



**OREGON DEPARTMENT OF HUMAN SERVICES
OFFICE OF DEVELOPMENTAL DISABILITIES SERVICES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 318**

**INDIVIDUAL RIGHTS, COMPLAINTS, NOTIFICATION OF PLANNED
ACTION, AND CONTESTED CASE HEARINGS FOR DEVELOPMENTAL
DISABILITIES SERVICES**

EFFECTIVE JUNE 10, 2024

411-318-0000 Statement of Purpose and Scope
(Statutory Minor Correction 03/19/2020)

(1) The rules in OAR chapter 411, division 318 prescribe:

- (a) The rights of individuals receiving developmental disabilities services;
- (b) The process for reporting and investigating a complaint regarding dissatisfaction with a developmental disabilities service or provider;
- (c) The requirements for notification in the event a developmental disabilities service is denied, reduced, suspended, or terminated and the contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disabilities service; and
- (d) The contested case hearing process for challenging an involuntary reduction, transfer, or exit.

(2) The rules in OAR chapter 411, division 318 apply to the developmental disabilities services and service settings described in OAR chapter 411, divisions 004 and 300 to 455.

Statutory/Other Authority: ORS 409.050, 427.107

Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.107, 427.109

411-318-0005 Definitions and Acronyms

(Amended 06/10/2024)

In addition to the following definitions and acronyms, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 318. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "CDDP" means "Community Developmental Disabilities Program" as defined in OAR 411-317-0000.

(2) "Claimant" means the person directly impacted by an action that is the subject of a hearing request.

(3) "Complainant" means an individual, as defined in OAR 411-317-0000, or an individual's representative.

(4) "Complaint" means a complainant expresses dissatisfaction with a case management entity or provider, in their preferred language, and requests a formal response.

(5) "Complaint Form" means the form used to file a complaint (form 0946).

(6) "Complaint Investigation" means the investigation of a non-abuse related complaint that has been made to the Department or a local program.

(7) "Complaint Log" means a list of complaint-related information.

(8) "Continuing Services" means the continuation of a developmental disabilities service following the request for a hearing. Services continue until a Final Order is issued.

(9) "DD Administrative Hearing Request" means the form used to request an administrative hearing to contest an action related to developmental disabilities services (form 0443DD).

(10) "Denial" means a rejection of a request for a developmental disabilities service or for an increase in a developmental disabilities service. A denial of a Medicaid service requires a Notification of Planned Action.

(11) "Department" means the Oregon Department of Human Services, including the Office of Developmental Disabilities Services.

(12) "Department Hearing Representative" means a person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0510.

(13) "Department Staff" means a person employed by the Department who is knowledgeable in a particular subject matter.

(14) "Exit" means termination or discontinuance of a Department-funded developmental disabilities service.

(15) "eXPRS" means the Department's electronic payment and reporting system.

(16) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of Department staff or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(17) "Hearing" means a contested case hearing subject to OAR 137-003-0501 through 137-003-0700, which results in a Final Order.

(18) "Informal Conference" means the discussion between a claimant, the claimant's representative, Department staff, and a Department hearing representative that is held prior to a hearing to address any matters pertaining to the hearing, as described in OAR 411-318-0025. An administrative law judge does not participate in an informal conference. An informal conference may result in resolution of the issue.

(19) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(20) "Involuntary Transfer" means a provider has made the decision to transfer an individual to another setting operated by the same provider without prior approval from the individual.

(21) "Local Program" means the case management entity, provider organization, or other certified, licensed, or endorsed provider or agency that contracts with the Department to provide developmental disabilities services, including services to an individual associated with a complaint.

(22) "Notice of Involuntary Reduction, Transfer, or Exit" means:

(a) Notice of Exit or Transfer for Residential Settings (form 0719R).

(b) Notice of Exit, Suspension, or Reduction for Community Living and Supported Living Services (form 0719C).

(c) Notice of Exit, Suspension, Transfer, or Reduction for Day Support Activities and Employment Services (form 0719E).

(23) "Notification of Planned Action" means the written decision notice issued to an individual in the event that a developmental disabilities service is denied, reduced, suspended, or terminated (form 0947).

