

Adult Foster Home Provider Alert

Policy updates, rule clarifications and announcements

Date: September 17, 2015

Topic: Home and Community-Based Services (HCBS) Rules
Effective January 1, 2016 – *Corrected date noted in bold below*

To: APD (Older Adults and Adults with Physical Disabilities)

This Provider Alert and the pages that follow are provided to share important information with you about new federal requirements for all settings in which home and community-based services are provided, including adult foster homes. You are encouraged to review the information that follows, and check the Oregon Department of Human Services HCBS website regularly:

www.oregon.gov/dhs/seniors-disabilities/HCBS/Pages/index.aspx

You will find many HCBS resources at this website, including:

- Federal HCBS resources
- Oregon's HCBS Transition Plan

This is a required document that demonstrates to the Centers for Medicare and Medicaid Services (CMS) how Oregon is complying with the federal regulations.

- Oregon-specific resources:
 - Schedule for the public forum meetings for providers and residents
 - General information about HCBS
 - Fact sheets
 - Frequently Asked Questions (FAQs)
 - HCBS Feedback Form

At this time, work is being done to incorporate these regulatory requirements into the adult foster home program rules, OAR chapter 411, division 50. You may expect to hear more specific information about the adult foster home rule changes by late **October, 2015**.

Oregon's Home and Community- Based Services (HCBS) and Settings

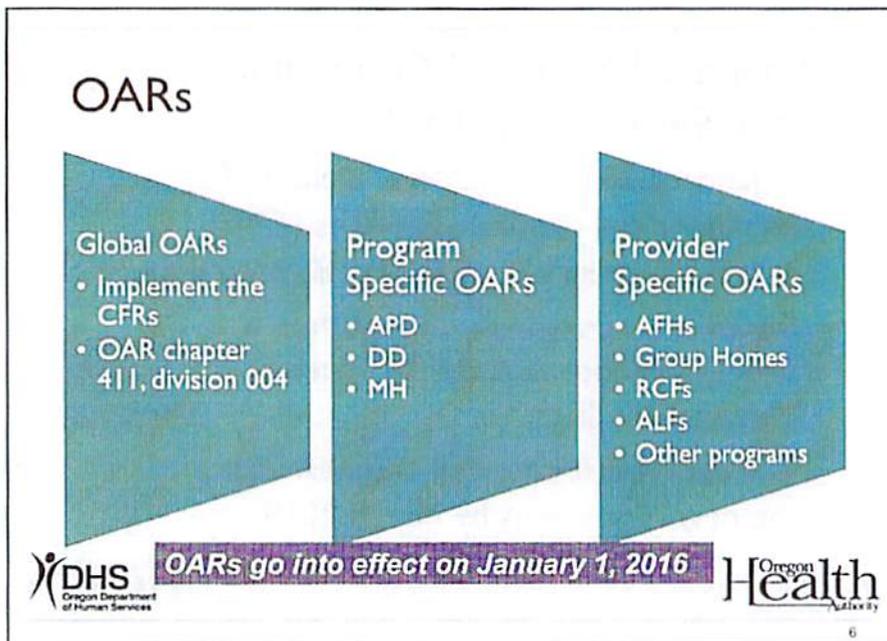
Update on Rule Making Process



What are Home and Community- Based Services (HCBS)?

- In January 2014, the Federal Centers for Medicare and Medicaid Services (CMS) issued new regulations for HCBS providers.
- States must come into compliance with the new regulations in order to receive Medicaid funding.
- The state must be in full compliance with the new regulations by March 2019.





Global OAR 411-004

- Modeled closely on CMS' CFRs
- Provides a consistent foundation for all HCBS providers across all three delivery systems
- Define purpose, scope, definitions and expectations.
- Program specific and Provider specific OARs are still being drafted.



