



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 21, 2014 Rulemaking Hearing for
ODDS - Support Services for Adults with Intellectual or
Developmental Disabilities*

The purpose of the hearing was to take public testimony regarding the Department of Human Services (DHS), Office of Developmental Disability Services (ODDS) proposal to update the rules in OAR chapter 411, division 340 for support services for adults 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 eligibility for support services is determined by the Community Developmental Disability Program (CDDP) of the county of origin according to OAR 411-320-0110;
- Refer to the individual's rights adopted in OAR 411-318-0010 that implement Senate Bill 22;

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- Incorporate the complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318;
- Clarify the conditions under which an individual must be exited from support services;
- Come into compliance with monitoring requirements established in the Community First Choice 1915(k) state plan;
- Add requirements for individual participation in assessment processes;
- Provide clarity around transfers from one case management entity to another;
- Incorporate the requirement for individuals to have a Career Development Plan;
- Account for changes in service eligibility related to the types of Medicaid eligibility an individual may have and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
- Specify the use of support services funds to purchase individual supports based on assessments and approved waiver language;
- Update the available supports to reflect changes to the proposed Support Services 1915(c) Home and Community-Based Services waiver;
- Specify the circumstances that lead to the inactivation of the provider enrollment for personal support workers and independent providers;
- Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect an individual or an employee from misuse;
- Reflect the completed transition period for the implementation of the Community First Choice 1915(k) state plan and make terminology consistent with the proposed Support Services 1915 (c) Home and Community-Based Services waiver;
- Incorporate the provider qualification requirements for personal support workers adopted in OAR chapter 411, division 375;
- Update provider types to reflect changes in the Support Services 1915(c) Home and Community-Based Services waiver and the Long-Term Care Community Nursing Program;
- Reflect terminology associated with service descriptions found in the Community First Choice 1915(k) state plan;

- Clarify that the authority to sanction a certified provider organization lies with the Department;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

Public Comments

Oregon Self Advocacy Coalition (OSAC), Sherri Osburn, Self-Advocate and Vice Chair of Oregon Council on Developmental Disabilities – Exhibit #1

The testimony and written comments provided by Ms. Osburn are summarized below.

Ms. Osburn lives in Portland and is the Vice Chair of the Oregon Council on Developmental Disabilities. Ms. Osburn is also a board member on her Brokerage and is very active in her community.

Ms. Osburn wanted to talk about her relationship with her personal agent. Ms. Osburn has a good relationship with her personal agent and said her personal agent knows: how independent she is, how she likes to live her life, and what she likes to do. Ms. Osburn says her personal agent supports her, treats her with respect, and treats her as she expects anyone else to treat her. Ms. Osburn states her personal agent asks her how she is doing and offers help if she needs it. Ms. Osburn says her personal agent never asks her about safety and barriers because her personal agent knows her and acknowledges her independence and all the things she does.

At the end of the testimony, it was stated that Ms. Osburn's comments were in regards to the case management contacts part of the rule and Ms. Osburn was using her personal agent as an example to describe what she likes.

OSAC, Ross Ryan, Self-Advocate – Exhibit #1

The testimony and written comments provided by Mr. Ryan are summarized below.

Mr. Ryan was at the hearing on behalf of the OSAC Rules Committee. Mr. Ryan's comments were on transportation.

Mr. Ryan said transportation is important to him because he doesn't drive. Without transportation, Mr. Ryan said it would be hard for him to get where he wants to go. Mr. Ryan works as a paid advocate for individuals with intellectual or developmental disabilities (I/DD). Mr. Ryan stated he is on several committees that make things better for individuals with I/DD. Mr. Ryan said when he cannot get to a meeting, he cannot get paid, which means he cannot live or put food on the table. Mr. Ryan gave an example of when he has a meeting in Salem, it can be hard for him to get back before 6 p.m., which is when the small buses close for the evening. Mr. Ryan said he needs transportation services to help him.

Mr. Ryan then talked about the new requirement in the rules that an individual needs to have care needs during transportation or at the place they are going to. Since Mr. Ryan doesn't often have medical needs, he is worried he cannot get transportation to where he needs to go. Mr. Ryan said the transportation rules were working before and should have been left alone. Mr. Ryan feels "if it's not broke, don't fix it."

Mr. Ryan asked the Department to look at it from the point of view of someone with I/DD. He asked "how would you feel if you could not get somewhere?" Mr. Ryan feels this is a big deal and the rules should be put back to how they were before because they worked.

OSAC, Gabrielle Guedon, Self-Advocate – Exhibit #1

The testimony and written comments provided by Ms. Guedon are summarized below.

Ms. Guedon lives in Portland. She wanted to talk about choice advising in the rules. Ms. Guedon states they are individuals and should be given the choice to receive support one-on-one or in groups. Ms. Guedon says they have the right to receive services in the community and choose where they want to live. Ms. Guedon says they have the right to be with people with or without disabilities.

Ms. Guedon states they would like to have less options and more choice. Ms. Guedon says "we don't want to choose from a menu." Ms. Guedon said she and others want to make choices that are personal and to live their lives as they want.

OSAC, Jordan Ohlde, Vice Chair – Exhibit #1

The testimony and written comments provided by Mr. Ohlde are summarized below.

