

Independent Choices Operational Protocol  
Waiver Number 11-W-00130/0  
November 3, 2000

1. State-Specific Operational Design – See Appendix #1 to this Protocol
2. Assignment of oversight and management responsibilities-  
Project oversight and management responsibilities will be assigned to the Senior and Disabled Services Division of the Oregon Department of Human Services. Specifically, the Rate Setting and Audit Unit of SDSD's Research and Finance Section is assigned overall project management and oversight responsibilities. The Unit manages compliance and reporting activities related to Oregon's Home and Community-Based Services waiver. Both the Project Manager and the Project Coordinator are housed within this Unit. SDSD will also manage contracts with counseling and training resources, fiscal intermediaries and the evaluator.

Case management staff involved in the Project at each partner site are supervised by local management staff. Local office site managers are:

- Clackamas County: Long-Term Care Program Manager
- Coos County: District Manager; Assistant District Manager
- Jackson/Josephine Counties: Unit Manager

Names and contact information for persons currently employed in these positions are found in Appendix 2.

3. Ongoing Monitoring Tasks-
  - Ensuring consumer compliance with fiscal and legal responsibilities
    1. A random sampling of 10% of consumers at each project site will be selected for annual audit.
    2. Auditors will request access to records of the consumers Independent Choices bank accounts, and to payroll records for employees. (Providing access to these records is a condition of project participation.)
    3. Auditors will reconcile records of the participants' bank accounts to provider payments made. Auditors will reconcile records of hours worked to actual wages paid. Auditors will (when appropriate) further request documentation of required payroll tax filings.
    4. If a consumer is accumulating unspent funds towards a purchase, auditors will request documentation showing that the local office has been informed of the consumer's intent.

Staff members completing the reviews are employed by the State as Fiscal Auditors in SDSD's Rate Setting and Audit Unit. The Independent Choices project manager supervises the unit. Fiscal auditors possess at least two years financial audit experience and a Bachelor's degree with substantial coursework in Accounting and Auditing.

- *Investigating complaints of non-payment*

There may be circumstances in which consumers use up their cash benefits before caregivers have been fully paid. Consumers will be required to supply their providers with complaint procedures, including a local project staff person to contact in case of non-payment. If a provider complains that he or she has not been paid by a project consumer, partner site staff will contact the consumer and request copies of legally required time records, and of the canceled check or receipt that documents payment. Records received will be forwarded to SDSD's Rate Setting and Audit Unit staff for review and verification. Failure to provide the required documentation will be grounds for project disenrollment.

If a consumer does not pay a provider, her project participation shall end, and she shall begin to receive Medicaid long-term care services through an alternative service plan. SDSD shall reimburse the provider for the wages that were not paid. The reimbursement shall be recouped from the former consumer as a Medicaid overpayment.

Staff members completing the reviews are employed by the State as Fiscal Auditors in SDSD's Rate Setting and Audit Unit. The Independent Choices project manager supervises the unit. Fiscal auditors possess at least two years financial audit experience and a Bachelor's degree with substantial coursework in Accounting and Auditing.

- *Ensuring health and safety*

Project site staff at each location is responsible for monitoring consumers' health and safety. This will be accomplished in a variety of ways. Case managers will make informal contact no less than once every two months for the first full year of the consumer's enrollment in the project. Case managers will discuss needed resources and steer consumers toward assistance, if needed. Case managers will also perform semi-annual reassessments of consumers' ADL and IADL needs to ensure consumers are adequately planning for and securing needed services.

4. Provisions for making State contacts available to authorized HCFA and SSA officials-

Authorized HCFA and SSA staff may contact either the Project Coordinator or the Project manager to confirm beneficiary participation data. Contact information is found in Appendix 2.

5. Assuring that care needs are satisfied-

Local office case managers in the project demonstration sites will assure that consumers' needs are adequately met through personal contact with consumers on a bi-monthly basis for the first full year of project enrollment. Case managers will also perform semi-annual reassessments of consumers' ADL and IADL needs utilizing the CAPS 360 assessment tool. Project consumers will be required to participate in a training session that will include topics such as needs assessment and service planning. If there is a complaint of self-neglect or abuse, the local office Protective Services unit will become involved. Substantiated complaints of self-neglect or abuse will be grounds for project disenrollment.

Consumers must agree to these terms as part of the Independent Choices participation agreement.

6. Participant Eligibility

Local office case managers will establish consumer eligibility. Project eligibility is based upon satisfaction of the following criteria:

*1. Financial Eligibility Criteria*

All participants in the Independent Choices demonstration project must meet Oregon's financial eligibility for Medicaid long-term care services which is 300 percent of the SSI Federal Benefit Rate (FBR).

*2. Functional Eligibility Criteria*

Functional eligibility criteria for the demonstration project will be the same as that used for other Oregon long-term care consumers. Oregon ranks persons into priority levels one (1) through seventeen (17) based on their needs for assistance in six activities of daily living. Functional reassessments are completed not less frequently than annually. For purposes of the Independent Choices demonstration, functional assessments of both project consumers and of the associated comparison group will be completed on a semi-annual basis.

### *3. Eligibility for Community-Based Care Services*

Project participants must be eligible to receive nursing facility or community-based services under the same criteria as other Oregon consumers. The consumer must be 18 or older; must be eligible for Title XIX; must be documented as eligible for services through the Home and Community-Based Services waiver; and must meet the functional impairment level within the service priority level.

### *4. Independent Choices Project-Specific Criteria*

#### *a. Ability to Assess and Plan for Care:*

Consumers must demonstrate the ability to assess and plan for care by maintaining a stable living situation, defined as continuous tenancy at a given residence for the past three months. If health issues or a no-fault situation has prompted a move within the last three months, proof of any three consecutive months of tenancy in the past year is acceptable.

Furthermore, consumers must demonstrate management of money so that food, shelter, utilities and personal care needs are met. Ability to manage money may be shown by submission of a current bill from an electricity, gas or water department showing that payments are current or a payment plan is being followed.

#### *b. Living Situation:* Through its Home and Community-Based Services waiver, SDSO offers services to clients in a variety of settings. These include both community residential services and in-home services.

Consumers who participate in the demonstration project must either be current recipients of in-home services, or must be eligible to receive in-home services under Oregon Law. Furthermore, services currently received must be provided through the Client-Employed Provider (CEP) program, or the new participant must have the ability and willingness to receive services through that program.

#### *c. Cachement Area:* Participants' primary residence must fall within the boundaries of the three Planning and Services Areas served by the Clackamas Area Agency on Aging (AAA), the Coos/Curry County AAA or the Rogue Valley Council of Governments.

#### *d. Characteristics of Persons Who Self-Select to Participate:* Project participants must possess a demonstrated ability, individually or through a willing representative, to appropriately assess and plan for the adequate provision of services necessary for the participants' care. Participants who

are not able to self-direct care, but who have a surrogate decision-maker who is willing and able to assume this responsibility, may participate in the project.

*e. Partner Site Maximum Enrollments:*

SDSD will limit project enrollment at each partner site to no more than one hundred (100) consumers, for a total of three hundred (300).

### 7. Enrollee Grievance and Appeal Rights

Project consumers retain the same appeal and grievance rights as any consumer of SDSD programs. Oregon Administrative Rules (OAR) 461-025-0300 through 461-025-0385 establish SDSD grievance and appeal rights and procedure. Copies of applicable Administrative Rules are attached (Appendix 3).

Consumers who are denied the ability to participate in the Independent Choices demonstration have the right to a contested case hearing under Oregon Administrative Rules. Additionally, if SDSD or partner site staff do not take action on a consumer's request to participate in the project within 45 days of the request, the consumer has the right to request a contested case hearing.

The person requesting the hearing must complete a Hearing Request form. Workers in each office are available to help clients complete this request form. The hearing must be requested within 45 days of denial of participation.

Clients are offered up to two pre-hearing conferences. Pre-hearing conferences can serve to clarify any factual misunderstandings; to provide the client an opportunity to understand why program participation was denied; and to allow the Division an opportunity to review, and perhaps rescind its' denial based on additional information supplied by the client.

If a hearing is actually held, an impartial hearings officer conducts the proceedings, and issues a final report. The Senior and Disabled Services Division has the affirmative duty to assist the client with the hearing request, to provide qualified interpreters and to advise the client of any free legal services that are available to provide representation at the hearing.

The Hearings Officer must issue final orders within 90 days from the date of the hearing request. A client may request reconsideration or rehearing of a final order within 30 days of the date of service of the order.

## 8. State's Relationships and Arrangements with Organizations

### Enrollment and assessment activities

Enrollment of project consumers, initial assessment of needs and on-going reassessment will be provided by the case management staff in the partner sites of Clackamas, Coos/Curry Counties, and the Rogue Valley Council of Governments.

The Coos/Curry Multi-Services office (MSO) of the Senior and Disabled Services Division provides Medicaid funded long-term care, health maintenance and Food Stamp services to elders and to adults with physical disabilities ages 18 to 64.

The Rogue Valley Council of Governments, under contract with the State of Oregon, provides the same services in Jackson and Josephine counties. Employees in this location are employed by the State of Oregon Senior and Disabled Services Division; the Executive Director of the office is an employee of the COG. In Clackamas County, administration of the Medicaid program has been delegated to the county. All employees are County staff.

Case managers in each of the three sites assess individual applicants and clients; and develop, coordinate and arrange a variety of services for elderly and disabled adults or for medical patients about to be discharged from a hospital. These services are designed to ensure the continuity of care to enable the person to maintain or achieve maximum physical, social and emotional independence or rehabilitation.

To qualify as a case manager, an applicant must have at least six months experience demonstrating knowledge of three or more of the following skills and abilities:

- casework methods and techniques
- clients rights, confidentiality, privileged communications and professional ethics
- communication with and assessment of the needs of individuals with physical and mental disabilities and/or the elderly
- disease processes
- service coordination delivery system
- client advocacy techniques
- eligibility determination for social or financial services

### Counseling and training services

Some counseling services will be provided by local office case management staff through assessment, reassessment and on-going monitoring activities. Small Business Development Centers (SBDC) exist throughout Oregon as affiliates of the regional community college district or the State System of Higher Education. Centers in partner site communities are willing to provide consumer training utilizing a custom designed course for Independent Choices consumers. Topics include: legal and fiscal responsibilities of being an employer; budgeting for expenditures related to in-home care; record-keeping responsibilities of employers; employer payroll obligations and provider selection through the interview process. All courses will be available at local sites and would be made available through videotape and alternative formats. Contracts between the three SBDC's and Oregon's SDSO define the relationship, scope of work to be completed and payment.