Global OAR Contents

- 411-004-0000 Statement of Purpose
- 411-004-0010 Definitions
- 411-004-0020 Home and Community-Based Services and Settings
- 411-004-0030 Person-Centered Service Plans
- 411-004-0040 Individually-Based Limitations



411-004-0000 Statement of Purpose

- These rules ensure that individuals receive HCBS:
 - In settings that are integrated in the greater community and
 - Support the same degree of access to the greater community as people not receiving HCBS.
- Access includes opportunities for individuals to:
 - Seek employment and work in competitive integrated employment settings;
 - Engage in community life;
 - Control personal resources; and
 - Receive services in the community.



OAR 411-004-0020

- Ensure the setting is selected by the individual from all available options including:
 - Non-disability setting
 - A private unit in a residential setting
- Ensure individual's rights of:
 - Privacy
 - Dignity
 - Respect
 - Freedom from coercion and restraint



OAR 411-004-0020

Optimizes and does not control:

- Individual initiative,
- Autonomy, *and*
- Independence in making life choices

Individual Choices includes:

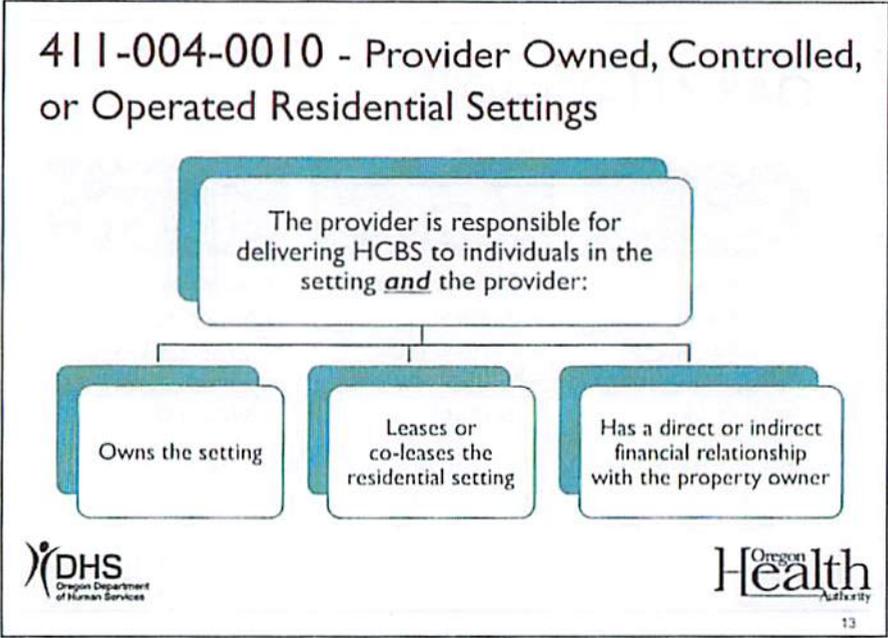
- Daily activities
- Physical environment
- With whom to interact

Supports individual choice regarding:

- Services
- Supports
- Who provides services and supports

411-004-0010 Critical Definitions

- "Provider Owned, Controlled, or Operated Residential Setting"
- "Individually-Based Limitation"
- "Person-Centered Service Plan Coordinator"
- "Residency Agreement"



- ### 411-004-0010 - Provider Owned, Controlled, or Operated Residential Settings
- Residential settings that are considered provider owned, controlled, or operated include, but are not limited to:
 - Group Homes
 - Foster Homes
 - Assisted Living Facilities
 - Residential Treatment Homes/Facilities
 - Some supported and specialized living programs
- DHS**
Oregon Department of Human Services
- Oregon Health Authority**
- 14

411-004-0010 - Provider Owned, Controlled, or Operated Residential Settings

- There are specific requirements for Provider Owned, Controlled, or Operated Residential Settings.
- These specific requirements are intended to ensure individuals in these settings are supported in having daily living experiences like other members of the community.



15

411-004-0010 - Provider Owned, Controlled, or Operated Residential Settings



The unit must be a **specific physical place** that can be owned, rented, or occupied under a legally enforceable Residency Agreement; and

The individual has the same responsibilities and **protections from eviction** that tenants have under landlord/tenant laws.



