

CHAPTER 276

AN ACT

SB 20

Relating to services provided to individuals with developmental disabilities; amending ORS 427.101, 427.107, 427.115, 427.121, 427.154, 430.662 and 430.664; and repealing ORS 427.160.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 427.101 is amended to read: 427.101. As used in this section and ORS 427.115, 427.121, 427.154 [and 427.160], 430.662 and 430.664:

[(1) "Adult" means an individual who is 18 years of age or older.]

(1) **"Community living setting" means:**

(a) **A residential setting;**

(b) **An individual's home or the home of the individual's family; or**

(c) **Other nonresidential setting.**

[(2) "Community living and inclusion supports"]

(2) **"Developmental disability services" means [services that may or may not be work-related and includes] the following services as provided for individuals with intellectual or developmental disabilities:**

(a) Services designed to develop or maintain the individual's skills in the following areas:

[(a)] (A) Eating, bathing, dressing, personal hygiene, mobility and other personal needs;

[(b)] (B) Self-awareness and self-control, social responsiveness, social amenities, interpersonal skills, interpersonal relationships and social connections;

[(c)] (C) Community participation, recreation and the ability to use available community services, facilities or businesses;

[(d)] (D) Expressive and receptive skills in verbal and nonverbal language, the functional application of acquired reading and writing skills and other communication needs; and

[(e)] (E) Planning and preparing meals, budgeting, laundering, housecleaning and other personal environmental needs;

(b) **Case management;**

(c) **Services described in ORS 430.215;**

(d) **Employment services;**

(e) **Environmental accessibility adaptations;**

(f) **Specialized supports; and**

(g) **Specialized medical equipment and supplies.**

[(3) "Comprehensive services" means a package of services, other than support services for adults, that is provided by or under the direction of a community developmental disabilities program and that includes at least one of the following living arrangements licensed or regulated by the Department of Human Services:]

[(a) Twenty-four-hour residential care, including but not limited to a group home, a foster home or a supported living program.]

[(b) Assistance provided to maintain an individual in the individual's own home or the home of the

individual's family and that costs more than an amount specified by the department by rule.]

[(4)] (3) "Employment services" means services provided to develop or maintain the skills necessary for an individual to obtain and retain employment, including job assessment, job exploration, job development, job training, job coaching, work skills, and ongoing supports.

[(5)] (4) "Environmental accessibility adaptations" means physical modifications to an individual's home that are necessary to ensure the health, welfare and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

[(6)] (5) "Individualized [written] service plan" means a plan described in ORS 427.107 (2)(i), (j) and (k) that identifies the resources, services and purchases necessary for an individual with a developmental disability to achieve identified personal goals and maximize self-determination.

[(7)] (6) "Person-centered planning" means an informal or formal process for gathering and organizing information that helps an individual to:

(a) Enhance self-determination by choosing personal goals and lifestyle preferences;

(b) Design strategies and networks of support to achieve personal goals and a preferred lifestyle using individual strengths, relationships and resources; and

(c) Identify, use and strengthen naturally occurring opportunities for support in the home and in the community.

(7) **"Residential setting" means one of the following community living settings licensed or regulated by the Department of Human Services:**

(a) **Residential facilities licensed under ORS 443.400 to 443.455;**

(b) **Licensed adult foster homes, as defined in ORS 443.705;**

(c) **Developmental disability child foster homes certified under ORS 443.835;**

(d) **Group homes; and**

(e) **Supported living programs.**

(8) "Self-determination" means empowering individuals to:

(a) **Make their own choices and decisions;**

[(a)] (b) Select and plan, together with freely chosen family members and friends, the [support services for adults] **developmental disability services** that are necessary [instead of purchasing a predefined program or package of services] **for an individual to live, work and recreate in the setting that the individual chooses and in the community;**

[(b)] (c) Control [the expenditure of available financial assistance in order to purchase support services for adults], **or have input regarding, the manner in which resources are used to obtain needed services and supports,** with the help of a social support network if needed;

[(c)] (d) Live an autonomous life in the community, rich in community affiliations, through formal

or informal arrangements of resources and personnel **and contribute to their community in the ways they choose;** [and]

[(d)] (e) Have a valued role in the community through competitive employment, organizational affiliations, personal development and general caring for others in the community, and to be accountable for spending public dollars in ways that are life-enhancing for the individual; **and**

(f) **Speak or act on their own behalf or on behalf of others, including participating in policy-making and legislative processes.**

(9) "Service provider" means any person who is paid a service rate by the department to provide one or more of the services identified in the individualized [written] service plan of an [adult with a] **individual with an intellectual or developmental disability** regardless of where the service is provided.