The American Association of Retired Persons (AARP) of Clackamas County has contracted with Oregon SDSO to provide training to meet the needs of Independent Choices consumers.

Employment and caregiver performance supervisory skills training and assistance will be available on a one-to-one basis through Oregon's Independent Living Centers.

### Fiscal intermediary services

Determination and redetermination of participant payment amounts will be made by local office case management staff. The process is fully described in item # 16 below.

Oregon SDSO will contract with a nationally recognized payroll and tax preparation service to provide fiscal intermediary services to project consumers. Consumers who satisfactorily complete required training and pass the skills test may choose to use this service, or to self perform required legal and fiscal activities. Consumers who do not pass the required skills test must use the fiscal intermediary service as a condition of project participation.

## 9. Financial Management Plan

As a condition of participation in the Independent Choices project, consumers must attend mandatory training. The required training includes the following content areas:

### ***Program concepts***

- The goals and objectives of the project
- Review of program eligibility criteria
- Cash benefit determination
- Continuing participation
- Disenrollment guidelines

### ***Roles and responsibilities of project participants***

- Fiscal responsibilities of participants
- Legal responsibilities of participants
- Using the benefit: range of services; community resources; overview of recruitment and retention of providers
- Criminal record checks
- Community resource availability
- Project evaluation activities

### ***Project timeline***

#### ***Information on right to hearings and appeals***

Participants will also receive a consumer manual at the mandatory training session. The consumer manual will be available in alternative formats to accommodate the needs of consumers who have sensory impairments or who are non-English speaking. A copy of draft text of the manual is attached.

Potential participants will be tested at the end of the training session to determine their understanding of the actions they must take and the processes to be used to meet their fiscal and legal responsibilities. Oregon is developing a multiple-choice skills-based test of no more than 20 questions. Consumers who are unable to pass the exam will be required to use the services of a fiscal intermediary as a condition of participation in the program.

A random sampling of 10% of consumers at each project site will be selected for annual audit. Auditors will request access to records of the consumers Independent Choices bank accounts, and to payroll records for employees. (Providing access to these records is a condition of project participation.)

Auditors will reconcile records of the participants' bank accounts to provider payments made. Auditors will reconcile records of hours worked to actual wages paid. Auditors will (when appropriate) further request documentation of required payroll tax filings. If a consumer is accumulating unspent funds towards a

purchase, auditors will request documentation showing that the local office has been informed of the consumer's intent.

Staff members completing the reviews are employed by the State as Fiscal Auditors. All possess at least two years financial audit experience and a Bachelor's degree with substantial coursework in Accounting and Auditing.

#### Investigating complaints of non-payment

There may be circumstances in which consumers use their cash benefits (appropriately or inappropriately) in a way that uses the benefit before caregivers have been fully paid. Consumers will be required to supply their providers with complaint procedures, including a local project staff person to contact in case of non-payment. If a provider complains that he or she has not been paid by a project consumer, partner site staff will contact the consumer and request copies of legally required time records, and of the canceled check or receipt that documents payment. Failure to provide the required documentation will be grounds for project disenrollment.

If a consumer does not pay a provider, her project participation shall end, and she shall begin to receive Medicaid long-term care services through an alternative service plan. SDSD shall reimburse the provider for the wages that were not paid. The reimbursement shall be recouped from the former consumer as a Medicaid overpayment.

#### 10. Marketing Strategy

All clients in the project sites who were receiving Title XIX in-home services (the SDSD client population eligible for program participation) were sent initial information about Oregon's Independent Choices Program in 1997. In 1998, these clients, along with any people who had since become eligible for Medicaid in-home services, were sent an update on the program and its status. At each site, potentially eligible clients also received an invitation to attend a local client information meeting. The meetings were held during the early part of 1999. Approximately 150 potentially eligible consumers attended. Additional program information was distributed at the meetings. A panel of SDSD project staff, local office management, Medicaid long-term care clients serving as the project consumer advisory group and community resource contacts discussed program philosophy, program operations and answered audience questions. These meetings were videotaped.

In the fall of 1998, ICP staff conducted training of case managers, intake and eligibility workers, and front desk staff at the three project sites. Handouts on the program were distributed, including extra client information packages identical to those handed out at the above mentioned meetings.

Local office case managers have maintained and updated lists of potentially eligible consumers. SDSD anticipates that we will contact these consumers in late fall 2000 and ask if they are still interested in participating in the Independent Choices project. If the answer is affirmative, the consumer will be screened to determine eligibility and be enrolled for mandatory training.

As new clients come into the system who meet the eligibility criteria, both intake/eligibility workers and case managers will tell them about the Program and will supply written material and audio and video tapes of client information meetings. Braille and foreign language versions of the materials will be available upon request by local staff.

Copies of marketing materials are attached for review including the Project brochure, consumer manual, and enrollment form and disenrollment form.

The Department of Human Services plans several media releases related to project approval, implementation and outcomes especially in the three counties participating in the project.

#### 11. Provisions for Enrollment and Disenrollment

Consumers will self-select into the demonstration program. SDSD has conducted informational meetings in the project areas. Interested consumers were asked to contact their local office case manager to express interest in enrollment into the Independent Choices program. Upon implementation of the program, case managers will make contact with interested consumers to advise them of implementation. Case managers will then conduct an interview with interested consumers and/or their surrogate decision-makers. The interview will consist of counseling on the responsibilities of being an employer, as well as the responsibilities involved with self-directing in-home care. Case managers will determine participant eligibility using the Independent Choices eligibility criteria. The eligibility criteria for Independent Choices are outlined in the State-specific operational design section of this document and also in item #6 of this Protocol.

Consumers will then be asked to complete the Independent Choices participation agreement. The participation agreement contains a written description of

consumers' responsibilities including: fiscal and legal responsibilities of being an employer, responsibility of managing the benefit to ensure all care needs are met, and hearing and appeal rights. As part of this process, case management staff will obtain signed informed consent from eligible consumers. The informed consent will ensure that consumers are aware that their participation in the demonstration is voluntary. It will also explain how the provision of long-term care will be changed as a result of demonstration participation. The form to be used is included in the consumer manual.

After completion of the steps above, consumers and/or surrogate decision-makers must attend a training session covering care planning and the legal and financial responsibilities of being an employer of domestic workers. In order to perform the fiscal and legal functions associated with Project participation, consumers must pass a skills test delivered at the completion of the mandatory training. Trainers will issue verification of successful exam completion to consumers for presentation to case managers. Consumers who do not pass the exam will retain the option of participating in the program only with use of a fiscal intermediary. Enrollment in the Independent Choices program will be effective the first day of the month after training.

The requirement that consumers who do not successfully complete the skills-based test use the fiscal intermediary service is additionally contained in the Independent Choices program Administrative Rules (draft copy attached). SDDS plans to complete public notice and filing steps required by the Oregon Administrative Procedures Act in order to adopt these rules no later than February 1, 2001.

Disenrollment from Independent Choices can be either voluntary or involuntary. Consumers wishing to disenroll from the program are required to give their case manager thirty (30) days notice of intent to disenroll from the program. Case managers will then counsel consumers on their options for long-term care services including nursing home care and community-based care services. Consumers will then return to the service option of their choice.

Involuntary disenrollment may result from any of the following:

- A provider claim of non-payment of wages where the consumer or his/her surrogate decision-maker cannot show proof of payment;
- Evidence that the cash benefit was used for illegal purposes in accordance with local, state or federal statutes;

- Failure to comply with legal/financial obligations of being an employer of domestic workers as outlined in the "Consumer Participation Agreement", and/or unwillingness to participate in counseling and training to remedy the lack of compliance;
- Inability to manage the cash benefit as evidenced by:
  - Overdrafts of the consumer's Independent Choices bank account
  - Non-compliance with recommendations for training/use of community resources
- Failure to maintain health and well-being by obtaining adequate personal care as evidenced by:
  - Declines in physical functional status which are not attributable to changes in health status;
  - Substantiated calls to SDS by community gatekeepers reporting the consumer's self-neglect;
  - Showing an unstable living situation as defined in the enrollment criteria;
  - Choosing and directing service providers in a manner which takes unnecessary risks of medical or hospital care due to poor personal care or neglect in the judgement of the SDSD/AAA local office
  - Refusal to cooperate with demonstration evaluation activities, even when local office staff has made efforts to accommodate the consumer's personal needs relating to participation.

In all cases, consumers have hearing and appeal rights, as outlined previously.

## 12. Waiting Lists:

Three circumstances may trigger the placement of a potential project consumer onto a waiting list:

- The maximum enrollment cap of 100 participants has been reached in any of the three areas participating in the project, or
- The ratio of “new” to “continuing” consumers exceeds the limit of 1:2 across all areas participating in the project, or
- Enrollment of the consumer will exceed the absolute limit of 100 “new” participants.

SDSD Central Office project staff will construct and maintain the required database of participants in the project. (See the full discussion of the database in item #18.) Using the database, the staff will monitor enrollment by area on a monthly basis to maintain control of the numbers of consumers enrolled by individual site. Local site office management will be informed each month of total

site enrollment. Special notice to the office will be given at any enrollment that increases the number of active consumers to over 90. Once the enrollment cap of one hundred has been reached, local offices will establish and maintain a list of interested consumers. Consumers who wish to enroll in the project will be notified that a waiting list exists. Rank on the waiting list will be determined by the date on which the potential consumer completes all activities related to Project participation, including completion of training. Written information about waiting list rank will be sent to consumers monthly. Aggregate waiting lists for each local site will be forwarded to central office project staff at least monthly, and will minimally contain enough information to allow central office staff to determine if the potential participant is a “new” consumer or an “existing” consumer.

