

OREGON ADMINISTRATIVE RULE CHANGES
ODDS & MEDICAID-FUNDED
EMPLOYMENT SERVICES
CHAPTER 411, DIVISION 345

CHANGES EFFECTIVE 12/28/2014

DISCLAIMER

This power point does not contain all of the content in 411-345.

It is important that you read these rules in their entirety.

REASONS FOR THE RULE CHANGES

Oregon's Office of Developmental Disability Services (ODDS) has made changes to Oregon Administrative Rule 411, Division 345 regarding ODDS and Medicaid-funded employment services for adults with intellectual and developmental disabilities.

Reasons for these changes are to:

- Align rules and services with Oregon's Employment First policy, [OAR chapter 407, division 025](#), regarding Integrated Employment for People with Intellectual and Developmental Disabilities, Oregon's Executive Order No.13-04, and Oregon Revised Statute;
- Align the rule with Oregon's Comprehensive and Support Services waivers;
- Align rules and services with regulations and guidance from the Centers for Medicare and Medicaid Services (CMS) and the federal agency responsible for regulating Medicaid-funded services; and
- Align other non-residential and group based days services with Oregon's Community First Choice (K Plan) and federal regulations governing these services.

UNDERLYING POLICIES NOW EXPLICITLY STATED IN THE RULE

- **Employment is the preferred activity** for individuals receiving services under these rules. **Individual integrated employment is the highest priority** over unemployment, segregated or sheltered employment, small group supported employment, or non-work day activities.
- 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 at least minimum wage.
- Consistent with the person-centered approach to these services, individuals accessing employment services under these rules must be encouraged, on an ongoing basis, to explore their interests, strengths, and abilities relating to employment or career advancement.
- Employment services have an **optimal and expected outcome of sustained paid employment** and work experience leading to **further career development** and individual integrated employment for which an individual is compensated at or above the state's minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

See OAR 411-345-0025(1)-(5)

EMPLOYMENT SERVICES AVAILABLE

- Supported Employment
 - Individual Supported Employment
 - Job Coaching
 - Job Development
 - Small Group Supported Employment
- Discovery
- Employment Path (Facility or Community)



SUPPORTED EMPLOYMENT

NOW DISCRETE AND STAND ALONE SERVICES:

Individual Employment Support - Job Coaching:

- Support to maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.
- Job Coaching does not include support in volunteer work.

Small Group Supported Employment:

- Services and training activities provided in regular business, industry, and community settings.
- For groups of 2-8 individuals with disabilities.
- Must be provided in a manner that promotes integration into the work place and interaction with people without disabilities.
- Does not include vocational services in a facility-based work setting.
- This service does not include support in volunteer work.

SUPPORTED EMPLOYMENT WAGE REQUIREMENTS

Job Coaching:

- This service includes support to assist an individual to maintain **competitive integrated employment**. As outlined in the next slide, competitive integrated employment requires compensation at wage or better.
- 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.

See OAR 411-345-0025(9)(a)(A)(i) and (ii)

Small Group:

- 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.

See OAR 411-345-0025(9)(b)(F)

SUPPORTED EMPLOYMENT SERVICES

Competitive Integrated Employment means:

Work for which an individual:

(A) Is compensated at a rate that:

(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 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.

See OAR 411-345-0020(11)

SUPPORTED EMPLOYMENT SERVICES

Competitive Integrated Employment continued:

(b) Employment 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 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.

See OAR 411-345-0020(11)

SUPPORTED EMPLOYMENT SERVICES

Integrated Employment Setting means:

Employment 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 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.

See OAR 411-345-0020(36)

INDIVIDUAL EMPLOYMENT SUPPORT JOB DEVELOPMENT

Job Development:

- Support for an individual to obtain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.
- The job developed must provide compensation at or above the minimum wage but not less than the customary wage and level of benefits paid by the employer for the same or similar work.
- The job developed must meet criteria established in a Career Development Plan.
- Job Development may be authorized (by the SC/PA) in the limited circumstances where **the service is not available through Vocational Rehabilitation** and the **Department has approved authorization**.

See OAR 411-345-0025(9)(a)(B)

INTRODUCING DISCOVERY

NOW A STAND ALONE AND DISCRETE SERVICE

- Discovery is a comprehensive and person-centered employment planning support service to better inform an individual 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.
- 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.

