and intended for emergency use only. They do not require public comment or a public hearing. These are only valid for a maximum of 180 days.

It is important to note that multiple rules can and often are identified in the notices, so there is not necessarily a 1-to-1 notice to rule adoption, repeal and/or amendment. I have attached an example (PDF-Archives Rules Example) for you to see. It is our intent, when we rebuild the Rules database to separate out each rule into their own field so that we can have a direct correlation between rules and notices.

Mary Beth Herkert is happy to meet with Sen. Whitsett to answer any additional questions that he may have on rule making actions.

AUDITS DIVISION

5. **A copy of the most recent annual Audits Hotline Report was requested to be provided to Steve Bender so he could make it available to committee members.**

Response: Listed below are the links requested:

<http://sos.oregon.gov/audits/Documents/2014-14.pdf>

Senator Whitsett was also interested in our Housing audit. Here is the link

<http://sos.oregon.gov/Documents/audits/full/2013/2013-16.pdf>

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

FILED
1-15-15 3:19 PM
ARCHIVES DIVISION SECRETARY OF STATE

Department of Consumer and Business Services, Oregon Occupational Safety and Health Agency and Division Sue C. Joye	437 Administrative Rules Chapter Number (503) 947-7449
Rules Coordinator Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE, Salem, OR 97301 Address	Telephone

RULE CAPTION

Adopt changes to recordkeeping and reporting requirements in Division 1, General Administrative Rules.

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

Hearing Date	Time	Location	Hearings Officer
2-26-15	10:00 a.m.	Oregon OSHA, Fremont Place, Building I, 1750 NW Naito Parkway, Suite	Sue Joye
3-3-15	1:00 p.m.	Oregon OSHA, Red Oaks Square, 1230 NE Third Street, Suite A-115,	Sue Joye
3-5-15	10:00 a.m.	Oregon OSHA, 1140 Willagillespie, Suite 42, Eugene, OR 97401-2101	Sue Joye

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:
 OAR 437-001-0704

AMEND:
 OAR 437-001-0015, 437-001-0700

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:
 ORS 654.025(2), 656.726(4)

Other Authority:

Statutes Implemented:
 ORS 654.001 - 654.295

RULE SUMMARY

Oregon OSHA must adopt rules that are at least as effective as the federal OSHA rules. On September 18, 2014, federal OSHA published a final rule that updates the list of industries that are exempt from the requirement to routinely keep OSHA injury and illness records, due to relatively low occupational injury and illness rates. The previous list of industries was based on the old Standard Industrial Classification (SIC) system and injury and illness data from the Bureau of Labor Statistics (BLS) from 1996, 1997, and 1998. The new list of industries that are exempt from routinely keeping OSHA injury and illness records is based on the North American Industry Classification System (NAICS) and injury and illness data from the Bureau of Labor Statistics (BLS) from 2007, 2008, and 2009. Note: The new rule retains the exemption for any employer with ten or fewer employees, regardless of their industry classification, from the requirement to routinely keep records.

The final rule also expands the list of severe work-related injuries that all covered employers must report to OSHA. The revised rule retains the current requirement to report all work-related fatalities within 8 hours and adds the requirement to report all work-related in-patient hospitalizations, amputations and loss of an eye within 24 hours to OSHA.

This rulemaking incorporates federal OSHA changes, but also makes additional changes:

The rules for reporting workplace incidents were moved to their own rule number, separating reporting from recordkeeping.

In addition to federal OSHA changes for reporting workplace incidents, the new requirement to report workplace amputations was revised to include any amputation or avulsion that includes bone and/or cartilage loss.

Clarifies inpatient hospitalization related to workplace illnesses and injuries.

Edits were made to enhance clarity so employers can better understand their responsibility to record workplace illnesses and injuries.

The annual summary requirements was modified for clarity and to allow for the employer to designate a representative to sign and certify that the information is correct, as long as the information is shared with a company executive.

A note was added reminding employers that, in addition to these reporting requirements, an injury involving a mechanical power press must also be reported to Oregon OSHA.

The definition of Standard industrial classification (SIC) was removed from OAR 437-001-0015 because it is no longer pertinent since the North American Industry Classification System (NAICS) is now used to classify industries.

Please visit our web site www.orosha.org Click 'Rules' in the left vertical column and view our proposed, adopted, and final rules.

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

03-11-2015 5:00 p.m.	Sue C. Joye	Sue.C.Joye@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

FILED
1-15-15 3:19 PM
ARCHIVES DIVISION
SECRETARY OF STATE

D Department of Consumer and Business Services, Oregon Occupational Safety and Health
Agency and Division

437

Administrative Rules Chapter Number

Adopt changes to recordkeeping and reporting requirements in Division 1, General Administrative Rules.

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

In the Matter of:

[See attached document.]

Statutory Authority:

ORS 654.025(2), 656.726(4)

Other Authority:

Statutes Implemented:

ORS 654.001 - 654.295

Need for the Rule(s):

[See attached document.]

Documents Relied Upon, and where they are available:

[See attached document.]

Fiscal and Economic Impact:

[See attached document.]

Statement of Cost of Compliance:

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

[See attached document.]

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

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

[See attached document.]

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

[See attached document.]

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

[See attached document.]

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

[See attached document.]

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

03-11-2015 5:00 p.m.

Sue C. Joye

Sue.C.Joye@state.or.us

Last Day (m/d/yyyy) and Time
for public comment

Printed Name

Email Address



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 Consumer and Business Services/Oregon OSHA
Agency and Division

OAR 437
Administrative Rules Chapter Number

In the Matter of:

ADOPT: OAR 437-001-0704

AMEND: OAR 437-001-0015, 437-001-0700

Rule Caption:

Adopt changes to recordkeeping and reporting requirements in Division 1, General Administrative Rules.

Statutory Authority: ORS 654.025(2) and 656.726(4)

Stats. Implemented: ORS 654.001 through 654.295

Need for the Rule(s):

Oregon OSHA must adopt rules that are at least as effective as the federal OSHA rules. On September 18, 2014, federal OSHA published a final rule that updates the list of industries that are exempt from the requirement to routinely keep OSHA injury and illness records, due to relatively low occupational injury and illness rates. The previous list of industries was based on the old Standard Industrial Classification (SIC) system and injury and illness data from the Bureau of Labor Statistics (BLS) from 1996, 1997, and 1998. The new list of industries that are exempt from routinely keeping OSHA injury and illness records is based on the North American Industry Classification System (NAICS) and injury and illness data from the Bureau of Labor Statistics (BLS) from 2007, 2008, and 2009. Note: The new rule retains the exemption for any employer with ten or fewer employees, regardless of their industry classification, from the requirement to routinely keep records.

The final rule also expands the list of severe work-related injuries that all covered employers must report to OSHA. The revised rule retains the current requirement to report all work-related fatalities within 8 hours and adds the requirement to report all work-related in-patient hospitalizations, amputations and loss of an eye within 24 hours to OSHA.

This rulemaking incorporates federal OSHA changes, but also makes additional changes:

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In addition to federal OSHA changes for reporting workplace incidents, the new requirement to report workplace amputations was revised to include any amputation or avulsion that includes bone and/or cartilage loss.

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Edits were made to enhance clarity so employers can better understand their responsibility to record workplace illnesses and injuries.

The annual summary requirements was modified for clarity and to allow for the employer to designate a representative to sign and certify that the information is correct, as long as the information is shared with a company executive.

A note was added reminding employers that, in addition to these reporting requirements, an injury involving a mechanical power press must also be reported to Oregon OSHA.

The definition of Standard industrial classification (SIC) was removed from OAR 437-001-0015 because it is no longer pertinent since the North American Industry Classification System (NAICS) is now used to classify industries.

Documents Relied Upon, and where they are available:

Federal Register / Vol. 79, No. 181 / Thursday, September 18, 2014 / Rules and Regulations:

https://www.osha.gov/FedReg_oshapdf/FED20140918.pdf

Oregon OSHA 437-001-0700 Recordkeeping and Reporting

http://www.orosha.org/pdf/rules/division_1/437-001-0700-0742.pdf

State of Oregon Employment Department economic data

<https://www.qualityinfo.org/ed-ewind/?at=1&t1=0~4101000000~00~5~0000~00~00000~2014~02>

State of Oregon Worker's Compensation Division data

<http://www.cbs.state.or.us/imd/rasums/2055t/13web/table10.pdf>

Fiscal and Economic Impact, including Statement of Cost of Compliance:

Fiscal and Economic Impact:

This rulemaking has two components: recordkeeping and reporting, that affect Oregon employers in the following manner.

Recordkeeping:

This rulemaking requires certain industries to record workplace injuries and illnesses that had previously been exempt from these requirements. Additionally, some industries that have been required to record incidents will no longer need to do so.

Based on information collected by federal OSHA, there is a cost in time for employers newly-required to maintain an OSHA 300 Log. Both federal OSHA and Oregon OSHA provide free on-line training for the recordkeeping rules, and should take the user one to two hours to complete. Retraining can be necessary in situations where recordkeeping is an administrative function, these duties may be passed to other personnel or because of employee turnover. Because of this, this analysis treats training as an annual cost, which is likely to overstate the impact to some degree.

Another cost in time is for recording each incident, including the DCBS form 801. Federal OSHA estimates that it can take 30 minutes to complete the paperwork for each recordable event.

There is also an annual cost for completing the 300 Log, and certifying and posting the 300A Summary form. Federal OSHA estimates that it can take one hour to complete this task, although it may take large employers with many recordable cases longer, up to 8 hours. This task is accomplished annually.

Table 1 below outlines the list of industries and number of industries that will be newly required to record workplace injuries and illnesses, along with the number of Oregon employers within those industries, and the number of accepted disabling claims for each industry. While it should be noted that not all disabling claims are recordable, and some recordable events are not compensable events, a claim that has been accepted as disabling is almost certain to be a recordable event on the OSHA 300 Log. Because many accepted non-disabling claims are also likely to be recordable, the number of disabling claims is likely to understate the number of recordable events. Based on data from the Worker's Compensation Division, the ratio between accepted disabling claims and accepted non-disabling claims is approximately 2.18.

Table 2 below outlines the list of industries and number of industries that will be newly exempt from recording workplace injuries and illnesses, along with the number of Oregon employers within those industries, and the number of accepted disabling claims for each industry. The limitations of the data in Table 1 are also true for Table 2.

Table 1: Industries Newly Required to Keep Records

Industry	Number of employers 2 nd Quarter 2014 ¹	Number of Accepted Disabling Claims 2014 ²
3118 Bakeries and tortilla manufacturing	240	110
4411 Automobile dealers	229	131
4413 Automotive parts, accessories, and tire stores	789	115
4441 Building material and supplies dealers	749	170
4452 Specialty food stores	424	34
4453 Beer, wine, and liquor stores	253	NA
4539 Other miscellaneous store retailers	678	34
4543 Direct selling establishments	172	27
5311 Lessors of real estate	1926	57
5313 Activities related to real estate	1833	79
5324 Commercial and industrial machinery and equipment rental and leasing	135	6
5419 Other professional, scientific, and technical services	1344	NA
5612 Facilities support services	96	NA
5617 Services to buildings and dwellings	3035	422
5619 Other support services	501	NA
6219 Other ambulatory health care services	85	45
6241 Individual and family services	910	102
6242 Community food and housing, and emergency and other relief services	278	8
7111 Performing arts companies	155	24 ³
7113 Promoters of performing arts, sports, and similar events	113	24 ³
7121 Museums, historical sites, and similar institutions	112	17
7139 Other amusement and recreation industries	1028	NA
7223 Special food services	549	50
8129 Other personal services	409	NA
Totals	16,043	1,674

When one applies the 2.18 ratio to the 1,674 claims, the total number of accepted claims is 3,649.

