

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

**CHAPTER 411
DIVISION 323**

**AGENCY CERTIFICATION AND ENDORSEMENT TO PROVIDE
SERVICES TO INDIVIDUALS WITH INTELLECTUAL OR
DEVELOPMENTAL DISABILITIES
IN COMMUNITY-BASED SETTINGS**

EFFECTIVE JULY 1, 2014

411-323-0010 Statement of Purpose

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain a certificate and endorsement in order to provide person-centered services to individuals with intellectual or developmental disabilities in the following community-based settings:

- (a) 24-hour residential as described in OAR chapter 411, division 325;
- (b) Supported living as described in OAR chapter 411, division 328;
or
- (c) Employment and day support as described in OAR chapter 411, division 345.

(2) To provide person-centered services to individuals with intellectual or developmental disabilities in community-based settings, agencies must have:

- (a) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;

(b) Endorsement to provide Medicaid services as described in OAR 411-323-0035;

(c) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(d) For each licensed site or geographic location where direct program services are to be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0020 Definitions

(Temporary Effective 07/01/2014 to 12/28/2014)

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 323:

(1) "24-Hour Residential Services" mean the person-centered services provided in a comprehensive residential home licensed by the Department under ORS 443.410.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a home operated by an agency that is licensed to provide 24-hour residential services.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any

subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(5) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(6) "Agency" means a public or private community agency or organization that is approved by the Department to provide program services.

(7) "Applicant" means a person, agency, corporation, or governmental unit who applies for certification and endorsement to operate an agency providing program services to individuals with intellectual or developmental disabilities.

(8) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting activities to ensure all state and federal funds are expended for the purpose the funds were contracted and intended for without fraudulent activity.

(9) "Audit Review" means a Certified Public Accountant, without applying comprehensive audit procedures, assesses the standards and accepted practices of accounting activities and ensures the accounting activities are in conformity with generally accepted accounting principles.

(10) "Board of Directors" means the group of people formed to set policy and give directions to an agency designed to provide program services to individuals with intellectual or developmental disabilities. A board of directors may include local advisory boards used by multi-state organizations.

(11) "Care" means "services" as defined in this rules.

(12) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(13) "Certificate" means the document issued by the Department to an agency that certifies the agency is eligible to receive state funds for the provision of endorsed program services.

(14) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(15) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(16) "Choice" means the expression of preference, opportunity for, and active role of the individual in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated orally, through sign language, or by other communication methods.

(17) "Complaint" means "complaint" as defined in OAR 411-318-0005.

(18) "Complaint Investigation" means "complaint investigation" as defined in OAR 411-318-0005.

(19) "Condition" means a provision attached to:

(a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency; or

(b) A new or existing endorsement that limits or restricts the scope of the endorsement or imposes additional requirements on the certified agency or program services site.

(20) "Denial" means the refusal of the Department to issue:

(a) A certificate to operate an agency because the Department has determined the agency is not in compliance with these rules or the corresponding program rules; or

(b) An endorsement for an agency to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program rules.

(21) "Department" means the Department of Human Services.

(22) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid provider for the individual. An individual is not required to appoint a designated representative.

(23) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(24) "Director" means the Director of the Department or the designee of the Director.

(25) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program rules.

(26) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of program services.

(27) "Founded Report" means the determination by the Department or Law Enforcement Authority, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(28) "Guardian" means the parent for an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.

(29) "Independence" means the extent to which an individual with an intellectual or developmental disability exerts control and choice over his or her own life.

(30) "Individual" means an adult or a child with an intellectual or developmental disability who receives Department-funded services in accordance with an ISP.

(31) "Informal Conference" means the discussion held prior to a hearing between the Department and an applicant or an agency to address any matters pertaining to the hearing. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

(32) "Integration" as defined in ORS 427.005 means:

(a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and

(c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.

(33) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(34) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and the health and safety of the individual. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for the individual to meet the needs of the individual identified

through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(35) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as providers and family members.

