



Oregon

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To: Christina Hartman
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 -
Employment Services for Individuals with Intellectual or
Developmental Disabilities*

The purpose of the hearing was to take public testimony regarding the proposal of the Department of Human Services, Office of Developmental Disabilities Services (ODDS) to update the rules in OAR chapter 411, division 345 for employment services for individuals with intellectual or developmental disabilities (I/DD) to reflect the following:

- Alignment with the rules in OAR chapter 407, division 025, Executive Order No.13-04, and Oregon's "Employment First" policy;
- Alignment with the 1915(c) Home and Community-Based Services (HCBS) waivers and the services available under the waivers;
- Alignment with the Executive Order by outlining the requirements for a Career Development Plan completed as a part of the annual Individual Support Plan (ISP);
- Changes to provider types who may deliver employment services;
- Changes in the funding authority for non-employment services from the 1915(c) Home and Community-Based Services (HCBS) waiver to the 1915(k) Community First Choice state plan amendment; and
- Alignment of provider qualifications and requirements with the rules in OAR chapter 407, division 025 and Executive Order No. 13-04.

"Assisting People to Become Independent, Healthy and Safe"
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The proposed rules:

- Make permanent temporary rule language that became effective on July 1, 2014;
- Change the references to "alternatives to employment" to "attendant care" or "skills training" where appropriate;
- Incorporate the general definitions in OAR 411-317-0000 and update the definitions relating to employment and other available services, provider types, and service descriptions;
- Describe who is eligible to receive services as described in these rules and assure employment services are only available to individuals who are eligible for OSIPM;
- Update provider requirements consistent with the 1915(c) HCBS waiver, incorporate new provider types, and include qualifications for providers by service type;
- Assure that adequate documentation of services is kept by providers;
- Incorporate limits to employment services as described in the 1915(c) HCBS waivers;
- Account for the adoption of rules in OAR chapter 411, division 318 and recognize the authority of that rule in matters of complaints, individual rights, Notification of Planned Action, and hearings;
- Require and describe a Career Development Plan;
- Reflect new ODDS terminology and current practice; and
- Correct formatting and punctuation.

Public Comments

Oregon Self Advocacy Coalition (OSAC), Kaaren Londahl, Self Advocate – Exhibit #1

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

Ms. Londahl lives in North Portland and was at the hearing to talk about people who are 18 or under with I/DD. Ms. Londahl said kids in middle school with I/DD can get jobs and work at places like Wal-Mart, Tektronix, Fred Meyer, or Safeway. Ms. Londahl said it is important that kids know what the skills are to get a job and what kind of jobs they could have (lawyer, nurse, dentist) and they need to know what is out there. Ms. Londahl believes it is very necessary for kids with I/DD to get a job

because that is how kids and adults can learn how to work. They have to know what the workforce is out in the community.

Ms. Londahl pointed out that parents are not going to be around for kids for their entire lives. Ms. Londahl stated where she works, for Senator Chip, she gets a paycheck and really likes her job. Ms. Londahl likes to pay taxes. It makes a person feel good, and she thinks it is necessary. Ms. Londahl said people need to learn skills when they are younger so they can learn how to do it. She says "Let them learn. They can do it."

OSAC, Adriana Richardson, OSAC Secretary – Exhibit #1

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

Ms. Richardson lives in West Linn and is the OSAC secretary. Ms. Richardson believes it is important for kids under 18 with I/IDD and in high school and up to get employment services because it: teaches responsibility; teaches them how to be independent; and gives them more of a desire to graduate high school with a goal to work and have a successful job long term.

Ms. Richardson feels when kids are discouraged from work, they will not learn how to do things on their own and won't know what to do when they graduate from high school. Ms. Richardson said once they graduate high school, the kids are on their own and won't get services after that. Ms. Richardson feels it is important for ODDS to pay for employment services because the sooner kids get started, the better. Ms. Richardson feels the sooner kids start, they will be successful and be able to be on their own a lot sooner than expected.

Ms. Richardson stated she did not work in high school, but wishes she did because she would have felt more involved and included in the community. Ms. Richardson says it would have been easier for her family and other people to see her as independent and not holding her back in her 20's if she would have started working at a younger age. Ms. Richardson said if she was given a chance to work, it would have helped her to be independent sooner (early 20's) and she would have been able to figure out more of the community bus routes and resources if she had been out there sooner.

OSAC, Jordan Ohlde, Vice Chair OSAC – Exhibit #1

The testimony provided by Mr. Ohlde is summarized below.