Mr. Ohlde is from Bend and is the Vice Chair of OSAC. Mr. Ohlde is also on a local Brokerage Advisory Committee in Bend. Mr. Ohlde stated he is a very strong member of the Advisory Committee to ensure the services individuals receive are what they want as a community.

Mr. Ohlde stated he was at the hearing to talk about his favorite subject, transportation. Mr. Ohlde said if he didn't have transportation he would: not get to work, not be able to hang out and do things with his friends (e.g. go get a drink or go to a baseball game), or not be able to just go hang out and watch a movie. Mr. Ohlde says he relies on transportation every day.

Mr. Ohlde said he has roommates at his house and without reliable transportation to get him where he needs to go, he would be stuck in his house and likely arguing with those roommates. Mr. Ohlde says "you all would not want to be in our situation and be stuck in your house." Mr. Ohlde feels transportation needs to be an integral part of the rule.

Mr. Ohlde said he loves his job at the movie theatre, which he has been doing for 15 years. Mr. Ohlde says he is treated as an equal at his job and he thinks it is important to have a job that people are interested in and fits what someone wants to do. Mr. Ohlde takes transportation to get to his job. Mr. Ohlde said on Saturday the bus runs every 80 minutes, so he has to leave his home, go about two blocks (takes about 10 minutes), wait for the bus to come at 11:20, and that he needs to be to work by noon. If Mr. Ohlde did not have transportation, he wouldn't get to work and would be fired. If Mr. Ohlde was fired he would be sitting at home and not making money to get the stuff he needs or wants for his everyday life.

Mr. Ohlde says without transportation and coming in to work, he would not feel like part of the community because he would be sitting at home, eating up social security, and taking benefits other people need more than he does. Mr. Ohlde also said his job helps him to buy stuff he needs and wants for his everyday life. Mr. Ohlde said if he didn't have transportation he couldn't get to activities and meetings he is very vocal in. Mr. Ohlde also

said that if Bend didn't have good sidewalks (which they are working on) to get on the bus system, he wouldn't get there.

Mr. Ohlde is worried the rules will not allow him to get to work and his activities. Mr. Ohlde says he needs transportation to be independent because he needs a ride, not because he has care needs on the way to where he is going.

Another issue Mr. Ohlde wanted to discuss is that the rule does not allow transportation to vacation destinations. Mr. Ohlde currently lives in a vacation destination. Mr. Ohlde is worried because he lives in a vacation destination, and so do his parents, that he will not be able to get to their house or travel in the community due to the rule saying individuals cannot go to a spot in a vacation destination (transportation is not covered to a vacation destination).

Mr. Ohlde thanked the Department for their time and asked it be put into consideration that the rules are not just affecting those present, but also affects others who were not at the hearing.

Written Comments

Department of Human Services, Office of Adult Abuse Prevention and Investigation (OAAPI), Tina Strahan, Abuse Investigations Coordinator – Exhibit #2

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

Association of Oregon Community Mental Health Programs (AOCMHP), Sarah Jane Owens, DD Specialist – Exhibit #3

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

Ms. Owens stated there are areas of inconsistent case management services and requirements in OAR chapter 411, division 320 and 340, which can be confusing for both consumers and systems.

Ms. Owens stated there is no similar language in OAR chapter 411, division 340 to OAR 411-320-0090(6). The language in OAR 411-320-0090(6) references that the service coordinator and personal agent work in conjunction. Ms. Owens says when an individual is enrolled in a

Brokerage, the personal agent should facilitate the meeting as the case management entity. She feels the language in OAR 411-320-0090(6) needs to be added to OAR chapter 411, division 340 so Brokerages are responsible to prioritize Family Reconnection.

Ms. Owens also states that while OAR 411-320-0100(1)(a) says "(a) When an individual chooses case management services through a personal agent, the CDDP must send referral information to the appropriate support services Brokerage within 10 days following the individual's decision of the individual unless a later date is mutually agreed upon by the individual, the Brokerage, and the CDDP. If there is no available Brokerage capacity for an individual requesting Brokerage services, the individual may receive case management through the CDDP and receive in-home other available chosen supports until Brokerage capacity becomes available", there is not similar language in OAR chapter 411, division 340.

Ms. Owens feels OAR chapter 411, division 340 should contain the following "(a) When an individual chooses case management services through a CDDP, the Brokerage must send referral information to the appropriate CDDP within 10 days following the individual's decision unless a later date is mutually agreed upon by the individual, the Brokerage, and the CDDP." Ms. Owens says the same language and requirements should be applied to case management in CDDPs and Brokerages. While the CDDP is directed to send referrals within specified timelines, there is no language in the rule as specific when an individual chooses to return to a CDDP for services.

Ms. Owens also states language similar to OAR 411-320-0100(5)(a) should be included in OAR chapter 411, division 340. There is also no language in OAR chapter 411, division 340 that is similar to OAR 411-320-0110(8) and Ms. Owens feels there should be language in OAR chapter 411, division 340 with the same timelines and requirements.

Oregon Council on Developmental Disabilities (Council), Jaime Daignault, Executive Director and Leslie Sutton, Policy Analyst – Exhibit #4

The written comments provided by Ms. Daignault and Ms. Sutton on behalf of the Council are summarized below.

The Council starts by saying Oregon is strongest when all Oregonians are included in the community, have choice and control over their own lives, and have supports they need to live healthy, fulfilling lives. The Council works to make this a reality for Oregonians with I/DD and their families by systems change and advocacy activities.