(24) "OAH" means the Office of Administrative Hearings.

(25) "Personnel Complaint" means a complaint involving the conduct of a person receiving funds to deliver developmental disabilities services.

(26) "Program Director" means the Director of a local program, or the Director's designee.

(27) "Program Staff" means a person employed by the local program who is knowledgeable in a particular subject matter.

(28) "Representative" means an adult, such as a parent, family member, guardian, legal representative, advocate, or any other person, who is chosen by an individual or the individual's legal representative to represent the individual in connection with the provision of developmental disabilities services or during the complaint or hearing process. A representative may not be an employee of the Department, CDDP, or Brokerage acting in official capacity. An individual or the individual's legal representative is not required to choose a representative.

(29) "Request for Service" means:

(a) Submission of a completed application for developmental disabilities services as described in OAR 411-320-0080;

(b) A written request for a new developmental disabilities service or provider; or

(c) A written request for a change in a developmental disabilities service currently provided.

(30) "Service" means the developmental disabilities services and service settings described in OAR chapter 411, divisions 004 and 300 to 455.

(31) "These Rules" mean the rules in OAR chapter 411, division 318.

(32) "Transfer" means an exit immediately followed by an entry at another location administered or operated by the same provider. A transfer is subject to the same standards as an entry and exit.

(33) "Written Outcome" means the written response from the Department or the local program to a complaint following a review of the complaint.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662

Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007, 427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662

411-318-0010 Individual Rights

(Amended 06/29/2016)

(1) While receiving developmental disabilities services, an individual has the right to:

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

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

(c) Be assured that medication is administered only for the clinical needs of the individual as indicated by a health care provider, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(d) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(e) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(f) Informed, voluntary, written consent prior to participating in any experimental programs;

(g) A humane service environment that affords reasonable privacy and the ability to engage in private communications with people chosen by the individual through personal visits, mail, telephone, or electronic means;

(h) Visit with legal and designated representatives, family members, friends, advocates, legal and medical professionals, and others chosen by the individual, except where prohibited by court order;

(i) Participate regularly in the community and use community resources, including recreation, developmental disabilities services, employment services, school, educational opportunities, and health care resources;

(j) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

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

(l) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(m) Keep and use personal property and have a reasonable amount of personal storage space;

(n) Food, housing, clothing, medical and health care, supportive services, and training;

(o) Seek a meaningful life by choosing from available services and enjoying the benefits of community involvement and community integration in a manner that is most integrated, considering the preferences and age of the individual;

(p) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(q) Ongoing participation in the planning of services, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with an explanation of all service considerations in a manner that ensures meaningful individual

participation, and the right to invite others chosen by the individual to participate in the plan for services;

(r) Request a change in the plan for services and a reassessment of service needs;

(s) A timely decision upon request for a change in the plan for services and a reassessment of service needs;

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

(u) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, notification of available sources of necessary continued services, and a hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(v) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), and the procedures for filing complaints, reviews, hearings, or appeals if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Be encouraged and assisted in exercising all legal, civil, and human rights;

(x) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment;

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment; and

(aa) Be informed that a family member has contacted the Department to determine the location of the individual, and to be informed of the name and contact information of the family member, if known, as provided under ORS 430.212 and OAR 411-320-0090.

(2) The individual rights described in section (1) of this rule apply to all individuals' eligible for or receiving a developmental disabilities service. A parent or guardian may place reasonable limitations on the rights of a child.

(3) In addition to the rights described in section (1) of this rule, individuals receiving home and community-based services in residential and non-residential home and community-based settings have the right to home and community-based settings with the qualities described in OAR 411-004-0020(1).

(4) In addition to the rights described in sections (1) of this rule, individuals receiving home and community-based services in provider owned, controlled, or operated residential settings have the right to provider owned, controlled, or operated residential settings with the qualities described in OAR 411-004-0020(2).

(a) For children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, the qualities described in OAR 411-004-0020(2) apply in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities.

(b) Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, must be addressed through a person-centered service planning process and documented in the ISP for the child.