Mr. Ohlde thinks it is important to get the voices of those in the I/DD community "out there" as far as the school districts are concerned because a lot of school districts are not like the Bend-LaPine school district that he attended. In Bend, Mr. Ohlde said a lot of services are not the same as around the rest of the state. Mr. Ohlde would like to see these kids get the opportunities that he got in high school and to learn about Job Match and all the different services out there some of which are new that he didn't even have the opportunity to use. Mr. Ohlde thinks it is important and stated if he can hold down a job in one spot for 15 years, what is holding these kids back to get the services and a job they can thrive doing in the long term.

Written Comments

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

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

Association of Persons Supporting Employment First, Tara Asai, President – Exhibit #3

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

Oregon Rehabilitation Association (ORA), Danielle Vander Linden, Director of Program, Policy, and Member Services – Exhibit # 4

The written comments provided by Ms. Vander Linden on behalf of ORA are outlined below.

Preamble policy language regarding services provided lumps all types of employment/services that are not "individual integrated employment" together with unemployment and non-work day activities. It appears by the revised language in this rule that it is the assumption that all individuals are capable of working in an integrated community setting or that they are interested in working. Although Oregon is an Employment First state, providers want to stress the importance of offering a full range of

employment supports and services as consistent with a person-centered approach to employment.

There have been a number of rules to review and provide feedback on in a small window of time. Many providers did not have a good opportunity to review the updates as they are facing other challenges in regards to billing and being paid for services through the eXPRS system.

Provider costs in the fiscal impact statement seem to be underestimated. Rates have been reduced while the level of need in the employment setting has not been adequately captured. Providers are expressing concern over how they will sustain long term with the current rate structure.

Job coaching rate does not allow for individual illness, paid time off, etc. Provider can't control how many hours an individual actually works. Clarification around this would be helpful.

Definition of "ISP Team" requires providers to be invited by the individual. This still makes providers nervous knowing they may not be invited to the ISP team meeting even though they are providing employment services.

Additional comments provided by ORA are summarized in Attachment A.

Oregon IDD Coalition (Coalition), Leslie Sutton, Policy Analyst – Exhibit #5

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

The Coalition is concerned the fiscal impact statement may underestimate the costs of credentialing and training (3 days and \$160). The additional expenditures for training, travel, and lodging that may be necessary are not captured in the fiscal impact analysis.

The Coalition says training requirements for employment providers are specific to each service category of employment. The Coalition says this requires specialized recordkeeping for each service provided by that provider, so providers can match an "endorsed" provider to a specific service billed for an individual. The Coalition says many provider systems track the provider and service provided, but do not link to a database that

would authorize an endorsed provider to provide that specific element. The Coalition says ODDS must build in a capability with the Plan of Care to link the service authorized to the provider to ensure the provider is trained and authorized to provide the supports they are providing.

The Coalition says self-employment must "yield(s) an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills". The Coalition reads "similar experience" to mean the income from a self-employment business would be comparable to other self-employment businesses of the same "business age" and requiring similar tasks, skills, and training. The Coalition said it often takes a "bit of time" for a business to be profitable and this should be taken into account when comparing self-employment income of an individual with disability to that of an individual without a disability.

**Oregon Council on Developmental Disabilities (Council), Leslie Sutton, Policy Analyst and Jaime Daignault, Executive Director—
Exhibit #6**

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

The Council offers nine suggestions in regards to the rules:

- "1. Accurately align employment rules with Oregon statutes.
2. Ensure that the Competitive Integrated Employment definition requires people have access to employee benefits like employees without disabilities.
3. System sustainability and billing requirements require that job coaches be paid for hours they work, not the hours the customer works.
4. Self-determination principles do not require that all people receiving employment services have ISP teams.
5. Self-determination, person-centered planning principles, and federal regulations require that ISP meetings must be driven by the person.
6. People receiving small group employment or job coaching services must receive minimum wage or above.
7. Employment services for people under age 18 must be available.

8. Skills training in the employment rule must match the skills training provisions in other rules and ensure that a person has continued access to skills training for various subjects.

9. Providers can only exit private pay customers for failing to pay for services."

One issue the Council has is the employment rules misquote Oregon statutes in several places and that ODDS must correct the errors.

Another issue the Council finds with the proposed rules (411-345-0025(9)(a)(A)(iii)) is the rules allow providers to bill job coaching hours based on the numbers of hours a supported individual works, instead of the number of hours a job coach is working with the individual. The Council says this means a provider is billing Medicaid waiver services for hours the provider is not working. This means if a person works 40 hours, the job coach gets paid for 40 hours, even if the job coach was only with the person for one hour (which means the provider gets paid for 39 hours they did not work).

The Council states Medicaid is a payment system of services rendered. The Council has concern about Oregon allowing providers to bill for hours they are not rendering services. The Council says system sustainability, accountability, and quality assurance "demand that Oregon change this provision to pay providers for hours they provide a service to an individual." The Council thinks allowing providers to be paid for services they are not providing takes money away from the I/DD system that could be used to support people with I/DD in other ways.