The Council had comments on both OAR chapter 411, divisions 320 and 340 and put them together because many of the provisions are in both rules. The following are a summary of the comments:

- "1. The proposed community transportation rules create barriers to self-advocacy, community access and participation, and integration. These services must be restored immediately.
2. Eligibility documentation must be accurate, but not unreasonably burdensome.
3. Rule language must be aligned with Oregon statute.
4. Individual rights must reflect federal Home and Community-Based Service (HCBS) rights.
5. Choice advising must instruct people on all services, not just "available" services within the particular part of the I/DD system the person uses.
6. Licensed or certified placement settings options should also include less restrictive setting options.
7. Education services for adults must be restored.
8. Comprehensive service entry meetings must include documentation that the place the person will live was chosen by the person.
9. Rental unit home modifications must include the costs to remove the modification when the tenant moves out, if the landlord wants the modification removed.
10. K Plan services must be based on the needs, goals, and preferences identified in the assessment and the person-centered planning process.
11. Attendant care should be based on a person's needs, preferences, and goals, no matter where the person chooses to receive services.
12. Self-determination, person-centered planning principles, and federal regulations require that ISP meetings must be driven by the person.
13. Chore services should be provided when no one else is responsible for and able to perform or pay for the services."

In regards to the community transportation rules, the Council feels transportation is key for people to access and participate in the community and workforce and without it, people with disabilities would have a hard

time "living, working, and playing" in their communities. The HCBS rule directs waiver and K Plan services be provided in integrated settings that support full access to the community. The Council states this will not be possible if Oregon continues to "unreasonably restrict community transportation services". The Council makes a few recommendations to restore what they feel will allow those with I/DD to access the community.

The Council states it supports the comments of OSAC on the community transportation rules, which identify barriers to community life under the amended rules. The Council says the barriers impact OSAC members' ability to engage in activities like, visiting family, volunteering, working, self-advocacy, recreation, and participating in the community.

In addition to supporting OSAC's comments, the Council thinks the proposed rules do not allow adequate access to the community because transportation is only allowed to access state plan or waiver services, resources, and activities. The Council says before the rule changes, transportation was used to help people access community services, activities, and resources. OSAC recommends the focus of transportation be restored back to accessing community services, activities, and resources so individuals receiving services can participate in their communities (411-340-0020(78), effective 6/23/05). The Council says this would also support the HCBS rule requirements, which promote full access to the community (42 CFR 441.530(a)(1)(i)).

The Council also feels the rule unreasonably narrows where people can use transportation in that it only allows transportation in the area around the individual's home that is commonly used by people in the same area to buy goods and services. The Council says that like everyone, individuals with disabilities like to go to stores and restaurants where they feel welcome and that may not be the store or restaurant closest to the individual's home. The rules seem to prohibit people going to their favorite places by restricting them to what is closest to their home. OSAC and the Council recommend this language be deleted to preserve access to the community.

The Council states that community transportation is a "stand-alone instrumental activity of daily living (IADL) and should be treated as a stand-alone service." The Council says, however, the rules say an individual can

only receive transportation services if they have an activity of daily living (ADL) or IADL need during transportation or at the destination. The Council feels the rule misses the point because individuals with I/DD need transportation because their disability prevents them from driving. The Council feels the fact an individual may have an ADL or IADL need during transportation or at the destination is separate from the fact they need transportation to be involved in the community. OSAC and the Council recommend this language be removed from the rule.

The Council says the exclusion list is unreasonable as well. One reason is the list excludes transportation to "vacation destinations", and the Council feels most of Oregon is considered a vacation destination. The Council says this would mean individuals that have family living in "vacation destinations" would not be able to use ODDS transportation to visit that family. The Council says it also means people who go to a vacation destination for self-advocacy, work, and volunteer activities would not be able to access ODDS transportation to do so. The Council says vacation travel is already prohibited in the rule, so they ask ODDS to delete this exclusion.

Another exclusion the Council finds unreasonable is that family members are not allowed to receive transportation reimbursement for driving individuals receiving services, even if the family member is paid to support the person. The Council thinks this unreasonably treats family members differently from other support workers, so the Council and OSAC recommend this exemption be deleted.

The Council states Oregon has a history of providing transportation to individuals receiving I/DD services in recognition of the fact that transportation is a critical service that allows individuals to participate in the community. The 2011 Oregon Support Services waiver, included transportation services, with the following definition:

"Transportation of individuals to leisure activities, day habilitation services, supported employment, non-medical appointments, and various related services in accordance with the individual's plan of care. No payment will be made to a spouse for these services; the cost of purchasing or leasing family vehicles will not be charged to the waiver. Cost associated with transportation services rendered by

residential or employment providers may be included in the rate established for such services. Transportation services under the waiver shall be offered in accordance with the individual's plan of care."

The Council states the above is not a "radical" concept as other states have broad non-medical transportation services in their Medicaid programs. The paragraph above does not restrict transportation to only locations where the individual receives state plan or waiver services.

In regards to individual rights, the Council said that the Centers for Medicare and Medicaid Services (CMS) in March 2014 enacted new rules for HCBS. The Council said the rules enacted by CMS ensure individuals receiving services have opportunities to access the "benefits of community living" and receive services in "the most integrated setting". The HCBS rules also include new provisions surrounding person-centered planning.