Central Office project staff will also use the database to monitor the ratio of “new” to “existing” consumers enrolled in the demonstration. Project staff will monitor the ratio across the three regions quarterly, and discuss with local site management any actions that may need to be taken to implement a waiting list. If at any time, the ratio of “new” consumers to “existing” consumers exceeds 1:1.9, or the number of “new” consumers enrolled exceeds 90 across the three regions, local office management must contact State project staff for approval prior to enrollment of a participant.

If a wait list is implemented, project staff will provide written information to local management concerning the rank of participants from their region on the list. The list will be updated monthly. Written information about waiting list rank will be sent to consumers monthly. In any case in which a waiting list is implemented, local office management must obtain State approval prior to participant enrollment. Persons will be moved off the wait list and into the Project using a “first-in, first-out” approach.

Persons placed on the wait list retain eligibility for all Medicaid State plan services and for services under Oregon’s approved Section 1915(c) waiver for the aged and disabled.

### 13. Provider Background Checks-

Consumers will be required to obtain a criminal background check on any potential employee who the consumer is interested in hiring. The local SDSD/AAA office will provide the background checks at no cost to the consumer. Pursuant to the confidentiality statutes surrounding release of criminal record information by the Oregon State Police, the specific arrest and conviction information will remain confidential. Local office staff are only authorized to inform the consumer whether

the provider would pass the background check if he/she applied as a Client-Employed Provider. Ultimately, the hiring decision is left up to the consumer. Since the potential provider is applying directly with the consumer, that provider does not retain hearing and appeal rights if not hired.

The requirement that all potential providers complete a criminal record check is additionally contained in the Independent Choices program Administrative Rules (draft copy attached). SDSA plans to complete public notice and filing steps required by the Oregon Administrative Procedures Act in order to adopt these rules no later than February 1, 2001.

#### 14. Consumer Care/Purchasing Plans-

Consumers will develop their own individualized care plan while participating in the demonstration. All consumers will receive direction and assistance through the mandatory training sessions, and will have access to their local office case manager for counseling and assistance.

#### 15. State process for reviewing and approving consumer purchase requests

Project consumers who are able to accumulate cash may retain this cash in an accumulation fund. Consumers must designate the future personal care expense towards which the funds accumulate. Local office project staff must agree with the consumer that the purchase will help the consumer to meet her personal care needs.

The approval protocol used by local office staff is based on the underlying assumption that in a consumer-directed environment, most (if not all) purchases that consumers believe will contribute to meeting their personal care needs are valid uses of the cash benefit, and warrant approval by the local office staff.

Central Office project staff is developing a broad listing of approved items for which fund accumulation may be approved. Local partner sites will use multiple person review process for items outside of the broad listing, and will include the Project consumer's input as a part of the review process.

#### 16. Payment Methodology

##### *Services to be Cashed Out*

The following services offered under Oregon's 1915(c) waiver for the aged and disabled and under the State Medicaid plan will be cashed out.

- Homemaker Services
- Personal Care
- Transportation

- Chore Services
- Adult Companion Services
- Attendant Care
- In-home Services

Algorithms used to establish payment amounts

The method described in step #1 will be used to determine the combined amount to be cashed out for the following services: homemaker services, transportation, chore services, adult companion services, attendant care and in-home services.

**Step #1:** After an initial assessment of a project consumer is completed, and at six-month intervals thereafter, the local office project staff will determine whether the project consumer needs “minimal”, “substantial” or “full” assistance for Activity of Daily Living (ADL) and self-management tasks. “Minimal Assistance” means the client is able to perform a majority of a task, but requires some assistance. (OAR 411-30-002(23)) “Substantial Assistance” means a client can perform only a small portion of a task and requires assistance with the majority of a task. (OAR 411-30-002(34)). “Full Assistance” means that a client is unable to do any part of an activity of daily living or task; i.e. it must be done entirely by someone else. (OAR 411-30-002(14)). Category assignment of minimal, substantial or full is based on client needs, as assessed through the CAPS 360 tool. Assignment to the proper category is made through the automated computer system.

Administrative Rule 411-30-070 (1) authorizes ADL hours as follow:

<b><i>Task</i></b>	<b><i>Minimal assistance</i></b>	<b><i>Substantial assistance</i></b>	<b><i>Full assistance</i></b>
<b>Eating</b>	<i>5 hours</i>	<i>20 hours</i>	<i>30 hours</i>
<b>Dressing</b>	<i>5 hours</i>	<i>15 hours</i>	<i>20 hours</i>
<b>Bathing/ Personal Hygiene</b>	<i>10 hours</i>	<i>15 hours</i>	<i>25 hours</i>
<b>Mobility</b>	<i>10 hours</i>	<i>15 hours</i>	<i>25 hours</i>
<b>Bowel and Bladder</b>	<i>10 hours</i>	<i>20 hours</i>	<i>25 hours</i>
<b>Cognition</b>	<i>5 hours</i>	<i>10 hours</i>	<i>20 hours</i>

Section (2) of the same rule authorizes maximum hours for self-management tasks.

<i><b>Task</b></i>	<i><b>Minimal Assistance</b></i>	<i><b>Substantial Assistance</b></i>	<i><b>Full Assistance</b></i>
<b>Medication management</b>	<i>2 hours</i>	<i>4 hours</i>	<i>6 hours</i>
<b>Transportation or Escort</b>	<i>2 hours</i>	<i>3 hours</i>	<i>5 hours</i>
<b>Meal preparation</b>			
Breakfast	<i>4 hours</i>	<i>8 hours</i>	<i>12 hours</i>
Lunch	<i>4 hours</i>	<i>8 hours</i>	<i>12 hours</i>
Dinner	<i>8 hours</i>	<i>16 hours</i>	<i>24 hours</i>
<b>Shopping</b>	<i>2 hours</i>	<i>4 hours</i>	<i>6 hours</i>
<b>Housecleaning</b>	<i>5 hours</i>	<i>10 hours</i>	<i>20 hours</i>

The Division sets service payment rates for community based care providers under the authority of OAR 461-155-270. In-home service payment rates, as of August 2000, are \$8.12 per hour for minimal and substantial assistance hours, and \$8.34 per hour for full assistance hours.

Project staff will apply the category of need determined through the CAPS 360 assessment to project consumers, and use that need category to determine service hours available for ADL and self-management tasks (OAR 411-30-070 (1) and (2)). The total number of hours authorized for minimal and substantial assistance will be multiplied by the scheduled payment rate (currently \$8.12). The number of hours authorized for full assistance will be multiplied by the scheduled payment rate (currently \$8.34). The two products will be added together to produce **Sub-total 1**.

**Step #2:** The State will continue to pay the employer FICA share of 7.65% of wage (OAR 411-30-060(10)(b)(A)) as well as the Unemployment Tax (OAR 411-30-060(10)(b)(B)) to Independent Choices participants since it pays these amounts on behalf of other clients receiving in-home services.

Sub-Total #1 from Step #1 will be multiplied by 7.65% to calculate the **Employer FICA share**. Sub-total #1 will be multiplied by 2.8 % to calculate the **Unemployment Tax Share**.

Sub-Total #1 plus the Employer FICA share plus the Unemployment Tax Share equal **The Adjusted Monthly Payment**.

**Step#3:** The value of any personal care hours approved for the Project consumer will be calculated. Oregon Administrative rule restricts the maximum number of Personal Care Hours per recipient to 20 each month. The number of hours actually approved will be multiplied by the scheduled rate, currently \$15.97 per hour, to calculate the **Personal Care Cash-Out**.

**Step#4:** The Adjusted Monthly Payment plus the Personal Care Cash-Out equals the **Total Monthly Cashed-Out Benefit**.

This process will be used both for “new” and “existing” clients. Benefits will be paid directly to clients on a prospective basis. Payments will be made once a month, on the first day of the month. Payments will be deposited directly to the participant’s designated Independent Choices checking account.

#### Adjustment and Review of Payment Amounts

Hours of care needed and authorized for the demonstration will be calculated based on the CAPS 360 assessment. From his or her assessment, the case manager enters data into a computerized model, that translates descriptive statements about clients into a need for “minimal”, “substantial” or “full” assistance. This same assessment tool and automated algorithm are also used for hours authorized in the Client-Employed Provider (CEP) Program, and for authorization of personal care services through a contract agency.

Case managers will reassess the needs of project participants every six months. The semi-annual reassessment will allow for observation of the adequacy of the authorized ADL hours. The 360 assessment itself is needs-based, and the reassessment consists both of interviewing the client to discuss her understanding of her needs and of direct observation of her ability to complete ADL tasks. The reassessment takes place in the client’s home, allowing for direct observation of the outcomes of the service plan.

In addition to semi-annual reassessments, project consumers may request a reassessment at any time that they feel that the hours authorized, which are the

basis of the cash benefit, are inadequate to provide needed care, or if their health condition changes.

### 17. Quality Assurance Plan

Senior and Disabled Services Division will have primary responsibility for monitoring and ensuring quality for the Independent Choices demonstration. SDSD's plan for ensuring quality will demonstrate a Continuous Quality Improvement focus with a specific Corrective Action Plan when deficiencies are identified, or when consumer surveys reveal potential problems. The general focus of the plan will be in the following areas:

- Consumer satisfaction with the information, training and technical assistance offered by SDSD staff, AAA staff, and community agencies providing formal training and technical assistance for project consumers.
- Consumer satisfaction with self-assessment and service planning
- Provider satisfaction with the training information provided by SDSD. Specifically, was the information provided sufficient for providing project consumers with the information needed for successful participation in the demonstration?

The Quality Assurance plan will include quarterly surveys of both project consumers and providers of consumer training and technical assistance. These written surveys include both satisfaction scales and open-ended questions. Satisfaction scales will determine overall satisfaction with the Independent Choices Program. Open-ended questions will allow consumers to give feedback on specific issues that will assist project staff to determine where corrective action may be needed. The survey questions will address the following as indicators of quality:

- Consumer satisfaction with consumer guide and training provided by community partners
- Community partners' satisfaction with materials provided by SDSD for training and technical support
- Consumer satisfaction with technical support and counseling provided by local office and community partners
- Consumer satisfaction with the ability to self-assess and develop a service plan
- Consumer satisfaction with criminal record check process
- Consumer satisfaction with the ability to recruit and retain providers
- Consumer satisfaction with financial responsibilities, including payroll responsibilities, tax withholding

The Independent Choices project coordinator will have responsibility for the Quality Assurance Plan. The coordinator will administer the survey quarterly by mail beginning the month after consumers are enrolled into Independent Choices. The information gathered on these quarterly surveys will be entered into an SPSS database for analysis and comparison. A Corrective Action Plan will be instituted if survey results show deficiencies or potential problems. The project coordinator will monitor the Corrective Action Plan. This will be done through the comparison of the quarterly survey results.