The Council recognizes there are not enough job coaches and they support efforts to create incentives that encourage providers to enter the job coaching market. The Council feels, however, that allowing providers to bill for hours they are not working is not a reasonable incentive.

The next issue the Council has is that self-determination includes authority for a person with I/DD, with the help of social support if needed, to control resources and purchase supports (OAR 411-340-0020(94)(b)). Under this, the Oregon I/DD support system does not require an ISP team for all individuals. The employment rule, however, requires an ISP team for all individuals receiving employment support, which is not accurate, empowering, or in alignment with self-determination principles. The Council

recommends all references to "ISP Team" in the employment rule be changed to "the individual and their ISP team, if needed."

The Council talks about minimum wage and said it is the lowest rate for an hour of an American's time. The Council said individuals with disabilities are sometimes paid less than minimum wage, which perpetuates inequality. The Council said in 2011, the Centers for Medicare and Medicaid Services (CMS) said individuals with disabilities must be paid minimum wage or above. The Council pointed out that CMS issued guidance that individual supported employment and small group supported employment must include compensation at minimum wage or above, but not less than the customary wage and benefit level paid by the employer for the same or similar work performed by those without disabilities. The Council says the proposed rule is unclear as to if minimum wage or above is required for job coaching or small group services for jobs established prior to December 28, 2014.

The Council says it looks forward to partnering with ODDS to make employment a reality for Oregonians with I/DD who want to work.

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

OSAC, Leslie Sutton, Policy Analyst for the Council – Exhibit #7

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

OSAC feels individuals under 18 should have access to employment services because it will help them be successful in school, work, and life. Many of the individuals involved in OSAC worked during high school. Those individuals feel it showed them they could work and build a resume, and it showed employers that individuals with I/DD can work and be successful. The members of OSAC feel their high school work experiences helped them learn what it is like to have a job, how to stay on task, and how to be a part of the working world.

Those on OSAC who did not work, wish they did because it would have: helped them feel more involved and included; been easier for them to see themselves as independent; and would have been easier for their families

and others to see them as independent. OSAC feels students need to have employment experiences and ODDS needs to support that.

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 their 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).

The written 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.

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Rule Number and Proposed Rule Language	Comment	ODDS Response Permanent Rule Language
411-345-0010 Statement of Purpose		
<p>(1) These rules, OAR 411-345-0010 through 411-345-0270, effectuate Oregon's Employment First policy under which the employment of individuals with developmental disabilities in fully integrated work settings is the highest priority over unemployment, segregated employment, or other non-work day activities.</p>	<p>Asai - To make the purpose statement consistent with the rules, "fully integrated work settings" should be deleted and "individual integrated employment" should be added place of it.</p>	<p>ODDS considered Ms. Asai's comments and made additional edits.</p> <p>ODDS changed all references from "Individual Integrated Employment" to "Competitive Integrated Employment". This term is defined, and has been incorporated throughout the rule in order to align with federal law and regulations. OAR 411-345-0025(1) was changed to reflect that competitive integrated employment is the highest priority.</p> <p><i>(1) These rules, OAR 411-345-0010 through 411-345-0270, effectuate Oregon's Employment First policy under which the employment of individuals with developmental disabilities in competitive integrated employment is the highest priority over unemployment, segregated employment, or other non-work day activities.</i></p>
411-345-0020 Definitions		
<p>(5) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection,</p>	<p>ORA -The definition does not encompass all of the duties required of providers. The duties extend "far beyond" assistance with ADL, IADL, and health-related tasks.</p>	<p>ODDS considered ORA's comments but did not make additional edits at this time.</p> <p>The definition is aligned with federal</p>

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<p>set-up, hands-on, standby assistance, and reminding.</p>	<p>ORA states the term seems very caregiver focused, which is not in alignment with person-centered philosophy providers and the state would like to see reflected.</p>	<p>regulations and Oregon's Community First Choice K Plan. ODDS encourages ORA and member organizations to submit specific information regarding what is not adequately captured in the definition, and recommendations for future changes.</p>
<p>(12) "Competitive Integrated Employment" means employment where an individual is compensated at a rate that: (a) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.206(a)(1)) or the rate specified in the applicable state or local minimum wage law; and (b) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or (c) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not</p>	<p>Asai - The yellow highlighted section should be deleted. (a) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.206(a)(1)) or the rate specified in the applicable state or local minimum wage law; Council - Sections (c) and (d) are improperly switched and "or" and "and" are improperly used. The mistake makes it seem like individuals who are self-employed would need to receive benefits. The Council asks ODDS to reverse (c) and (d) to make clear that a component of integrated competitive employment includes benefits. The Council says it should read: <u>"(c) Is eligible for the level of benefits provided to other employees or;</u> <u>(d) In the case of an individual who is self-</u></p>	<p>ODDS considered Ms. Asai's comment but did not make the suggested change. ODDS kept the references to the Fair Labor Standards Act in the rule to maintain clarification regarding the wage requirements, maintain alignment with federal laws and regulations, as well as increase enforcement capability. ODDS considered the Council's recommendations and made additional edits. <i>(11) "Competitive Integrated Employment" means work that is performed on a full-time or part-time basis (including self-employment):</i> <i>(a) For which an individual:</i> <i>(A) Is compensated at a rate that:</i> <i>(i) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29</i></p>