The Council points out the new HCBS rule provisions are not adequately represented in the new rule language. The Council recommends ODDS create a RAC to examine, update, and amend the existing rules on rights, and any other rules, to closely align with the HCBS requirements. The Council recommends the following rights be added to all "rights" rules so individuals are able to enjoy the benefits of the HCBS rules:

"While receiving developmental disability services, the individual has a right to:

1. Receive services in a place or setting that is integrated in and supports full access to the greater community;
2. Is selected by the individual from among setting options, including non-disability settings;
3. Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;
4. Optimizes autonomy and independence in making life choices; and
5. Facilitates choice regarding services and who provides them.

For people receiving services in provider controlled homes or residential programs:

1. The individual has a right to have a rental lease or other legally enforceable agreement providing similar protections;
2. The individual has privacy in their unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
3. The individual controls his/her own schedule including access to food at any time;
4. The individual can have visitors at any time; and
5. The setting is physically accessible for the individual."

In regards to choice advising, the Council says information about all services must be provided, not just the services available within the particular part of the I/DD system the individual uses. The Council states people are most successful when they choose which services they receive, where they receive the services, and how they receive them. The Council says individuals often report they are not given a variety of options to constitute a "choice" because they are only told what is available in a certain part of the system instead of given a choice of a wide array of services or settings. The Council says impartial choice advising should be a tool to help individuals choose services instead of individuals being assigned services.

The Council also talked about education and how it is important to all people, including those with disabilities. Many adults take classes to learn about things they are interested in. The ODDS rules give people receiving I/DD services, the right to "participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, school, educational opportunities, and health care resources." The Council says in the past, individuals have used educational services for classes to learn to read or communicate with American Sign Language, however, the new rules make it no longer possible for adults to take classes.

The Council says the new rules prohibit using support services for educational services of any kind. The council says the language must be restored to allow those with I/DD the opportunity fulfill their right to "access adult education opportunities."

Additional written comments provided by Ms. Daignault and Ms. Sutton on behalf of the Council are summarized below in Attachment A.

OSAC, Leslie Sutton, Policy Analyst for the Council – Exhibit #5

The written comments provided by Ms. Sutton on behalf of OSAC are summarized below.

OSAC first comments on the right to make choices about I/DD services. OSAC states that I/DD services help individuals live in their communities and meet their goals. OSAC says individuals have the most success when they choose: the services they use, how they use the services, where they use their services, and who provides the services. OSAC has a few concerns about the definition of choice advising in the CDDP and Support Services rules (411-320-0020(21), (22) & 411-340-0020(23), (24)). OSAC feels the definitions must be changed to allow individuals to have "full conversations about the choices we make about our IDD services".

OSAC feels individuals are at their best when they use services they want. OSAC states that "choice includes picking what you do and do not want." OSAC feels choice advising should remind individuals they can choose their services, but also refuse to take services offered to them. OSAC feels if an individual does not want a service, choice advising should remind them they do not have to use that service.

OSAC feels transportation services are too narrow because individuals feel they cannot get transportation services to get in the community. OSAC says if individuals do not have transportation services, they cannot participate as members of the community because they will be unable to work, volunteer, go to self-advocacy meetings, visit family, go to the grocery store, or have a life like those without disabilities. OSAC feels the rule changes are not in the best interest of individuals receiving services because the change makes it too hard to get the transportation services individuals need. OSAC says individuals have lost jobs, volunteer positions, and have not been able to visit family or participate in the community like they used to. OSAC says the rules are making individuals feel more isolated and not integrated.

Before the rule change, OSAC said transportation services were services that allowed individuals to gain access to community services, activities,

and resources. OSAC liked this definition as it focused on accessing the community and helped individuals to have a life in the community. OSAC feels the old definition also recognized individuals with I/DD need transportation because they may not be able to drive due to their disability.

OSAC says the new rules only allow transportation if individuals are accessing Medicaid state plan and waiver services, activities, and resources. OSAC says this is way too narrow and would like it to go back to the old definition. OSAC gave an example of where individuals met at a community location to talk about the rules and how to make I/DD services better for everyone. Since the meeting was not a Medicaid service or everyone involved did not need Medicaid services, only those that needed Medicaid services during the meeting could have used transportation services to attend (which means only one in four could have attended the meeting).

OSAC asks the Department "Please put yourselves in our shoes". OSAC wants to know how those in the Department would feel if they could not go out in the community. OSAC states individuals with I/DD are valued members of the community and without transportation they cannot access the community. OSAC feels the rules must change the focus of transportation services back on accessing community services, activities, and resources.

OSAC also said part of being a community member means picking where an individual wants to buy things. OSAC says everyone has a favorite grocery store, restaurant, or clothing store and these places may not be the closest stores to an individual's home. Some of the places individuals choose because they feel welcomed and like a valued customer when they shop there (the staff people understand how to support the individuals, if needed, and are friendly). OSAC says at times, the closest places to their homes are where people are unfriendly or don't have what they want, so they choose to go somewhere else.

OSAC says that just because an individual has disabilities, it does not mean they should be stuck using only the stores closest to where they live. OSAC says everyone's lives are limited by where they can go, and if individuals can only use the stores closest to where they live, their life and

community shrinks to a few blocks or miles. OSAC says this is not fair and takes individuals away from the greater community they use today.