16

411-004-0010 - Provider Owned, Controlled, or Operated Residential Settings

In Oregon, the current Rules requiring exit notices and appeal rights are considered to meet the Federal requirement for protections from eviction.

What may be new for Oregon providers and individuals is the expectation to have a written Residency Agreement.



17

411-004-0010 - Provider Owned, Controlled, or Operated Residential Settings

-  The setting is physically accessible.
-  Each individual has privacy in their sleeping or living unit.
-  Units have doors lockable by the individual, with the individual and only appropriate staff having keys to doors.
-  Individuals sharing units have a choice of roommates in that setting.



18

411-004-0010 - Provider Owned, Controlled, or Operated Residential Settings

- Individuals have the freedom:
 - To furnish and decorate their units as agreed to within the Residency Agreement
 - And support to control their own schedules and activities
 - And support to have access to food at any time
 - To have their choice of visitors at any time



19

411-004-0040 - Individually-Based Limitation

- An individually-based limitation is based on specific assessed need
- Must be based on health or safety risks not convenience.
- May only be implemented with the informed consent of the individual



20

When there is a significant health or safety risk, limitations may be made on these requirements:

Lockable Bedroom or Unit Doors	Choice of Roommate	Written Residency Agreement
Access to Food	Decorating and Furnishing	Visitors
	Control Schedule and Activities	

21

To have limitations applied

CM or Service Coordinator must document in the person-centered service plan

Identify an individualized assessed and specific need	Document the positive interventions and supports used prior to any limitations	Document less intrusive methods of meeting the need that have been tried but did not work
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22

When limitations are applied:

The person-centered service plan must:

Include a clear description of the limitation that is directly proportionate to the specific assessed need	Include the informed consent of the individual or legal representative	Include an assurance that interventions and supports will cause no harm to the individual
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23

When limitations are applied:

There are time limit and data collection requirements.

Include established time limits for periodic reviews to determine if the limitation is still necessary	Include regular collection and review of data to measure the ongoing effectiveness of the limitation
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24

Provider Responsibility for Limitations

- Maintain a copy of the completed and signed form documenting the consent to the appropriate limitation.
- Regularly collect and review data to measure the ongoing effectiveness of and the continued need for the limitation; and
- Request a review of the limitation when:
 - a new limitation is indicated, or
 - change of a limitation is required or
 - Removal of an limitation is appropriate



25

Critical Definitions - Person-Centered Service Plan Coordinator

- Depending on the delivery system this could be:
 - A case manager,
 - A service coordinator,
 - A personal agent, or
 - Or people designated by DHS or OHA to provide case management services or person-centered service planning



26

Critical Definitions – Residency Agreement

- A written, legally enforceable agreement.
- The Residency Agreement:
 - Identifies the rights and responsibilities of the individual and the residential provider.
 - Must provide protections for the individual and address eviction and appeal processes that is substantially equivalent to the processes provided under landlord tenant laws.
- Current OAR language on move out meets this requirement



27

Heightened Scrutiny

Settings that are considered "institution-like" must go through a process at the state level to determine if the State believes there is sufficient evidence to support that a site meets HCBS.

The State may then present a case to CMS that the setting is HCBS, and CMS must agree.

Settings that are determined at the state or federal level to not be Home and Community-Based may not utilize Medicaid HCBS funding.



28

Additional Trainings

- Ontario 9/14/2015
 - Four Rivers Cultural Center
- Medford 9/22/2015
 - Smullin Health Education Center
- South Coast Coos 9/23/2015
 - Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians Community Center
- Eugene 9/28/2015
 - Lane Community College
- Astoria 9/30/2015
 - Judge Guy Boyington Bldg
- Portland 10/1/2015
 - Ambridge Event Center



29

Next Steps and Staying Connected

- Communication materials –
 - <http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Pages/Index.aspx>
- Questions/Comments -
 - E-mail to: HCBS.Oregon@state.or.us



30