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<p>individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and (d) Is eligible for the level of benefits provided to other employees.</p>	<p><u>employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills."</u></p>	<p><i>U.S.C.206(a)(1)) or the rate specified in the applicable state or local minimum wage law; and (ii) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or (iii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and (B) Is eligible for the level of benefits provided to other employees. (b) That is at a location where an employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable</i></p>

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		<p><i>positions interact with other persons and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions; and (c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.</i></p>
<p>(13) "Customized Integrated Employment" means competitive integrated employment for an individual with a disability that is based on an individualized determination of the strengths, needs, and interests of the individual, is designed to meet the specific abilities of the individual and the business needs of the employer, and is carried out through flexible strategies, such as:</p> <p>(a) Job exploration by the individual;</p> <p>(b) Working with an employer to facilitate placement, including:</p> <p>(D) Providing services and supports at the job location.</p>	<p>Asai - Highlighted sections should be added: (b) Working with an employer to facilitate placement and support on-going employment, including... (D) Providing services, consultation, and supports at the job location.</p>	<p>ODDS considered Ms. Asai's comment and made additional edits.</p> <p>The original definition was one page long. It was shortened and made more broad to ensure it captures these and other key elements.</p> <p><i>(12) "Customized Employment" means competitive integrated employment for an individual with a disability that is based on an individualized determination of the strengths, needs, and interests of the individual, is designed to meet the specific abilities of the individual and the business needs of the employer.</i></p>

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<p>(28) "Facility-Based" means a service that is operated at a fixed site owned, operated, or controlled by a service provider where an individual has few or no opportunities to interact with people who do not have a disability except for paid staff.</p>	<p>ORA - All reference to 8 or fewer individuals was removed from the definition, but not from the Executive Order [13-04], which could cause confusion in the future. Providers appreciate the removal of 8 or fewer to the rule. Providers remain concerned that if the site is owned or controlled by the provider, that will prevent providers from creating and/or retaining small, community-based businesses. Many already have such shops and stores and have invested significantly in them.</p>	<p>ODDS considered ORA's comment but did not make additional edits.</p> <p>Executive Order 13-04 has been superseded and replaced by Executive Order 15-01. This order regarding Employment Services for Individuals with Intellectual and Developmental Disabilities, has been aligned with ODDS' definition of "facility-based." Integration remains a key element that distinguishes community and facility based services.</p>
<p>(31) "Important for an Individual" means the areas of the life of an individual that relate to being healthy, safe, and a valued member of the community.</p>	<p>Asai - This definition should be deleted.</p>	<p>The term is not used under these rules.</p>
<p>(37) "Integration" as defined in ORS 427.005 means: (a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people; (b) Participation by individuals with intellectual or developmental</p>	<p>Asai - Although CMS and the implementation of Olmstead and the ADA, include language around employment in their definition of integration, the Oregon rule omits this. The following additional language under "d" should be added to the definition of "Integration."</p>	<p>Elements from Ms. Asai's recommended language have been incorporated in the definition for "Competitive Integrated Employment" and "Integrated Employment Setting."</p> <p>ODDS agreed with the comments made by OSAC and the Council and made additional edits.</p>

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<p>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 developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.</p>	<p>“Integration” as defined in ORS 427.005 means:</p> <p><u>(d) Individuals with intellectual or developmental disabilities work in typical employment settings in the community where they have regular contact with their non-disabled co-workers.</u></p> <p>OSAC - The integration definition must expand to include people without disabilities rather than just people without I/DD.</p> <p>Council - The OAR misquotes ORS 427.005. The language that reads "without an intellectual or developmental disability" should read "without disabilities". The language should be changed to correctly quote Oregon law and the true definition of integration.</p>	<p>(35) <i>"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 that are 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> <p><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>
<p>(41) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made</p>	<p>Asai - Add language that says "The ISP includes the Career Development Plan."</p>	<p>ODDS agreed with Ms. Asai's comment and made additional edits.</p> <p>(39) <i>"ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and</i></p>