¹ Data is from the State of Oregon economic data available at <https://www.qualityinfo.org/ed-ewind/?at=1&t1=0~410100000~00~5~0000~00~00000~2014~02>

² Data is from the Accepted disabling claims by industry (NAICS) and accident or exposure event, Oregon 2013 available at <http://www.cbs.state.or.us/imd/rasums/2055t/13web/table10.pdf>

³ Data available is combined for NAICS code 711

Table 2: Industries Newly-Exempt from Recordkeeping

Industry	Number of employers 2 nd Quarter 2014 ¹	Number of Accepted Disabling Claims 2014 ⁵
4412 Other Motor Vehicle Dealers	242	36
4431 Electronics and Appliance Stores	756 ⁶	57
4461 Health and Personal Care Stores	871	57
4471 Gasoline Stations	928	88
4511 Sporting Goods, Hobby, and Musical Instrument Stores	882	48
4532 Office Supplies, Stationary, and Gift Stores	440	23
4812 Nonscheduled Air Transportation	46	10
4861 Pipeline Transportation of Crude Oil	5	1
4869 Other Pipeline Transportation	2	1
4879 Scenic and Sightseeing Transportation, Other	5	0
4885 Freight Transportation Arrangement	267	8
5111 Newspaper, Periodical, Book, and Directory Publishers	380	37
5122 Sound Recording Industries	46	11
5151 Radio and Television Broadcasting	132	29
5172 Wireless Telecommunications Carriers (except Satellite)	42	78 ⁷
5179 Other Telecommunications	48	* ⁴
5191 Other Information Services	56	2
5221 Depository Credit Intermediation	1462	60
5239 Other Financial Investment Activities	37	6
5241 Insurance Carriers	289	56
5259 Other Investment Pools and Funds	22	13
5413 Architectural, Engineering, and Related Services	1698	46
5416 Management, Scientific, and Technical Consulting Services	3363	NA
5418 Advertising and Related Services	699	26
5511 Management of Companies and Enterprises	1181 ⁸	33
5614 Business Support Services	597	39
5615 Travel Arrangement and Reservation Services	244	69
5616 Investigation and Security Services	347	58
6116 Other Schools and Instruction	727	33
7213 Rooming and Boarding Houses	62	1
8112 Electronic and Precision Equipment Repair and Maintenance	220	NA
8114 Personal and Household Goods Repair and Maintenance	261	NA
8122 Death Care Services	169	NA
8134 Civic and Social Organizations	340	13
8139 Business, Professional, Labor, Political, and Similar Organizations	1039	13
Totals	16,842	1,281

When one applies the 2.18 ratio to the 1,281 claims, the total number of accepted claims is 2,792.

⁴ Data is from the State of Oregon economic data available at <https://www.qualityinfo.org/ed-ewind/?at=1&t1=0~4101000000~00~5~0000~00~00000~2014~02>

⁵ Data is from the Accepted disabling claims by industry (NAICS) and accident or exposure event, Oregon 2013 available at <http://www.cbs.state.or.us/imd/rasums/2055t/13web/table10.pdf>

⁶ Data is only available for NAICS code 443

⁷ Data is for NAICS code 517

⁸ NAICS code 55 consists only of subsectors within 5511

The number of establishments that would be newly required to maintain the OSHA 300 Log is 799 fewer than the number of establishments that need to record this data now and would be exempt in this rulemaking.

However, there are 857 more events that would likely need to be recorded on the OSHA 300 Log under this rulemaking.

Based on the economic data available at <https://www.qualityinfo.org/>, the average wage of a Human Resource Manager, who would be most likely tasked with the recordkeeping responsibilities, is \$48 per hour. Assuming loading costs (such as costs not typically reflected in wage data, such as benefits, worker's compensation insurance, vacation leave, and sick leave) of 100%, the average hourly cost would be \$96.

Table 3 below outlines the annual cost for recording events for newly-required employers and newly-exempt employers, using 30 minutes of employee time at \$96 per hour.

Table 3: Annual cost of Recording Incidents (events)

	Number of Claims	Number of Hours	Annual Cost
Newly-required employers	3,649 (disabling claims table 1 ratio adjustment)	1,825	\$175,200
Newly-exempt employers	2,792 (accepted claims table 2 ratio adjustment)	1,396	\$134,016
		Annual increase	\$ 41, 184

Based on this data, the total cost of recording incidents represents an annual increase for all affected Oregon employers of \$41,184.

Table 4 below outlines the annual cost for training, completing the OSHA 300 Log, and certifying and posting the 300A Summary form for newly-required employers and newly-exempt employers, using 3 hours of employee time at \$96 per hour for a total of \$288 per employer.

Table 4: Annual Costs for Training and Paperwork

	Total Number of Employers	Total Annual Cost
Newly-required employers	16,043 (table 1)	\$4,620,384
Newly-exempt employers	16,842 (table 2)	\$4,850,496
	Annual cost reduction	\$230,112

The annual costs for training, completing the OSHA 300 Log, and certifying and posting the 300A Summary form under this rulemaking is \$230,112 (table 4) less than the current costs. When one factors in the \$41,184 (table 3) cost for recording incidents, the rulemaking for recording workplace injuries and illnesses represents a cost savings of \$188,928.

Reporting:

This rulemaking expands the workplace incidents that employers must report to Oregon OSHA. Under the current rule, employers must report workplace fatalities, catastrophes, and incidents that result in overnight hospitalization.

Under this rulemaking, employers would still be required to report workplace fatalities and catastrophes, and in-patient hospitalizations but also expands the requirement to include all incidents that result in amputations and avulsions that result in bone and/or cartilage loss, and incidents that result in the loss of an eye.

Table 5 below is amputation data from worker's compensation data. This data includes avulsions that involve bone and/or cartilage loss.

Table 5: Amputations by Body Part - Oregon ADC Counts 2003-2013

Year accepted	Finger	Toe	Arm	Hand	Leg	Foot	Other lower (multiple, unspec.)	Other upper (multiple, unspec.)	Head (ear, nose, etc)	Totals
2003	172	3	0	1	0	0	0	0	0	176
2004	195	1	0	0	0	0	0	1	0	197
2005	175	2	2	1	0	0	0	0	0	180
2006	190	0	1	0	2	0	1	0	0	194
2007	163	1	3	1	0	0	0	0	0	168
2008 ¹	159	2	1	0	0	0	1	0	0	163
2009	91	2	0	0	1	0	0	0	1	95
2010	107	3	0	0	0	0	0	0	0	110
2011	98	0	1	0	0	0	0	1	0	100
2012	101	2	1	0	0	0	0	0	0	104
2013 ²	138	3	0	3	1	4	0	0	0	149
Totals	1589	19	9	6	4	4	2	2	1	1636

¹ The drop in counts from 2008 is likely due to the increase in use of multiple codes, not an actual decrease in amputations.

² Starting in 2013, WCD Operations is coding individual accepted conditions. This will likely result in an increase in amputation counts due to the resulting ability to identify them.

DCBS, CSD, IT&R - 10/13/14

Programmer notes: 2012 and prior= OIICS 1.0, (Nature =0311, 0319 for amputations) and (Nature = 035, Part = 032 for eye enucleations). After 2013, Nature condition = 1311, 1319. There were no eye enucleations as of this report date for the time period indicated.

There were no reports of eye loss in the system, although that may be because of how worker's compensation codes eye loss. In the avulsion data from worker's compensation, there were four events from 2009 through 2013, although this reflects all avulsions in the area of the head, which also includes nose, mouth, eyes, and ears, and there is no easy way to determine if any of those incidents represent an eye loss. With so few incidents, however, it is unlikely that the number of cases in Oregon will be statistically meaningful in light of the number of cases that already need to be reported, both currently and with the new reporting requirements of this rulemaking.

While Oregon OSHA requires employers to report overnight hospitalizations, many incidents resulting in an amputation or avulsion do not result in an overnight hospitalization. This requirement will increase the number of accident reports by an estimated average of 164 events per year. The average amount of time it takes to report an incident is approximately 10-15 minutes. Using the same wage data as above, this would represent a cost in time of \$24 per report, and a total of \$3,936 per year.

Since Oregon OSHA already requires employers to report incidents that result in an overnight hospitalization, we are anticipating that the requirement to report all incidents that result in in-patient hospitalization will only increase the number of reportable incidents by 20%. Based on the data collected from DCBS form 801, there are an average of 542 incidents that result in an overnight hospitalization, although these are not necessarily all events that would need to be reported, as it includes injuries and illnesses where treatment was necessary some time after the incident or diagnosis, such as back surgery.

However, presuming that all of these 542 events were reportable events, the 20% increase this rulemaking represents an increase of 108 events, resulting in a cost in time of \$2,592.

An increase in the number of reportable incidents will increase the number of accident investigations conducted by Oregon OSHA. However, this will not represent an additional cost to employers overall as Oregon OSHA's enforcement resources will not change due to the rulemaking.

A note was also added referring to additional reporting requirements for injuries relating to mechanical power presses. There is no additional cost associated with this, as it is already required by 1910.217. This note was added simply as a reminder to employers who may be affected by this additional reporting requirement.

The total anticipated annual economic impact of the changes to reporting workplace incidents is \$6,528 (\$3,936 + \$2,592).

Conclusion:

The positive economic impact of the rules for recordkeeping is estimated to be \$188,928, and the negative economic impact of the rules for reporting is estimated to be \$6,528, making the overall impact of this rulemaking an annual estimated net cost savings of \$182,400.

Statement of Cost of Compliance:

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

Costs incurred by Oregon OSHA represent similar costs associated with the promulgation, implementation and administration of a rule.

All state agencies are affected by the rules in the sense that they are employers under the Oregon Safe Employment Act (OSEAct).

The public as a whole will be affected only to the degree that members of the public are employers and employees.

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:

Based on the generally accepted understanding that small businesses make up the majority of Oregon employers (typically 90%), this rule does have the potential to impact all small business employers in Oregon.

Any fiscal impact should affect large and small business the same proportionately.

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

All economic impacts of this rule are recordkeeping and administrative.

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

All economic impacts of this rule are administrative.

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

A stakeholder group from a variety of businesses and business organizations was formed.

Administrative Rule Advisory Committee consulted? Yes.

If not, why?

Authorized Signer

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.
ARC 925-2005

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534)
FOR ADMINISTRATIVE RULES

AGENCY NAME: DCBS/Oregon OSHA
ADDRESS: 350 Winter Street NE
CITY/STATE: Salem OR 97301-3882
PHONE: 503-947-7449

PERMANENT: XX

HEARING DATE: Feb/Mar 2015

TEMPORARY:

EFFECTIVE DATE: Jan. 2016

BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT WILL RESULT FROM THIS PROPOSED CHANGE.

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.

IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)
See attached Notice of Proposed Rulemaking Hearing.

Description of the need for, and objectives of the rule:
See attached Notice of Proposed Rulemaking Hearing.

List of rules adopted or amended:
ADOPT: OAR 437-001-0704

AMEND: OAR 437-001-0015, 437-001-0700

Materials and labor costs increase or savings:
None.

Estimated administrative construction or other costs increase or savings:
None.

Land costs increase or savings:
Oregon OSHA does not foresee any effect on land costs.

Other costs increase or savings:
Oregon OSHA does not foresee any additional costs.

