



Oregon

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To: Christina Hartman
DD Rules and Policy Analyst

From: Kimberly Colkitt-Hallman, Administrative Rules Coordinator
Aging and People with Disabilities and
Developmental Disabilities

Subject: Hearing Officer's Report
*November 19, 2014 Rulemaking Hearing for ODDS - In-Home
Support for Children with Intellectual or Developmental
Disabilities*

The purpose of the hearing was to take public testimony regarding the Department of Human Services (Department), Office of Developmental Disability Services (ODDS) proposal to update the rules in OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities.

The proposed rules:

- Make permanent temporary rule language that became effective on July 1, 2014;
- 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;

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- 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.

Public Comments

No one testified at the rulemaking hearing on November 19, 2014.

Written Comments

Department of Human Services Background Check Unit, Kelly Myrick-Duckett, Policy Analyst – Exhibit # 1

The written comments provided by Ms. Myrick-Duckett are summarized below in Attachment A.

SEIU Local 503, Marilyn McManus, Long Term Care Policy Analyst – Exhibit # 2

The written comments provided by Ms. McManus are summarized below in Attachment A.

Clackamas County H3S, Claire Weiss, Clackamas CDDP Children's Team Supervisor – Exhibit # 3

The written comments provided by Ms. Weiss are summarized below. In regards to the fiscal impact statement, Ms. Weiss says the workload model has not been funded yet and the level of funding has yet to be determined.

Ms. Weiss says the amount of work that needs to be done due to changes in this rule, was not known when the workload model was developed. Ms. Weiss stated the rule goes into effect January 2015, but the earliest any funding would be available for the workload model is July 2015. Ms. Weiss thinks the expectation to increase requirements under existing "inadequate" funding for CDDPs, is setting up CDDPs to fail and have compliance issues. Ms. Weiss states there may also be possible health and safety impacts on the individuals CDDPs serve.

Additional comments provided by Ms. Weiss are summarized below in Attachment A.

Association of Oregon Community Mental Health Programs (AOCMHP), Sarah Jane Owens, Disability Specialist – Exhibit # 4

The written comments provided by Ms. Owens are summarized below.

Ms. Owens submitted a chart that had various workload increases noted on it. The chart first talked about the increases due to ROIs, subpoenas, and ODDS requests for records. Ms. Owens estimates a workload increase by 300%. In the past about 20 of these were processed a month, however, in June - August 2014 approximately 178 were processed. The estimated time increase is 1.0 FTE of work. Ms. Owens says that as the K plan continues to roll out, ROIs will increase and any cut to FTE will result in significant delays in regards to: timely disclosure of records; client records to ODDS in regards to hearings, appeals and grievances; and client referrals to vocational rehab, brokerages, and residential/vocational providers.

Ms. Owens stated in regards to filing there has been an increase in pages that need to be filed by 50%. This additional filing has been estimated to add 3-5 hours per day of work. Ms. Owens says that as the K Plan continues to roll out, filing will increase and any cuts in FTEs will result in significant delays of records not getting into files.

In regards to archiving of client records and volumizing, Ms. Owens stated the frequency of archiving has increased and adds approximately 8 hours per month. It is noted that as the K Plan continues to roll out, archiving will increase. In regards to volumizing, Ms. Owens stated there has been a 50% increase, which has added approximately 5 days of work per month.

Ms. Owens stated that as the K Plan continues to roll out, volumizing will increase due to it being necessary due to capacity limits of records rooms.

In regards to PMDDT referrals, Ms. Owens says this is a new task that was created due to K Plan. In FY 13-14, this new task created 146 PMDDT referrals. This adds about 5 hours of time per case. Also in regards to referrals, vocational rehabilitation referrals are a new referral type created due to the Employment first initiative. There were no estimates in regards to this referral type.

In regards to reviewing expenditure guidelines, Ms. Owens says this is a new task that requires assessment, filling out supplemental forms, costs, etc. In the past this was not necessary to justify. Ms. Owens says this takes about 4 to 5 hours and a lot of back and forth calling.

Another new task is confirming medical eligibility for "presumptive". Ms. Owen's chart says this requires checking eXPRS and calling the self-sufficiency office. This new task requires about an hour of time per incident. Also ANA and CAN are new tasks (assessment). Ms. Owens said in the past for adult clients there was a customer goal survey. The CAN takes about an additional 1.5 hours per case.

The last task noted on Ms. Owens chart is TNT (fiscal intermediary). It says that processing PSW time sheets takes about 16 hours a month per "CM". This is because there are multiple time sheets due to an increase in the number of PSWs.

The public comment period closed at 5 p.m. on November 28, 2014.