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<p>during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service 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.</p>		<p><i>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 for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.</i></p>
<p>"ISP Meeting"</p>	<p>Council - Under current Medicaid regulations (42 CFR 441.540), the person-centered service plan must be "driven by" the individual. The definition needs to change to reflect the ISP meeting is "driven by" the individual.</p> <p>OSAC - Individuals who use services should run their own ISP meetings.</p>	<p>"ISP Meeting" is not a term defined under OAR 411-345.</p>

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<p>(44) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator or personal agent, and others chosen by the individual, such as service providers and family members.</p>	<p>ORA - The definition requires providers to be invited by the individuals. This makes providers nervous knowing that they may not be invited to the ISP team meeting even though they are providing employment services.</p>	<p>ODDS considered ORA's comments but did not make additional edits.</p> <p>Under the rules, individuals who use services are encouraged to run their own ISP meetings.</p>
<p>(54) "Person-Centered Planning": (a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540. (b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help: (A) Determine and describe choices about personal goals, activities, services, service providers, service settings, and lifestyle preferences; (B) Design strategies and networks of support to achieve goals and a</p>	<p>Asai - The language highlighted in yellow should be deleted: (a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.</p> <p>Subsection (b) of this definition should be replaced with the following: <u>"Person-Centered Planning is a process to assist people with disabilities and their families to plan for the future. By focusing on the Person's strengths and preferences and specific support needs, this planning creates a snapshot of possibilities for the future and is useful as</u></p>	<p>ODDS considered Ms. Asai's comments but did not make additional edits.</p> <p>The wording of the definition was vetted through the Rules Advisory Committee and is defined consistently throughout all ODDS rules.</p>

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<p>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.</p>	<p><u>a blueprint to chart specific action steps. Capitalizing on what is learned about the Person and where to connect with opportunities in the community including employers, a Person-Centered Plan lays a foundation for the ISP and Career Development Plan."</u></p> <p>(A), (B), and (C) should be deleted.</p>	
<p>(58) "Productivity" as defined in ORS 427.005 means: (a) Regular engagement in income producing work, preferably competitive integrated employment with supports and accommodations to the extent necessary, by an individual with an intellectual or developmental disability, which is measured through improvements in income level, employment status, or job advancement; or (b) Engagement by an individual with an intellectual or developmental disability in work contributing to a household or community.</p>	<p>ORA - The wording "in income level, employment status, or job advancement" is limiting and doesn't allow smaller milestones to be recognized.</p> <p>Council - This misquotes ORS 427.005 by breaking the language of the definition in to two parts, which improperly changes the meaning of the statutory language.</p>	<p>ODDS considered ORA's comment and welcomes specific recommendations.</p> <p>ODDS considered the Council's recommendation and made additional edits.</p> <p><i>(52) "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 with an intellectual or developmental disability in work contributing to a household or community.</i></p>

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<p>(67) "Situational Assessment" means an assessment that maintains the qualities of a vocational assessment but is administered on-site in an integrated employment setting, where an individual is evaluated in the performance of work activities typical to the setting where the assessment is administered.</p> <p>(78) "Vocational Assessment" means an assessment administered to provide employment related information essential to the development of, or revision of, the employment related planning documents for an individual including, but not limited to, the ISP and Career Development Plan.</p>	<p>Asai - The definitions for "situational assessment" and "vocational assessment" should be deleted. Since Discovery is being used as a comprehensive planning service, it would seem "incongruent" to have Vocational and Situational Assessments as a tool. The definitions should be deleted or have the same definition as used in Oregon VR.</p>	<p>ODDS considered Ms. Asai's comments and made additional edits.</p> <p>ODDS deleted "situational assessment."</p> <p>ODDS kept the term "vocational assessment" to specify that, as required under Executive Order 13-04, and OAR 407-025, ODDS will not fund vocational assessments in sheltered workshop settings.</p>
<p>411-345-0025 Services Provided</p>		
<p>(1) The delivery of employment services provided under these rules presumes all individuals eligible for services are capable of working in an integrated employment setting and earning minimum wage or better.</p>	<p>ORA - This lumps all employment and services that are not "individual integrated employment" together with unemployment and non-work day activities. It appears the assumption is all individuals are capable of working in integrated community settings or they are interested in working. Although Oregon is an</p>	<p>ODDS considered ORA's comments but did not make additional edits.</p> <p>With the right job match, all individuals who have a disability can be successful in a competitive integrated employment setting for which the compensation is minimum wage or better.</p>

