SUPPORT SERVICES FOR ADULTS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

CHAPTER 411
DIVISION 340

Disclaimer

OAR references to the 411-340 support services rules are based on proposed language and are subject to change following the public comment period and finalization of Oregon Administrative Rules on December 29th, 2014.

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

Definitions

- A number of definitions that are commonly used across all Individuals with Intellectual and Developmental Disability Services Rules were moved to a new Definitions Rule 411-317. If you are looking for a definition that you cannot find, try looking in 411-317.

New and Significantly Changed Definitions

- New Waiver and all K plan services get definitions; discontinued services had their definitions removed.
- “Administrator Review” See OAR 411-318 for the significance of this term.
- Removed all definitions related to the former individual budget model of brokerage services.
- “Career Development Plan” relates to the new requirements for implementing Employment First.
- "Case Management Contact" describes a newly required kind of case management service.
- “Choice Advising” updated to specify that case management provider, service options, service settings, and service providers are subject to choice.
- “Community Transportation” adds that it “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. “

New and Significantly Changed Definitions

- “Completed Application” is defined by referring to the CDDP rule. It is an application required by the Department that is filled out completely, signed, and dated, and contains documentation required to make an eligibility determination.
- "Designated Representative" gets modified by adding that the DR is chosen by the individual.
- “Employer” gets defined, including to say an employer may also be a designated representative.
- "Individual" has added “(u)nless 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 to exercise the rights of the individual.”

New and Significantly Changed Definitions

- “Nursing Service Plan” is defined to make clear that it is not part of the ISP.
- "Protective Services" mean the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.
- “Provider Organization” had added that they are licensed or certified by the Department.
- "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available

411-340-0050 Inspections and Investigations

- (9) sets the expectation that Department reviews happen every two years.
- (10) established that a brokerage will get a report of findings from the review.
- (11) requires a response to the findings within 45 days.

411-340-0060 Complaints, Notification of Planned Action, and Hearings

- This rule and elsewhere in these OARS, matters of individual complaints and hearings defer to 411-318.
- The Department adopted OAR 411-318-0000 that provides a uniform complaints process. It is important for you to review and become knowledgeable of the requirements contained in the OAR 411-318-0000 rule.
- A power point presentation regarding those rules is available.

411-340-0110 Standards for Support Services Brokerage Entry and Exit

- (4) Reasons to exit an individual from support services now include:
  - (D) When an individual is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, ICF/ID, or other 24-hour residential program and it is determined that the individual is not returning home; or
  - (E) When an individual does not reside in Oregon or resides in an area outside the geographic service area of the brokerage

411-340-0120 Support Service Brokerage Services

- (1)(b) now requires that a brokerage is required to provide case management, removes the requirement to develop an individualized budget.
- (5)(d) is updated to include OHP Plus eligibility, in addition to OSIPM, as a thing a PA must attempt to help an individual to access.

411-340-0120 Support Service Brokerage Services

- (5)(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 as identified in the ISP 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 contact may be made by telephone or by other interactive methods. The outcome of the case management contact must be recorded in the progress notes. The purpose of the case management contact is:
  - (a) To assure known health and safety risks are adequately addressed;
  - (b) To assure that the support needs of an individual have not significantly changed; and
  - (c) To assure that an individual is satisfied with the current supports.

See The Case Management Contact Requirements Technical Guide for more information about this.

411-340-0120 Support Service Brokerage Services

- (7) Requires that discussions related to choice advising be documented in the service record.
- (8) Level of Care is required for all individuals eligible for OHP plus or OSIPM.
  - Prior to accessing services and prior to an initial FNA (ANA).
  - Reviewed annually and not more than 60 days before an ISP renews.
  - It can be done by a PA or SC (a new LOC is not required just because an individual transfers from a CDDP).

411-340-0120 Support Service Brokerage Services

- (9) Functional Needs Assessment. Required to be completed:
  - Not more than 45 days from the date that the individual submitted a completed application to the CDDP or the date the individual became eligible for OHP Plus or OSIPM;
  - Prior to the development of an initial ISP;
  - Within 60 days prior to the authorization annual renewal of an ISP;
  - 45 days from the date an individual requests a reassessment.
  - Face to face

411-340-0120 Support Service Brokerage Services

- (9)(c) for some one needing another ANA (at renewal), requires that they participate in the reassessment and that they be notified of that requirement.
  - (A) Gives authority to terminate services based on failure to participate in the ANA/CNA.
  - (B) Allows the Department to make exceptions to (A).
  - (d) Sets a minimum 14 day timeframe to provide notice to the individual that the reassessment needs to happen.

411-340-0120 Support Service Brokerage Services

- (10) Individual Support Plan requirements
  - An initial ISP must be authorized within 90 days from the submission of a completed application, and no later than the end of the month following the month in which the level of care determination was made or no more than 45 days from the date the level of care determination was made.
  - A personal agent must revise the ISP for the individual as needed if a revision of the ISP is requested by the individual. The revision of the ISP must be completed within 30 days from the request of the individual.

411-340-0120 Support Service Brokerage Services

- (b)(D) requires that "other state plan services" besides K plan be listed on the ISP (such as SPPC)
- (c) requires that the ISP be made available in a way that it can be understood by the individual.
- (e)(E) allows an in home comprehensive services ISP to act as a support services ISP for up to 90 days.
- (f) removes the requirement to record the final cost of services at the end of the plan year.

411-340-0120 Support Service Brokerage Services

- (11) Annual plans are required for any individual not enrolled in any waiver or K plan services.
- (12)(i) requires a Career Development Plan be attached to the ISP of an adult
- (13) Case management transfers. When an individual requests to transfer to a CDDP or different brokerage, the CDDP must be notified within 5 days. Planning for the transfer must begin within 10 days unless the individual, brokerage and CDDP agree to a longer time frame.