(10) "Service rate" means the amount of reimbursement paid to a service provider to care for an [adult with a] **individual with an intellectual or developmental disability.**

(11)(a) "Specialized medical equipment and supplies" means:

(A) Devices, aids, controls, supplies or appliances that enable individuals:

(i) To increase their ability to perform activities of daily living; or

(ii) To perceive, control or communicate with the environment in which they live;

(B) Items necessary for life support, including ancillary supplies and equipment necessary to the proper functioning of these items; and

(C) Medical equipment not available in the medical assistance program.

(b) "Specialized medical equipment and supplies" does not include items that have no direct medical or remedial benefit to the individual.

(12) "Specialized supports" means treatment, training, consultation or other unique services that are not available through the medical assistance program but are necessary to achieve the goals identified in the individualized [written] service plan, or other [support services for adults] **developmental disability services** prescribed by the department by rule.

(13) "Support service brokerage" means an entity that contracts with the department to provide or to arrange for [support services for adults] **developmental disability services.**

[(14) "Support services for adults" means the services for adults with developmental disabilities provided by a support service brokerage under ORS 427.154 and 427.160.]

SECTION 2. ORS 427.115 is amended to read:

427.115. (1) The Department of Human Services or its designee shall assess the support needs for each [adult with a developmental disability who is receiving comprehensive services that include 24-hour residential care] **individual with an intellectual or developmental disability who is receiving developmental disability services in a residential set-**

ting and shall determine a service rate that is sufficient to meet the support needs of the [adult] **individual.** If an assessment of support needs results in a change to the service rate being paid to the service provider, the department or the department's designee shall provide to the [adult receiving comprehensive services and the adult's service provider and, if appropriate, to the adult's service coordinator,] **individual and the individual's service provider and case manager and, if appropriate, to the individual's guardian, primary caregiver or family members, a detailed accounting of the service rate paid to the service provider and the factors and weighting of factors used to determine the service rate.**

(2) The department or the department's designee shall assess the support needs and determine the service rate, as described in subsection (1) of this section, no later than 90 days after the [adult receiving comprehensive services or the adult's] **individual or the individual's** service provider, [service coordinator] **case manager,** guardian, primary caregiver, family member or legal representative makes a request, based on significant changes to the [adult's] **individual's** support needs, for a new assessment of support needs and a redetermination of the service rate.

(3) The department shall adopt by rule the procedures and criteria for requesting and conducting an assessment of support needs and a determination of a service rate under this section, using an advisory committee appointed in accordance with ORS 183.333. The rules shall include a procedure for contesting the denial of a request for assessment of support needs and redetermination of a service rate or the failure of the department or the department's designee to respond to a request for assessment and redetermination within a reasonable period of time, as prescribed by the department by rule.

SECTION 3. ORS 427.121 is amended to read:

427.121. [(1) As used in this section:]

[(a) "Adult" means an adult with developmental disabilities who is eligible to receive comprehensive services as defined in ORS 427.101.]

[(b) "Residential setting" means a living arrangement described in ORS 427.101 (3).]

(1) As used in this section, "adult" means an individual:

(a) Who is at least 18 years of age;

(b) Who has an intellectual or developmental disability; and

(c) Who is eligible for, and who chooses to receive, developmental disability services.

[(2) An adult has the right to choose the adult's placement setting. The Department of Human Services or the department's designee shall present to an adult at least three appropriate placement setting options, including at least two different types of residential settings, before:]

[(a) Making an initial placement.]

[(b) Transferring the adult from one placement setting to another placement setting.]

(2) **An adult has the right to choose the adult's community living setting. The Department of Human Services or the department's designee shall present to an adult at least three types of community living settings, including an option for services in the adult's own or family home:**

(a) **Each year, prior to authorizing services in a community living setting for the adult.**

(b) **When an adult is moving from one community living setting to another community living setting.**

(3) The department or the department's designee may not *[transfer an adult from a placement]* **authorize services in a new type of community living setting** without first complying with subsection (2) of this section.

(4) The department or the department's designee is not required to present the options under subsection (2) of this section if:

[(a) The department or the department's designee demonstrates that three appropriate placement settings or two different types of residential settings are not available within the geographic area where the adult wishes to reside;]

[(b) The adult selects a placement setting option and waives the right to be presented with the placement setting options described in subsection (2) of this section; or]

[(c) (a) The adult is at imminent risk to health or safety in the adult's current placement setting; or

(b) The adult is moving from one nonresidential setting to another nonresidential setting.