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	<p>Employment First State, providers feel it is important to offer a full range of employment support and services as consistent with a person-centered approach to employment.</p>	
<p>(9) Employment service providers operating under these rules must provide one or more of the following employment services: (a) SUPPORTED EMPLOYMENT - INDIVIDUAL EMPLOYMENT SUPPORT: (A) JOB COACHING: (ii) Individuals utilizing this service for jobs obtained prior to December 28, 2014 are optimally compensated at or above the minimum wage. Effective July 1, 2015, all jobs that pay below minimum wage must be supported through another employment service available under these rules.</p>	<p>Council - The language "optimally compensated at minimum wage or above" indicates that is ideally what an individual would be paid, but does not require it. The language is also not clear on if jobs established before December 28, 2014 could remain paying less than minimum wage. The Council asks this language be made more clear by inserting "<u>As of July 1, 2015, individuals utilizing this service must be compensated at or above minimum wage. Supports for jobs that pay below minimum wage cannot be provided through individual or small group supported employment services.</u>"</p>	<p>ODDS considered the Council's recommendation and made additional edits.</p> <p><i>(ii) Individuals utilizing this service for jobs obtained prior to December 28, 2014 are optimally compensated at or above the minimum wage. Individuals utilizing this service for jobs obtained after December 28, 2014, must be compensated at or above the minimum wage. Effective July 1, 2015, all jobs that pay below minimum wage must be supported through another employment service available under these rules, including all jobs obtained prior to December 28, 2014.</i></p>
<p>(9)(a)(A)(iii) Job coaching services must be provided, at minimum, for the number of hours identified in an ISP. Providers may bill job coaching hours based on the hours a supported individual works.</p>	<p>ORA - This does not allow for individual illness, paid time off, etc. ORA states providers cannot control how many hours an individual actually works. ORA feels clarification around this section would be helpful.</p>	<p>ODDS considered ORA's comment and made additional edits.</p> <p>Reference to this requirement was removed from rule, and will be addressed in policy outside of the rule.</p>

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(9)(a)(A)(iv) Support to maintain self-employment requires the following:	ORA - Clarification on the intent would be helpful to providers, as this section requires an annual review that requires action by the individual.	ODDS considered ORA's comment but did not make additional edits at this time. ODDS anticipates further guidance will be developed in policy outside of the rule.
(9)(a)(C)	Asai - Add a (C) which states: <u>"(C) EMPLOYMENT CONSULTATION FOR THE EMPLOYER</u> <u>(i) Support /training for co-workers and management to develop natural supports</u> <u>(ii) On-going support for developing and maintaining workplace accommodations including technology, tools, and social supports that support not only the Employee, but also co-workers that support the Employee."</u>	ODDS considered Ms. Asai's comment but did not make additional edits at this time. ODDS will continue to consider the comment as part of future rule and policy making.
(9)(b) SUPPORTED EMPLOYMENT - SMALL GROUP EMPLOYMENT SUPPORT: (F) Individuals utilizing this service for jobs obtained prior to December 28, 2014, are optimally compensated at or above the minimum wage. Effective July 1, 2015, a job that pays below minimum wage must be supported through another Employment Service	OSAC - Earning minimum wage is an equality issue. Individuals need income to do the things they enjoy. Individuals with disabilities, who work, should be paid minimum wage or higher, just like everyone else.	ODDS considered OSAC's comment and made additional edits. As one measure to ensure individuals with disabilities earn the same wages and benefits as coworkers who do not have disabilities, these rules require that Individual Employment Support ("Job Coaching") or Small Group Employment Support be used for support to work in

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available under these rules.		<p>jobs that pay minimum wage or better. Otherwise the more appropriate service is Employment Path.</p> <p><i>(F) Individuals utilizing this service for jobs obtained prior to December 28, 2014, are optimally compensated at or above the minimum wage. Individuals utilizing this service for jobs obtained after December 28, 2014, must be compensated at or above the minimum wage. Effective July 1, 2015, a job that pays below minimum wage must be supported through another Employment Service available under these rules, including all jobs obtained prior to December 28, 2014.</i></p>
<p>(9)(c) DISCOVERY: (A) A comprehensive and person-centered employment planning support service to better inform an individual seeking individual integrated employment and develop a Discovery Profile. It includes a series of work or volunteer related activities to inform the individual and the job developer about the strength's, interests, abilities, skills, experiences,</p>	<p>Asai - Discovery is a strategy that was developed in customized employment to develop jobs for individuals with significant support challenges. The ideal, under this strategy, is all individuals with disabilities who desire employment will be able to obtain it. In order to obtain employment outcomes, it is recommended the Department use the following to replace the current language. <u>"(A) A comprehensive person-centered</u></p>	<p>ODDS considered Ms. Asai's recommendation and made additional edits.</p> <p>ODDS intends to engage a stakeholder group to review the Discovery service.</p> <p><i>(c) DISCOVERY: (A) A comprehensive and person-centered employment planning support service to better inform an individual</i></p>