*Typical-Single story 3 bedrooms, 1 1/2 bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

PREPARERS NAME: Dave McLaughlin
EMAIL ADDRESS: dave.j.mclaughlin@state.or.us

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

FILED
12-23-14 4:56 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Health Authority, Division of Medical Assistance Programs

Agency and Division

410

Administrative Rules Chapter Number

Sandy Cafourek

(503) 945-6430

Rules Coordinator

Telephone

Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301

Address

RULE CAPTION

Annual Updates for Relative Value Units, Clinical Lab and Ambulatory Surgical Centers

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

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

OAR 410-120-1340

REPEAL:

OAR 410-120-1340(T)

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

3.042

Other Authority:

Statutes Implemented:

ORS 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742 & 414.743

RULE SUMMARY

The Division of Medical Assistance Programs (Division) will amend this rule to implement annual updates to the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services and Clinical Laboratory and Ambulatory surgical services.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

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

02-19-2015 5:00 p.m.

Sandy Cafourek

dmap.rules@state.or.us

Last Day (m/d/yyyy) and Time
for public comment

Rules Coordinator Name

Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking accompanies this form.

FILED
12-23-14 4:56 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Oregon Health Authority, Division of Medical Assistance Programs

410

Agency and Division

Administrative Rules Chapter Number

Annual Updates for Relative Value Units, Clinical Lab and Ambulatory Surgical Centers

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

In the Matter of:

The amendment of OAR 410-120-1340 and the repeal of OAR 410-120-1340(T)

Statutory Authority:

ORS 413.042

Other Authority:

Statutes Implemented:

ORS 414.025, 414.033, 414.065, 414.095, 414.705, 414.727, 414.728, 414.742 & 414.743

Need for the Rule(s):

The Division of Medical Assistance Programs (Division) General Rules, administrative rules govern payments for services provided to certain eligible clients. The Division amends OAR 410-120-1340 to implement the annual updates by the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services, Clinical Lab and Ambulatory Surgical Centers.

Documents Relied Upon, and where they are available:

Federal register, Vol. 79, No.219 published November 13, 2014

<https://www.federalregister.gov/articles/2014/11/13/2014-26183/medicare-program-revisions-to-payment-policies-under-the-physician-fee-schedule-clinical-laboratory>

Fiscal and Economic Impact:

Amending these rules will have a savings to the Authority but no impact to other state agencies, local government, or clients. Small businesses impact will vary depending upon the rate of utilization and how the RVU weight changes for that particular procedure code; some will go up and some will go down.

Statement of Cost of Compliance:

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

Amending these rules will have a savings to the Authority but no impact to other state agencies, local government, or clients. Small businesses impact will vary depending upon the rate of utilization and how the RVU weight changes for that particular procedure code; some will go up and some will go down.

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

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

The Division has approximately 63,000 enrolled providers. These enrolled providers range from large hospital affiliates, national Durable Medical Equipment or Pharmacy chains to individually owned physician offices. The Division's fee-for-services providers serve approximately 10 percent of the total OHP population. The Division does not have available information to estimate the percentage of these medical practices that are small businesses. The impact to these smaller provider groups will vary depending upon the rate of utilization and how the RVU weight changes for that particular specialty. The RVU update is a standard reimbursement methodology for all payers, and CMS calculates the costs associated with the visit and adjusts the RVU weight to account for variations in office costs and other factors, as they do for the clinical lab and ambulatory surgical centers.

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

None

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

None

d. Were small businesses involved in the development of this rule?

? Because these proposed rules implement the annual RVU, ASC, and Clinical Lab update by the Centers for Medicare and Medicaid, small business providers did not participate in the development of these rules.

Administrative Rule Advisory Committee consulted?:No

If not, why?:

Because the proposed rules implement the annual update to the RVUs, ASC, and Clinical Lab by Centers for Medicare and Medicaid, a formal rule advisory committee was not consulted.

02-19-2015 5:00 p.m.	Sandy Cafourek	dmap.rules@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

FILED
2-3-15 10:43 AM
ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on 01/28/2015 by the

Department of Fish and Wildlife	635
Agency and Division	Administrative Rules Chapter Number
Michelle Tate	(503) 947-6044
Rules Coordinator	Telephone
4034 Fairview Industrial Dr. SE, Salem, OR 97302	
Address	

To become effective 02/09/2015 through 07/30/2015.

RULE CAPTION

2015 Commercial Winter, Spring, and Summer Fisheries for Columbia River Select Areas

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

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180

SUSPEND:

Statutory Authority:

ORS 183.325, 496.138, 496.146, 506.109, 506.119

Other Authority:

Statutes Implemented:

ORS 496.162, 506.129, 507.030

RULE SUMMARY

These amended rules set seasons, area boundaries, gear regulations and allowable sales for winter, spring and summer commercial fisheries in the Columbia River Select Areas. Rule revisions are consistent with action taken January 28, 2015 by the Oregon and Washington Departments of Fish and Wildlife at a meeting of the Columbia River Compact.

Michelle Tate

michelle.l.tate@state.or.us

Rules Coordinator Name

Email Address

DFW 10 - 2015 (T)

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules
accompanies this form.

FILED
2-3-15 10:43 AM
ARCHIVES DIVISION
SECRETARY OF STATE

Department of Fish and Wildlife
Agency and Division

635
Administrative Rules Chapter Number

2015 Commercial Winter, Spring, and Summer Fisheries for Columbia River Select Areas

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

In the Matter of:

Amendments to OAR Chapter 635, Division 042, related to commercial Chinook salmon and shad fisheries in the Columbia River Select Areas.

Statutory Authority:

ORS 183.325, 496.138, 496.146, 506.109, 506.119

Other Authority:

Statutes Implemented:

ORS 496.162, 506.129, 507.030

Need for the Temporary Rule(s):

These rules are needed to set the 2015 commercial winter, spring and summer fishing seasons for Chinook salmon and shad in the Columbia River Select Areas.

Documents Relied Upon, and where they are available:

1. Joint Staff Report: Oregon and Washington Dept.s of Fish & Wildlife, Winter Fact Sheet No. 2a, dated January 28, 2015.
2. Columbia River Action Notice / Joint State Action, dated January 28, 2015.

A copy of the rules and the other documents relied upon for this rulemaking [the above documents] are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Justification of Temporary Rule(s):

These rules are necessary to allow the non-Indian commercial harvest of Chinook salmon and shad in the Columbia River winter, spring and summer Select Area fisheries. These fisheries are managed to provide opportunity to meet species or stock-specific allocations for each fishery while remaining within Endangered Species Act (ESA) guidelines. There is insufficient time to initiate the permanent rulemaking process. Failure to adopt these modifications would cause serious prejudice to the public interest in that commercial fishermen would not be allowed to harvest their allocation of this valuable resource, resulting in economic hardship.

Michelle Tate

michelle.l.tate@state.or.us

Printed Name

Email Address

Authorization Page
Generated on February 3, 2015 9:34AM
TEMPORARY ADMINISTRATIVE RULES

Department of Fish and Wildlife	635
Agency and Division	Administrative Rules Chapter Number
Michelle Tate	michelle.l.tate@state.or.us
Rules Coordinator	Email Address
4034 Fairview Industrial Dr. SE, Salem, OR 97302	503-947-6044
Address	Telephone
01/28/2015	
Adopted on	
02/09/2015 thru 07/30/2015	
Effective dates	

RULE CAPTION

2015 Commercial Winter, Spring, and Summer Fisheries for Columbia River Select Areas

Not more than 15 words

RULEMAKING ACTION

ADOPT:

AMEND: 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180

SUSPEND:

Stat. Auth.: ORS 183.325, 496.138, 496.146, 506.109, 506.119

Other Auth.:

Stats. Implemented: ORS 496.162, 506.129, 507.030

RULE SUMMARY

These amended rules set seasons, area boundaries, gear regulations and allowable sales for winter, spring and summer commercial fisheries in the Columbia River Select Areas. Rule revisions are consistent with action taken January 28, 2015 by the Oregon and Washington Departments of Fish and Wildlife at a meeting of the Columbia River Compact.

STATEMENT OF NEED AND JUSTIFICATION

Amendments to OAR Chapter 635, Division 042, related to commercial Chinook salmon and shad fisheries in the Columbia River Select Areas.

In the Matter of

1. Joint Staff Report: Oregon and Washington Dept.s of Fish & Wildlife, Winter Fact Sheet No. 2a, dated January 28, 2015.
2. Columbia River Action Notice / Joint State Action, dated January 28, 2015.

A copy of the rules and the other documents relied upon for this rulemaking [the above documents] are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Documents Relied Upon, and where they are available

These rules are needed to set the 2015 commercial winter, spring and summer fishing seasons for Chinook salmon and shad in the Columbia River Select Areas.

Need for the Temporary Rule(s)

These rules are necessary to allow the non-Indian commercial harvest of Chinook salmon and shad in the Columbia River winter, spring and summer Select Area fisheries. These fisheries are managed to provide opportunity to meet species or stock-specific allocations for each fishery while remaining within Endangered Species Act (ESA) guidelines. There is insufficient time to initiate the permanent rulemaking process. Failure to adopt these modifications would cause serious prejudice to the public interest in that commercial fishermen would not be allowed to harvest their allocation of this valuable resource, resulting in economic hardship.

Justification of Temporary Rules



Roger Fuhrman

2/3/15

Authorized Signer

Printed Name

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.



Oregon Administrative Rules
Oregon Department of Fish and Wildlife

635-042-0145

Youngs Bay Salmon Season

(1) Salmon and shad may be taken for commercial purposes during open 2015 fishing periods in waters of Youngs Bay as described below. Retention and sale of white sturgeon is prohibited.

(a) The 2015 open fishing periods are established in three segments categorized as the winter fishery, subsection (1)(a)(A); the spring fishery, subsection (1)(a)(B); and summer fishery, subsection (1)(a)(C), as follows:

(A) Winter Season: Open Mondays, Wednesdays, and Thursdays from February 9 through March 5 (12 days) open hours are from 6:00 a.m. to midnight (18 hours) on Mondays and Thursdays, and 6:00 a.m. to 6:00 p.m. (12 hours) on Wednesdays. Beginning March 9 the following open periods apply:

Monday, March 9 — 9:00 a.m.–1:00 p.m. (4 hrs.); Wednesday, March 11 — 11:00 a.m.–3:00 p.m. (4 hrs.); Thursday, March 12 — 12:00 p.m.–4:00 p.m. (4 hrs.); Monday, March 16 — 4:00 p.m.–8:00 p.m. (4 hrs.); Wednesday, March 18 — 6:00 p.m.–10:00 p.m. (4 hrs.); Thursday, March 19 — 7:00 p.m.–11:00 p.m. (4 hrs.); Monday, March 23 — 9:00 a.m.–1:00 p.m. (4 hrs.); Wednesday, March 25 — 11:00 a.m.–3:00 p.m. (4 hrs.); Thursday, March 26 — 12:00 p.m.–4:00 p.m. (4 hrs.); Monday, March 30 — 10:00 a.m.–2:00 p.m. (4 hrs.);

(B) Spring Season: Open during the following periods:

Tuesday, April 21 — 8:00 p.m.–Midnight (4 hrs.); Thursday, April 23 — 9:00 p.m.–3:00 a.m. Friday, April 24 (6 hrs.); Tuesday, April 28 — 7:00 p.m.–7:00 a.m. Wednesday, April 29 (12 hrs.); Thursday, April 30 — 7:00 p.m.–7:00 a.m. Friday, May 1 (12 hrs.); Monday, May 4 — 9:00 a.m.–3:00 a.m. Tuesday, May 5 (18 hrs.); Wednesday, May 6 — 9:00 a.m.–9:00 p.m. (12 hrs.); Thursday, May 7 — 9:00 a.m.–3:00 a.m. Friday, May 8 (18 hrs.); and Noon Monday through Noon Friday (4 days/week) from May 11 through June 12 (20 days).