(c) Limitations that deviate from and are more restrictive than what is typical for children of the same age without disabilities must comply with OAR 411-004-0040.

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

(6) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(7) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(8) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

Statutory/Other Authority: ORS 409.050, 427.107

Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.107, 427.109

411-318-0015 Complaints

(Amended 06/10/2024)

(1) The Department and local programs must address all complaints in accordance with their policies and procedures and these rules.

(2) Department staff and program staff addressing or reviewing a complaint may not have a conflict of interest with the complaint or the complainant.

(3) A complaint related to a developmental disabilities service or provider may be filed at any time.

(4) A complaint may include, but is not limited to:

(a) An expression of dissatisfaction with a developmental disabilities service or provider. For example:

(A) The person-centered planning process, including but not limited to people chosen by an individual or an individual's ability to make informed, timely choices.

(B) Service planning as described in OAR 411-415-0070, including but not limited to an individual's choice of providers or additional services meeting an individual's needs, such as protocols, Positive Behavior Support Plans, Career Development Plans, etc.

(C) Home and community-based services as defined in OAR 411-317-0000, including but not limited to an individual's ability to choose their home, desired room decorations, food preferences, and transportation.

(D) Employment services, including but not limited to the choice of being employed, the choice to not be employed, or employment opportunities.

(b) An allegation of circumstances or events that are contrary to law, rule, policy, or otherwise, as determined by a complainant.

(5) The complaint process described in this rule does not apply to a complaint in the following situations:

(a) Anonymous complaints and allegations of discrimination are reviewed by the Governor's Advocacy Office.

(b) The merits of the complaint have been, or are going to be, decided by a judge or a juvenile court ruling.

(c) The subject matter of the complaint is not related to a developmental disabilities service or a provider.

(d) The complaint is about the personnel of a local program.

(A) An agency must include policies and procedures for the handling of personnel complaints in accordance with OAR 411-323-0060(9).

(B) A Community Developmental Disabilities Program (CDDP) must include policies and procedures for the handling of personnel complaints in accordance with OAR 411-320-0175(1).

(C) A Brokerage must include policies and procedures for the handling of personnel complaints in accordance with OAR 411-340-0060(1).

(e) The subject matter of the complaint is subject to review under the following:

(A) ORS 419B.005 to 419B.055 for child abuse reports.

(B) OAR chapter 309, division 118 for the Oregon State Hospital.

(C) OAR 407-005-0025 and 407-005-0030 for discrimination on the basis of disability.

(D) OAR 407-005-0100 to 407-005-0120 for staff conduct or customer service received from Department personnel.

(E) OAR chapter 411, division 020 for adult protective services provided by the Department's Aging and People with Disabilities Program.

(F) OAR 410-141-3875 through 410-141-3915 for the Oregon Health Plan.

(G) OAR 413-010-0420 for Department Child Welfare decisions.

(H) OAR 413-010-0700 through 413-010-0750 for Department Child Protective Service dispositions.

(I) OAR 413-120-0060 for Department Child Welfare adoption placement selections.

(J) OAR chapter 582, division 020 for Department Vocational Rehabilitation service determinations.

(K) OAR chapter 839, division 003 for a violation of civil rights investigation conducted by the Bureau of Labor and Industries.

(6) If a complaint alleges circumstances that meet the criteria for an investigation of abuse, the allegation must be immediately reported to the appropriate protective service entity, such as:

(a) The Department;

(b) A CDDP;

(c) A Brokerage;

(d) The Office of Training, Investigations, and Safety;

(e) Child Welfare; or

(f) Law enforcement.

(7) If a complaint falls under section (5) of this rule, the local program or Department must offer to assist the complainant with filing the complaint with the appropriate entity.

(8) The local program or Department must ensure there is no punitive action threatened or taken against a complainant.

(9) Information regarding the complaint process must be accessible for people with disabilities and provided in a person's preferred language.

(10) A local program must have and implement written policies and procedures regarding individual complaints and the complaint process. A copy of the policies and procedures for resolving complaints must be maintained on file at the office of the local program and must be available to staff, individuals, individuals' representatives, providers, and the Department. The policies and procedures must include, but are not limited to, all of the following:

(a) Method used to submit a complaint. For example, form 0946, verbal, email.