DISCOVERY - CONTINUED

- Discovery must have an outcome of a Discovery Profile. The Discovery Profile must meet requirements established by the Department.
- Discovery should result in a referral to vocational rehabilitation services. [Best practices around the state suggest that a referral to VR is made at the time Discovery is authorized].
- Must be completed within a three month period. A three month extension may be authorized if the individual and the services coordinator or personal agent determines there is a legitimate reason.
- Legitimate reasons may include but are not limited to:
 - A medical event
 - There is an event that significantly changes the individuals strengths, interests, and abilities; or
 - An opportunity to participate in particular work trials or volunteer positions may only be scheduled outside of the three month period.

EMPLOYMENT PATH SERVICES

(PREVIOUSLY PREVOCAATIONAL SERVICES)

- To provide learning and work experiences, including volunteer work, where an individual may develop 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.
- 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.
- 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.

See OAR 411-345-0025(9)(d)(A)-(C)

EMPLOYMENT PATH SERVICES CONTINUED

Employment Path Facility:

- Employment path services are a facility-based service if it is 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 except for paid staff.

See OAR 411-345-0025(9)(d)(D)

OTHER DAY SERVICES - ATTENDANT CARE AND SKILLS TRAINING PROVIDED BY AN AGENCY SERVICE PROVIDER

- Previously called Alternatives to Employment Services and Community Inclusion, other non-employment day services includes:
- Attendant care and skills training support to meet ADL/IADL needs. This includes the IADL of socialization and integration into the community.
- This service is provided by an agency certified and/or endorsed under this rule, and in a group setting.

OTHER DAY SERVICES - ATTENDANT CARE AND SKILLS TRAINING PROVIDED BY AN AGENCY SERVICE PROVIDER

Day services are **facility-based** if delivered at a fixed site operated, owned, or controlled by the service provider where the supported individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

EMPLOYMENT SERVICE LIMITATIONS

- Only one service may be billed per individual per hour. Payments based on an outcome [Discovery or Job Development] are not in conflict with payments made based on direct service delivery.
 - Note: If an individual is participating in a work experience for purposes of Discovery, Employment Path may not be billed simultaneously. Although information from Employment Path may be used to inform the Discovery Profile.
- Employment services are limited to:
 - (a) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services; and
 - (b) 40 hours in any one week for job coaching if job coaching is the only service utilized.

See OAR 411-345-0095(2)-(3)

CAREER DEVELOPMENT PLAN

“Career Development Plan” means the part of an ISP that identifies:

- The employment goals and objectives for an individual;
- The services and supports needed to achieve those goals;
- The people, agencies, and providers assigned to assist the individual to attain those goals;
- The obstacles to the individual working in an individualized job in an integrated employment setting; and
- The services and supports necessary to overcome those obstacles.

See OAR 411-345-0020(7)

CAREER DEVELOPMENT PLAN

- In order to receive employment services, an individual must have an employment related goal in his or her ISP and Career Development Plan.
- All individuals utilizing services under these rules must participate in career development planning as a part of the annual ISP.

See OAR 411-345-0160

Additional guidance regarding who must complete a CDP as the new ISP rolls out is forthcoming. This requirement will not be enforced until the new ISP rolls out, except for the target population outlined under the former OAR 411-345

The target population includes: individuals using sheltered workshop services, transition aged youth within one year of leaving school, and individuals who are interested in actively pursuing integrated employment (including when discovery, job coaching is authorized, or when a referral to VR is made).

CAREER DEVELOPMENT PLAN – OTHER POLICY GUIDANCE

- The career plan must be developed, at minimum, as a part of the annual ISP process and more frequently as necessary.
- All individuals using ODDS-funded services who are eligible for employment services must participate in career development planning and have an opportunity to review and consider all employment services as part of the annual ISP.
- An individual must have an employment related goal in order to participate in ODDS services. The optimal and expected outcome of all ODDS and Medicaid-funded Employment Services is individual integrated employment at minimum wage or better.
- The employment goal must support this expected outcome. The individual must, at minimum, have an interest in exploring competitive integrated employment and developing general habilitative skills that can be transferred to a competitive and integrated employment setting.