(C) Summer Season: Beginning June 16 the following open periods apply:

Noon Tuesday, June 16 through Noon Friday, June 19 (3 days); Noon Mondays through Noon Fridays, June 22–July 3 (8 days); Noon Monday, July 6 through Noon Thursday, July 9 (3 days); and Noon Tuesdays through Noon Thursdays, July 14 through July 30 (6 days).

(b) For the winter fisheries, the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers including the lower Walluski River upstream to the Highway 202 Bridge are open. Those waters southerly of the alternate Highway 101 Bridge (Lewis and Clark River) are closed. For the spring and summer fisheries the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers and includes the lower Walluski River upstream to Highway 202 Bridge and the lower Lewis and Clark River upstream to the overhead power lines immediately upstream of Barrett Slough.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom except the use of additional weights and/or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries and upstream of the alternate Highway 101 Bridge in the Lewis and Clark River during the spring and summer seasons. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7 inches during the winter season. It is *unlawful* to use a gill net having a mesh size that is more than 9.75 inches during the spring and summer seasons.

(b) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(3) Non-resident commercial fishing and boat licenses are not required for Washington fishers participating in Youngs Bay commercial fisheries. A valid fishing and boat license issued by the state of Washington is considered adequate for participation in this fishery. The open area for non-resident commercial fishers includes all areas open for commercial fishing.



Oregon Administrative Rules
Oregon Department of Fish and Wildlife

Stat. Auth.: ORS 183.325, 506.109, 506.119
Stats. Implemented: ORS 506.129, 507.030

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon and shad may be taken for commercial purposes during open 2015 fishing periods described as the winter fishery and the spring fishery in subsections (1)(a)(A) and (1)(a)(B) respectively, of this rule in those waters of Blind Slough and Knappa Slough. Retention and sale of white sturgeon is prohibited. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough and Knappa Slough in subsection (1)(a)(A), the winter fishery in Blind Slough only in subsection (1)(a)(B), and the spring fishery in Blind Slough and Knappa Slough in subsections (1)(a)(C) and (1)(a)(D). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough and Knappa Slough: Monday and Thursday nights beginning Monday, February 9 through Friday, March 20 (12 nights);

(B) Blind Slough Only: Monday and Thursday nights beginning Monday, March 23 through Tuesday, March 31 (3 nights);

(C) Blind Slough and Knappa Slough Tuesday and Thursday nights beginning Tuesday, April 22 through Friday, May 1 (4 nights); and

(D) Blind Slough and Knappa Slough Monday and Thursday nights beginning Monday, May 4 through Friday, June 12 (12 nights).

(b) The fishing areas for the winter and spring seasons are:

(A) Blind Slough are those waters from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the period from May 4 through June 12, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter and spring fisheries, outlined above in subsections (1)(a)(A), (1)(a)(B), (1)(a)(C) and (1)(a)(D), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted.

(B) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter fishery or greater than 9.75-inches during the spring fishery.

(C) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 183.325, 506.109, 506.119

Stats. Implemented: ORS 506.129, 507.030

635-042-0170

Tongue Point Basin and South Channel

(1) Tongue Point includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy "7" to a marker on the southwest end of Lois Island upstream to an upper boundary line from a



Oregon Administrative Rules Oregon Department of Fish and Wildlife

marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(3) Salmon and shad may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Retention and sale of white sturgeon is prohibited. The 2015 open fishing periods are:

(a) Winter Season:

Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Monday, February 9 through Friday, March 13 (10 nights).

(b) Spring Season:

Tuesday, April 21 from 8:00 p.m. to midnight (4 hours);

Thursday, April 23 from 9:00 p.m. to 3:00 a.m. Friday, April 24 (6 hours);

Tuesday, April 28 from 7:00 p.m. to 7:00 a.m. Wednesday, April 29 (12 hours);

Thursday, April 30 from 7:00 p.m. to 7:00 a.m. Friday, May 1 (12 hours); and

Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning beginning Monday, May 4 through Friday, June 12.

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is *unlawful* to use a gill net having a mesh size that is less than 7 inches during the winter season or more than 9.75-inches during the spring season.

(b) In waters described in section (2) as South Channel, nets are restricted to 250 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is less than 7 inches during the winter season or more than 9.75 inches during the spring season.

(c) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Stat. Auth.: ORS 183.325, 506.109, 506.119

Stats. Implemented: ORS 506.129, 507.030

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon and shad may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge. Retention and sale of white sturgeon is prohibited.

(2) The 2015 open fishing seasons are:

(a) Winter season: Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Monday, February 9 through Tuesday, March 31, 2015 (15 nights).

(b) Spring season: Tuesday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Thursday, April 16 through Friday, May 1, 2015 (5 nights); and Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Monday, May 4 through Friday, June 12, 2015 (11 nights).

(3) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length and there is no weight restriction on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(b) It is *unlawful* to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream. It is *unlawful* in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.



Oregon Administrative Rules Oregon Department of Fish and Wildlife

- (c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.
- (d) During the winter season, outlined above in subsection (2)(a), it is *unlawful* to use a gill net having a mesh size that is less than 7-inches.
- (e) During the spring season, outlined above in subsection (2)(b) it is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches.
- (4) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. During the winter season, described in subsection (2)(a) above, fishers are required to call (360) 795-0319 to confirm the location and time of sampling. During the spring season, described in subsection (2)(b) above, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).
- Stat. Auth.: ORS 183.325, 506.109, 506.119
Stats. Implemented: ORS 506.129, 507.030

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

FILED
1-29-15 8:24 AM
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SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities	411
Agency and Division	Administrative Rules Chapter Number
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Address	

To become effective Upon filing, Rulemaking Notice was published in the November 2014 Oregon Bulletin.

RULE CAPTION

ODDS - In-Home Support for Children with Intellectual or Developmental Disabilities

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

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

- ADOPT:**
- AMEND:**
- 411-308-0010, 411-308-0020, 411-308-0030, 411-308-0040, 411-308-0050, 411-308-0060, 411-308-0070, 411-308-0080, 411-308-0090, 411-308-0100, 411-308-0110, 411-308-0120, 411-308-0130, 411-308-0140, 411-308-0150, 411-308-0135

- REPEAL:**
- RENUMBER:**
- AMEND AND RENUMBER:**

Statutory Authority:
ORS 409.050, 430.662

Other Authority:

Statutes Implemented:
ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

RULE SUMMARY

The Department of Human Services (Department), Office of Developmental Disability Services is permanently updating the rules in OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities.

The proposed rules:

- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;
- Provide a uniform dispute resolution process by incorporating the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;
- Clarify that a child who accesses in home support through general fund eligibility must be to prevent out-of-home placement and to allow time for the transition into other Medicaid services, if eligible;
- Account for changes in Medicaid service eligibility;
- Clarify when a child may be exited from in-home supports and to reiterate the requirement for a Notification of Planned Action in the instance supports are terminated;
- Require a plan to reduce or eliminate the need for children accessing in-home supports through general funds. The plan may include assisting the child to access waiver or Community First Choice services, if eligible;
- Remove the sanctions for independent providers, provider organizations, and general business providers;
- Update the language to reflect the completion of the transition period for implementation of the Community First Choice 1915(k) state plan amendment and update the available supports to reflect changes to the proposed 1915(c) Home and Community-Based Services waiver;
- Update provider types to reflect changes in the 1915(c) Home and Community-Based Services waiver;
- Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse;
- Reflect new Department terminology and current practice; and

- Correct formatting and punctuation.

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PERMANENT ADMINISTRATIVE RULES

Department of Human Services, Aging and People with
Disabilities and Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

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Adopted on

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Effective date

RULE CAPTION

ODDS - In-Home Support for Children with Intellectual or Developmental
Disabilities

Not more than 15 words

RULEMAKING ACTION

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411-308-0010, 411-308-0020, 411-308-0030, 411-308-0040, 411-308-0050, 411-308-0060, 411-308-0070, 411-308-0080, 411-308-0090, 411-308-0100, 411-308-0110, 411-308-0120, 411-308-0130, 411-308-0140, 411-308-0150, 411-308-0135

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 409.050, 430.662

Other Auth.:

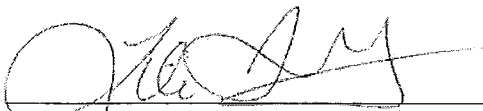
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

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- Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.



Authorized Signer

Lilia Teninty

Printed Name

1/24/15

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

**DIVISION 308
IN-HOME SUPPORT FOR CHILDREN
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

411-308-0010

Statement of Purpose

(1) The rules in OAR chapter 411, division 308 prescribe standards, responsibilities, and procedures for Community Developmental Disability Programs to partner with families and community partners in identifying and providing in-home support for children with intellectual or developmental disabilities. Supports are intended to maximize the independence of a child and engagement in a life that is fully integrated into the community. Supports are designed to increase the ability of a family to care for a child with an intellectual or developmental disability in the family home.

(2) In-home supports are also designed to prevent out-of-home placement or to return a child with an intellectual or developmental disability back to the family home from a residential setting other than the family home.

Stat. Auth.: ORS 409.050, 430.662

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

411-308-0020

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 308:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(4) "Alternative Resources" mean possible resources for the provision of supports to meet the needs of a child. 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.

(5) "Annual Plan" means the written summary a services coordinator completes for a child who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(6) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are necessary to enable a child to increase the ability of the child to perform ADL and IADLs or to perceive, control, or communicate with the home and community environment in which the child lives.

(7) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-308-0120 that are purchased to provide support for a child and replace the need for direct interventions to enable self-direction of care and maximize independence of the child.

(8) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in OAR 411-308-0120.

(9) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(10) "Behavior Consultant" means a contractor with specialized skills as described in OAR 411-308-0130 who conducts functional assessments and develops a Behavior Support Plan.

(11) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of a child and to modify the behavior of the primary caregiver or provider, adjust environment, and teach new skills.

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

(13) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

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

(15) "Children's Intensive In-Home Services" mean the services described in:

(a) OAR chapter 411, division 300, Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350, Medically Fragile Children Services; or

(c) OAR chapter 411, division 355, Medically Involved Children's Program.

(16) "Chore Services" mean the services described in OAR 411-308-0120 that are needed to restore a hazardous or unsanitary situation in the family home to a clean, sanitary, and safe environment.