(b) When a complaint must be logged in the complaint log.

(c) Process for reviewing and resolving a complaint.

(d) Time frames for responding to a complaint as set forth in this rule.

(e) Documentation to be used in response to a complaint as set forth in this rule.

(f) The process for assisting an individual or an individual's representative with filing a personnel complaint or a complaint with another entity according to section (7) of this rule.

(g) Submission of documents to the Department.

(11) A local program must submit records requested by the Department within three business days from the receipt of the request.

(12) A complaint received on the Complaint Form (0946) constitutes a complaint and must be addressed through the complaint process described in section (17) of this rule.

(13) An expression of dissatisfaction about a developmental disabilities service or provider that is not submitted on the Complaint Form (0946) must be addressed through the complaint process described in section (17) of this rule, upon confirmation by an individual or an individual's representative that they wish to file it as a complaint or expresses the need to escalate it and receive a written outcome.

(14) COMPLAINT LOG.

(a) A local program must maintain a complaint log. At a minimum, the complaint log must include all of the following:

(A) The legal name of the individual for which the complaint is being filed.

(B) The individual's preferred name.

(C) The individual's preferred method of contact.

(D) The name and contact information of the person making the complaint, if known.

(E) The name of the person taking the complaint.

(F) The nature of the complaint, including if there was a request for new or changed developmental disabilities services which may result in a hearing.

(G) The date the complaint was received.

(H) The date the complaint was acknowledged in writing as described in section (17)(a) of this rule.

(I) The date the local program offered the complainant an opportunity to discuss the complaint with the local program, as described in section (17)(b) of this rule, and the date of the discussion, if applicable.

(J) The date of an extension for a written outcome that was mutually agreed upon as described in section (17)(c) of this rule.

(K) The written outcome of the complaint as described in section (17)(c) of this rule.

(L) The date and method the written outcome was provided to the complainant.

(b) Personnel complaints and allegations of abuse must be maintained separately from the complaint log.

(c) A local program must only document complaints about their local program in their complaint log. In the event a complaint is against another agency or program, the local program must:

(A) Help the individual or the individual's representative file the complaint with the other agency or program; and

(B) Document the support provided by the local program in the individual's progress notes.

(15) SCREENING OF COMPLAINTS. A local program must screen all complaints for potential hearing related issues.

(a) In the event that a complaint appears to allege a denial, reduction, suspension, or termination of a developmental disabilities service, the local program must issue a Notification of Planned Action and advise the complainant of the right to a hearing and assist the complainant with filing a hearing request, if so desired.

(b) In the event a complainant decides to file a complaint rather than a hearing request, the local program must document the complainant's decision in the individual's progress notes.

(16) FILING A COMPLAINT.

(a) Complaints may be made orally, in writing, or on a Complaint Form (0946).

(b) A complaint regarding dissatisfaction with the services of a provider organization may be filed with the Department or directly with the provider organization, Brokerage, or CDDP.

(c) A complaint regarding dissatisfaction with the services of a Brokerage or CDDP may be filed with the Department or directly with the Brokerage or CDDP.

(d) A complaint regarding dissatisfaction with the Department, including complaints about the Stabilization and Crisis Unit (SACU), children's intensive in-home services (CIIS), and children's 24-hour residential services and settings, must be filed with the Department.

(17) PROCESS FOR ADDRESSING COMPLAINTS.

(a) The local program or Department must provide written acknowledgement of a complaint to an individual or the individual's representative within five business days from the receipt of the complaint. A copy of the written acknowledgment must be maintained in the individual's file.

(b) The written acknowledgement must inform the complainant about the opportunity to discuss the complaint with the Program Director of the local program or the Director of the Department, or their designee.

(A) This discussion does not preclude the complainant from receiving a written outcome after the local program or Department has reviewed the complaint.

(B) This discussion must occur within 10 business days from the date of the written acknowledgement. The local program or Department must document all offers for a discussion in the complaint log.