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<p>and support needs of the individual, as well as identify the conditions or employment settings in which the individual will be successful. It is also an opportunity for the individual to begin active pursuit of individual integrated employment.</p> <p>(B) May include job and task analysis activities, assessment for use of assistive technology, job shadowing, informational interviewing, employment preparation, resume development, and volunteerism to identify transferable skills and job or career interests.</p>	<p><u>employment service that informs an Individual and his/her team about the Individual's strengths, interests, and contributions for employment as well as the ideal conditions for success.</u></p> <p><u>Analyzing detailed information from past experience and observing novel experiences allows the Person performing the Discovery process to develop a picture of the Individual's best possibilities for working in the community. Information is then translated into a written Discovery Profile that can be used as a blueprint for job development and customized employment in the Individual's local community.</u></p> <p><u>(B) A more in-depth Discovery process may include customized job trials or work experience to gain insight into technology and specialized supports that the Individual may not have had the opportunity to utilize in the past, but may be important for job success."</u></p>	<p><i>seeking competitive integrated employment and develop a Discovery Profile. It includes a series of work or volunteer related activities, completed in integrated employment settings, to inform the individual and the job developer about the strength's, interests, abilities, skills, experiences, and support needs of the individual. Discovery includes analyzing detailed information from novel and past experiences in order to identify the conditions or integrated employment settings in which the individual shall be most successful.</i></p> <p><i>(B) May include job and task analysis activities, assessment for use of assistive technology, job shadowing, informational interviewing, employment preparation, resume development, and volunteerism to identify transferable skills and job or career interests.</i></p>
<p>(9)(d) EMPLOYMENT PATH SERVICES:</p> <p>(A) To provide learning and work experiences, including volunteer work, where an individual may develop</p>	<p>Asai - Employment Path Services should be time-limited with a specific goal of employment. This should be discussed at the annual ISP. The following language is recommended to replace the current</p>	<p>ODDS considered Ms Asai's comment but did not make additional edits at this time. ODDS will continue to consider the comment as part of future rule and policy making.</p>

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<p>general, non-job-task-specific strengths and skills that contribute to employability in integrated community settings. Producing goods or services may be incidental to this service but the primary purpose must be to develop general employment skills that may be transferred to an individual integrated job. (B) Are expected to occur over a defined period of time with specific outcomes to be achieved, as determined by the individual and his or her service and supports planning team through an ongoing person-centered planning process. (C) Requires that an individual have an employment-related goal in his or her ISP. General habilitation activities accessed through employment path services must be designed to support such employment goals. (D) Employment path services are a facility-based service if delivered at a fixed site operated, owned, or controlled by the service provider and where the supported individual has few or no opportunities to interact with people who do not have a disability</p>	<p>language in this section. <u>"(d) EMPLOYMENT PATH SERVICES:</u> <u>(A) To provide learning and work experiences that contribute to the employability of an individual in an individual integrated job.</u> <u>(B) Specific outcomes to be achieved, as determined by the Individual and his or her service and supports planning team will be defined on an annual basis at the ISP. Requires that an individual have the goal of employment and includes a Career Development Plan as part of his/her ISP. General habilitation activities accessed through employment path services must be designed to support the employment goal.</u> <u>(C) Employment path services occur in the community in the most least restricted environment possible."</u></p>	

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<p>except for paid staff. Facility-based employment path services may include support in a sheltered workshop if support is to develop general skills that may be transferred to an individual integrated job.</p>		
<p>(12) Agency service providers operating under these rules may provide one or more of the following services: (b) SKILLS TRAINING. Skills training are specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and are a means for an individual to acquire, maintain, or enhance independence. (C) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator or personal agent must reassess or redefine the use of skills training with the individual for that particular goal.</p>	<p>Council - This uses outdated language for incidents when skills training does not work because it potentially cuts the person off from future skills training on any subject. The Council asks the Department update the language to the following to ensure individuals have ongoing skills training to meet their goals. <i>"When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the personal agent must reassess or redefine the use of skills training with the individual for that particular goal."</i></p>	<p>ODDS considered the Council's comment but did not make additional edits at this time. ODDS will continue to consider the comment as part of future rule and policy making.</p>
<p>411-345-0027 Qualification for Services</p>		
<p>(3) Employment services for individuals under the age of 18 years</p>	<p>Council - Youth should have access to employment services, but the concern is</p>	<p>ODDS considered the Council's comment and made additional edits.</p>