(36) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.

(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or the person or agency authorized by a court to make decisions about services for the adult.

(37) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or

comes in contact with any person whom the public or private official has reasonable cause to believe abused an adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(38) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around and that restricts freedom of movement or access to the body of the individual.

(39) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to an agency following the enrollment of the agency as described in OAR chapter 411, division 370.

(40) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following the enrollment of the entity or person as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(41) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(42) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. A person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(43) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.

(b) Person centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, service providers, and lifestyle preferences;

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

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

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(44) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(45) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual in work contributing to a household or community.

(46) "Program" means "agency" as defined in these rules.

(47) "Program Services" mean the person-centered services provided in a community-based setting as described in:

(a) OAR chapter 411, division 325 for 24-hour residential;

(b) OAR chapter 411, division 328 for supported living; and

(c) OAR chapter 411, division 345 for employment and day support.

(48) "Program Rules" mean the rules in:

- (a) OAR chapter 411, division 325 for 24-hour residential;
- (b) OAR chapter 411, division 328 for supported living; and
- (c) OAR chapter 411, division 345 for employment and day support.

(49) "Protection" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, and to safeguard the person, property, and funds of the individual.

(50) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(51) "Provider" means "agency" as defined in this rule.

(52) "Revocation" means the action taken by the Department to rescind:

- (a) A certificate to operate an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules; or

- (b) An endorsement for an agency to provide program services after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules.

(53) "Services" mean supportive services including, but not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also include being aware of the general whereabouts of an individual at all times and monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(54) "Services Coordinator" means "Services Coordinator" as defined in OAR 411-320-0020.

(55) "Staff" means a paid employee responsible for providing services to an individual whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(56) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(57) "Support" means the assistance that an individual requires, solely because of the effects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(58) "Suspension" means an immediate temporary withdrawal of the:

(a) Certificate to operate an agency after the Department determines that the agency is not in compliance with these rules or the corresponding program rules; or

(b) Endorsement for an agency to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program rules.

(59) "These Rules" mean the rules in OAR chapter 411, division 323.

(60) "Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons:

(a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

(b) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(61) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the agency.

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Stats. Implemented: ORS 409.050

411-323-0030 Certification

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) CERTIFICATION. A person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be certified by the Department under these rules before establishing, conducting, maintaining, managing, or operating an agency.

(a) Certificates are not transferable.

(b) The Department issues or renews a certificate to an agency found to be in compliance with these rules and the corresponding program rules. The certificate is effective for five years from the date issued unless sooner revoked or suspended.

(c) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(d) For the purpose of certification, any applicant or person with an ownership interest in an agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(e) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(f) A review of the agency is conducted by the Department prior to the issuance or renewal of a certificate.

(2) CURRENT AGENCY CERTIFICATION.

(a) All agencies providing program services as of July 1, 2011 are certified for five years unless the certification is sooner revoked or suspended.

(b) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter

309, division 035 for residential treatment facilities for people who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional certification as an agency under these rules to provide program services. Current license or certification is considered sufficient demonstration of ability to:

- (A) Recruit, hire, supervise, and train qualified staff;
- (B) Provide program services according to an ISP; and
- (C) Develop and implement operating policies and procedures required for managing an agency and delivering program services, including provisions for safeguarding individuals receiving program services.

(3) INITIAL CERTIFICATION. Notwithstanding section (2) of this rule, an applicant intending to provide program services as defined in OAR 411-323-0020 must apply for an initial certificate and demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules and the corresponding program rules.

(a) The applicant must submit an application to the Department at least 90 days prior to anticipated certification. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(b) At a minimum, the applicant must provide:

- (A) A copy of any management agreements or contracts relative to the operation and ownership of the agency;
- (B) A financial plan that includes financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance; or
- (C) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as

the Board of Directors for the agency, and as changes are made.

(c) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035.

(d) The applicant must demonstrate proof of liability and operational insurance coverage.