- (17) "Community Nursing Services" mean the nursing services described in OAR 411-308-0120 that focus on the chronic and ongoing health and safety needs of a child living in the family home. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.
- (18) "Community Transportation" means the services described in OAR 411-308-0120 that enable a child to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the family home that is commonly used by people in the same area to obtain ordinary goods and services.
- (19) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of a child. Less costly alternatives include other programs available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.
- (20) "CPMS" means the "Client Processing Monitoring System". CPMS is the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.
- (21) "Crisis" means "crisis" as defined in OAR 411-320-0020.
- (22) "Delegation" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.
- (23) "Department" means the Department of Human Services.
- (24) "Designated Representative" means any adult, such as a family member, guardian, advocate, or other person, who is chosen by the parent or guardian, not a paid provider of ODDS funded services, and authorized by the parent or guardian to serve as the representative of the parent or guardian in connection with the provision of ODDS funded supports. A parent or guardian is not required to appoint a designated representative.
- (25) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (26) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.
- (27) "Employer" means, for the purposes of obtaining in-home support through a personal support worker as described in these rules, the parent or guardian or a person selected by the parent or guardian to act on the behalf of the parent or guardian to conduct the employer responsibilities described in OAR 411-308-0135. An employer may also be a designated representative.
- (28) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in the ISP for a child. Employer-related supports may include, but are not limited to:
- (a) Education about employer responsibilities;
 - (b) Orientation to basic wage and hour issues;
 - (c) Use of common employer-related tools such as service agreements; and
 - (d) Fiscal intermediary services.
- (29) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.
- (30) "Employment Services" means "employment services" as defined in OAR 411-345-0020.
- (31) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.
- (32) "Entry" means admission to a Department-funded developmental disability service.
- (33) "Environmental Modifications" mean the physical adaptations described in OAR 411-308-0120 that are necessary to ensure the health, welfare, and safety of a child in the family home, or that are necessary to enable the child to function with greater independence around the family home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.
- (34) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-308-0120 that are made to the exterior of a family home as identified in the ISP for a child to ensure the health, welfare, and safety of the child or to enable the child to function with greater independence around the family home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.
- (35) "Exit" means termination or discontinuance of in-home support.
- (36) "Family":
- (a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the primary caregiver is:
 - (A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or
 - (B) In a domestic relationship where partners share:
 - (i) A permanent residence;

- (ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and
- (iii) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.
- (b) The term "family" is defined as described above for purposes of:
 - (A) Determining the eligibility of a child for in-home supports as a resident in the family home;
 - (B) Identifying people who may apply, plan, and arrange for individual services; and
 - (C) Determining who may receive family training.
- (37) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home for children with intellectual or developmental disabilities or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting. A family home may include a foster home funded by Child Welfare.
- (38) "Family Training" means the training services described in OAR 411-308-0120 that are provided to a family to increase the capacity of the family to care for, support, and maintain a child in the family home.
- (39) "Fiscal Intermediary" means a person or entity that receives and distributes IHS funds on behalf of an employer.
- (40) "Functional Needs Assessment":
 - (a) Means the comprehensive assessment or reassessment that:
 - (A) Documents physical, mental, and social functioning;
 - (B) Identifies risk factors and support needs; and
 - (C) Determines the service level.
 - (b) The functional needs assessment for a child is known as the Child Needs Assessment (CNA). Effective December 31, 2014, the Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/CNAchildInhome.xls>. Printed copies of a blank CNA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.
- (41) "General Business Provider" means an organization or entity selected by a parent or guardian and paid with IHS funds that:
 - (a) Is primarily in business to provide the service chosen by the parent or guardian to the general public;
 - (b) Provides services for the child through employees, contractors, or volunteers; and
 - (c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.
- (42) "Guardian" means the parent of a minor child or a person or agency appointed and authorized by a court to make decisions about services for a child.
- (43) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to enable a child to be independent in the family home and community, such as:
 - (a) Meal planning and preparation;
 - (b) Managing personal finances;
 - (c) Shopping for food, clothing, and other essential items;
 - (d) Performing essential household chores;
 - (e) Communicating by phone or other media; and
 - (f) Traveling around and participating in the community.
- (44) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.
- (45) "IHS Funds" means "in-home support funds". IHS funds are public funds contracted by the Department to the CDDP and managed by the CDDP to assist a family with the identification and selection of supports for a child according to an ISP or Annual Plan.
- (46) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for IHS funds. Effective January 1, 2015, the Department incorporates version 2.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.
- (47) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with an ISP or Annual Plan, and purchase of supports that are not available through other resources that are required for a child with an intellectual or developmental disability who is eligible for in-home support services to live in the family home. In-home supports are designed to:
 - (a) Support a child to be independent and to be engaged in a life that is fully integrated in the community.
 - (b) Prevent unwanted out-of-home placement and maintain family unity; and
 - (c) Whenever possible, reunite a family with a child who has been placed out of the family home.
- (48) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving a child.

- (49) "Independent Provider" means a person selected by a parent or guardian and paid with IHS funds to directly provide services to a child.
- (50) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services.
- (51) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (52) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for a child 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. The ISP reflects services and supports that are important to meet the needs of the child identified through a functional needs assessment as well as the preferences 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.
- (53) "Job Development" means "job development" as defined in OAR 411-345-0020.
- (54) "Natural Supports" mean the parental responsibilities for a child who is less than 18 years of age and the voluntary resources available to the child from relatives, friends, neighbors, and the community that are not paid for by the Department.
- (55) "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 a child and identifies the diagnoses and health needs of the child 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.
- (56) "ODDS" means the Department of Human Services, Office of Developmental Disability Services.
- (57) "OHP" means the Oregon Health Plan.
- (58) "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.
- (59) "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.
- (60) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.
- (61) "Parent" means the biological parent, adoptive parent, or stepparent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as the designated representative of the parent or guardian in connection with the provision of ODDS funded supports.
- (62) "Person-Centered Planning":
- (a) Means a timely and formal or informal process driven by a child, includes people chosen by the child, ensures the child directs the process to the maximum extent possible, and the child 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 child 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 child.
- (63) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.
- (64) "Plan Year" means 12 consecutive months from the start date specified on an authorized ISP or Annual Plan.
- (65) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:
- (a) Emphasizes the development of functional alternative behavior and positive behavior intervention;
- (b) Uses the least intrusive intervention possible;
- (c) Ensures that abusive or demeaning interventions are never used; and
- (d) Evaluates the effectiveness of behavior interventions based on objective data.
- (66) "Primary Caregiver" means the parent, guardian, relative, or other non-paid parental figure of a child that provides direct care at the times that a paid provider is not available. In this context, the term parent or guardian may include a designated representative.
- (67) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.
- (68) "Provider" means a person, agency, organization, or business selected by a parent or guardian that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

- (69) "Provider Organization" means an entity licensed or certified by the Department that is selected by a parent or guardian and paid with IHS funds that:
- (a) Is primarily in business to provide supports for children with intellectual or developmental disabilities;
 - (b) Provides supports for a child through employees, contractors, or volunteers; and
 - (c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.
- (70) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.
- (71) "Regional Process" means a standardized set of procedures through which the needs of a child and funding to implement supports are reviewed for approval. The regional process includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Plan for the child. A child who meets the general fund eligibility under OAR 411-308-0060 may be granted access to in-home supports through the regional process.
- (72) "Relief Care" means the intermittent services described in OAR 411-308-0120 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.
- (73) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in an ISP and relating to the ADL, IADL, and health-related tasks of a child as discussed by the parent or guardian, services coordinator, and ISP team.
- (74) "Service Agreement":
- (a) Is the written agreement consistent with an ISP that describes at a minimum:
 - (A) Type of service to be provided;
 - (B) Hours, rates, location of services, and expected outcomes of services; and
 - (C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if a child is unable to provide for their own safety and the child is missing while in the community under the service of a contractor or provider organization.
 - (b) For employed personal support workers, the service agreement serves as the written job description.
- (75) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available to meet the identified support needs of a child.
- (76) "Skills Training" means the activities described in OAR 411-308-0120 that are intended to maximize the independence of a child through training, coaching, and prompting the child to accomplish ADL, IADL, and health-related skills.
- (77) "Social Benefit" means the service or financial assistance solely intended to assist a child with an intellectual or developmental disability to function in society on a level comparable to that of a child who does not have an intellectual or developmental disability. Social benefits are pre-authorized by a services coordinator and provided according to the description and limits written in an ISP.
- (a) Social benefits may not:
 - (A) Duplicate benefits and services otherwise available to a child regardless of intellectual or developmental disability;
 - (B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child;
 - (C) Provide financial assistance with food, clothing, shelter, and laundry needs common to a child with or without an intellectual or developmental disability; or
 - (D) Replace other governmental or community services available to a child.
 - (b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.
 - (c) Assistance provided as a social benefit may not exceed the actual cost of the support required by a child to be supported in the family home.
- (78) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-308-0120, such as:
- (a) Necessary medical supplies specified in an ISP that are not available through state plan or alternative resources;
 - (b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and
 - (c) Supplies necessary for the continued operation of augmentative communication devices or systems.
- (79) "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.
- (80) "Supplant" means take the place of.
- (81) "Support" means the assistance that a child and a family requires, solely because of the effects of an intellectual or developmental disability of the child, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.
- (82) "Supported Employment - Individual Employment Support" means "supported employment - individual employment support" as defined in OAR 411-345-0020.

- (83) "Supported Employment - Small Group Employment Support" means "supported employment - small group employment support" as defined in OAR 411-345-0020.
- (84) "Support Services Brokerage" means "Brokerage" as defined in OAR 411-340-0020.
- (85) "These Rules" mean the rules in OAR chapter 411, division 308.
- (86) "Transition Costs" mean the expenses described in OAR 411-308-0120 required for a child to make the transition to the family home from a nursing facility or ICF/ID.
- (87) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:
- (a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004;
 - (b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or
 - (c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.
- (88) "Unusual Incident" means any incident involving a child 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.
- (89) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-308-0150.
- (90) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-308-0120 that are made to the vehicle that is the primary means of transportation for a child in order to accommodate the service needs of the child.
- Stat. Auth.: ORS 409.050, 430.662
 Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0030

In-Home Support Administration and Operation

- (1) **FISCAL INTERMEDIARY SERVICES.** The CDDP must provide, or arrange a third party to provide, fiscal intermediary services. The fiscal intermediary receives and distributes IHS funds on behalf of a family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of the family who employs a person to provide services, supervision, or training in the family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.
- (2) **GENERAL RECORD REQUIREMENTS.**
- (a) **DISCLOSURE.** For the purpose of disclosure from medical records under these rules, a CDDP is considered a "public provider" as defined in ORS 179.505 and ORS 179.505 is applicable.
- (A) Access to records by the Department does not require authorization by the family.
 - (B) For the purposes of disclosure from non-medical records, all or portions of the information contained in the non-medical record may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).
- (b) **SERVICE RECORDS.** Records for children who receive in-home support must be kept up-to-date and must include:
- (A) An easily accessed summary of basic information as described in OAR 411-320-0070, including the date of entry into in-home support;
 - (B) Records related to receipt and disbursement of IHS funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of the acceptance or delegation from the family of the record keeping responsibilities outlined in these rules. Records must include:
 - (i) Itemized invoices and receipts to record the purchase of any single item;
 - (ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;
 - (iii) Written professional support plans, assessments, and reviews to document the acceptable provision of behavior support, nursing, and other professional training and consultation services; and
 - (iv) Pay records to record employee services, including timesheets signed by both employee and employer.
 - (C) Incident reports, including those involving CDDP staff;
 - (D) A functional needs assessment and other assessments used to determine required supports, preferences, and resources;
 - (E) When a child is not Medicaid Title XIX eligible, documentation of general fund eligibility;
 - (F) ISP or Annual Plan and reviews;
 - (G) Correspondence and notes from the services coordinator related to plan development and outcomes; and
 - (H) Family satisfaction information.
- (3) **RIGHTS OF A CHILD.**
- (a) The rights of a child are described in OAR 411-318-0010.
 - (b) The individual rights described in OAR 411-318-0010 must be provided as described in OAR 411-320-0060.

(4) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The policy and procedures for complaints must be explained and provided as described in OAR 411-320-0175.

(5) NOTIFICATION OF PLANNED ACTION. In the event 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.

(6) HEARINGS.

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

(b) A parent or guardian may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025.

(c) A notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 must be explained and provided as described in OAR 411-320-0175.

(7) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish the objectives of the CDDP and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0040

Required In-Home Support

(1) The CDDP must provide or arrange for the following services as required to meet the support needs of children receiving in-home support in the family home:

(a) SERVICE COORDINATION.