The goal of the Quality Assurance plan is to ensure that project consumers are provided with the knowledge that will enable them to be successful participants in the demonstration. The quarterly survey results will allow SDSD to determine how we are reaching that goal. An annual report on the QA plan will be provided to HCFA at the end of each year of the demonstration.

#### 18. Data Collection and Reporting Plan

The Senior and Disabled Services Division intends to employ a contractor to create a working database to contain information related to project participants and to persons selected for the evaluation group. The role of the contractor will be to construct the necessary database for user upload and maintenance. At a minimum the database will include:

- Participant/Evaluation/Wait List group member name, address, SSN, Medicaid identification number and telephone number
- Effective date of Independent Choices project participation (if applicable)
- Final date on which a cash payment is made to a project participant (if applicable)
- Date on which the participant disenrolls from the project
- Disenrollment reason code
- “New” versus “continuing” identifier
- Participant group identifier or evaluation group identifier or wait list identifier
- Four digit identification number of SDSD/AAA branch office to which person is assigned
- Date on which person entered waiting list group (if applicable)
- Coded entry of fiscal intermediary services used by participant (if applicable)
- Coded entry of counseling/training services used by participant (if applicable)

Project staff may identify other variables to be included as project implementation proceeds. Data entry into the database will be completed by support staff

members of the Senior and Disabled Service Division's Research and Finance Section. Local office staff will be required to report all new Program participants to designated project support staff along with identification information. Providers of counseling and/or training services and fiscal intermediaries will be required by contract to forward monthly reports of participant usage to the State project staff. Portland State University Institute on Aging (evaluation contractor) is required by contract to report to the State identification information on people selected as members of the comparison group. All other data is available through MMIS and MSIS information on participants and the comparison group.

Database reports will be designed that, at a minimum will provide required individual-level and aggregate attachments for required quarterly reporting. Reports will also minimally provide tracking of regional wait lists, region level information at the individual level and tracking of participant use of services available through the project. Project staff may identify other necessary reports as implementation proceeds.

Access to the database will be restricted to support staff performing data entry tasks and to Central office project coordination and management staff.

Persons responsible for the accuracy of the database are the Project Coordinator and the Project manager.

#### 19. Reporting Expenditures

Completion and submission of required HCFA 64.9 and 64.9p information is handled by the Accounting Unit of the Department of Human Services Director's office. SDSO is working with representatives of this unit as well as analysts from the Department's Office of Information Services to make the reporting changes necessary to submit financial information as required.

System changes will allow quarterly submission of HCFA 64.9 and 64.9p information for expenditures subject to the budget neutrality cap. These services are:

- Homemaker Services
- Personal Care
- Respite
- Adult Day Health Services
- Environmental Accessibility Modifications
- Transportation

- Durable medical equipment and supplies
- Chore Services
- Adult Companion Services
- Emergency Response
- Attendant Care
- In-home Services
- Hospice
- Home Delivered Meals
- Home Health

Expenditures will be reported for all Independent Choices demonstration eligibles on a date of service basis. Demonstrations eligibles include all persons in the three participating geographic areas who meet waiver eligibility criteria (see item #6 in this Protocol, criteria # 1 through 3) and who receive services subject to the budget neutrality cap, whether or not they are participants in the Independent Choices demonstration.

#### 20. Tracking and Reporting Eligibles and Eligible Member Months-

Completion and submission of required HCFA 64.9 and 64.9p information is handled by the Accounting Unit of the Department of Human Services Director's office. SDSA is working with representatives of this unit as well as analysts from the Department's Office of Information Services to make the reporting changes necessary to submit eligibility information as required.

The Project Medicaid eligible group includes all persons in the three participating geographic areas who (1) are 18 years or older, (2) meet Oregon's financial eligibility for functional impairment, (3) meet Oregon's functional impairment criteria within service priority levels, and (4) are documented to receive services according to the methodology that the State uses under its home and community-based services waiver and (5) are receiving services subject to the budget neutrality cap whether or not they participate in the Independent Choices project.

Eligible member/months for the MEG are calculated as the number of months in which persons in the MEG are eligible to receive services.

#### 21. Phase-Down Plan-

In the event that Oregon's Independent Choices demonstration project does not become a service option statewide; the program will be phased out as follows:

- When a project termination date has been determined, case managers will be notified of the termination date and new enrollments will cease.
- Six months prior to the project termination date, and monthly thereafter, all project consumers and surrogate decision-makers will be notified of the project termination date. Project consumers and surrogate decision-makers will be notified in writing or in an appropriate alternative format. Available alternate formats include, large print (16 point font and above), computer disk, Braille, audiotape or oral presentations. All materials will be written at a sixth grade level to ensure readability. Telephone numbers and TTY numbers will be listed together to allow access to information sources. Captioning will be included on all films, video or televised informational materials.
- Project disenrollment caused by the termination of the demonstration project is not a hearable issue and cannot be appealed by project consumers or surrogate decision-makers.
- Project consumers will be offered an alternative service option of their choice when the project is terminated. Community-based service options include; in-home services (both Client-Employed Provider and contract agency services) and substitute home services (Adult Foster Home, Residential Care Facility and Assisted Living Facility). Consumers will also be given the option of nursing facility services.
- Prior to the consumer's transition back to traditional services, case managers will assess the consumer's needs utilizing the Client Assessment and Profile System (CAPS). Once the 360 assessment has been completed and the consumer has been advised of service options, the consumer will then choose the service package which will best meet their needs.
- Once the project termination date has been determined, case managers will work with consumers who prefer to retain in-home services and assist with the certification of their in-home service provider(s) as Client-Employed Provider(s).
- The Division will terminate direct deposit of the Independent Choices cash grant on the project termination date. Consumers will be advised to close the dedicated Independent Choices bank account within thirty (30) days after the project terminates.

- Participants will be notified that any excess funds, excluding funds needed for tax purposes, remaining in their bank accounts at project termination must be returned to Senior and Disabled Services Division, no later than thirty (30) days after project termination. This will not be a hearable issue. Participants will be notified in the same manner as outlined previously.

## Appendix #1 State Operational Design

SDSD will implement Independent Choices through three partner agencies - the Clackamas Area Agency on Aging, serving southeastern metropolitan Portland; the Rogue Valley Council of Governments, serving Jackson and Josephine counties in southern Oregon, and the Coos Multi-Services Office of SDSD, serving Coos and Curry counties on the southern Oregon coast.

### Project Overview

#### *Eligible Project Participants*

Project participants must meet the requirements of OAR 411-15-015, by which SDSD establishes priority levels within which to manage its limited resources. These requirements include financial eligibility, functional eligibility and community-based care services eligibility. Project participants must also meet specific project criteria, discussed below.

#### *1. Financial Eligibility Criteria*

All participants in the Independent Choices demonstration project must meet Oregon's financial eligibility for Medicaid long term care services which is 300 percent of the SSI Federal Benefit Rate (FBR).

#### *2. Functional Eligibility Criteria*

Functional eligibility criteria for the demonstration project will be the same as that used for other Oregon long-term care consumers. Oregon ranks persons into priority levels (1) through (17) based on their needs for assistance in six activities of daily living - mobility, eating, toileting, cognition, bathing and dressing. Functional reassessments are generally completed not less frequently than annually. For purposes of the Independent Choices demonstration, functional reassessments of both project consumers and of associated comparison groups will be completed on a semi-annual basis.

#### *3. Eligibility for Community-Based Care Services*

Project participants must be eligible to receive nursing facility or community-based care services under the same criteria as other Oregon consumers. The consumer must be age 18 or older; must be eligible for Title XIX; must be documented as eligible for services through the Home and Community-Based Services Waiver; and must meet the functional impairment level within the service priority level.

#### 4. *Specific Project Criteria*

*a. Living Situation:* Through its Home and Community-Based Services Waiver, SDSD offers services to clients in a variety of settings. These include both community residential services and in-home services. Consumers who participate in the demonstration project must either be current recipients of in-home services, or must be eligible to receive in-home services under Oregon law. (A client who lives in a community based care facility is not eligible to receive in-home services under Oregon law; therefore, clients receiving services in community-based care facilities will be precluded from demonstration project participation.) Furthermore, services currently received must be provided through the Client Employed Provider (CEP) program, or the new participant must have the ability and willingness to receive services through that program.

*b. Cachment area:* The participant's primary residence must be located within the boundaries of the three Planning and Service Areas served by the Clackamas Area Agency on Aging (AAA), the Coos/Curry County AAA or the Rogue Valley Council of Governments.

*c. Characteristics of persons who will be self-selected to participate:* Project participants must possess a demonstrated ability, individually or through a willing representative, to appropriately assess and plan for the adequate provision of services necessary for the participants' care. Participants who are not able to self-direct care, but who have a surrogate decision-maker who is able and willing to assume this responsibility, may participate in the project.

*d. Partner site maximum enrollments:* Project enrollment at each partner site is limited to more than 100 consumers.

#### *Eligible Providers*

Services within the demonstration project will be provided by private individuals, employed and directly supervised by the consumer. Project consumers, with the assistance of local office case management staff, will be responsible for assuring the provider's ability to perform or assist with any activity of daily living (ADL) need and his or her competency to provide or assist with instrumental ADL needs. Consumers, with the assistance of local case management staff, will be responsible for verification that the care provided meets the identified needs.

All potential providers' criminal records will be checked by SDSD/AAA staff. Any expense associated with the record check will be borne by SDSD. If a record of a potentially disqualifying crime under existing Oregon law is revealed by the records check, the consumer may choose to hire the applicant in his or her sole discretion.

SDSD will reserve the right to terminate Independent Choices providers if violations of protective service and abuse laws occur or if fiscal improprieties occur that are directly related to employment under the Independent Choices project. If new criminal convictions come to the attention of the Division, the Division will make that information available to the project participant.