QUALIFICATIONS FOR EMPLOYMENT SERVICES

- Employment services for persons under the age of 18 require Department approval.
- Services still cannot supplant those available under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

See OAR 411-345-0027(3)

- A transmittal with additional guidance regarding when employment and day services are available to individuals who have services available under IDEA is forthcoming and will be available shortly.

EMPLOYMENT SERVICE PROVIDER REQUIREMENTS

- (1) Providers of employment services must be
- (a) A provider certified under OAR chapter 411, division 323 [and endorsed under that rule to provider services under 411-345];
 - (b) A provider certified under OAR chapter 411, division 340; or
 - (c) A qualified independent provider. Independent providers who are employed by the individual [ie PSWs] may only provide Individual Employment support – Job Coaching.

See OAR 411-345-0030 regarding Service Provider Requirements

EMPLOYMENT SERVICE PROVIDERS TRAINING, QUALIFICATIONS & REQUIREMENTS

Employment Professional means:

An employee of an agency service provider, an independent provider, or an employee of an independent provider who has specific qualifications and training to provide employment services under these rules, including supported employment - individual employment support (job coaching and job development), supported employment - small group employment support, discovery, and employment path services.

See OAR 411-345-0020(21) regarding the definition for Employment Specialist

EMPLOYMENT SERVICE PROVIDERS QUALIFICATIONS

Employment Professionals must possess and demonstrate:

- Possess knowledge of best practice methodologies for the employment service provided; and
- Be able to demonstrate the core competencies of the employment service provided within one year of employment.

See OAR 411-345-0030(3)
regarding Employment Provider Qualifications

Additional guidance regarding how an Employment Professional will demonstrate these competencies is forthcoming.

EMPLOYMENT SERVICE PROVIDER TRAINING REQUIREMENTS

All Employment Professionals must participate in a competency-based employment training within 90 days of providing an employment service. The training must be one that has been approved by the Department.

See OAR 411-345-0030(4)
regarding Employment Provider Training

Additional guidance regarding trainings that have been approved by the Department is forthcoming. Free trainings are made available through Oregon Employment Learning Network (OELN). Of course providers may also access other training resources to meet this requirement.

Resources include qualified trainings through: ACRE, Virginia Commonwealth University, Training Resource Network, the Institute on Community Inclusion, and highline College.

EMPLOYMENT SERVICE PROVIDER TRAINING REQUIREMENTS

All Employment Professionals who provide the Discovery Service must complete a Department-approved training **before** being authorized to provide Discovery.

See OAR 411-345-0030(4)(c)(C)
regarding Employment Provider Training

EMPLOYMENT SERVICE PROVIDER TRAINING REQUIREMENTS

Effective July 1, 2016, agency service providers must have at least one employee who has the Department approved credentialing. Effective July 1, 2016, providers independently contracted to provide an employment service must have the Department approved credentialing.

See OAR 411-345-0030(4)(d) regarding Employment Provider Training

Additional guidance regarding credentialing programs that have been approved by the Department is forthcoming. This does include the APSE Certified Employment Support Professional (CESP) certification, and may include other substantial equivalents.

EMPLOYMENT SERVICE PROVIDER TRAINING REQUIREMENTS

By July 1, 2015, a discovery provider must be qualified as a vendor through Vocational Rehabilitation job placement in order to provide the discovery service.

See OAR 411-345-0030(3)(d)(B)

FUTURE CHANGES UNDER REVIEW

ODDS and stakeholders will be reviewing whether the following are appropriate as part of future changes:

1. Alignment with CMS regulations and the new HCBS setting requirements.
2. Align provider qualifications and training requirements for all provider organizations, Personal Support Worker employees, and independent contractors.
3. Align licensing/certification/endorsement requirements across provider organizations (those cert/endorsed under 411-323, 411-340, and 411-345).
4. Endorsement under 411-345 by type or level of employment service.
 - eg.: Discovery, Job Development and Job Coaching endorsement level 1; Small Group endorsement level 2; Employment Path endorsement level 3.
5. Remove non-employment services from OAR 411-345 regarding employment services.
6. ODDS is reviewing whether Career Development Planning is more appropriately addressed under a stand alone rule regulating the ISP and CDP.
7. To provide clarification regarding provider controlled settings.