(C) In the event that a resolution is reached during the discussion, the local program or Department must provide a written outcome to the complainant within 10 business days from the date of the discussion. A copy of the written outcome must be maintained in the individual's file.

(c) The local program or Department must complete a complaint investigation and issue a written outcome to the complainant within 45 calendar days from the receipt of the complaint, unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 calendar days.

(A) The review of the complaint must include, but is not limited to, an investigation and records review of the complaint by the Program Director of the local program or the Director of the Department, or their designee.

(B) The written outcome of the complaint may be issued on the complaint form or may be issued in a separate document. The written outcome must include all of the following:

(i) The rationale for the outcome, including the outcome of conferences or discussions with the complainant, individual, providers, or others.

(ii) The reports, documents, and other information relied upon in deciding the outcome of the complaint, or a summary of the reports, documents, and other information relied upon.

(iii) Information about the complainant's right to review the documents relied upon in determining the outcome (Notification of Rights form 0948).

(iv) Information about the complainant's right to request a review of the written outcome (Notification of Rights form 0948).

(C) Notice that retaliation or discrimination, as a result of the outcome, is not tolerated.

(D) A copy of the written outcome must be maintained in the individual's file.

(18) REQUEST FOR REVIEW.

(a) A complainant may request a review of a written outcome within 30 calendar days from the date identified in the written outcome.

(A) If a provider organization issued the written outcome, the complainant may request a review of the written outcome by:

(i) The local CDDP or Brokerage; or

(ii) The Department.

(B) If a CDDP, Brokerage, CIIS, or SACU issued the written outcome, the complainant may request a review of the written outcome by the Department.

(C) If the Department issued the written outcome, the complainant may request a review of the written outcome by the Director of the Department or the Director's designee. The written outcome issued by the Director, or the Director's designee, is the final response.

(b) The Department may uphold, alter, or overturn a written outcome issued by a provider organization, CDDP, Brokerage, CIIS, or SACU.

(19) PROCESS FOR ADDRESSING AND RESOLVING A REQUEST FOR REVIEW.

(a) The receiving entity of a request for a review of a written outcome must acknowledge receipt of the request by issuing a written acknowledgement to the complainant within five business days from the receipt of the request for a review.

(b) The written acknowledgement must inform the complainant about the opportunity to discuss the complaint with the Program Director of the local program or the Director of the Department, or their designee.

(A) This discussion does not preclude the complainant from receiving a written determination after the receiving entity has reviewed the complaint.

(B) This discussion must occur within 10 business days from the date of the written acknowledgement.

(C) In the event that a resolution is reached during the discussion, the local program or Department must provide a written determination to the complainant within 10 business days from the date of the discussion. A copy of the written determination must be maintained in the individual's file.

(c) The local program or Department must review the written outcome and issue a written determination to the complainant within 45 calendar days from the receipt of the request for a review, unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 calendar days.

(A) The review of the written outcome must include, but is not limited to, an investigation and records review by the Program Director of the local program or the Director of the Department, or their designee.

(B) The written determination must include all of the following:

(i) The rationale for the determination, including the outcome of conferences or discussions with the complainant, individual, providers, or others.

(ii) The reports, documents, and other information relied upon in making the determination, or a summary of the reports, documents, and other information relied upon.

(iii) Information about the complainant's right to review the documents relied upon in making the determination.

(C) Notice that retaliation or discrimination, as a result of the determination, is not tolerated.

(D) A copy of the written determination must be maintained in the individual's file.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662
Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007, 427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662

411-318-0020 Notification of Planned Action

(Amended 12/28/2018)

(1) An individual and the representative of the individual must receive a written Notification of Planned Action in the event a developmental disabilities service is denied, reduced, suspended, or terminated.

(2) The Notification of Planned Action must be on the form prescribed by the Department (form 0947). The Notification of Planned Action must include all the following:

(a) The specific date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual.

(b) The effective date of the denial, reduction, suspension, or termination.

(A) For a denial of service, the effective date is the same date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual.