OSAC says transportation is a stand-alone service and should not be connected to other service needs. OSAC says individuals in the I/DD system need transportation to access the community because some individuals with I/DD cannot drive because of their disability. At times, OSAC says it is the only way an individual can reach the community. OSAC feels it is not right to tie transportation, a service an individual needs, to other requirements. While an individual may have an ADL or IADL need as well, those needs are separate from transportation.

OSAC feels since transportation to a vacation destination is excluded, many individuals will not be able to use transportation to get to places in the state where they have family, jobs, conferences, self-advocate meetings, or other non-vacation related business because those activities happen to be in a "vacation destination". OSAC says they understand this language was trying to say transportation services will not be allowed to help individuals go on vacation, but the exclusion on that already exists in another part of the rule. OSAC feels not allowing transportation to vacation destinations is unreasonable in that Oregon has so many vacation destinations.

OSAC is concerned that travel for "relaxation purposes" being excluded could mean travel for recreation purposes. If that is the case, OSAC says many individuals would no longer be able to use transportation services to access community recreation activities. OSAC states all people recreate in the community, but people with I/DD may need to use I/DD transportation services to access the recreation. OSAC points out many individuals are involved in local recreation programs, and cutting transportation to those events would mean individuals could not participate and would be sitting at home instead of out in the community.

OSAC also said many individuals have family members that are paid to support them (just like a support worker is). OSAC feels it is not fair for family members to not get mileage to support them just because they are related. OSAC feels family members should be able to get payment for transportation they provide if: the family member is paid to support the individual; and is not transporting the individual as a natural support. OSAC

states public transportation cannot always meet an individual's needs (the route may not go where the individual needs it to or the buses may not run on an evening/weekend when an individual may need it). OSAC says this means family members have to rearrange their schedule, drive individuals where they need to go, and pay for gas to get them there. OSAC thinks if a family member is paid to support an individual, they should get paid the mileage to transport them.

OSAC asks that as the Department changes the rule, to please consider individuals' needs to access the community and live integrated lives as valued members of the community. OSAC says if transportation services are too complicated, everyone loses because individuals with I/DD will have to sit at home with no way to access the community. OSAC also feels that without reliable transportation, individuals cannot get jobs, keep jobs, or succeed in life.

OSAC says individuals receiving services should lead their ISP meetings. OSAC feels when individuals are in charge and have a choice over their services they are most successful. OSAC says when individuals are not in charge, they do not feel like their voice matters in their own lives. OSAC says the best ISPs start with the person directing the meeting to describe what they want and how they want it. OSAC feels that as children grow up they should be encouraged to run their ISP meeting at an early age because it will teach children to speak up, take charge, and make sure the ISP does what they need it to do. Some rule language supports this thought and other rules appear not to (note from OSAC, see attachment A for more details).

Additional comments provided by Ms. Sutton on behalf of OSAC are summarized in Attachment A.

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

ODDS Response

Transportation: Response included in Attachment A.

Choice Advising: Response included in Attachment A.

ISP Meeting: Response included in Attachment A.

Inconsistent CDDP/Brokerage Rule Language: ODDS directs the commenter to OAR 411-340-0120(13) for language that corresponds to OAR 411-320-0100(1)(a). OAR 411-320-0100(5)(a) is a requirement for individuals enrolled in developmental disability services and is not specific to a CDDP or a Brokerage. Most of OAR 411-320-0110(8) is specific to the CDDP's role in entering an individual into a Brokerage. There is not a corresponding role for a Brokerage when an individual transfers back to a CDDP, with the exception of (d), relevant information that must be passed between the case management entities. It will be a topic for future rule making. Brokerage requirements around family reconciliation will also be subject for future rule making.

HCBS: ODDS appreciates the comments made that relate to HCBS but did not make any additional changes at this time. Language to comply with HCBS will be reflected in a future rulemaking.

Education: Response included in Attachment A.

ATTACHMENT A

Rule Number and Proposed Rule Language	Comment	ODDS Response
411-340-0020 Definitions		
<p>(2422) "Choice" means an individual's <u>the</u> expression of preference, opportunity for, and active role <u>of an individual</u> in decision-making related to services received and from whom, including, but not limited to, case management, providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing an individual's rights, risks, and personal choices. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated <u>through a variety of methods. Choice may be expressed orally-verbally</u>, through sign language, or by other communication methods.</p>	<p>OSAC - OSAC says when individuals choose providers, they want to know about the different kinds of providers, not just "available" providers. OSAC says individuals are told they can pick from providers, but that is only in the part of the I/DD system they use, which limits their options to only I/DD options. OSAC says individuals want to hear about all of their options.</p>	<p>ODDS considered the comments made by OSAC but did not make any additional edits.</p> <p>The wording of the definition was vetted through the Rules Advisory Committee.</p>
<p>(2523) "Choice Advising" means the impartial sharing of <u>the following information to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-340-0150(5):</u> <u>(a) Case management;</u> <u>(b) Service options;</u> <u>(c) Service setting options; and</u></p>	<p>OSAC - OSAC says this definition needs to let individuals know they can receive I/DD services in non-disability settings. HCBS says individuals must choose from different options where they receive services, including non-disability specific options. OSAC says they do not often hear about non-disability specific places where they can receive services and only hear about options available in the I/DD</p>	<p>ODDS considered the comments made by OSAC and the Council and made additional edits to the definition of choice advising.</p> <p><i>(23) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in</i></p>