411-340-0130 Using Support Services Funds to Purchase Supports

- (5) POST ELIGIBILITY TREATMENT OF INCOME. Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.
- (6) Service available is limited to:
  - the amount determined necessary by the ANA for attendant care, hourly relief care, skills training, and SPPC.
  - other support needs identified through the person centered planning process consistent with the expenditure guidelines
  - an average of 25 hours per week of employment services, unless it's job coaching, then 40 hours.

411-340-0130 Using Support Services Funds to Purchase Supports

- (8) Identifies types of support that may be available to an individual.
  - K plan services are available when an individual meets LOC, has an assessed need, and has OHP Plus. Individual cannot access them if, in order to gain OHP plus, the individual engaged in a transfer of assets.
  - Waiver services are available when an individual meets LOC and has OSIPM.
  - State Plan Personal Care is available to eligible individuals according to OAR 411-034.
  - See the In-Home Expenditure Guidelines for more information about specific services.

411-340-0130 Using Support Services Funds to Purchase Supports

- Provider Terminations. Actions and requirements related to Personal Support Workers is removed and now encompassed in 411-375. There is no more "sanctioning."
- Language for terminating non-PSW Independent providers remains. Causes for termination now include:
  - Violation of the requirement to maintain a drug-free work place;
  - Failure to provide services as required;
  - Failure to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or
  - exclusion or debarment by the Office of the Inspector General.

411-340-0130 Using Support Services Funds to Purchase Supports

- When a brokerage terminates a non-PSW independent provider notice must be given to the provider and must include:
  - An explanation of the reason for termination of the provider enrollment;
  - The alleged violation as listed in section (a) of this rule;
  - The appeal rights of the independent provider, including where to file the appeal; and
  - For terminations based on substantiated protective services allegations, only the limited information allowed by law

411-340-0135 Standards for Employers

- (1) Requires that there be an employer of record.
- (2) requires a service agreement be created by the employer that aligns with the ISP.
- (4) Describes “interventions,” or what to do when an employer isn’t fulfilling their duties as an employer.
  - Review of the employer responsibilities with the employer.
  - Provide training related to being an employer (STEPS)
  - Implement corrective actions resulting from a PSW complaint.
  - Identify an employer representative when the individual is unable to fulfill the duties of being an employer.
  - Identify another employer when the current employer is unable to fulfill the duties of being an employer.

411-340-0135 Standards for Employers

- (5) Employer Responsibilities:
  - (a) Describes what an employer should be able to do:
    - Find and hire PSWs
    - Supervise a PSW
    - Schedule a PSW
    - Track and verify hours worked
    - Identify and attempt to correct poor performance, take appropriate disciplinary action
    - Discharge an unsatisfactory personal support worker.

411-340-0135 Standards for Employers

- (5)(b) describes signs that employer related duties are not being fulfilled:
  - PSW complaints
  - Frequent errors on timesheets, mileage logs or other documents submitted for payment
  - Complaints to Medicaid Fraud
  - Observation by the Department or Brokerage that services are not being delivered as authorized in the ISP.

411-340-0135 Standards for Employers

- (5)(d) states that an individual may not be an employer if, after appropriate intervention, the individual still cannot fulfill the duties of being an employer they are ineligible to employ a PSW (at least until the next ISP renewal).

- In this event, the individual should be counseled on other available service options, including agency providers.

411-340-0135 Standards for Employers

- (6) Designating an employer representative.

- When the individual cannot be the employer, in order to continue to use a PSW, an employer representative must be appointed.
- When an employer representative is designated, the individual may still fulfill those duties of being an employer that they are capable of. When an individual and an employer representative split the duties, the assigned responsibilities should be documented in the individual's record.

411-340-0135 Standards for Employers

- A legal representative or designated representative may also be the employer representative
- An employer who is also the personal support worker must seek an alternate employer for purposes of the employment of the personal support worker.
- Those who are ineligible to be employer representatives include:
  - People with a history of substantiated abuse
  - People with a history of founded child abuse
  - People who have participated in billing excessive or fraudulent charges
  - People previously terminated from being an employer representative for failing to meet the duties of being an employer.

411-340-0135 Standards for Employers

- (8) Employer Terminations:
  - A notice must be given to the individual if an employer is being terminated.
  - An appeal must be received with in 45 days.
  - The brokerage director reviews the situation and issues a decision within 30 days of the appeal.
  - If the individual disagrees with the response, an appeal to the Department may be made within 15 days of the Brokerage's decision.
  - The Department will conduct and complete a review within 30 days and make a response, which will be final.
  - The Department may take action to terminate an employer without the brokerage first taking action.

411-340-0140 Using Support Services Funds for Certain Purchases Is Prohibited

- Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need; or
- Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized consumer safety agencies.

411-340-0160 Standards for Independent Providers Paid with Support Services Funds

- All PSW qualification standards removed from this rule and incorporated in OAR 411-375.
- Background check changes for non-PSW independent providers:
  - (2)(b)(A) clarifies that a background check done so the provider could be a different provider type is not adequate to meet this rule. (B) establishes a two-year limit to the background check's validity.
  - (2)(k) requires an independent provider to sign a PEAA.
- Nurses are required to be enrolled in the Long Term Care Community Nursing Program.
- Social Sexual Consultants and Family Training Providers removed as provider types.

411-340-0170 Standards for Provider Organizations Paid with Support Services Funds

- Provider Organization's requirements regarding complaints has been incorporated into OAR 411-318
- Authority and the process for the Department to take action to attach conditions to a certificate is added in sections (3) through (8)