Department Response: The Department appreciates the efforts to estimate the fiscal impact of the proposed rule changes on CDDPs. The existing caseload model accounts for much of the administrative work efforts and accounts for the context of the work, including any efficiencies that may have been created, work that may be completed simultaneously with other tasks, and other mitigating factors.

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411-308-0020 Definitions		
<p>(3439) "Functional Needs Assessment": (a) mMeans a the comprehensive assessment or reassessment that documents: (aA) Documents Pphysical, mental, and social functioning; and (bB) Identifies Rrisk factors, choices and preferences, service and support needs, strengths, and goals.; and (C) <u>Determines the service level.</u></p>	<p>Weiss - (39)(a)(B) - Ms. Weiss states the Functional Needs Assessment is limited in the amount of text that can be typed. Ms. Weiss said there is usually not enough allowed text space to add choices, preferences, strengths, and goals. Ms. Weiss thinks the language surrounding choices, preferences, strengths, and goals should be moved to the ISP definition.</p>	<p>The Department made changes to the definition of "functional needs assessment" as suggested by Ms. Weiss.</p> <p><i>"Functional Needs Assessment":</i> <i>(a) Means the comprehensive assessment or reassessment that:</i> <i>(A) Documents physical, mental, and social functioning;</i> <i>(B) Identifies risk factors and support needs; and</i> <i>(C) Determines the service level.</i></p>
<p>(84) "<u>Unacceptable Background Check</u>" <u>means a check 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:</u> <u>(a) The person applying to be an independent provider has been disqualified under OAR 407-007-0275;</u> <u>(b) The person was enrolled as an independent provider for the first time.</u></p>	<p>Myrick-Duckett - (84) - In the Background Check Unit OARs, there is no "denied" or "disqualified" (OAR 407-007-0275); in this rule, a subject individual may be found "ineligible due to ORS 443.004." I suggest the following change: (84) "Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons: (a) The agency or any person holding 5 percent or greater ownership</p>	<p>The Department made changes to the definition of "unacceptable background check" as suggested by Ms. Myrick-Duckett.</p> <p><i>"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:</i> <i>(a) Under OAR 407-007-0275, the person</i></p>

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<p>or after any break in enrollment, after July 28, 2009 and has been disqualified under OAR 407-007-0275; or (c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.</p>	<p>interest in the agency has been disqualified <u>been found ineligible due to ORS 443.004,</u> under OAR 407-007-0275;</p>	<p><i>applying to be an independent provider has been found ineligible due to ORS 443.004;</i> <i>(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</i> <i>(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.</i></p>
<p>411-308-0030 In-Home Support Administration and Operation</p>		
<p>(2) GENERAL RECORD REQUIREMENTS. The CDDP must maintain records of services to children in accordance with OAR 411-320-0070, ORS 179.505, ORS 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department administrative rules and policies pertaining to service records</p>	<p>Weiss - (2)(b)(B)(iv) - The language states the CDDP needs to keep time sheets signed by the employer and employee and the employee responsibilities does not affirmatively state the employer must also keep copies of time sheets (as any employer must do).</p> <p>Ms. Weiss says it is not customary that anybody other than an employer would maintain employee time sheets once payment has been processed by a fiscal</p>	<p>The Department considered the comments made by Ms. Weiss but did not make any additional changes.</p> <p>Historically, the timesheet has filled not just the requirements of employers to maintain records, but also the requirement for the Medicaid agency to maintain documentation that services provided were consistent with the authorized Individual Service Plan. An accessible record that could withstand an</p>

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<p>(b) SERVICE RECORDS. Records for children who receive in-home support must be kept up-to-date and must include:</p> <p>(B) Records related to receipt and disbursement of in-home support 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 family the acceptance or delegation from the family of the record keeping responsibilities outlined in this these rules. Records must include:</p> <p>(iv) Pay records to record employee services, including timesheets signed by both employee and employer.</p>	<p>intermediary. Ms. Weiss says the employer is responsible for answering questions in regards to employee time, hours worked, etc., so they are who must maintain employee time sheets. Ms. Weiss feels this section should be moved to 411-308-0135 and removed from here (the service records section).</p>	<p>audit must be available to the Department. If retention of such records were left to the employer, the Department is at significant risk of being unable to access those records. Employers are not subject to these rules, are not regulated by the Department, and may become unavailable for any number of reasons.</p> <p>That said, the presence of the Department's eXPRS payment system and evolving time capture requirements stemming from recent changes to the Department of Labor regulations does call for an evaluation of PSW record keeping requirements going forward. The role of timesheets with respect to independent providers of in-home services is under review.</p>
<p>411-308-0040 Required In-Home Support</p>		
<p>(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 each</p>	<p>Weiss - (3) - Ms. Weiss states that without standardized documents available from DHS, the requirement could add "thousands of dollars to translation and interpretation costs" for CDDPs. Ms. Weiss says the rule states DHS will make</p>	<p>The Department considered the comments made by Ms. Weiss but did not make any additional changes.</p> <p>This is not a new requirement; the changes to this rule were to accurately</p>