ATTACHMENT A

Rule Number and Proposed Rule Language	Comment	ODDS Response
<p>(d) Available providers. about case management and other service delivery options available to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications identified in OAR 411-340-0150(5).</p>	<p>system. OSAC states they want to learn about options outside the I/DD system so they can have a more integrated life.</p> <p>In addition, when individuals choose providers, they want to know about the different kinds of providers, not just "available" providers. OSAC says individuals are told they can pick from providers, but that is only in the part of the I/DD system they use, which limits their options to only I/DD options. OSAC says individuals want to hear about all of their options.</p> <p>Council - Recommendation: "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-320-0030(4)(c) about:</p> <p>(a) Case management options, including the choice for adults to receive case management from a CDDP or Brokerage;</p> <p>(b) A wide array of service options, including the choice of which developmental disability services the individual uses or does not use;</p> <p>(c) A wide array of places the individual</p>	<p>OAR 411-340-0150(5) about:</p> <p>(a) Case management;</p> <p>(b) Service options;</p> <p>(c) Service setting options; and</p> <p>(d) Provider types.</p> <p>Choice advising is an evolving process, some of which exists outside the scope of administrative rule. All ODDS services are voluntary in the absence of a court commitment. CDDPs and Brokerages provide choice advising according to the specifications in the rules. OAR 411-320-0020(22), 411-320-0090(4)(I), 411-340-0020(23), and 411-340-0120(7) provide a description and requirement of choice advising to individuals enrolled in and receiving ODDS services.</p> <p>ODDS is committed to offering choices in case management, service types, service settings, and service providers. Coupled with the rule that requires person-centered practices, ODDS feels there is nothing in these rules that would inhibit an individual's choice with respect to services.</p>

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	<p>receives developmental disability services, including disability or non-disability options for where the individual works, lives, volunteers, and accesses community services, resources and activities; and</p> <p>(d) The individual's choice of providers to deliver developmental disability supports."</p>	
<p>(3127) "Community Transportation" means the services described in OAR 411-340-0130 that enable an individual to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. <u>Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services.</u></p>	<p>Council - The Council feels the new language is too restrictive. The Council likes this older language better: "Transportation" means services that allow individuals to gain access to community services, activities and resources that are not medical in nature.</p> <p>Recommendation: "Community Transportation" means the services described in OAR 411-340-0130 <u>that are not medical in nature</u>, enable an individual to gain access to community-based state plan and waiver services, <u>and destinations in the community to access activities, and resources and participate in the workforce and community life that are not medical in nature.</u> Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the</p>	<p>ODDS considered the comments made by the Council and OSAC but did not make any additional edits.</p> <p>The adopted rules were constructed with the intent and purpose of increasing the independence of individuals enrolled in services who require transportation assistance due to the presence of a disability and a need for supports either during transportation or at the destination. ODDS believes the rules are reflective of the needs of those who require supports with transportation and also allow independence and community access to individuals who receive services through the 1915(c) and 1915(k) waiver and state plan.</p>

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	<p>same area to obtain ordinary goods and services.</p> <p>OSAC - Definition too narrow because it says transportation services can only be used to access Medicaid state plan and waiver services, activities, and resources. The rule also too narrow in that it says an individual can only use transportation around their home that is commonly used by people in the same area. Feel this part of the rule should be removed.</p>	
<p>(657) "Integration" as defined in ORS 427.005 means:</p> <p>(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;</p> <p>(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and</p> <p>(c) Individuals with intellectual or</p>	<p>Council - Misquotes ORS when says "without an intellectual or developmental disability" under the ORS it should read "without disabilities". The Council asks the Department change this language to correctly quote the law and make the definition accurate.</p> <p>OSAC - To OSAC, integration means equal opportunities to do the same things people without disabilities do.</p> <p>OSAC feels the rule about participation by those with I/DD in the same activities as people without I/DD, is too narrow. Under the rules, OSAC says a place could be "integrated" if it segregated individuals</p>	<p>ODDS considered the comments made by the Council and OSAC and made additional edits to the definition of integration.</p> <p><i>(65) "Integration" as defined in ORS 427.005 means:</i></p> <p><i>(a) Use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;</i></p> <p><i>(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and</i></p>

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developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.	with disabilities other than I/DD (e.g. a sensory disability or mental illness) from people without disabilities. OSAC states this is not integrated because it doesn't allow equal opportunity to do the same things as those without disabilities. OSAC feels this section should say integration is about participation by people with I/DD in the same community activities as people without disabilities.	<i>(c) Residence by individuals with intellectual or developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.</i>
<p>(839) "Productivity" as defined in ORS 427.005 means:</p> <p>(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or</p> <p>(b) Engagement by an individual in work contributing to a household or community.</p>	<p>Council - The Council says this misquotes the OAR by breaking the language into two parts, which changes the meaning. The Council says if ODDS is going to quote statutory language in rule, they must do so correctly. The Council asks ODDS to change the definition to accurately reflect the definition in the ORS in "form and language".</p>	<p>ODDS considered the comments made by the Council and made additional edits to the definition of productivity.</p> <p><i>(83) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.</i></p>
411-340-0110 Standards for Support Services Brokerage Entry and Exit		
(3) ENTRY INTO BROKERAGE SERVICES.	<p>Council - The Council says the entry meeting documentation requirements must reflect or say the setting where the</p>	<p>ODDS considered the comments made by the Council but did not make any additional edits.</p>