(A) The agency must, at the expense of the agency, maintain in effect with respect to all occurrences taking place during the certification period, liability and operational insurance as described in the contract the agency has with the Department including, but not limited to, automobile liability insurance, comprehensive or commercial general liability insurance, and workers' compensation coverage if required.

(B) The agency must name the State of Oregon, Department of Human Services and the divisions, officers, and employees of the Department as additionally insured on any insurance policies required by their contract with respect to agency activities being performed under the certification of the agency. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(C) The agency must forward certificates of insurance indicating coverage to the Department as required by this rule.

(D) In the event of unilateral cancellation or restriction by the insurance company of any insurance coverage required by the contract the agency has with the Department, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the cancellation or restriction in writing within three days of receiving notification from the insurance company.

(4) CERTIFICATE RENEWAL.

(a) To renew a certificate, the agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing certificate for the agency. The completed application must be on a form provided by the Department and must include all information requested by the Department. At a minimum, the agency must provide:

(i) A copy of any management agreements or contracts relative to the operation and ownership of the agency;

(ii) A financial plan that includes financial audits for the last two years as described in section (5) of this rule; and

(iii) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(B) Identify the scope of program services the agency provides and provide proof of endorsement for each program service as described in OAR 411-323-0035;

(C) Demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program rules; and

(D) Demonstrate proof of continued liability and operational insurance coverage as described in section (3)(d) of this rule.

(b) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(c) If the renewal application is not submitted to the Department prior to the date the certificate expires, the agency is considered a non-certified Medicaid agency and is subject to termination of their Medicaid Agency Identification Number.

(5) FINANCIAL AUDITS. Agencies certified and endorsed to provide program services must obtain an audit at least once during the biennium. On alternating years, the agency may obtain an audit review as defined in OAR 411-323-0020 or another financial audit. The audit or the audit review must be submitted to the Department within 90 days of the end of the fiscal year.

(6) CERTIFICATE EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency expires five years following the date of issuance.

(7) CERTIFICATE TERMINATION. The certificate automatically terminates on the date agency operation is discontinued or if there is a change in ownership.

(8) RETURN OF CERTIFICATE. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(9) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The agency must notify the Department in writing of any pending change in the ownership, legal entity, legal status, or management corporation of the agency.

(b) A new certificate is required upon a change in the ownership, legal entity, legal status, or management corporation of the agency. The agency must submit an application as described in section (3) of this rule to the Department at least 30 days prior to a change in ownership, legal entity, legal status, or management corporation.

(10) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on a certificate includes one or more of the following actions:

(a) A condition as described in section (11) of this rule;

(b) Denial, revocation, or refusal to renew a certificate as described in section (12) of this rule; or

(c) Immediate suspension of a certificate as described in section (13) of this rule.

(11) CERTIFICATE CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency. The type of condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals. The Department may attach a condition to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation;
or

(D) The agency is not being operated in compliance with these rules or the corresponding program rules.

(b) Conditions that the Department may impose on a certificate include, but are not limited to:

(A) Restricting the total number of individuals to whom a program may provide services;

(B) Restricting the total number of individuals to whom a program may provide services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the program may provide to individuals based upon the capability and

capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE OF CERTIFICATE CONDITIONS. A written notice is issued to the agency by the Department when the Department imposes conditions on the certificate of the agency. The written notice of certificate conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of certificate conditions or at a later date as indicated on the notice and are a final order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(d) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of certificate conditions.

(A) The agency must request a hearing in writing within 21 days from the receipt of the written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(f) Conditions must be posted with the certificate in a prominent location and be available for inspection at all times.

(12) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days from the receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of program services;

(D) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(E) Falsifies information required by the Department to be maintained or submitted regarding individual program services, agency finances, or funds belonging to the individuals;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of a certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of a certificate.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew. The request for a hearing must be in writing.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing in writing within 21 days from the receipt of the written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing. The request for a hearing or administrator review must be in writing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation. The request for a hearing must be in writing.