SECTION 4. ORS 427.154 is amended to read:

427.154. (1) *[Support services for adults are intended to meet the needs of adults with developmental disabilities and to prevent or delay their need for comprehensive services.]* **Developmental disability services are intended to meet the needs of individuals with intellectual or developmental disabilities.** The Department of Human Services shall establish by rule the application and eligibility determination processes for *[support services for adults]* **developmental disability services.**

(2) *[Support services for adults]* **Developmental disability services** shall be provided *[through a support service brokerage and]* pursuant to an individualized *[written]* service plan that is developed and reassessed at least annually using a person-centered planning process.

(3) The department shall ensure that each individual receiving *[support services for adults]* **developmental disability services and the individual's guardian or legal representative** has an active role in choosing the services, activities and purchases that will best meet the individual's needs and preferences and to express those choices verbally, using sign language or by other appropriate methods of communication.

[(4) The services, activities and purchases available as support services for adults include, but are not limited to:]

[(a) Community living and inclusion supports that facilitate independence and promote community integration by supporting the individual to live as independently as possible;]

[(b) Employment services;]

[(c) Environmental accessibility adaptations;]

[(d) Specialized supports; and]

[(e) Specialized medical equipment and supplies.]

[(5) (4) [Support services for adults] **Developmental disability services** must complement the existing formal and informal supports, services, activities and purchases available to *[an adult living in the adult's own home or the home of the adult's family]* **an individual.**

[(6) (5) The department shall ensure that each individual and the individual's guardian or legal representative has the opportunity to confirm satisfaction with the *[support services for adults]* **developmental disability services** that the individual receives and to make changes in the services as necessary.

[(7) (6) The department shall ensure that all [adults with developmental disabilities receiving comprehensive services] **individuals receiving developmental disability services** have an equal opportunity for job placements. A provider of developmental disability services that offers job placements may not give preference to an *[adult with disabilities]* **individual** who is a resident of a facility owned or operated by the provider when determining eligibility for a job placement. The residence of an *[adult with developmental disabilities]* **individual** may not be the exclusive factor in determining eligibility for a job placement.

SECTION 5. ORS 427.107 is amended to read:

427.107. (1) As used in this section:

(a) "Facility" means any of the following that are licensed or certified by the Department of Human Services or that contract with the department for the provision of services:

(A) A health care facility as defined in ORS 442.015;

(B) A domiciliary care facility as defined in ORS 443.205;

(C) A residential facility as defined in ORS 443.400; or

(D) An adult foster home as defined in ORS 443.705.

(b) "Person" means an individual who has *[a]* **an intellectual or developmental disability** as defined in ORS 427.005 and receives services from a program or facility.

(c) "Program" means a community developmental disabilities program as described in ORS 430.662 and agencies with which the department or the program contracts to provide services.

(d) "Service" means a community-based service described in ORS 427.007.

(2) While receiving developmental disability services, every person shall have the right to:

(a) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation.

(b) Be free from seclusion or personal, chemical or mechanical restraints unless an imminent risk of physical harm to the person or others exists and only for as long as the imminent risk continues.

(c) Not receive services without informed voluntary written consent except in a medical emergency or as otherwise permitted by law.

(d) Not participate in experimentation without informed voluntary written consent.

(e) A humane environment that affords reasonable privacy and the ability to engage in private communications with people of the individual's choosing through personal visits, mail, telephone or electronic means.

(f) Visit with family members, friends, advocates and legal and medical professionals.

(g) Participate regularly in the community and use community resources.

(h) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation.

(i) Seek a meaningful life by choosing from available services and enjoying the benefits of community involvement and community integration in a manner that is least restrictive to the person's liberty considering the person's preferences and age.

(j) An individualized [*written*] service plan, services based upon that plan and periodic review and reassessment of service needs.

(k) Ongoing participation in the planning of services, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with an explanation of all service considerations in a manner that ensures meaningful individual participation and the right to invite others of the person's choosing to participate in the plan for services.

(L) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure.

(m) Be informed at the start of services and annually thereafter of the rights guaranteed by this section, the contact information for the protection and advocacy system described in ORS 192.517 (1), and the procedures for filing grievances, hearings or appeals if services have been or are proposed to be reduced, eliminated or changed.

(n) Be encouraged and assisted in exercising all legal rights.

(o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure without any form of retaliation or punishment.

(p) Manage the person's own money and financial affairs unless that right has been taken away by court order or other legal procedure.

(q) Keep and use personal property and have a reasonable amount of personal storage space.

(3) The rights described in this section are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, enter into contracts and execute documents.

(4) A person who is receiving developmental disability services has the right under ORS 430.212 to be informed and to have the person's guardian and any representative designated by the person be informed that a family member has contacted the department to determine the location of the person, and to be informed of the name and contact information, if known, of the family member.

(5) The rights described in this section may be asserted and exercised by the person, the person's guardian and any representative designated by the person.