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	<p>person resides was chosen by the person. The Council asks the rules be amended to reflect this "federal rule requirement".</p>	<p>The federal rule requirement is not applicable to entry into support services because support services is not a "setting".</p>
<p>411-340-0120 Support Service Brokerage Services</p>		
<p>(5) PERSONAL AGENT SERVICES. <u>(e) CASE MANAGEMENT CONTACT. Every individual who has an ISP must have a case management contact no less than once every three months. Individuals with significant health and safety risks must have more frequent case management contact. At least one case management contact per year must be face to face. If an individual agrees, other case management contacts may be made by telephone or by other interactive methods. The outcome of the case management contact must be recorded in the progress note for an individual. The purpose of the case management contact is:</u> <u>(A) To assure known health and safety risks are adequately addressed;</u> <u>(B) To assure that the support needs of the individual have not significantly</u></p>	<p>OSAC - OSAC feels people should be able to choose how often they want their case manager to contact them and that this should be an individual choice. Some individuals like more or less contact than others. OSAC feels sections (A) - (C) are not respectful because the conversation focuses on the negative parts of an individual's support needs instead of an individual's strengths, choices, and goals. OSAC feels the language should be more positive as positive conversations will help individuals share more information and can lead to better supports that help individuals reach their goals.</p>	<p>ODDS considered the comments made by OSAC but did not make any additional edits.</p> <p>The minimum contact requirement is a condition for continued access to K plan funded services. An individual may request more frequent contact at any time. Suggestions for phrasing the purpose of case management contact that preserves the intent would be considered during future rulemaking.</p>

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<p>changed; and (C) To assure that the individual is satisfied with the current supports.</p>		
<p>(10) INDIVIDUAL SUPPORT PLANS. (a) An individual who is accessing waiver or Community First Choice state plan services must have an authorized ISP. (A) The ISP must be facilitated, developed, and authorized by a personal agent.</p>	<p>OSAC - OSAC feels language around ISP meetings should center on individuals running their own ISP meetings.</p> <p>Council - The Council requests this definition be changed to reflect that the ISP meeting is driven by the individual (per Medicaid regulations, the person-centered planning process must be "driven by the individual").</p>	<p>ODDS considered the comments made by OSAC and the Council but did not make any additional edits.</p> <p>This rule does not inhibit an individual from driving the ISP meeting, but the specialized training and authority of a personal agent are needed to assure the meeting and its outcomes comply with all applicable rules and policy.</p>
<p>411-340-0130 Using Support Services Funds to Purchase Supports</p>		
<p>(1) A Brokerage may use sSupport services funds may be used to assist individuals to purchase supports described in section (8) of this rule, in accordance with an ISP when: (b) For an individual who has not had a service level determined, aFor Community First Choice state plan services, the support shall address a need that has been determined to be necessary by a functional needs assessmenthas determined the individual's support needs;</p>	<p>Council - The Council says this rule only allows individuals to access K-Plan services identified by the functional needs assessment (which is the Adult Needs Assessment (ANA)). The Council states the ANA does not identify needs for all available K Plan services (e.g. home modifications, assistive technology and devices, chore services, and emergency response systems). The Council says the rule language must be broad enough to allow authorization for all K Plan services based on the needs of the individual.</p>	<p>ODDS considered the comments made by the Council but did not make any additional edits.</p> <p>The functional needs assessment identifies areas where supports are necessary. The person-centered planning process identifies the methods by which those support needs are met. Any of the K plan services are available, when appropriate.</p>

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	<p>Recommendation: (b) For Community First Choice state plan services, the support shall address a need that has been identified through a functional needs assessment or person-centered planning process." The Council says using this language will align the rule with the service limits rule.</p>	
<p>(11) ENVIRONMENTAL MODIFICATIONS. (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.</p>	<p>Council - The Council says the rule about ODDS allowing modification, but not paying for the removal of modifications could create a barrier to finding adequate housing for an individual. The Council would like this section removed.</p>	<p>ODDS considered the comments made by the Council but did not make any additional edits.</p> <p>The suggested addition is outside of the scope of the funding authority.</p>
<p>(12) ATTENDANT CARE SERVICES. Attendant care services include direct</p>	<p>Council - The council says individuals succeed when they receive services</p>	<p>ODDS considered the comments made by the Council and made additional edits</p>

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<p><u>support provided to an individual in the home of the individual or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified needs of the individual.</u></p>	<p>based on their goals, preferences, and needs (and note the K Plan services align with this idea). The Council states the services are determined through an assessment that identifies an individual's goals, preferences, and needs. This proposed rule provides attendant care based only on the needs of the individual.</p> <p>Recommendation: ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual.</p>	<p>to the section for attendant care services.</p> <p><i>(12) ATTENDANT CARE SERVICES. Attendant care services include direct support provided to an individual in the home of the individual or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual.</i></p>
<p><u>(17) 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.</u> <u>(a) Chore services include heavy household chores such as:</u> <u>(A) Washing floors, windows, and walls;</u> <u>(B) Tacking down loose rugs and tiles;</u> <u>and</u> <u>(C) Moving heavy items of furniture for safe access and egress.</u> <u>(b) Chore services may include yard</u></p>	<p>Council - The Council says the proposed rule only allows chores services when "no one else is responsible; or no one else is able to perform or pay for the services." The Council says this makes it impossible for an individual to access this service without first asking friends and relatives if they can afford to pay for chore services for the individual, even though those people are under no obligation to pay for such things. The Council feels the "or" should be an "and" to reflect the intent of the rule.</p>	<p>ODDS considered the comments made by the Council but did not make any additional edits. Future rulemaking activity will reconsider the terminology.</p>