Consumers may choose to employ relatives as providers. However, payments for services are not intended to replace the resources available to consumers from their natural support system of relatives, friends, and neighbors. Independent Choices service payments can only be made to the extent that such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the consumer. Care plans will be based upon the least costly means of providing adequate care.

Surrogate decision-makers will not be eligible to be employed as providers by the consumer for whom they function as surrogate.

### *Participant Screening*

Consumers who self-select into Independent Choices will be asked to provide verification of their ability to assess and plan for provision of services by providing evidence of maintenance of a stable living situation and of basic utility needs.

Criteria used to assess whether a consumer demonstrates the ability to assess and plan for provision of services can be made include managing money so that shelter and utility needs are met. Participants must demonstrate management skills through maintenance of a stable living condition, defined as continuous tenancy in a single residence over a three-month period. (This requirement can be waived if moves are prompted by health issues or "no fault" situations.) Continuous tenancy must be proven by supplying documentation verifying payment to local office staff. Participants must also demonstrate their ability to handle basic utility payments by supplying documentation of payments to local office staff.

*Establishment and Payment of Service Allocation*

After an initial assessment of a project consumer is completed or after the semi-annual reassessment, local office project staff will determine whether the project consumer needs “minimal”, “substantial” or “full” assistance for Activity of Daily Living (ADL) and self-management tasks. “Minimal Assistance” means the client is able to perform a majority of a task, but requires some assistance. (OAR 411-30-002(23)) “Substantial Assistance” means a client can perform only a small portion of a task and requires assistance with the majority of a task. (OAR 411-30-002(34)). “Full Assistance” means that a client is unable to do any part of an activity of daily living or task; i.e. it must be done entirely by someone else. (OAR 411-30-002(14)). Category assignment of minimal, substantial or full is based on client needs, as assessed through the CAPS 360 tool. Assignment to the proper category is made through the automated computer system.

Administrative Rule 411-30-070 (1) authorizes monthly ADL hours as follow:

Task	Minimal assistance	Substantial assistance	Full assistance
Eating	5 hours	20 hours	30 hours
Dressing	5 hours	15 hours	20 hours
Bathing/ Personal Hygiene	10 hours	15 hours	25 hours
Mobility	10 hours	15 hours	25 hours
Bowel and Bladder	10 hours	20 hours	25 hours
Cognition	5 hours	10 hours	20 hours

Section (2) of the same rule authorizes maximum monthly hours for self-management tasks.

Task	Minimal Assistance	Substantial Assistance	Full Assistance
Medication management	2 hours	4 hours	6 hours
Transportation or Escort	2 hours	3 hours	5 hours
Meal preparation			
Breakfast	4 hours	8 hours	12 hours
Lunch	4 hours	8 hours	12 hours
Dinner	8 hours	16 hours	24 hours

Shopping	2 hours	4 hours	6 hours
Housecleaning	5 hours	10 hours	20 hours

The Division sets service payment rates for community based care providers under the authority of OAR 461-155-270.

Project staff will apply the category of need determined through the CAPS 360 assessment to project consumers, and use that need category to determine service hours available for ADL and self-management tasks (OAR 411-30-070 (1) and (2))

Service payments to Independent Choices participants will be increased by 7.65% so that project participants can correctly make required “employer” FICA contributions on behalf of their employees. Service payments to Project participants will also be increased by the employer share of Unemployment Tax. (OAR 411-30-060(10)(b)(B)).

This process will be used both for clients currently receiving in-home services under the Section 1915(c) waiver who choose to participate in Independent Choices and for new clients who opt to participate in the Independent Choices program directly after establishing eligibility.

SDSD will make service payment allocations directly available to consumers and their surrogates on a prospective basis -- that is, at the beginning of the month in which services under this waiver are to be rendered. Payments will be made once a month, on the first day of the month. Payments will be made directly to the participant’s or surrogate’s Independent Choices checking account.

*Provider Payment*

Providers will submit invoices to the project consumer in order to be paid for services. Consumers will be provided with a sample format to be used in documenting provider work hours. Consumers will pay all of their providers directly. Consumers will be responsible for deducting the appropriate taxes from their provider’s paychecks, calculating employer payroll taxes, and remitting those taxes to the state and federal government.

*Uses of Cash*

SDSD anticipates that most Independent Choices consumers will use their cash payment to increase the hourly wage that is paid to providers and that the full monthly service payment will be used to pay the provider wage.

If a consumer is able to accumulate cash, the cash can be accumulated as long as the consumer designates a purpose for the use of the funds, and has agreement from the local project staff. Oregon anticipates that very few consumers will be able to accumulate cash. Funds may be accumulated to cover future expenses that do not have another funding source and that will support the consumer's ability to remain as independent as possible. Funds will accumulate in the Independent Choices account until enough money has accumulated to meet the purpose designated by the consumer. At the conclusion of the demonstration project, any accumulated cash that has not been used will be returned to the State of Oregon. Monthly amounts accumulated by project participants will not negatively impact future service payment allowances.

Surrogate decision-makers will not be permitted to accumulate cash. Monthly amounts accumulated by surrogates will be used to offset future month's service payments. If a surrogate decision-maker accumulates cash in two consecutive months, local office project staff will re-evaluate consumer care needs and surrogate fitness through direct interviews.

Oregon has requested that the Independent Choices service payment to consumers, and any resulting contingency fund accumulation, be exempt from assessment as either an income source or as an asset for Title XIX programs, SSI, food stamps and other Federal programs based on income and/or assets.

### *Monitoring*

Consumers and surrogates are required to maintain an Independent Choices bank account for deposit of the Independent Choices service payment, and for all associated provider payments or cash accumulation towards purchases.

Consumers must additionally agree, as a condition of project participation, that transaction records and statements of this account will be made available to local office staff at any time that the account is overdrawn, or on demand. Consumers who become overdrawn must additionally attend a community budget management training that will be selected by local office staff. SDS Central Office Audit Unit staff will randomly sample representative Independent Choices participant accounts on a monthly basis to ensure compliance with the terms and conditions of the project.

Surrogates will agree, as a condition of project participation, that statements of their Independent Choices account will be forwarded to Audit Unit staff monthly for review.

Both consumers and surrogates will be informed of these conditions at the mandatory training sessions that are required for project participation. These conditions will also be made part of individual project participation agreements.

### *Resources Available to Consumers*

A breadth and diversity of resources will be available to project consumers to help them in fulfilling their responsibilities as consumers of long-term care, as employers, and as recipients of State and Federal taxpayer funded service allocations.

A network of community resources is available in each of the three partner site locations to work with project consumers on either a pro Bonn basis or at greatly reduced cost. These resources include:

- Training on fiscal and legal obligations of small employers through Small Business Development Centers
- Tax preparation counseling through the American Association of Retired Persons (AARP)
- Employment and care giver performance supervisory skills through Oregon's Independent Living Centers
- Provider recruitment through Senior Citizens Councils matching pre-screened and interviewed cares providers with project participants.

### *Participant tools*

The Independent Choices consumer manual provides information, instructions and procedures in the areas of service need assessment, job description development, recruitment and selection of providers, developing provider work agreements, and development of an emergency back-up attendant network. The manual also contains information, forms and instructions on the steps involved to both become established as an employer, and to perform those legal and fiscal obligations required of employers. Manuals also contain lists and contact people for community resources available both regionally and statewide. These manuals will be made available to all project participants as a hands-on resource, and will be introduced at the mandatory training sessions. The project participant manual will also be found on SDSD's Internet site ([www.sdsd.hr.or.us](http://www.sdsd.hr.or.us)), and can be made available in other accessible formats, as needed.

### *Project Enrollment Process*

1. Case management staff will initiate contact with consumers who indicate that they are interested in Independent Choices. Case managers will schedule home visits with potential participants to provide an in-depth description of the Independent Choices project and of consumer responsibilities under the project.
2. Consumers and/or surrogates who continue to self-select into Independent Choices will be asked to provide verification of their ability to assess and plan for provision of services by providing evidence of maintenance of a stable living situation and of basic utility needs. Different verification processes will apply to consumers and to surrogates.

In all cases in which a consumer might not be allowed to participate in the project, the decision not to allow consumer enrollment will be made by a partner site team. Team composition will include the case manager, local office management, a nurse, and a representative from the local Disability Services/Senior Advisory Council.

The decision not to allow project participation can be appealed through the usual hearing mechanisms.

3. Consumers and surrogates who continue to self-select into Independent Choices will attend mandatory training. Mandatory training will include issues around finding, hiring, supervising and firing personal care attendants; state and federal tax responsibilities; applicable state law regarding providers; required documentation; development of a budget and other accountability issues. Consumers will also be provided with written information about the Independent Choices resource and referral network. (Resource and referral network information will also be made available in alternate formats.)

In order to perform the fiscal and legal functions associated with Project participation, consumers must pass a skill test delivered at the completion of the mandatory training. Trainers will issue verification of successful exam completion to consumers for presentation to case managers. Consumers who do not pass the exam will retain the option of participating in the program only with use of a fiscal intermediary.

4. Consumers complete an initial Project participation agreement and are enrolled in the Project effective the first day of the next month.

5. Assessment of self-perceived locus of control and health status is completed at project enrollment and semi-annually thereafter. Project participants are required to complete the assessment questionnaire as a condition of participation.

Questionnaires will be returned directly to the Portland State University Institute on Aging for analysis. Non-treatment group members will be over-sampled for purposes of completion of the assessment questionnaire. Again, questionnaires will be returned directly to the University.

6. Both project participants and non-treatment group participants will be assessed at project implementation and semi-annually thereafter. The functional assessment for both groups will be performed by SDS/AAA case management staff using the SDS Client Assessment Profile System tool (the CAPS 360). This tool is used for all long-term care clients served by SDS, in both institutional and community settings.

#### *Maintaining Project Enrollment*

As mentioned above, both consumers and surrogates will negotiate and execute a Participation Agreement as a condition of Independent Choices project participation.

Consumers and surrogates may be removed from project participation if he or she fails to adhere to the terms of the Participation Agreement.

### *Project Requirements*

1. Attend a mandatory training session after enrollment, but before receipt of a service payment, that discusses the Independent Choices program and the responsibilities of a consumer or surrogate who participates in the program.
2. Demonstrate continued money management skills.