(6) Nothing in this section may be construed to alter any legal rights and responsibilities between parent and child.

(7) The department shall adopt rules concerning the rights described in this section that are consistent with the directives set forth in ORS 427.007.

SECTION 6. ORS 430.662 is amended to read:

430.662. (1) The Department of Human Services, in carrying out the legislative policy declared in ORS **427.007** and 430.610, subject to the availability of funds, shall:

(a) Use case management entities, including community developmental disabilities programs and support service brokerages, to provide case management services, using appropriate planning processes and implementation procedures, to ensure that:

(A) Persons with intellectual or developmental disabilities have the supports necessary to reside in the setting that they choose; and

(B) All persons with intellectual or developmental disabilities who are eligible for developmental disability services have access to the services.

[(a)] (b) Regulate and assist Oregon counties and groups of Oregon counties in the establishment and financing of community developmental disabilities programs operated or contracted for by one or more counties.

(c) Contract with support service brokerages to deliver developmental disability services in a manner that features regional consolidation, administrative efficiency, cost-effectiveness and strong consumer and family oversight.

(d) Contract with each community developmental disabilities program and support service brokerage to provide or arrange for the provision of the following basic services to persons with intellectual or developmental disabilities:

(A) Access to developmental disability services in the person’s home, work sites or other locations.

(B) Case management services.

(C) Protective services.

(D) Planning and coordination of activities with other agencies or organizations to ensure effective and efficient delivery of services and use of resources.

(E) Establishing and administering a process for filing and responding to complaints and grievances.

(F) Other requirements or services as prescribed by the department by rule.

(e) Contract with each community developmental disabilities program to provide or arrange for the provision of the following services to persons with intellectual or development disabilities:

(A) Eligibility determination for developmental disability services.

(B) Abuse investigations.

[(b)] (f) If a county declines to operate or contract for a community developmental disabilities program, contract with another public agency or private corporation to provide the program. The county must be provided with an opportunity to review and comment.

[(c)] (g) When no community developmental disabilities program is operating within a county, operate the program or service.

[(d)] (h) At the request of the tribal council of a federally recognized tribe of Native Americans, contract with the tribal council for the establishment and operation of a community developmental disabilities program in the same manner in which the department contracts with a county court or board of county commissioners.

[(e)] (i) If necessary to carry out the legislative policy declared in ORS 430.610, contract with a public agency or private corporation, in cooperation with the county, for some or all developmental [disabilities] **disability** services.

[(f) Approve or disapprove the biennial plan and budget information for the establishment and operation of each community developmental disabilities program. Subsequent amendments to or modifications of an approved plan or budget information involving more than 10 percent of the state funds provided for services under ORS 430.664 may not be placed in effect without prior approval of the department. However, an amendment or modification affecting 10 percent or less of state funds for services under ORS 430.664 within the portion of the program for persons with developmental disabilities may be made without department approval.]

[(g)] (j) Make all necessary and proper rules to regulate the establishment and operation of [commu-

nity developmental disabilities programs] **developmental disability services**.

(2) The enumeration of duties and functions in subsection (1) of this section may not be deemed exclusive or construed as a limitation on the powers and authority vested in the department by other provisions of law.

SECTION 7. ORS 430.664 is amended to read:

430.664. [(1) In addition to any other requirements that may be established by rule by the Department of Human Services, each community developmental disabilities program may contract with the department to provide or arrange for the provision of the following basic services to persons with developmental disabilities:]

[(a) Eligibility determination for developmental disability services.]

[(b) Access to developmental disability services in homes, work sites or other locations that promote independence, productivity and integration into the community.]

[(c) Case management services.]

[(d) Abuse investigation and protective services.]

[(e) Planning and coordination of activities with other agencies or organizations to ensure the effective and efficient service delivery and use of resources.]

[(f) Establishing and implementing a process to respond to complaints and grievances.]

[(g) Other alternative services as prescribed by the department by rule.]

[(2)] (1) Each community developmental disabilities program **and support service brokerage** shall have:

(a) A written management plan that governs the program’s **or brokerage’s** operating structure, goals and activities; **and**

(b) **A developmental disability advisory committee.**

[(3) Each community developmental disabilities program shall have a developmental disability advisory committee.]

[(4) Subject to the review and approval of the department, a community developmental disabilities program may initiate additional services after the services described in this section are provided.]

(2) **A person with an intellectual or developmental disability who is served by a support service brokerage, and the person’s family members, shall have an opportunity for a formal, significant, continuing role in advising the support service brokerage regarding the design, implementation and quality assurance of the support service brokerage.**

SECTION 8. ORS 427.160 is repealed.

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