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<p>hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.</p>		
<p>(18) 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 an individual to accomplish ADL, IADL, a health related task, or employment goal 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 of the individual: (A) The individual has an assessed need for ADL, IADL, or health-related task during transportation; or (B) The individual has either an</p>	<p>Council - The Council recommends section (b)(B) be removed because it misses the point of why I/DD individuals need transportation in the first place (comments summarized above).</p> <p>Recommendation: (a) Community transportation services are IADL activities that include but are not limited to -- (A) Community transportation provided by common carriers, taxicab, or bus in accordance with standards established for these entities; (B) Reimbursement on a per-mile basis for transporting an individual to access community services, activities and resources that are not medical in nature; or to accomplish an ADL, other IADL, health related task, skills training, or employment goal identified on an ISP; or (C) Assistance with the purchase of a bus pass. (b) Community transportation may only be authorized when Natural Supports or</p>	<p>ODDS considered the comments made by the Council and OSAC but did not make any additional edits.</p> <p>The adopted rules were constructed with the intent and purpose of increasing the independence of individuals enrolled in services who require transportation assistance due to the presence of a disability and a need for supports either during transportation or at the destination. ODDS believes the rules are reflective of the needs of those who require supports with transportation and also allow independence and community access to individuals who receive services through the 1915(c) and 1915(k) waiver and state plan.</p>

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<p><u>assessed need for ADL, IADL, or health-related task at the destination or a need for waiver funded services at the destination;</u></p>	<p>volunteer services are not available and one of the following is identified in the individual's ISP: (A)the individual has an assessed need for ADL, IADL, or health related task during transportation; or (B) has either an assessed need for ADL, IADL, or health related task at the destination or a need for waiver funded services at the destination;</p> <p>OSAC - OSAC requested that the requirement that individuals have an ADL or IADL need during the transportation or at the destination in sections (a)(B) and (b) be removed.</p>	
<p><u>(18) COMMUNITY TRANSPORTATION.</u> <u>(f) Community transportation services exclude:</u> <u>(H) Transportation to vacation destinations or trips for relaxation purposes;</u> <u>(I) Transportation provided by family members;</u></p>	<p>Council - The Council asks that both sections (H) and (I) be removed. The Council says that (H) excludes individuals from traveling within most of Oregon, even in their own community, if the community in which they or their family live is a vacation destination. The Council says (I) excludes family members from providing transportation, even if they are paid to support the individual and this is not treating family members fairly.</p> <p>OSAC - OSAC requests the removal of</p>	<p>ODDS considered the comments made by the Council and OSAC but did not make any additional edits to section (H).</p> <p>ODDS interprets "vacation destination" as being relative to the residence of the individual, and does not consider any specific location as a "vacation destination."</p> <p>In regards to section (I), qualified family members are not excluded from being paid providers of this service. Edits were</p>

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	<p>section (H) as many individuals live in vacation destinations and instead use the current vacation exclusion already in the rule to do what the Department is getting at. Also concerned about what is meant by "relaxation purposes" as it could limit recreational activities. If it is meant "vacation purposes" then OSAC asks the Department take this out and rely on the vacation exclusion that already exists in the rule.</p> <p>OSAC feels section (I) should be removed. In terms of if a family member is paid to support an individual, the family member should get paid to transport the individual.</p>	<p>made to the rule language to provide clarification.</p> <p><i>(I) Transportation provided by family members who are not personal support workers and are not simultaneously providing other paid supports at the time of the transportation;</i></p>
<p>(2826) EDUCATIONAL SERVICES: Educational services for school age individuals, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills, are not allowable expenses covered by support services funds.</p>	<p>Council - The Council would like this to read how it did before the changes "Educational services for school age individuals, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills, are not allowable expenses covered by support services funds."</p>	<p>ODDS considered the comments made by the Council but did not make any additional edits.</p> <p>ODDS believes the adopted rules accurately reflect the services available through the Community First Choice state plan and the 1915(c) waivers.</p>
<p>(3129) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND</p>	<p>Strahan - Ms. Strahan wants to know if the word adult should be added as follows:</p>	<p>ODDS considered the comments made by Ms. Strahan and made the edits as requested.</p>

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<p>GENERAL BUSINESS PROVIDERS PROVIDER TERMINATION. (ac) A sanction may be imposed on a provider <u>Provider enrollment may be terminated</u> when the Brokerage <u>or Department</u> determines that, at some point after the provider's initial qualification and authorization <u>of the provider</u> to provide supports purchased with support services funds, the provider has: (E) Had a founded report of child abuse or substantiated abuse;</p>	<p>(E) Had a founded report of child abuse or substantiated adult abuse;</p> <p>Section (29)(b)(D) specifies both child and adult abuse as follows "<u>(D) Services to an individual, is being investigated by Adult or Child Protective Services for suspected abuse that poses imminent danger to current or future individuals; or</u>".</p> <p>Ms. Strahan says it would make communications clearer if adult was added to (E).</p>	<p><i>(E) Had a founded report of child abuse or substantiated adult abuse;</i></p>