Basic life needs must continue to be met. A consumer can demonstrate that shelter needs are met through continued maintenance of a stable living situation. Managing money so that utility needs are met can be demonstrated through verification by the partner sites that the consumer's basic utility bills, (electricity, water and gas) are either current or that a payment plan is being followed.

Consumers will also be required to make payment to their providers. Consumers will be required to agree, as a condition of project participation, that they will perform all legal and fiscal requirements of employers. SDSD will require that consumers agree in writing with providers about pay periods, rates of pay and pay dates. SDSD will also suggest, but not require, that consumers use this written agreement as a vehicle to define working conditions and other terms of employment. Consumers will be provided with sample working agreements defining pay dates and terms, conditions of employment and reasons for dismissal as part of their consumer resource manual.

If a provider complains to a local partner site Independent Choices worker that he or she has not been paid by a project consumer, partner site staff will contact the consumer and request copies of legally required time records, and of the canceled check or pay receipt detailing the wage payment. Failure to provide the requisite documentation will be grounds for project disenrollment. Consumers will be required to supply project staff with names and addresses of their providers as a condition of participation. Local office project staff will mail non-payment complaint procedures to each provider.

Central Office Audit Unit staff will verify, through random audits, that consumers are meeting the legal and fiscal responsibilities of employers. Failure to meet these requirements is grounds for project disenrollment.

3. Demonstrate that personal care needs are met

We anticipate informal contact between project consumers and local office project staff on a frequent basis, but no less than once every two months during the first full year of consumer enrollment. This will be a “check-in” call; local office staff will discuss needed resources and steer participants towards assistance if needed. Local office staff will be encouraged to follow up on statements that need further explanation through home visits.

4. Consumers must choose and direct the activities of personal caregivers in a manner that avoids unnecessary risk of medical care or hospitalization due to poor care or neglect.

Valid community complaints of self-neglect or abuse that can be documented may be a ground for removal from the project. Partner sites will use the same review processes currently used for Protective Services interventions.

5. Consumers must maintain a separate bank account for deposit of the Independent Choices service payment. Consumers must agree that transaction records and statements of this account will be made available to local office staff at any time that the account is overdrawn, or on demand. Consumers who become overdrawn must additionally attend a community budget management training that will be selected by local office staff.

Consumers must additionally agree that all records of their Independent Choices account will be made available to Audit Unit staff on demand.

6. Consumers must meet all legal requirements of employers. These include, but are not limited to:

- hiring, supervising and paying employees (providers);
- keeping all records required of small employers by Internal Revenue Service and Oregon State Department of Revenue rules;
- withholding all required payroll taxes from their employee’s wages and depositing those funds for later transmittal in their Independent Choices account;
- completing all filings required of employers of domestic workers by federal, state and local governments; and
- transmitting all withheld payroll taxes to the appropriate agencies in a timely manner.

7. Consumers must agree to participate in all project assessment activities.

### *Disenrollment*

Consumers and surrogates can be removed from the Independent Choices project voluntarily or involuntarily.

SDSD anticipates that a small number of consumers and surrogates will voluntarily opt out of the Independent Choices demonstration project after some period of participation. For example, a senior who decides to participate when first assessed as eligible might choose to opt out some time later if the demands of tasks required by the project became too onerous. In these cases, the consumer or surrogate will provide 30 day notice to the local office of her intent to discontinue project participation, and the consumer will be reinstated into the long-term care option of her choice.

We anticipate that a small number of project consumers will prove themselves to be unable to self-direct purchase and payment of long-term care and that a small number of surrogates will prove to be incapable of acting in the best interests of project consumers. Persons who abrogate the terms of their Participation Agreement will be involuntarily terminated from the Independent Choices project.

As conceived and designed, the Independent Choices program will be available as an addition to the in-home services currently offered by SDSD. Project consumers who move from their own homes to substitute homes or into nursing facilities will no longer be eligible for project participation.

In all cases in which a consumer might be removed from project participation, the decision to remove the consumer will be made by a partner site team.

The decision to remove a consumer from the project can be appealed through the usual hearing mechanisms.

If removed from the project, a consumer can again participate after satisfaction of the demonstrated abilities for enrollment for a 12 month period, if in a living situation that is eligible for project participation.

**Appendix #2**  
**Project management**

**Project Director:** Julia Huddleston, Rate Setting and Audit Unit Manager  
Senior and Disabled Services Division  
500 Summer Street N.E.  
Salem, OR 97310  
Phone (503) 945-6392; Fax (503) 373-7902  
[Julia.A.Huddleston@state.or.us](mailto:Julia.A.Huddleston@state.or.us)

**Project Coordinator:** Chris Pascual, Rate Setting and Audit Unit  
Senior and Disabled Services Division  
500 Summer Street N.E.  
Salem, OR 97310  
Phone (503) 945-7035; Fax (503) 373-7902  
[Chris.Pascual@state.or.us](mailto:Chris.Pascual@state.or.us)

**Clackamas AAA Project Manager:**  
Vickie Palmer, Program Supervisor  
Clackamas Area Agency on Aging  
P.O. Box 68369  
Oak Grove, OR 97268-0369  
Phone (503) 655-8209; Fax (503) 650-8941  
[Vickie.S.Palmer@co.clackamas.or.us](mailto:Vickie.S.Palmer@co.clackamas.or.us)

**Coos/Curry MSO Project Manager:**  
Karen Snyder, District Manager  
Senior and Disabled Services Division  
Gregory Russo, Assistant District Manager  
3030 Broadway  
North Bend, OR 97459-2222  
Phone (541) 756-2017; Fax (541) 756-1861  
[Karen.M.Snyder@state.or.us](mailto:Karen.M.Snyder@state.or.us)  
[Gregory.P.Russo@state.or.us](mailto:Gregory.P.Russo@state.or.us)

**Rogue Valley Council of Governments Project Manager:**  
Lou Gauthier, Branch Manager  
Senior and Disability Services  
P.O. Box 1131  
Grants Pass, OR 97526-0093  
Phone (541) 474-3110; Fax (541) 474-3125  
[Lou.R.Gauthier@rv.cog.or.us](mailto:Lou.R.Gauthier@rv.cog.or.us)

**Appendix #3**  
**Enrollee Grievance and Appeal Rights**

DEPARTMENT OF HUMAN SERVICES,  
ADULT AND FAMILY SERVICES DIVISION

461-025-0300

General

(1) The rules in Division 025 of this chapter of rules apply to all contested case hearings of the Adult and Family Services Division and to contested case hearings of the Senior and Disabled Services Division in the General Assistance and Food Stamp programs. The hearings are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 and following. The method described in OAR 137-003-0520(8) is used in computing any period of time prescribed in this division of rules.

(2) Notwithstanding the third sentence of OAR 461-165-0430(3)(a), contested case hearings authorized by section (1) of that rule are conducted in accordance with this division of rules and the Attorney General's model rules at OAR 137-003-0501 and following.

(3) Division employees are authorized to appear on behalf of the Division in the following types of hearings:

(a) Public assistance.

(b) Employment-Related Day Care.

(c) Food Stamp.

(4) The Division's contested case hearings are not open to the public and are closed to non-participants, except non-participants may attend subject to the party's consent.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00

461-025-0305

## Definitions

For the purposes of this division of rules, the following terms have the following definitions unless the context clearly indicates otherwise:

- (1) "Claimant" means a person who has requested a hearing or who is scheduled for an IPV hearing.
- (2) "Division" means the Adult and Family Services Division or the Senior and Disabled Services Division of the Department of Human Resources, whichever is responsible for the action being contested.
- (3) "Division representative" means a person authorized by OAR 461-025-0300 to represent the Division in the hearing.
- (4) "Good cause" means a circumstance beyond the control of the claimant and claimant's representative.
- (5) "Panel" means the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.
- (6) A "request for hearing" is a clear expression, oral or written, by an individual or representative that the person wishes to appeal a Division decision or action or, in the Food Stamp program, wishes to have the decision considered by a higher authority.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00

461-025-0310

## Hearing Requests

(1) A claimant has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

- (a) The Division has not acted on a request or application for public assistance within 45 days of the application.
- (b) The Division has not acted on an application for food stamps within 30 days of the filing date.
- (c) The Division acts to deny, reduce, close or suspend a grant of public assistance (see ORS 411.095), a grant of aid (see ORS 418.125), a shelter payment permitted in the JOBS program (see OAR 461-190-0211 and following), medical assistance (see ORS 414.055), child care benefits authorized under division 160 or 165 of this chapter of rules, or food stamp benefits. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client's need.
- (d) The Division claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of food stamps was an overissuance.
- (e) The claimant claims that the Division previously underissued public assistance or food stamps and the Division denies the claim.
- (f) The household disputes its current level of food stamp benefits.
- (g) The filing group is aggrieved by any action of the Division that affects the participation of the filing group in the Food Stamp program.
- (h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.
- (i) The Division establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Assessment Program, the Division denies payment for a basic living expense (see OAR 461-135-0475).

(k) The right to a hearing is provided for the TA-DVS program (see OAR 461-135-1235).

(l) The right to a hearing is provided for the HSP program (see OAR 461-135-1335).

(m) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) or on the question of whether a support service payment should be authorized or made, unless specifically required by the Division's rules. On these questions and in any dispute arising in the JOBS program, the client is entitled to use the Division's conciliation process (see OAR 461-190-0231).

(3) A request for hearing is complete:

(a) In public assistance programs, when the Division's Administrative Hearing Request form (AFS 443) is completed and signed by the claimant or the claimant's representative and is received by the Division.

(b) In the Food Stamp program when:

(A) The Division receives the claimant's oral or written statement that he or she wishes to appeal a decision affecting the claimant's food stamp benefits to a higher authority; or

(B) The Division's Administrative Hearing Request form (form AFS 443) is completed and signed by the claimant or the claimant's representative and is received by the Division.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Division.

(4) In the event a request for hearing is not timely, the Division will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Division may refer an untimely request to the Panel for a hearing on the question of timeliness.

(5) In the event the claimant has no right to a contested case hearing on an issue, the Division may enter an order accordingly. The Division may refer a hearing request to the Panel for a hearing on the question of whether the claimant has the right to a contested case hearing.