(A) Assistance for families to determine needs, plan supports in response to needs, and develop individualized plans based on available natural supports and alternative resources;

(B) Assistance for families to find and arrange the resources to provide planned supports;

(C) Assistance for families and children (as appropriate) to effectively put an ISP or Annual Plan into practice, including help to monitor and improve the quality of personal supports and to assess and revise the goals of the ISP or Annual Plan; and

(D) Assistance to families to access information, referral, and local capacity building services through the family support program under OAR chapter 411, division 305.

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of IHS funds on behalf of families in addition to making payment with the authorization of the family; and

(B) Assistance for families to fulfill roles and obligations as employers when providers are paid with IHS funds.

(2) The CDDP must inform families about in-home support when a child is determined eligible for developmental disability services. The CDDP must provide accurate, up-to-date information that must include:

(a) The criteria for entry and for determining supports, including information about eligibility for in-home supports and how these supports are different from family support services provided under OAR chapter 411, division 305;

(b) An overview of common processes encountered in using in-home support, including the in-home support planning process and the regional process (as applicable);

(c) The responsibility of providers of in-home support and CDDP employees as mandatory reporters of child abuse;

(d) A description of the responsibilities of the family in regards to the use of public funds;

(e) An explanation of the rights of the family to select and direct providers from among those qualified according to OAR 411-308-0130 to provide services authorized through an ISP or Annual Plan and purchased with IHS funds; and

(f) Information on complaint and hearing rights and how to raise and resolve concerns about in-home supports.

(3) The CDDP must make the information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of each family.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0050

Financial Limits of In-Home Support

(1) The use of IHS funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include;

(A) Attendant care;

(B) Hourly relief care;

- (C) Skills training; and
 - (D) State plan personal care service hours as described in OAR chapter 411, division 034.
 - (b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines; and
 - (c) Employment services and payment for employment services are limited to:
 - (A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services; and
 - (B) 40 hours in any one week for job coaching if job coaching is the only service utilized.
 - (2) For a child who is not Medicaid Title XIX eligible:
 - (a) Support must be limited to:
 - (A) The amount of support determined to be necessary to prevent out-of-home placement that is specified in an Annual Plan and does not exceed the maximum allowable monthly plan amount published in the In-home Expenditure Guidelines in any month during the plan year; and
 - (B) The amount of time necessary for a child to transition into waiver or Community First Choice state plan services, if eligible.
 - (b) Payment rates used to establish the limits of financial assistance for a specific service in an Annual Plan must be based on the In-home Expenditure Guidelines.
- Stat. Auth.: ORS 409.050, 430.662
 Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0060

Eligibility for In-Home Support

(1) STANDARD ELIGIBILITY.

(a) In order to be eligible for in-home support, a child must:

- (A) Be under the age of 18;
- (B) Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;
- (C) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620;
- (D) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;
- (E) Meet the level of care as defined in OAR 411-320-0020;
- (F) Reside in the family home; and
- (G) Be safely served in the family home.

(b) TRANSFER OF ASSETS.

(A) As of October 1, 2014, a child 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 child 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 a child 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 a child is considered ineligible due to a disqualifying transfer of assets, the parent or guardian and child must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the child was requesting services under OSIPM.

(2) GENERAL FUND ELIGIBILITY. When the standard eligibility criterion described in section (1)(a)(B) of this rule is not met, the CDDP of the county of origin may find a child eligible for in-home support when the child:

- (a) Is experiencing a crisis and may be safely served in the family home;
- (b) Has exhausted all appropriate alternative resources including, but not limited to, natural supports and family support as defined in OAR 411-305-0020;
- (c) Does not receive or may stop receiving other Department-paid in-home or community living services other than Medicaid state plan personal care services, adoption assistance, or short-term crisis diversion services as described in 411-320-0160 to prevent out-of-home placement; and
- (d) Is at risk of out-of-home placement and requires in-home support to be maintained in the family home; or
- (e) Resides in a Department-paid residential setting and requires in-home support to return to the family home.

(3) CONCURRENT ELIGIBILITY. A child not eligible for in-home support from more than one CDDP unless the concurrent service:

- (a) Is necessary to transition from one county to another with a change of residence;
- (b) Is part of a collaborative plan developed by both CDDPs; and
- (c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0070

In-Home Support Entry and Exit

(1) ENTRY.

(a) For standard eligibility, a CDDP must:

(A) Confirm a child meets the standard eligibility criteria described in OAR 411-308-0060; and

(B) Complete a level of care determination, a functional needs assessment, an ISP, and authorize funds for services as described in OAR 411-308-0080.

(b) For general fund eligibility, a CDDP must:

(A) Determine crisis eligibility and have confirmation from the Regional Crisis Diversion Program that a child meets the crisis diversion criteria;

(B) Complete an Annual Plan, based on the collaboration between the Regional Crisis Diversion Program and the CDDP, that includes strategies to resolve identified crisis risk factors and possible resources; and

(C) Have the Annual Plan approved by the Department prior to implementation of proposed crisis intervention services.

(2) CHANGE OF COUNTY OF RESIDENCE. If a child and the family move outside the service area of a CDDP, the originating CDDP must arrange for services purchased with IHS funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:

(a) Provide information to the family about the need to apply for services in the new CDDP and assist the family with the application for services if necessary; and

(b) Contact the new CDDP to negotiate the date on which the in-home support, including responsibility for payments, transfers to the new CDDP.

(3) EXIT.

(a) For standard eligibility, a child must exit in-home support when the child:

(A) Is no longer receiving Medicaid Title XIX;

(B) The parent or guardian submits a written request to end in-home supports;

(C) Turns 18 years of age;

(D) Is no longer eligible for developmental disability services as determined by the CDDP of the county of origin as described in OAR 411-320-0080;

(E) Does not meet the level of care as defined in OAR 411-320-0020;

(F) May not be safely served in the family home;

(G) No longer resides in the family home;

(H) Moves to a county outside the service area of the CDDP, unless transition services have been previously arranged and authorized by the CDDP as required in section (2) of this rule;

(I) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete the ISP development and monitoring activities and does not respond to a notice of intent to terminate; or

(J) The CDDP has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of IHS funds, or otherwise knowingly misused public funds associated with in-home support.

(b) For general fund eligibility, a child must exit in-home support when the child:

(A) No longer needs in-home support to prevent out-of-home placement;

(B) Meets the standard eligibility requirements for in-home support;

(C) Turns 18 years of age;

(D) Is no longer eligible for developmental disability services determined by the CDDP of the county of origin as described in OAR 411-320-0080;

(E) May not be safely served in the family home;

(F) No longer resides in the family home;

(G) Moves to a county outside the service area of the CDDP, unless transition services have been previously arranged and authorized by the CDDP as required in section (2) of this rule;

(H) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by CDDP staff to complete the Annual Plan development and monitoring activities and does not respond to a notice of intent to terminate; or

(I) The CDDP has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Annual Plan, refused to cooperate with documenting expenses of IHS funds, or otherwise knowingly misused public funds associated with in-home support.

(c) When a child is being exited from in-home support, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0080

Service Planning

(1) The CDDP must provide an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for in-home support.

(a) The planning process must occur in a manner that:

(A) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community; and

(B) Is consistent in both style and setting with the needs and preferences of the child and the family including, but not limited to, informal interviews, informal observations in home and community settings, or formally structured meetings.

(b) For standard eligibility, a functional needs assessment must be completed using a person-centered planning approach.

(2) The CDDP, the child (as appropriate), and the family must develop a written ISP or Annual Plan for the child as a result of the planning process prior to purchasing supports with IHS funds and annually thereafter.

(a) The ISP or Annual Plan must include, but not be limited to:

(A) The legal name of the child and the name of the parent (if different than the last name of the child) or the name of the guardian;

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

(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 child 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 identity of the person responsible for case management and monitoring the ISP or Annual Plan;

(F) Signatures of the services coordinator, the parent or guardian, and the child (as appropriate); and

(G) The review schedule of the ISP or Annual Plan.

(b) For a child accessing in-home supports through general fund eligibility, a plan to reduce or eliminate the need for in-home supports through general funds must be included. The plan may include assisting the child to access waiver or Community First Choice state plan services, if eligible.

(c) An ISP must also include the following:

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

(B) Provider type;

(C) The strengths and preferences of the child;

(D) Individually identified goals and desired outcomes;

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

(F) The risk factors and the measures in place to minimize the risk factors, including back-up plans for assistance with support and service needs; and

(G) A provision to prevent unnecessary or inappropriate care.

(3) An ISP or Annual Plan, or records supporting development of an ISP or Annual Plan, must include evidence that:

(a) When the child is not Medicaid eligible, IHS funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using IHS funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed including, but not limited to, identification of risks including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the family to recognize and report abuse.

(4) The services coordinator must obtain a Nursing Service Plan when in-home supports are used to purchase services requiring the education and training of a nurse.

(5) The services coordinator must obtain a Behavior Support Plan when the Behavior Support Plan is implemented by the family or providers during the plan year.

- (6) In-home supports may only be provided after an ISP or Annual Plan is developed as described in this rule, authorized by the CDDP, and signed by the parent or guardian.
 - (7) At least annually, the services coordinator must conduct and document reviews of an ISP or Annual Plan and resources with a family as follows:
 - (a) Evaluate progress toward achieving the purposes of the ISP or Annual Plan;
 - (b) Note effectiveness of purchases based on services coordinator observation and family satisfaction;
 - (c) Determine whether changing needs or availability of other resources have altered the need for specific supports or continued use of in-home supports; and
 - (d) For a child who meets the general fund eligibility under OAR 411-308-0060, a quarterly review of the continued risk for out-of-home placement and the availability of alternative resources, including eligibility for waiver and Community First Choice state plan services.
 - (8) When a child and family move to a different county, the originating CDDP must assist in-home support recipients by:
 - (a) Continuing in-home supports authorized by the ISP or Annual Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070; and
 - (b) Transferring the unexpended portion of the in-home supports to the new CDDP of residence.
- Stat. Auth.: ORS 409.050, 430.662
 Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0090

Managing and Accessing In-Home Support Funds

- (1) IHS funds contracted to a CDDP by the Department to serve a specifically-named child must only be used to support that specified child. Services must be provided according to an approved ISP or Annual Plan. The IHS funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to the procedures described in these rules.
 - (2) No child receiving in-home support may concurrently receive services through:
 - (a) Children's intensive in-home services as defined in OAR 411-308-0020;
 - (b) Direct assistance funds under family support as described in OAR 411-305-0120; or
 - (c) In-home support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060.
 - (3) Children receiving in-home support via general fund eligibility may receive short-term crisis diversion services provided through the CDDP or region. Children receiving in-home support via general fund eligibility may utilize family support information and referral services, other than direct assistance funds under family support while receiving in-home support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.
- Stat. Auth.: ORS 409.050, 430.662
 Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0100

Conditions for In-Home Support Purchases

- (1) A CDDP must only use IHS funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010 and in accordance with an ISP or Annual Plan that meets the requirements for development and content as described in OAR 411-308-0080.
- (2) The CDDP must arrange for supports purchased with IHS funds to be provided:
 - (a) In settings and under purchasing arrangements and conditions that enable a family to receive supports and services from a qualified provider as described in OAR 411-308-0130;
 - (b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:
 - (A) Represents a risk to the health and safety of a child or others;
 - (B) Is likely to continue and become more serious over time;
 - (C) Interferes with community participation;
 - (D) Results in damage to property; or
 - (E) Interferes with learning, socializing, or vocation.
 - (c) In accordance with applicable state and federal wage and hour regulations in the case of personal care services, training, and supervision;
 - (d) In accordance with applicable state or local building codes in the case of environmental modifications to the family home;
 - (e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;
 - (f) In accordance with OAR 411-308-0130 governing provider qualifications; and

(g) In accordance with the In-Home Expenditure Guidelines.