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<p>must have Department approval. Employment services do not include services available to an individual under the Rehabilitation Act of 1973 or services available to an individual under P.L. 94-142 (Individuals with Disabilities Education Act).</p>	<p>the rules are for "individuals" receiving employment services. The Rules define "individual" as an adult with I/DD. To serve youth, the definition of individual must change to accommodate youth receiving employment services.</p>	<p><i>(33) "Individual" means a person with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual.</i></p>
<p>411-345-0030 Service Provider Requirements</p>		
<p>(2) EMPLOYMENT SERVICE PROVIDER REQUIREMENTS: (b) INDEPENDENT PROVIDERS. All qualified independent providers must: (c) AGENCY SERVICE PROVIDERS.</p>	<p>ORA - It is difficult to understand the broad discrepancy in training requirements between individual and agency providers. ORA says if both types of providers are providing services to the same population, it seems training should be consistent for both of them.</p>	<p>ODDS considered ORA's comment but did not make additional edits.</p> <p>ODDS is working to align requirements for all provider types.</p>
<p>(3) EMPLOYMENT PROVIDER QUALIFICATIONS: (d) DISCOVERY PROVIDER. A provider of discovery services must also possess and demonstrate the following qualifications: (B) Be able to demonstrate the core competencies of a discovery provider within one year of employment,</p>	<p>SEIU Local 503 - "A job seekers' strengths..." An apostrophe is needed with "seekers" as it is possessive.</p>	<p>ODDS considered SEIU's comment and made additional edits.</p> <p><i>(ii) Be able to demonstrate the core competencies of a discovery provider within one year of employment, including skills to facilitate the discovery process, apply person-centered planning techniques, develop an employment</i></p>

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including skills to facilitate the discovery process, apply person-centered planning techniques, develop an employment portfolio, identify a job seekers strengths, interests, and talents, and integrate all pertinent information required by the Department into a Discovery Profile.		<i>portfolio, identify a job seekers' strengths, interests, and talents, and integrate all pertinent information required by the Department into a Discovery Profile.</i>
411-345-0095 Service and Payment Limitations		
(3) Employment services and payment for employment service 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;	ORA - It is not clear if this average is determined over a month, quarter, year, or some other time period.	ODDS considered ORA's comment but did not make additional edits at this time.
411-345-0140 Entry, Exit, and Transfer Requirements for Agency Service Providers		
(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.	SEIU Local 503 - Please add sexual orientation and gender identity.	ODDS considered SEIU's comment but did not make additional edits at this time.

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<p>(4) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.</p> <p>(a) An agency service provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:</p> <p>(D) The individual fails to pay for services; or</p>	<p>Council - Under Medicaid rules, providers can bill a Medicaid customer for services to the extent the person has not met their cost sharing (deductible, coinsurance, copay) responsibilities. The rule language implies providers can bill customers for the amount of the service after Medicaid pays, which is not allowed. The language should be changed to "An individual who privately pays for the service fails to do so" in order to avoid confusion.</p>	<p>ODDS considered the Council's comment but did not make additional edits.</p>
<p>411-345-0160 Individual Support Plan</p>		
<p>(4) A Career Development Plan and informal vocational assessment must be developed and implemented with the ISP as follows. The Career Development Plan must:</p> <p>(c) Be based on person-centered planning principles;</p>	<p>ORA - The section talks about person-centered planning, but prioritizes "employment in integrated settings" without individual consent.</p>	<p>ODDS considered ORA's comment but did not make additional edits.</p> <p>Oregon is an Employment First State. This means that employment is the first and priority option for working aged adults using non-residential day services. Through person-centered planning, individuals can identify the services and supports that best suit them in order to make an informed choice about pursuing employment in the community and achieving individual employment goals.</p>

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<p>(6) Agency service providers must: (a) Assign a staff member to participate as a team member in the development of the ISP and Career Development Plan when invited by the individual;</p>	<p>ORA - This section requires agency service provider to assign staff to an individual's ISP team when the individual requests it. It is not clear if this is a billable service. It appears the training required for the ISP process and CDP does not appear to be billable by agency service providers either.</p>	<p>ODDS considered ORA's comment but did not make additional edits</p> <p>This issue is addressed in policy and guidance outside of the rule.</p>
<p>(8) In preparation for the ISP meeting, the agency service provider must: (a) Gather person-centered information regarding preferences, interests, and desires of the individual supported;</p>	<p>ORA - This requirement may be reasonable for individuals with a history of service with an agency, but could be more difficult for individuals just starting out. It is unclear if this task is driven by service coordinators as they are the people responsible for the ISP and CDP process, not providers.</p>	<p>ODDS considered ORA's comment but did not make additional edits.</p> <p>This issue is addressed in policy and guidance outside of the rule.</p>