(6) To be timely, a completed hearing request must be received by the Division not later than:

(a) The 45th day following the date of the decision notice in public assistance and medical programs.

(b) The 90th day following the date of the decision notice in the Food Stamp Program.

(c) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(d) In a case described in section (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(7) In determining timeliness under section (4) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(8) In computing the time periods provided by this OAR, if the last day of the time period falls on a Saturday, Sunday, or a legal holiday, the period is extended until the next working day.

[ED. NOTE: The Form(s) referenced in this rule is not printed in the OAR compilation. Copies are available from the agency.]

Stat. Auth.: ORS 183.341, ORS 411.060, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.095, ORS 411.816 & ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00

461-025-0311

### Continuation of Benefits

(1) This rule explains who may receive continuing benefits while a contested case pends.

(2) A client who is entitled to a continuing benefits decision notice under a rule in division 175 of this chapter of rules may, at the option of the client, receive continuing benefits, in the same manner and same amount, until a final order resolves the contested case. To be entitled to continuing benefits, the client must complete a hearing request not later than the later of:

(a) The tenth day following the date of the notice; and

(b) The effective date of the action proposed in the notice.

(3) The continuing benefits are subject to modification based on additional changes affecting the client's eligibility or level of benefits.

Stat. Auth.: ORS 183.341, ORS 411.060, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.816 & ORS 418.100

Hist.: AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00

461-025-0315

### Expedited Hearings

(1) A claimant has the right to an expedited hearing if:

(a) The Division denies or fails to issue a timely decision on claimant's request for TA-DVS or emergency assistance;

(b) The claimant contests the form or amount of a TA-DVS or an emergency assistance payment;

(c) The claimant disagrees with the denial of continued benefits pending a requested hearing; or

(d) The claimant's request for expedited food stamp service is denied, or the claimant is aggrieved by an action of the Division that affects the expedited participation of the household in the Food Stamp program.

(2) Public Assistance programs: An expedited hearing is a telephone hearing held within five working days of the Division's receipt of the written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. In the TANF program, if the claimant requests a face-to-face hearing, the hearing may be postponed or continued as necessary to accommodate the claimant. However, the hearing must be held not later than 21 days following the receipt by the Division of the request for hearing if the claimant lives within 100 miles of Salem, Oregon, and not later than 35 days in all other cases. The final order must be issued within three working days from the date the hearing closes.

(3) Food Stamp program: An expedited hearing is a telephone hearing held within five working days of the receipt of a verbal or written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.

Stat. Auth.: ORS 411.060 & ORS 418.100

Stats. Implemented: ORS 411.095

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 21-1990(Temp), f. 8-28-90, cert. ef. 9-1-90; AFS 2-1991, f. 1-15-91, cert. ef. 2-1-91; AFS 4-1995, f. & ef. 2-1-95; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00

461-025-0316

Intentional Program Violation (IPV) Hearings; Food Stamp Program

Notwithstanding the other rules in this division of rules and the rules at OAR 137-003-0501 and following, this rule governs intentional program violation hearings. This rule reflects the requirements of the U.S. Department of Agriculture for the Food Stamp program.

(1) An individual accused of an Intentional Program Violation may waive the right to an IPV hearing by signing a waiver on a form prescribed by the Division. There is no further administrative appeal after the individual signs the waiver unless the individual asserts that the waiver was signed under duress and, within 90 days from the date the waiver was signed, requests a hearing to prove this. The claimant has the burden of proving duress. If the hearing officer determines that the waiver was signed under duress, the waiver may be nullified and the Division may thereafter initiate an Intentional Program Violation hearing.

(2) The claimant is entitled to an Advanced Notice of Intentional Program Violation Hearing at least 30 days in advance of the scheduled hearing. The notice includes the specific charge(s) alleged by the Division.

(3) Within 90 days of the date the claimant is notified in writing of the disqualification hearing, a hearing officer will conduct the hearing and serve a final order on the individual.

(4) The claimant is entitled to a postponement of the scheduled hearing, if the request for postponement is made at least 10 days before the date of the scheduled hearing. The hearing will not be postponed for more than a total of 30 days, and the hearing officer may limit the postponements to one.

(5) If the claimant fails to appear for the scheduled IPV hearing after refusing the notice of hearing, refusing to claim the notice, or receiving the notice, the hearing may be conducted without the individual. The individual has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. Good cause will be determined on the record by the hearing officer. If the individual shows good cause, the hearing officer will schedule another IPV hearing for the individual. If the individual never receives the notice of hearing, the 10 day time limit to show good cause does not apply.

(6) The hearing officer shall advise the claimant that he or she may refuse to answer questions during the hearing.

(7) The standard for proving that an individual has committed an Intentional Program Violation is clear and convincing evidence.

(8) There is no administrative appeal of a final order, except as provided in section (5) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

Hist.: AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00

461-025-0325

### Informal Conference

(1) The Division representative and the claimant may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(3). The informal conference may also be used to:

- (a) Provide an opportunity for the Division and the claimant to settle the matter;
- (b) Ensure the claimant understands the reason for the action that is the subject of the hearing request;
- (c) Give the claimant an opportunity to review the information that is the basis for that action;
- (d) Inform the claimant of the rules that serve as the basis for the contested action;
- (e) Give the claimant and the Division the chance to correct any misunderstanding of the facts;
- (f) Determine if the claimant wishes to have any witness subpoenas issued; and
- (g) Give the Division an opportunity to review its action.

(2) The claimant may, at any time prior to the hearing date, request an additional conference with the Division representative.

(3) The Division may provide to the claimant the relief sought at any time before the Final Order is served.

(4) Notwithstanding any rule in this chapter of rules, prehearing conferences are governed by OAR 137-003-0575.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.095

**Appendix #4**  
**Proposed Program Rules**

**PROPOSED**  
**OREGON ADMINISTRATIVE RULES**  
Chapter 411, Division 036

**Independent Choices Program**

The Independent Choices Program is a demonstration project which allows Oregon's Senior and Disabled Services Division to collect data relative to an innovative long-term care service option. This option is designed to enhance service to those Medicaid long-term care eligible consumers who are recognized as capable of becoming involved in developing a self-directed service plan, and controlling the implementation and management of that plan.

**411-036-0000 Purpose**

(1) These Administrative Rules are established to ensure that Independent Choices Program services will maximize independence, empowerment, dignity, and human potential through provision of flexible, efficient, and suitable services to each eligible consumer.

(2) Services enabled by these rules are intended to complement and supplement the consumer's own personal abilities to continue to live in his/her own home.

**411-036-0010 Definitions**

For the purpose of these rules, definitions used in OAR 411-030-0020 apply, as do the following:

(1) "Consumer" means an individual eligible for Independent Choices Program services who is either a recipient of in-home services or is eligible for in-home services under Oregon law. (A consumer who lives in a community based care facility is not eligible for ICP project participation.)

(2) “Contingency fund” means any ICP funds accumulated in the consumer’s ICP bank account that are held for contingency expenses.

(3) “Evaluation or Research Activities” are those activities which will allow the initial study group to be evaluated. Such activities include, but may not be limited to, survey instruments and questionnaires completed by each member of the study group.

(4) “FICA” is the acronym for Federal Insurance Company of America.

(5) “FUTA” is the acronym for Federal Unemployment Tax Assessment.

(6) "Independent Choices Program" (ICP) refers to the program wherein the provider is directly employed by the consumer and provides either hourly or live-in services.

(7) “Independent Choices Services Coordinator” refers to persons employed by the Division to complete functional assessments of ICP consumers who contact consumers monthly for the first six months, to monitor consumer progress and need for assistance.

(8) “Employee Provider” means an individual retained by the consumer to render service to that consumer for a fee.

(9) “Study group” means the group of participants in Independent Choices who will be a part of the initial testing of consumer-directed long-term care for its suitability to become a permanent part of Oregon’s community-based care programs. This group will consist of participants in the Independent Choices demonstration project and a non-participating control group of eligible consumers with similar characteristics.

(10) “Surrogate decision maker” means the person assigned by the consumer and approved by the SDS/AAA local branch staff to act as the consumer’s decision maker and representative in matters pertaining to Independent Choices Program service payments.

(11) “SUTA” is the acronym for State Unemployment Tax Assessment.

#### **411-036-0020 Program Scope**

(1) The Independent Choices Program is a demonstration project designed to allow for a long-term care option that empowers consumers to self-direct their own care plans and purchase services that will enhance their independence, dignity, choice and well-being in his/her own home. The services purchased can range from assistance with general household tasks to assistance with activities of daily living. The extent of the services may vary from a few hours per week to full-time.

(2) The demonstration will involve three partner sites, those being Clackamas Aging and Disability Services, Rogue Valley Council of Governments and Coos-Curry Multi-Service Office with enrollment caps at each site of no more than one hundred consumers.

#### **411-036-0030 Eligibility Requirements**

The purpose of establishing eligibility requirements for persons to be served in the Independent Choices Program (ICP) is to assist the Division in addressing the following goals:

(1) Testing whether direct payment of a cash benefit for in-home services increases consumer satisfaction, independence and service options without decreasing health status and personal well-being, allowing persons eligible for and receiving long-term care services to remain in the least restrictive and least costly setting consistent with their care needs;

(2) Identifying consumer groups who are most likely to be successful in a self-directed program that makes cash benefits available to its participants;

(3) Assuring access to ICP services for appropriate eligible persons; and

(4) Assuring that ICP services, and the setting in which they are provided, are safe and adequate; and

(5) Managing limited resources to enable the greatest possible number of eligible and appropriate persons receive needed ICP services based on the Division's assessment of the consumer's recognized capabilities, demonstrated abilities, functional impairment, and alternative service systems available.

#### **411-036-0040 Enrollment Criteria**

(1) Independent Choices Program services may be considered for those individuals who meet the established eligibility criteria and priority for service as described in OAR 411-015-0100.

(2) Project participants must demonstrate and have recognized capability to appropriately direct and purchase his/her own in-home care, or if the consumer is unable to do so, must have a family member, legal representative or other representative designated as surrogate who is willing and able to arrange and purchase supports on the consumer's behalf and to sign the Independent Choices Participation Agreement.