(3) When IHS funds are used to purchase services, training, supervision beyond basic supervision provided by a parent or guardian, or other personal care assistance for a child, the CDDP must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected child abuse;

(b) Responsibility to immediately notify the parent or guardian, or any other person specified by the parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical, or emotional well-being or level of services required;

(c) Limits of payment:

(A) Payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using IHS funds.

(d) The provisions of provider termination as described in OAR 411-308-0130;

(e) The requirement to maintain a drug-free workplace; and

(f) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, service agreements, and timekeeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursing a family for expenses or advancing funds to a family to obtain services. The CDDP must issue payment, or arrange a fiscal intermediary to issue payment, directly to a qualified provider on behalf of a family after approved services described in an ISP or Annual Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030 regarding expenditure of IHS funds. During development of an ISP or Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0110

Using In-Home Support Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, IHS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to an employee of a parent or guardian, employee of a general business provider, or employee of a provider organization who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(3) IHS funds may not be used for:

(a) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(b) Services or activities that are carried out in a manner that constitutes abuse of a child;

(c) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Services that restrict the freedom of movement of a child by seclusion in a locked room under any condition;

(e) Purchase or lease of a vehicle;

(f) Purchase of a service animal or costs associated with the care of a service animal;

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

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

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

(h) Ambulance service;

(i) Legal fees including, but not limited to, the cost of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(j) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the child for personal assistance in a home and community-based setting;

- (k) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;
 - (l) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;
 - (m) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when a child is not present or available to receive services including, but not limited to, employee paid time off, hourly "no show" charges, or contractor travel and preparation hours;
 - (n) Services, activities, materials, or equipment that are not necessary, not in accordance with the In-home Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-308-0020;
 - (o) Public education and services provided as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;
 - (p) Services provided in a nursing facility, correctional institution, residential setting, or hospital;
 - (q) Services, activities, materials, or equipment that the CDDP determines may be reasonably obtained by a family through alternative resources or natural supports;
 - (r) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;
 - (s) Services when there is sufficient evidence to believe that a parent or guardian, or a provider chosen by a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP or Annual Plan, refused to accept or delegate record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with in-home support; or
 - (t) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of a services coordinator, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury through negligent omission, treatment, or maltreatment of a child. Examples include, but are not limited to, the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.
- Stat. Auth.: ORS 409.050, 430.662
 Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0120

Supports Purchased with In-Home Support Funds

- (1) When conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, IHS funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, initial or annual ISP, and OSIPM or OHP Plus benefits a child qualifies for:
- (a) Community First Choice state plan services. A child who is eligible for OHP Plus and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services:
 - (A) Behavior support services as described in section (2) of this rule;
 - (B) Community nursing services as described in section (3) of this rule;
 - (C) Environmental modifications as described in section (4) of this rule;
 - (D) Attendant care as described in section (5) of this rule;
 - (E) Skills training as described in section (6) of this rule;
 - (F) Relief care as described in section (7) of this rule;
 - (G) Assistive devices as described in section (8) of this rule;
 - (H) Assistive technology as described in section (9) of this rule;
 - (I) Chore services as described in section (10) of this rule;
 - (J) Community transportation as described in section (11) of this rule; and
 - (K) Transition costs as described in section (12) of this rule.
 - (b) Home and community-based waiver services. A child who is eligible for OSIPM and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services and the following home and community-based waiver services:
 - (A) Case management as defined in OAR 411-320-0020;
 - (B) Employment services as described in section (13) of this rule;
 - (C) Family training as described in section (14) of this rule;
 - (D) Environmental safety modifications as described in section (15) of this rule;
 - (E) Vehicle modifications as described in section (16) of this rule; and
 - (F) Specialized medical supplies as described in section (17) of this rule.
 - (c) State Plan personal care services. A child who is eligible for OHP Plus through Title XXI, has personal care supportive needs, and does not meet the level of care as defined in OAR 411-320-0020 may access State Plan personal care services if the child meets the eligibility criteria described in OAR chapter 411, division 034.

(2) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to enable a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must

(A) Work with the child and primary caregiver to identify:

- (i) Areas of the family home life that are of most concern for the child and the parent or guardian;
- (ii) The formal or informal responses the family or the provider has used in those areas; and
- (iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

(B) Assess the child. The assessment must include:

- (i) Specific identification of the behaviors or areas of concern;
- (ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;
- (iii) Identification of early warning signs of the behavior;
- (iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the primary caregiver and the provider to help the child use acceptable, alternative actions to meet the needs of the child in the safest, most positive, and cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by the primary caregiver.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice as defined in OAR 411-308-0020.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(E) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

(G) Monitor and revise the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care; or

(G) Relief care.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

- (B) Care coordination;
- (C) Monitoring;
- (D) Development of a Nursing Service Plan;
- (E) Delegation and training of nursing tasks to a provider and primary caregiver;
- (F) Teaching and education of a primary caregiver and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and
- (G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.
- (b) Community nursing services exclude direct nursing care.
- (c) A Nursing Service Plan must be present when IHS funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.
- (d) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.
- (4) ENVIRONMENTAL MODIFICATIONS.
- (a) Environmental modifications include, but are not limited to:
 - (A) An environmental modification consultation to determine the appropriate type of adaptation;
 - (B) Installation of shatter-proof windows;
 - (C) Hardening of walls or doors;
 - (D) Specialized, hardened, waterproof, or padded flooring;
 - (E) An alarm system for doors or windows;
 - (F) Protective covering for smoke alarms, light fixtures, and appliances;
 - (G) Installation of ramps, grab-bars, and electric door openers;
 - (H) Adaptation of kitchen cabinets and sinks;
 - (I) Widening of doorways;
 - (J) Handrails;
 - (K) Modification of bathroom facilities;
 - (L) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;
 - (M) Installation of non-skid surfaces;
 - (N) Overhead track systems to assist with lifting or transferring;
 - (O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and
 - (P) Adaptations to control lights, heat, stove, etc.
- (b) Environmental modifications exclude:
 - (A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the child and identified in the ISP for the child;
 - (B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;
 - (C) Adaptations outside of the home; and
 - (D) General repair or maintenance and upkeep required for the family home.
- (c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.
- (d) Environmental modifications are limited to \$5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over \$5,000 in a plan year must be submitted to the Department for review.
- (e) Environmental modifications must be completed by a state licensed contractor with a minimum of \$1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.
- (f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.
- (g) Payment to the contractor is to be withheld until the work meets specifications.
- (h) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.
- (i) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

- (j) All dwellings must be in good repair and have the appearance of sound structure.
- (k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.
- (l) Environmental modifications must only be completed to the family home.
- (m) Upgrades in materials that are not directly related to the assessed health and safety needs of the child are not paid for or permitted.
- (n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.
- (o) RENTAL PROPERTY.
 - (A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.
 - (B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.
 - (C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.
- (5) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified goals, preferences, and needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.
 - (a) ADL services include, but are not limited to:
 - (A) Basic personal hygiene - providing or assisting with needs, such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;
 - (B) Toileting, bowel, and bladder care - assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing a child or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;
 - (C) Mobility, transfers, and repositioning - assisting with ambulation or transfers with or without assistive devices, turning a child or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;
 - (D) Nutrition - assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;
 - (E) Delegated nursing tasks;
 - (F) First aid and handling emergencies - addressing medical incidents related to the conditions of a child, such as seizure, aspiration, constipation, or dehydration or responding to the call of the child for help during an emergent situation or for unscheduled needs requiring immediate response;
 - (G) Assistance with necessary medical appointments - help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments; and
 - (H) Observation of the status of a child and reporting of significant changes to a physician, health care provider, or other appropriate person.
 - (b) IADL services include, but are not limited to, the following services provided solely for the benefit of the child:
 - (A) Light housekeeping tasks necessary to maintain a child in a healthy and safe environment - cleaning surfaces and floors, making the child's bed, cleaning dishes, taking out the garbage, dusting, and laundry;
 - (B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;
 - (C) Meal preparation and special diets;
 - (D) Cognitive assistance or emotional support provided to a child due to an intellectual or developmental disability - helping the child cope with change and assisting the child with decision-making, reassurance, orientation, memory, or other cognitive functions;
 - (E) Medication and medical equipment - assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring a child for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and
 - (F) Social support in the community around socialization and participation in the community:
 - (i) Support with socialization - assisting a child in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;
 - (ii) Support with community participation - assisting a child in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and
 - (iii) Support with communication - assisting a child in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills.

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

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

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

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

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

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

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

(d) Attendant care services must:

(A) Be prior authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(e) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services as defined in this rule available from the family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment;

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

(E) Supports and services that are funded by Child Welfare in the family home;

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

(G) Services provided by the family; and

(H) Home schooling.

(f) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(6) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

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

(b) Skills training is authorized when:

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

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

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

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

(d) Skills training does not replace the responsibilities of the school system.

(7) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed 7 consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without permission from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the parent or guardian, is a safe setting for the child; or

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

(c) Relief care services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than 7 consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

(D) For vacation, travel, and lodging expenses; or

(E) To pay for room and board.

(8) **ASSISTIVE DEVICES.** Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable a child to increase the ability of the child to perform and support ADLs and IADLs or to perceive, control, or communicate within the family home and community environment in which the child lives.

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

(c) Assistive devices that may be purchased for the purpose described in subsection (a) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive devices are limited to \$5,000 per plan year without Department approval. Any single purchase costing more than \$500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

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

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

(g) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the child or do not address the underlying need for the device;

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

(C) Items that are considered unsafe for a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(9) **ASSISTIVE TECHNOLOGY.** Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems.

(a) Expenditures for assistive technology are limited to \$5,000 per plan year without Department approval. Any single purchase costing more than \$500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

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

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

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

(10) **CHORE SERVICES.** Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

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

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

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

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

(11) **COMMUNITY TRANSPORTATION.**

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

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

- (B) Reimbursement on a per-mile basis for transporting a child to accomplish ADL, IADL, a health-related task, or employment goal as identified in an ISP; or
- (C) Assistance with the purchase of a bus pass.
- (b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:
 - (A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or
 - (B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.
- (c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.
- (d) Community transportation expenses exceeding \$500 per month must be approved by the Department.
- (e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.
- (f) Community transportation excludes:
 - (A) Medical transportation;
 - (B) Purchase or lease of a vehicle;
 - (C) Routine vehicle maintenance and repair, insurance, and fuel;
 - (D) Ambulance services;
 - (E) Costs for transporting a person other than the child.
 - (F) Transportation for a provider to travel to and from the workplace of the provider;
 - (G) Transportation that is not for the sole benefit of the child;
 - (H) Transportation to vacation destinations or trips for relaxation purposes;
 - (I) Transportation provided by family members;
 - (J) Transportation normally provided by schools;
 - (K) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;
 - (L) Reimbursement for out-of-state travel expenses; and
 - (M) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(12) TRANSITION COSTS.

- (a) Transition costs are limited to a child transitioning to the family home from a nursing facility, ICF/ID, or acute care hospital.
- (b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.
- (c) Financial assistance for transition costs is limited to:
 - (A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;
 - (B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings, such as a bed; and
 - (C) Other items necessary to re-establish a home.
- (d) Transition costs are provided no more than twice annually.
- (e) Transition costs for basic household furnishings and other items are limited to one time per year.
- (f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(13) EMPLOYMENT SERVICES. Employment services must be:

- (a) Delivered according to OAR 411-345-0025; and
- (b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(14) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

- (a) Family training services include:
 - (A) Instruction about treatment regimens and use of equipment specified in an ISP;
 - (B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and
 - (C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the intellectual or developmental disability of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

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

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

(b) Family training services exclude:

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

(B) Training for a paid provider;

(C) Legal fees;

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

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(15) ENVIRONMENTAL SAFETY MODIFICATIONS

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

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

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

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

(D) Adaptations that add to the total square footage of the family home.