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<p><u>family's the</u> needs and abilities <u>of each family</u>.</p>	<p>available, in multiple languages, the standard required forms included in 411-308-0040(2), including but not limited to (2)(b), (2)(d), & (2)(e).</p>	<p>reflect the Department's style guidelines. The content of the rule is consistent with Federal, State, and Department policies.</p>
<p>411-308-0060 Eligibility for In-Home Support</p>		
<p>(1) STANDARD ELIGIBILITY. <u>(a)</u> In order to be eligible for in-home support, a child must: (bB) Be receiving the full Medicaid benefit through the Oregon Health Plan Title XIX Medicaid benefits <u>Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;</u></p>	<p>Weiss - (1)(a)(B) - Ms. Weiss says at most CDDPs there is not a way to clearly access the necessary Medicaid screens to show if a child is OHP Plus, CHP, or OSIPM early in the process. Ms. Weiss says this leads to confusion for families and services coordinators and can lead too many hours spent trying to track down eligibility status of children. Ms. Weiss feels that if ODDS makes this information more readily available to service coordinators early in the planning process, it will "allay confusion about eligibility status". Ms. Weiss thinks the rule should have a statement in it that DHS ODDS will provide the eligibility information to service coordinators upon request.</p>	<p>The Department considered the comments made by Ms. Weiss but did not make any additional changes.</p> <p>The Department agrees that discovering information about an individual's Medicaid eligibility can be challenging, but there is a how-to guide available in the eXPRS system that describes how to use the system to determine Medicaid eligibility. The Department will continue efforts to simplify this process.</p>
<p>411-308-0100 Conditions for In-Home Support Purchases</p>		

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<p>(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030 regarding expenditure of in-home support-IHS funds. During development of an child's 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.</p>	<p>Weiss - (5) - Ms. Weiss says service agreements are not defined in the definitions. Ms. Weiss states this may also be a place where maintenance of timesheets could be addressed, in the ISP could delineate that responsibility for maintaining employer records, including time sheets, lies with the employer.</p> <p>Ms. Weiss feels the reference to "service agreements" should be eliminated. Ms. Weiss feels the requirement that employers maintain time sheets for auditing purposes should be added.</p>	<p>The Department agrees with Ms. Weiss that the term "service agreement" benefits from a definition.</p> <p><i>"Service Agreement":</i></p> <p><i>(a) Is the written agreement consistent with an ISP that describes at a minimum:</i></p> <p><i>(A) Type of service to be provided;</i></p> <p><i>(B) Hours, rates, location of services, and expected outcomes of services; and</i></p> <p><i>(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.</i></p> <p><i>(b) For employed personal support workers, the service agreement serves as the written job description.</i></p> <p>The Department considered the comments by Ms. Weiss about eliminating the reference to service agreements in section (5) but did not make any additional changes.</p>

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		<p>The function and use of service agreements, and their relationship to the ISP, is undergoing review by the Department. However, until a reasonable alternative is developed, the requirement to maintain a service agreement for service provides must remain in place.</p>
<p>411-308-0120 Supports Purchased with In-Home Support Funds</p>		
<p>(1) For an initial or annual ISP, <u>When conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, in-home support IHS funds may be used to purchase a combination of the following supports based upon the needs of the a child <u>as determined by a services coordinator and</u> consistent with the child's a functional needs assessment, <u>initial or annual</u> ISP, and <u>OSIPM or OHP Plus benefits a child qualifies for available funding:</u></u></p> <p>(b) As a waiver service, <u>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</u></p>	<p>Weiss - (1)(b) - Ms. Weiss says at most CDDPs there is not a way to clearly access the necessary Medicaid screens to show if a child is OHP Plus, CHP, or OSIPM early in the process. Ms. Weiss says this leads to confusion for families and services coordinators and can lead too many hours spent trying to track down eligibility status of children. Ms. Weiss feels that if ODDS makes this information more readily available to service coordinators early in the planning process, it will "allay confusion about eligibility status". Ms. Weiss thinks the rule should have a statement in it that DHS ODDS will provide the eligibility information to service coordinators upon request.</p>	<p>The Department considered the comments made by Ms. Weiss but did not make any additional changes.</p> <p>The Department agrees that discovering information about an individual's Medicaid eligibility can be challenging, but there is a how-to guide available in the eXPRS system that describes how to use the system to determine Medicaid eligibility. The Department will continue efforts to simplify this process.</p>