(B) For a reduction, suspension, or termination of service, the effective date is:

(i) For a Notification of Planned Action mailed or hand delivered on or before the 18th of the month, the end of the calendar month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable; or

(ii) For a Notification of Planned Action mailed or hand delivered on or after the 19th of the month, the end of the calendar month following the month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable; or

(iii) No fewer than 10 calendar days after the date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable.

(c) The specific service or unit of service to be denied, reduced, suspended, or terminated.

(d) The rationale for the denial, reduction, suspension, or termination, including a reference to the specific reports, documents, or other information relied on in making the determination. For an action taken based on the result of a completed Oregon Needs Assessment for the determination of meeting ICF/IID Level of Care, the Notification of Planned Action must identify the specific questions, and responses to those questions, related to the areas of major life activity, identified in OAR 411-317-0000 for ICF/IID Level of Care, in which an individual does not demonstrate significant impairment.

(e) The specific sections of the rules or statutes upon which the determination is based.

(f) Notification that the documents relied upon may be reviewed by the individual or the representative of the individual.

(g) Notification that if the individual or the representative of the individual disagrees with the determination to deny, reduce, suspend,

or terminate a service, the individual has the right to request a hearing, or the representative of the individual has the right to request a hearing on the behalf of the individual, as provided in ORS chapter 183 and OAR 411-318-0025. The notification of the right to a hearing must include all the following:

(A) The timeline for requesting a hearing.

(B) How to request a hearing.

(C) The right to receive assistance from the local program in completing and submitting a request for hearing.

(D) The right of the individual to receive continuing services at the same level until a Final Order has been issued or, at the request of the individual or the representative of the individual, or until the individual has exhausted the appeals processes identified in OAR 411-318-0025.

(E) Notification of the time frame within which the individual or the representative of the individual must request continuing services.

(F) Notification of how, when, and where the individual or the representative of the individual may request continuing services.

(G) Notification that the individual may be required to repay the Department for any continuing services received during the hearing process if the Final Order upholds the determination to reduce, suspend, or terminate the services.

(3) The Notification of Planned Action must be made available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and the representative of the individual.

Statutory/Other Authority: ORS 409.050, 427.107

Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.107, 427.109

411-318-0025 Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials

(Amended 06/10/2024)

(1) An individual or an individual's representative may request a hearing, as provided in ORS chapter 183, if the individual experiences a denial, reduction, suspension, or termination of a developmental disabilities service, or in instances when a timely Notification of Planned Action has not been provided.

(2) HEARING REQUESTS.

(a) A request for a hearing must be made within 90 calendar days from the date on a Notification of Planned Action.

(b) The request for a hearing may be made orally, in writing, or by completing the DD Administrative Hearing Request (form 0443DD).

(A) ORAL HEARING REQUESTS.

(i) An individual or the representative of an individual may orally express a desire for a hearing to the local program or Department staff.

(ii) Upon receipt of an oral request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form and a copy of the Notification of Planned Action, if applicable, to eXPRS no later than one business day of receiving the request for a hearing. A copy of the DD Administrative Hearing Request must be provided to the individual and the individual's representative.

(B) WRITTEN HEARING REQUESTS.

(i) An individual or an individual's representative may provide a written request for a hearing to the local program or Department staff.

(ii) Upon receipt of a written request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form and a copy of the Notification of Planned Action, if applicable, to eXPRS no later than one business day of receiving the request for a hearing. A copy of the DD Administrative Hearing Request must be provided to the individual and the individual's representative.

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

(3) If a Notification of Planned Action identifies records used in a decision that is the subject of a hearing request, the records must be submitted to the Department within three business days from the date of the hearing request.

(4) CONTINUING SERVICES PENDING A FINAL ORDER.

(a) In the event of a reduction, suspension, or termination of a developmental disabilities service, a claimant or the claimant's representative may request continuing services for the claimant during the hearing process. To receive continuing services, a claimant or the claimant's representative must either:

(A) Request a hearing before the effective date of action; or

(B) Within 10 business days after the effective date of action identified on the Notification of Planned Action, request a hearing and continuing services.

(b) The Department shall grant a late request for continuing services when the Department determines a claimant or the claimant's representative has good cause for the late request.