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

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

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

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

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

(i) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(j) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

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

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

(m) Environmental modifications must only be completed to the family home.

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

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

(p) RENTAL PROPERTY.

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

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

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

(16) VEHICLE MODIFICATIONS.

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

(b) Vehicle modifications exclude:

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

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

(C) Routine vehicle maintenance and repair.

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

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

(17) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0130

Standards for Providers Paid with In-Home Support Funds

(1) PROVIDER QUALIFICATIONS.

(a) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS. An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide in-home supports must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request Form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

(I) Based on possible criminal activity or other allegations against the independent provider, a new fitness determination is conducted resulting in a change in approval status; or

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(D) Be legally eligible to work in the United States;

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP or Annual Plan for the child, with such demonstration confirmed in writing by the parent or guardian, including:

(i) Ability and sufficient education to follow oral and written instructions and keep any records required;

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the parent or guardian; and

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

(G) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(H) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(I) Not be on the list of excluded or debarred providers maintained by the Office of Inspector General (<http://exclusions.oig.hhs.gov/>);

(J) If transporting the child, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(c) Subsection (b)(C) of this section does not apply to employees of a parent or guardian, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(d) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(e) All providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.

(2) PROVIDER TERMINATION.

(a) **PERSONAL SUPPORT WORKERS.** The provider enrollment for a personal support worker is inactivated or terminated as described in OAR chapter 411, division 375.

(b) **INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.**

(A) The provider enrollment for an independent provider who is not a personal support worker may be inactivated in the following circumstances:

(i) The provider has not provided any paid in-home services to an individual within the last previous 12 months;

(ii) The provider informs the Department, CDDP, CIIS, or Support Services Brokerage that the provider is no longer providing in-home services in Oregon;

(iii) The background check for the provider results in a closed case pursuant to OAR 407-007-0325;

(iv) Services provided by the provider are being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future children; or

(v) Provider payments, all or in part, for the provider have been suspended based on a credible allegation of fraud or a conviction of fraud pursuant to federal law under 42 CFR 455.23.

(B) The provider enrollment for an independent provider, who is not a personal support worker, may be terminated when the Department determines after enrollment that the independent provider has:

(i) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(ii) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(iii) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(iv) Failed to safely and adequately provide the authorized services;

(v) Had a founded report of child abuse or substantiated adult abuse;

(vi) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;

(vii) Billed excessive or fraudulent charges or been convicted of fraud;

(viii) Made a false statement concerning conviction of crime or substantiated abuse;

(ix) Falsified required documentation;

(x) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(xi) Violated the requirement to maintain a drug-free work place;

(xii) Failed to provide services as required;

(xiii) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(xiv) Has been excluded or debarred by the Office of the Inspector General.

(C) If the CDDP or Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the CDDP or Department must issue a written notice.

(i) The written notice must include:

(I) An explanation of the reason for termination of the provider enrollment;

(II) The alleged violation as listed in subsection (A) or (B) of this section;

(III) The appeal rights for the independent provider, including how to file an appeal; and

(IV) The effective date of the termination.

(ii) For terminations based on substantiated abuse allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(D) The provider may appeal a termination within 30 days of the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(i) A provider of Medicaid services may appeal a termination by requesting an administrator review.

(ii) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the termination notice was mailed to the provider.

(E) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

(3) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.
(4) **BEHAVIOR CONSULTANTS.** Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

- (a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-308-0120;
- (b) Have current certification demonstrating completion of OIS training; and
- (c) Submit a resume or the equivalent to the CDDP indicating at least one of the following:
 - (A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or
 - (B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-308-0120.

(5) **NURSES.** A nurse providing community nursing services is not a personal support worker. The nurse must:

- (a) Have a current Oregon nursing license;
- (b) Be enrolled in the Long-Term Care Community Nursing Program as described in OAR chapter 411, division 048; and
- (c) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(6) **PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.**

(a) The following provider organizations may not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior support services:

- (A) 24-hour residential settings certified, endorsed, and licensed under OAR chapter 411, division 325;
- (B) Foster homes for children certified under OAR chapter 411, division 346;
- (C) Foster homes for adults licensed under OAR chapter 411, division 360;
- (D) Employment settings certified and endorsed under OAR chapter 411, division 345; and
- (E) Supported living settings certified and endorsed under OAR chapter 411, division 328.

(b) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

- (A) Recruit, hire, supervise, and train qualified staff;
 - (B) Provide services according to an ISP; and
 - (C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.
- (c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with IHS funds meet the standards for independent providers described in this rule.

(7) **GENERAL BUSINESS PROVIDERS.** General business providers providing services to children paid with IHS funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation. Services purchased with IHS funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

- (a) For a home health agency, a license under ORS 443.015;
- (b) For an in-home care agency, a license under ORS 443.315;
- (c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractor's Board), as applicable;
- (d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;
- (e) For public and private transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators with a valid license to drive;
- (f) For vendors and medical supply companies providing assistive devices, a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Division of Medical Assistance Programs; and
- (g) For providers of personal emergency response systems, a current business license.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0135

Standards for Employers

(1) **EMPLOYER OF RECORD.** An employer of record is required when a personal support worker who is not an independent contractor is selected by the parent or guardian to provide supports. The Department may not act as the employer of record.

- (2) **SERVICE AGREEMENT.** The employer must create and maintain a service agreement for a personal support worker that is in coordination with the services authorized in the ISP. The service agreement serves as a written job description for the employed personal support worker.
- (3) **BENEFITS.** Only personal support workers qualify for benefits. The benefits provided to personal support workers are described in OAR chapter 411, division 375.
- (4) **INTERVENTION.** For the purpose of this rule, "Intervention" means the action the Department or the designee of the Department requires when an employer fails to meet the employer responsibilities described in this rule. Intervention includes, but is not limited to:
- (a) A documented review of the employer responsibilities described in section (5) of this rule;
 - (b) Training related to employer responsibilities;
 - (c) Corrective action taken as a result of a personal support worker filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;
 - (d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in section (5) of this rule; or
 - (e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in section (5) of this rule.
- (5) **EMPLOYER RESPONSIBILITIES.**
- (a) For a child to be eligible for in-home support provided by an employed personal support worker, an employer must demonstrate the ability to:
- (A) Locate, screen, and hire a qualified personal support worker;
 - (B) Supervise and train the personal support worker;
 - (C) Schedule work, leave, and coverage;
 - (D) Track the hours worked and verify the authorized hours completed by the personal support worker;
 - (E) Recognize, discuss, and attempt to correct, with the personal support worker, any performance deficiencies and provide appropriate, progressive, disciplinary action as needed; and
 - (F) Discharge an unsatisfactory personal support worker.
- (b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (a) of this section include, but are not limited to:
- (A) Personal support worker complaints;
 - (B) Multiple complaints from a personal support worker requiring intervention from the Department as defined in section (4) of this rule;
 - (C) Frequent errors on timesheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department;
 - (D) Complaints to Medicaid Fraud involving the employer; or
 - (E) Documented observation by the Department of services not being delivered as identified in an ISP.
- (c) The Department may require intervention as defined in section (4) of this rule when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.
- (d) A child may not receive in-home support provided by a personal support worker if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section. The child may receive in-home support provided by a provider organization or general business provider, when available.
- (6) **DESIGNATION OF EMPLOYER RESPONSIBILITIES.**
- (a) A parent or guardian not able to meet all of the employer responsibilities described in section (5)(a) of this rule must:
- (A) Designate an employer representative in order for the child to receive or continue to receive in-home support provided by a personal support worker; or
 - (B) Select a provider organization or general business provider to provide in-home support for the child.
- (b) A parent or guardian able to demonstrate the ability to meet some of the employer responsibilities described in section (5)(a) of this rule must:
- (A) Designate an employer representative to fulfill the responsibilities the parent or guardian is not able to meet in order for the child to receive or continue to receive in-home support provided by a personal support worker; and
 - (B) On a Department approved form, document the specific employer responsibilities to be performed by the parent or guardian and the employer responsibilities to be performed by the employer representative.
- (c) When an employer representative is not able to meet the employer responsibilities described in section (5)(a) or the qualifications in section (7)(c) of this rule, the parent or guardian must:
- (A) Designate a different employer representative in order for the child to receive or continue to receive in-home support provided by a personal support worker; or
 - (B) Select a provider organization or general business provider to provide in-home support for the child.

(7) EMPLOYER REPRESENTATIVE.

- (a) A parent or guardian may designate an employer representative to act on behalf of the parent or guardian to meet the employer responsibilities described in section (5)(a) of this rule.
- (b) If a personal support worker is selected by the parent or guardian to act as the employer, the parent or guardian must seek an alternate employer for purposes of the employment of the personal support worker. The alternate employer must:
 - (A) Track the hours worked and verify the authorized hours completed by the personal support worker; and
 - (B) Document the specific employer responsibilities performed by the employer on a Department-approved form.
- (c) The Department may suspend, terminate, or deny a request for an employer representative if the requested employer representative has:
 - (A) A founded report of child abuse or substantiated adult abuse;
 - (B) Participated in billing excessive or fraudulent charges; or
 - (C) Failed to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule.
- (d) If the Department suspends, terminates, or denies a request for an employer representative for the reasons described in subsection (c) of this section, the parent or guardian may select another employer representative.

(8) NOTICE.

- (a) The Department shall mail a notice to the parent or guardian when:
 - (A) The Department denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (5)(a) or (7)(b) of this rule; and
 - (B) The Department denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (5)(a) or (7)(b) of this rule because the employer representative does not meet the qualifications in section (7)(c) of this rule.
- (b) If the parent or guardian does not agree with the action taken by the Department, the parent or guardian may request an administrator review.
 - (A) The request for an administrator review must be made in writing and received by the Department within 45 days from the date of the notice.
 - (B) The determination of the Director is issued in writing within 30 days from the date the written request for an administrator review was received by the Department.
 - (C) The determination of the Director is the final response from the Department.
- (c) When a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating a child from in-home support, the hearing rights in OAR chapter 411, division 318 apply.
Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0140

Quality Assurance

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by the Department in OAR 411-320-0045.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

411-308-0150

Variances

- (1) The Department may grant a variance to these rules:
 - (a) If the CDDP lacks the resources needed to implement the standards required in these rules;
 - (b) If implementation of the proposed alternative practice, service, method, concept, or procedure shall result in services or systems that meet or exceed the standards in these rules and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws; or
 - (c) If there are other extenuating circumstances.
- (2) Variances are not granted for OAR 411-308-0110 and OAR 411-308-0130.
- (3) The CDDP requesting a variance must submit a written application to the Department that contains the following:
 - (a) The section of the rule from which the variance is sought;
 - (b) The reason for the proposed variance;
 - (c) A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;
 - (d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

- (e) If the variance applies to the services for a child, evidence that the variance is consistent with the currently authorized ISP or Annual Plan for the child.
- (4) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the CDDP and to all relevant Department programs or offices within 30 days from the receipt of the variance request.
- (5) The CDDP may request an administrator review of the denial of a variance request by sending a written request for review to the Director. The decision of the Director is the final response from the Department.
- (6) The Department determines the duration of the variance.
- (7) The CDDP may implement a variance only after written approval from the Department.
- Stat. Auth.: ORS 409.050, 430.662
- Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670