(a) Consumers must demonstrate the ability to assess and plan for care as follows:

(A) By maintaining a stable living situation, defined as continuous tenancy at a given residence for the past three months. If health issues or a no-fault situation has prompted a move within the past three months, proof of any three consecutive months of tenancy during the past year is acceptable.

(B) By managing money so that food, shelter, utilities and personal care needs are met. Ability to manage money may be shown by submission of a current bill from an electricity, gas or water department showing that payments are current or a payment plan is being followed, and by submission of documentation that demonstrates recent timely rent/mortgage payments.

(3) All participants or the designated surrogate will be required to attend a four hour training session prior to receiving an Independent Choices benefit.

(4) All participants or the designated surrogate must pass a written exam at the end of the training session. The exam will test their knowledge of the financial responsibilities of being an employer if it is their choice to manage the cash benefit without the use of a fiscal intermediary.

a) Clients or the designated surrogates unable to pass the exam will be required to use a fiscal intermediary to participate in the program. The cost of the fiscal intermediary will be borne by the Division.

(b) Clients or the designated surrogate may choose to use a fiscal intermediary. However, if the client is not required to use a fiscal intermediary, the cost of the fiscal intermediary must be borne by the client.

**411-036-0050 Disenrollment and Disenrollment Criteria**

(1) Participants and surrogates may be disenrolled from the ICP project voluntarily or involuntarily.

(A) Voluntary disenrollment: Participants must provide thirty (30) days notice to the local office of intent to discontinue project participation.

(B) Involuntary disenrollment: When a participant proves to be unable to self-direct purchase and payment of long-term care, when a surrogate proves incapable of acting in the best interest of the participant, or when persons invalidate the terms of their Participation Agreement, they may be involuntarily terminated from the ICP project and reinstated into another long-term care option of their choice.

(C) Involuntary disenrollment may result from any of the following disenrollment criteria:

(i) A provider claim of non-payment of wages where the consumer or his/her representative cannot show proof of payment;

(ii) Evidence that the Medicaid cash benefit was used for illegal purposes in accordance with local, state or federal statutes;

(iii) Failure to comply with legal/financial obligations as an employer of domestic workers and/or unwillingness to participate in counseling and training to remedy lack of compliance;

(iv) Inability to manage the cash benefit as evidenced by:

(I) Overdrafts of the consumer's Independent Choices bank account;

(II) Non-compliance with recommendations for training/use of community resources which were the result of (a).

(v) Failure to maintain health and well-being by obtaining adequate personal care as evidenced by:

(I) Declines in physical functional status which are not attributable to changes in health status;

(II) Substantiated complaints of the consumer's self-neglect, neglect, or other abuse on the part of the consumer or surrogate.

(vi) Refusal to cooperate with demonstration evaluation activities, even when local staff have made efforts to accommodate the consumer's personal needs relating to participation.

(D) Loss of eligibility. Persons will no longer be eligible for project participation and will be disenrolled from the ICP program when:

(1) A participant moves from their own home to a substitute home such as an assisted living facility, an adult foster home, a residential care facility or into a nursing home; or

(2) A participant loses their Medicaid financial eligibility.

**411-036-0060 Case Management**

(1) Functional Assessment:

(a) Both project participants and control group participants will be assessed at project implementation and semi-annually thereafter.

(b) The assessment process will identify the consumer's ability to perform activities of daily living, self-management tasks, and determine the consumer's ability to address health and safety concerns. The case manager will conduct this assessment in accordance with standards of practice established by the Division as described in OAR Chapter 411, Division 030.

#### **411-036-0070 Service Rate Allocation**

(1) Setting the monthly allocation:

(a) All participating consumers will have a functional assessment completed by local case management staff using the CAPS 360. The CAPS 360 will be completed at consumer's entry into the Independent Choices Program, and at six-month intervals after entry.

(b) The cash benefit allocation will be based upon assessment of need determined by the CAPS 360 tool and upon the assistance standards in the Client-Employed Provider (CEP), OAR Chapter 411, Division 030.

(c) The cash benefit allocation will be increased by the employer portion of required FICA, FUTA and SUTA contributions that SDSA pays on behalf of consumers participating in the CEP program.

(d) The cash benefit allocation will be reviewed and reassessed by the Case Manager every six months, or as needed if the consumer's condition changes.

(e) Independent Choices Program allocations will be inflated each fiscal year by the same percentage as that used in the CEP program.

(2) Employment Relationship: The relationship between the provider and the consumer is that of employee and employer.

(3) Interruption of Services:

(a) When a consumer is absent from the home due to an illness or medical treatment, and is expected to return to the home, cash benefits for a live-in provider may be retained to ensure his/her presence upon the consumer's return, or to maintain the consumer's home for up to 30 days, at a rate established by the Division. An exception to this rate may be granted by the local unit manager if the physician providing treatment in a hospital or rehabilitation setting requests the presence of the provider for special services such as interpreting, briefing, or training. In this circumstance, benefits will continue as though the consumer was in the home.

(b) When a consumer is absent from the home due to illness or medical treatment for longer than 30 days, ICP benefits can resume upon return to the home, providing eligibility criteria can still be met, and if the program's enrollment cap has not been met in the interim.

(4) Selection of Employee Providers:

(a) The consumer carries full responsibility for locating, interviewing, screening, and hiring his/her own employees. The right to employ the individual of his/her choice stands without regard to any limitations established by the legislature or federal government, except for Immigration and Naturalization Service Rules.

(b) Provider Monitoring: Consumers and surrogates are responsible for assuring their employees' ability to perform or assist with any activity of daily living (ADL) need and his or her competency to provide or assist with instrumental ADL needs. Case management staff will assist the client in assessing provider abilities if requested.

(c) Screening and Criminal Record Checks: Providers must be subjected to a criminal record check with costs borne by the Division. If a record of a potentially disqualifying crime is revealed, the consumer may allow the applicant to function as a provider solely at his or her discretion.

(d) Relatives as Providers: Participants' relatives may be employed as providers; however, payments for home services are not intended to replace the resources available to a consumer from their natural support system.

(5) Termination of Employment: Terms of dismissal and resignation are the sole responsibility of the employer to establish. The employer will outline these terms for the provider at the time of employment.

(6) Termination of Cash Payments:

(a) SDS/AAA local office reserves the right to suspend or terminate program participation with timely notice when:

(A) Any disenrollment criteria occur;

(B) Consumer no longer has the skills to adequately or safely obtain and direct needed services; or

(C) the consumer requests termination.

(b) Should program participation be terminated by SDS/AAA local office, the consumer has the right to request a hearing for appeal as specified in OAR 461-025-0300 through 461-025-0385.

(7) SDS Fiscal and Accounting Responsibility:

(a) The Division will make an electronic deposit payment to the designated Independent Choices bank account, as authorized by an SDS unit or Type B AAA. The deposit will be made by the fifth day of each month in the amount determined as the consumer's cash benefit allocation. This payment shall be considered full payment for the services rendered under Title XIX and the employer's share of payroll taxes, in lieu of client employed provider payments.

(b) Ancillary Contributions:

(A) The consumer will retain and pay the employer's share of FICA, and withhold the employee's share of FICA. The prevailing employee's FICA rate must be withheld from his/her payment to each employed service provider. The consumer will also retain and pay the FUTA and SUTA which was part of the cash benefit if these taxes are owed to federal and state agencies at the end of the tax year.

(c) All provider payments and contingency fund payments must be paid through the Independent Choices checking account. Bank staff will notify a local office staff designee in case of participant overdraft. Bank statements and transaction records will be made available by the consumer to local office staff at any time the account is overdrawn, or on demand. Consumers who become overdrawn must clear all overdraft charges and outstanding check amounts and may be required to attend a community budget management training to be selected by local office staff.

(d) Division Audit Unit staff will randomly sample representative ICP bank account records to include copies of cancelled checks on a monthly basis to ensure compliance with the terms and conditions of the project. Surrogates will forward monthly ICP bank statements to the Audit Unit for review.

**411-036-0080 Issuing Benefits**

(1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the consumer's possession.

(2) A benefit payment accrues to and becomes vested in the consumer when issued.

(3) A benefit is considered issued and received by the consumer when the direct check deposit is made to the consumer's ICP bank account.

(4) Benefits to the consumer do not require accountability for individual expenditures or amounts but they are subject to random audit.

**411-036-0090 Responsibility for Authorizing Benefits**

Local offices designated to determine eligibility in specific areas and programs have the sole responsibility to authorize benefits. The local office staff is responsible for determining need, establishing eligibility and authorizing benefits.

**411-36-0100 Surrogate Decision Makers**

(1) With local office staff approval, a surrogate decision maker may be used to obtain and use benefits for the consumer.

(2) A surrogate decision maker may be used any time the consumer, their spouse, or another responsible designee names one, who has been approved by the local office in writing, on a form designated by the Division.

(3) The branch office may appoint an emergency surrogate decision maker if the consumer is temporarily unable to act as payee.

(4) When a surrogate decision maker is named, the surrogate must either have access (signing privileges) to the consumer's Independent Choices Program bank account, or must open one for direct deposit, in both their's and the consumer's name.

(5) Surrogate decision makers may be asked to allow the Division to request a credit check. If this is refused, project participation will be denied.

(6) Surrogate decision makers other than immediate family members of the consumer will be required to submit to a criminal record check. If found to have record of a conviction, the local office staff may determine whether circumstances exist that allow the individual to function as a surrogate without endangering the consumer.

**411-036-0110 Issuance Date of Benefit**

(1) For all benefits:

(a) Authorized direct deposit payment of ICP benefits is made between the first and fifth days of the payment period.

(b) Benefits issued by electronic direct deposit will be available by the fifth day of each month except for the initial month of benefits for new, reopened or restored cases.

**411-036-0120 Hearings and Appeals**

(1) For the purpose of these rules, OAR 461-025-0300 through 461-025-0385 apply to Department of Human Resources contested case hearings involving benefits in public assistance programs.

(2) Subject to the approval of the Attorney General, SDSD employees are authorized to appear on behalf of the agency in hearings conducted by the Division.

**411-036-0130 Termination of Program**

(1) This demonstration is meant to be a three-year project and may terminate after the three years have lapsed.

**411-030-0140 Effective Date**

(1) The effective date of this demonstration will be as soon as possible after all necessary program approvals have been received from the appropriate Federal agencies.