(c) A claimant may be required to pay back any benefits received during the hearing process if the Final Order is not in the claimant's favor.

(5) EXPEDITED HEARINGS.

(a) An individual or the individual's representative may request an expedited hearing when:

(A) The time otherwise permitted for a hearing may jeopardize the individual's life, health, or ability to attain, maintain, or regain maximum function; or

(B) An individual receiving a notice of exit from a residential setting is not allowed to remain in the setting.

(b) An expedited hearing must be held within five business days from the date the Office of Administrative Hearings (OAH) receives the request for an expedited hearing that meets the criteria of subsection (A) or (B) of section (a).

(c) A written decision shall be issued within three business days after the hearing record is closed.

(6) INFORMAL CONFERENCE.

(a) The Department staff, Department hearing representative, and the claimant or the claimant's representative may have an informal conference, without the presence of an administrative law judge, to discuss the action that is the subject of a hearing request. An informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the claimant's representative to settle the matter.

(B) Ensure the claimant or the claimant's representative understands the reason for the action that is the subject of the hearing request.

(C) Give the claimant or the claimant's representative an opportunity to review the information that is the basis for the action that is the subject of the hearing request.

(D) Inform the claimant or the claimant's representative of the rules that serve as the basis for the action that is the subject of the hearing request.

(E) Give the Department and the claimant or the claimant's representative the chance to correct any misunderstanding of the facts.

(F) Give the claimant or the claimant's representative an opportunity to provide additional information to the Department.

(G) Give the Department an opportunity to review the action that is the subject of the hearing request with the claimant or the claimant's representative.

(b) At any time prior to the hearing date, the claimant or the claimant's representative may request an additional informal conference with a Department hearing representative. A Department hearing representative may grant, at their discretion, an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the reprieve sought at any time before a Final Order is issued.

(7) REPRESENTATION.

(a) A representative may be chosen by a claimant to represent the interests of the claimant during an informal conference and hearing.

(b) Employees for the Department, CDDP, and Brokerage are authorized to appear as a witness on the Department's behalf during an informal conference and hearing.

(8) HEARINGS NOT OPEN TO THE PUBLIC. Non-participants may attend a hearing only with the consent of the claimant or the claimant's representative and the Department hearing representative.

(9) WITHDRAWAL OF HEARING REQUEST. A claimant or the claimant's representative may withdraw a hearing request at any time prior to the issuance of a Final Order. The withdrawal is effective on the date the request for the withdrawal is received by OAH. The Department shall issue an order of withdrawal to the last known address of the claimant. The claimant or the claimant's representative may cancel the withdrawal up to 10 business days following the date the order of withdrawal is issued.

(10) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the claimant's representative appears by phone or in person at the hearing. The dismissal order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative upon a showing that the claimant or the claimant's representative has good cause for not attending the hearing or requesting a postponement.

(11) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(a) Whether the Department is authorizing OAH to issue a Final Order, a Proposed Order, or a Proposed and Final Order; and

(b) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing request is being referred for an expedited hearing.

(12) FINAL ORDER. A Final Order is the final action expressed in writing by OAH or the Department as described in OAR 137-003-0665. A Final Order is issued:

(a) Within 90 calendar days from the request for a hearing; or

(b) Within 90 calendar days from the receipt of a Proposed Order or a Proposed and Final Order from OAH.

(13) PROPOSED ORDERS. After OAH issues a Proposed Order, the Department shall issue a Final Order unless the Department authorizes OAH to issue the Final Order as described in OAR 137-003-0655 and section (11)(a) of this rule.

(14) PROPOSED AND FINAL ORDERS. A Proposed and Final Order becomes a Final Order 21 calendar days after OAH issues the Proposed and Final Order unless:

(a) The claimant or the claimant's representative has filed written exception and written argument as described in section (15) of this rule;

(b) The Department has issued a revised order; or

(c) The Department has notified OAH and the claimant or the claimant's representative that the Department shall issue the Final Order.

(15) EXCEPTIONS.