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<p>Community First Choice state plan services and the following home and community-based waiver services:</p>		
<p>(67) RELIEF CARE. (b) Relief care may include both day and overnight services that may be provided in: (C) The home of a qualified provider. If relief care is provided in the home of a qualified provider, the services coordinator and the parent must document that the home of the qualified provider is a safe setting for the child; or</p>	<p>Weiss - (7) - Ms. Weiss says language should be eliminated that talks about "hourly relief care" as the new expenditure guidelines disallow "hourly relief care". Ms. Weiss stated this section should be consistent with new expenditure guidelines and "hourly relief care" should be eliminated except to reference that it is instead considered "attendant care".</p> <p>(7)(b)(C) - Ms. Weiss wants to know how "safe setting" is defined. Ms. Weiss says that what should be documented is the parent as employer has chosen this setting as a safe overnight setting for the child. Ms. Weiss says that the requirement the service coordinator must document the home of the provider is safe should be eliminated. Ms. Weiss thinks the language should read "If overnight relief care is provided in the home of a provider, the parent has determined</p>	<p>The Department considered the comments made by Ms. Weiss about hourly relief care but did not make any additional changes.</p> <p>References to "hourly" relief care will remain in these rules to account for the time to transition away from hourly relief care.</p> <p>The Department made changes to section (7)(b)(C) as suggested by Ms. Weiss.</p> <p><i>(C) The home of a qualified provider, chosen by the parent or guardian, is a safe setting for the child; or</i></p>

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	the home is a safe setting for the child."	
<p>(810) CHORE SERVICES. (911) COMMUNITY TRANSPORTATION. (12) TRANSITION COSTS.</p>	<p>Weiss - (10), (11), (12) - Ms. Weiss says that in the new expenditure guidelines, these types of supports require prior authorization for children under 18. Ms. Weiss says this rule needs to be consistent with the new guidelines and that the rule needs to have something added about prior authorization is needed by ODDS before any of these services are used for children. Ms. Weiss stated there is some leeway for community transportation without prior authorization, which is confusing.</p>	<p>The Department considered the comments made by Ms. Weiss but did not make any additional changes.</p> <p>The Department feels that the incorporation of the in-home expenditure guidelines into the rule aligns the rule with the guidelines: <i>411-308-0100(2) The CDDP must arrange for supports purchased with IHS funds to be provided:</i> <i>(g) In accordance with the In-Home Expenditure Guidelines.</i></p>
<p>411-308-0130 Standards for Providers Paid with In-Home Support Funds</p>		
<p>(2) PROVIDER TERMINATION. (b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS. (B) The provider enrollment for an independent provider who is not a personal support worker may be terminated when the Department determines that, at some point after the initial qualification and</p>	<p>McManus - (2)(b)(B)(xiii) - Social Security should be capitalized.</p>	<p>Future rules will reflect the change suggested by Ms. McManus.</p>

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<p>authorization of the provider to provide supports purchased with IHS funds, the provider has: (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</p>		
<p>411-308-0135 Standards for Employers</p>		
<p>(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 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. (3) BENEFITS. Only personal support workers qualify for benefits. The benefits provided to personal support</p>	<p>Weiss - (1) - (4) - Ms. Weiss feels the language in 411-308-0030 (2)(b)(B)(iv) is not affirmatively stated in this section in that the employer must also keep copies of times sheets (as any employer must do). Ms. Weiss says it is not customary that anybody other than an employer would maintain employee time sheets once payment has been processed by a fiscal intermediary. Ms. Weiss says the employer is responsible for answering questions in regards to employee time, hours worked, etc., so they are who must maintain employee time sheets. Ms. Weiss feels 411-308-0030 (2)(b)(B)(iv) should be moved to 411-308-0135 and</p>	<p>The Department considered the comments made by Ms. Weiss but did not make any additional changes.</p> <p>Historically, the timesheet has filled not just the requirements of employers to maintain records, but also the requirement for the Medicaid agency to maintain documentation that services provided were consistent with the authorized Individual Service Plan. An accessible record that could withstand an audit must be available to the Department. If retention of such records were left to the employer, the Department is at significant risk of being unable to</p>

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<p>workers are described in OAR chapter 411, division 375.</p> <p>(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:</p> <p>(a) A documented review of the employer responsibilities described in section (5) of this rule;</p> <p>(b) Training related to employer responsibilities;</p> <p>(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;</p> <p>(d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in section (5) of this rule; or</p> <p>(e) Identifying another representative if the current employer representative</p>	<p>removed from where 0030.</p>	<p>access those records. Employers are not subject to these rules, are not regulated by the Department, and may become unavailable for any number of reasons.</p> <p>That said, the presence of the Department's eXPRS payment system and evolving time capture requirements stemming from recent changes to the Department of Labor regulations does call for an evaluation of PSW record keeping requirements going forward. The role of timesheets with respect to independent providers of in-home services is under review.</p>

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<u>is not able to meet the employer responsibilities described in section (5) of this rule.</u>		