(a) Once OAH has issued either a Proposed Order or a Proposed and Final Order, a claimant or a claimant's representative may file a written exception and written argument for the Department to consider. The written exception and written argument must be postmarked to the location indicated in the OAH order no later than 20 calendar days after service of the Proposed Order or Proposed and Final Order unless an earlier deadline has been established according to section (11)(b) of this rule.

(b) Unless the Department receives a timely written exception and written argument as described above, the Department shall issue the Final Order unless the Department authorizes OAH to issue the Final Order in compliance with OAR 137-003-0655 and section (11)(a) of this rule.

(16) PETITION OF FINAL ORDER. A claimant or a claimant's representative may file a petition for reconsideration or rehearing up to 60

calendar days after a Final Order is served. The petition must be filed with the entity that issued the Final Order, unless stated otherwise on the Final Order.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662
Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007, 427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662

411-318-0030 Contested Case Hearings for Provider Notices of Involuntary Reductions, Transfers, or Exits

(Amended 06/10/2024)

(1) This rule applies to involuntary reductions, transfers, or exits by a provider, including a licensed or certified provider organization, who has a contract with the Department, CDDP, or Brokerage. This rule does not apply to providers who have a direct employer-employee relationship with an individual or an individual's employer representative.

(2) An individual must be given the opportunity to dispute an involuntary reduction, transfer, or exit by requesting a hearing as provided in ORS chapter 183.

(3) An individual or the individual's representative may request a hearing either orally or in writing when the individual and the individual's representative receives a Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 0719C, 0719E).

(a) To request a hearing in writing:

(A) The individual or the individual's representative must complete the Administrative Hearing Request included with the Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 719C, 0719E) and submit the form to the Office of Developmental Disabilities Services (ODDS) as described on the form; or

(B) The individual or the individual's representative may meet with a staff person of the CDDP, Brokerage, or Department to complete the Administrative Hearing Request included with the

Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 0719C, 0719E). After meeting with the individual or the individual's representative, the CDDP, Brokerage, or Department must submit the form to ODDS within three business days. A copy of the form must be mailed to the individual and the individual's representative.

(b) To request a hearing orally, the individual or the individual's representative must orally express the desire for a hearing to a staff person of the CDDP, Brokerage, or Department. Upon receipt of an oral request for a hearing, the CDDP, Brokerage, or Department must complete the Administrative Hearing Request included with the Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 0719C, 0719E) and submit the form to ODDS within one business day. A copy of the form must be mailed to the individual and the individual's representative.

(4) Upon receipt of the Administrative Hearing Request form for a Notice of Involuntary Reduction, Transfer, or Exit, ODDS shall:

(a) Refer the hearing request to the Office of Administrative Hearings within five business days from the receipt of the hearing request.

(b) Assist the claimant or the claimant's representative in gathering and submitting exhibits.

(c) Act as a liaison between the Office of Administrative Hearings and the CDDP or Brokerage responsible for the claimant's services.

(5) The Office of Administrative Hearings communicates directly with a claimant and the claimant's representative regarding informal conference dates, hearing dates, and the Final Order as described in OAR chapter 137, division 003.

(6) If an individual or an individual's representative requests a hearing within 15 calendar days from the issuance of a Notice of Involuntary Reduction, Transfer, or Exit, the individual must continue to receive the same services until receipt of a Final Order.

(7) When an individual has been given less than 30 calendar days advanced written Notice of Involuntary Reduction, Transfer, or Exit due to a medical emergency or because the individual is engaging in behavior that poses an imminent danger to self or others, and the individual or the individual's representative has requested a hearing as described in this rule, their provider must continue to provide services to the individual until receipt of a Final Order.

(8) An individual or the individual's representative may request an expedited hearing according to OAR 411-318-0025(5) when:

(a) The request for a hearing is more than 15 calendar days following the issuance of the Notice of Involuntary Reduction, Transfer, or Exit and the individual requests to continue to receive the same services until receipt of the Final Order; or

(b) The individual has been given less than 30 calendar days advanced written Notice of Involuntary Reduction, Transfer, or Exit, and the individual has not been allowed to remain in the setting.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662

Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007, 427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662