(13) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the certificate.

(A) Notwithstanding subsection (B) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(14) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, an agency may request an administrator review notwithstanding subsection (b) of this section.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrator review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrator review for imposition of conditions.

(c) The Department must receive a written request for an administrator review within 10 business days from the receipt of the

notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrator review, any additional written materials the agency wishes to have considered during the review.

(d) The determination of the administrator review is issued in writing within 10 business days from the receipt of the written request for a review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The Department must receive a written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(15) INFORMAL CONFERENCE. Unless an administrator review has been completed as described in section (14) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0035 Endorsement

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) ENDORSEMENT REQUIRED. A person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be endorsed by the Department under these rules before establishing, conducting, maintaining, managing, or operating program services.

(a) Endorsements are not transferable or applicable to any other program services. Separate endorsements are required for each program service provided by a certified agency. A certified agency intending to provide additional program services once initial endorsement has been issued must apply for an additional endorsement as described in section (3) of this rule.

(b) A certified agency must report each geographic location where program services are provided to the Department and to the corresponding CDDP of the geographic location as described in this rule.

(c) The Department issues or renews an endorsement to a certified agency found to be in compliance with these rules and the corresponding program rules. The effective date for each endorsement corresponds with the effective date for the certification of the agency unless sooner revoked or suspended.

(d) If a certified agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement for program services.

(e) For the purpose of endorsement, any applicant or person with an ownership interest in a certified agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.

(g) A review of the certified agency is conducted by the Department prior to the issuance or renewal of an endorsement.

(2) CURRENT AGENCY ENDORSEMENT.

(a) All certified agencies providing program services as of July 1, 2011 are endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(b) A certified agency intending to provide additional program services after July 1, 2011 must apply for endorsement as described in section (3) of this rule.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential treatment facilities for individuals who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional endorsement as an agency under these rules to provide program services.

(3) INITIAL ENDORSEMENT.

(a) Notwithstanding section (2) of this rule, a certified agency intending to provide program services as defined in OAR 411-323-0020 must apply for initial endorsement and demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program rules.

(b) The certified agency must submit an application to the Department at least 90 days prior to providing program services that identifies the program services that the certified agency intends to provide and all geographic locations where program services are to be provided.

(A) The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Each licensed site or geographic location where direct program services are to be delivered must be assigned a Medicaid Performing Provider Number by the Department as described in OAR chapter 411, division 370.

(4) ENDORSEMENT RENEWAL.

(a) To renew endorsement, the certified agency must:

(A) Submit an application prior to the expiration date of the existing endorsement for the certified agency. The completed application must identify the program services that the certified agency provides and all geographic locations that provide

program services. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Demonstrate to the satisfaction of the Department that the certified agency is in compliance with these rules and the corresponding program rules.

(b) Additional program services are not endorsed on renewal unless specifically approved by the Department. A certified agency requesting to provide additional program services must reapply for initial endorsement as described in section (3) of this rule.

(c) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(d) A certified agency may not provide program services if a renewal application is not submitted to the Department prior to the date the endorsement expires.

(e) Renewal of endorsements for program services is contingent upon the successful renewal of the certificate of the agency.

(5) EXISTING ENDORSEMENT - ADDING A GEOGRAPHIC LOCATION. Adding a geographic location to an existing endorsement must be reported by the agency to the Department and to the corresponding CDDP of the geographic location. The agency must report the additional geographical location on a form provided by the Department at least 30 days prior to providing program services at the additional geographic location.

(6) ENDORSEMENT EXPIRATION. Unless revoked, suspended, or terminated earlier, the effective date of each endorsement corresponds with the effective date of the certification of the agency.

(7) ENDORSEMENT TERMINATION. Endorsement automatically terminates on the date program services are discontinued or agency certification is terminated.

(8) CHANGE OF CERTIFICATION. New endorsement is required upon a change of the certification of an agency. The recertified agency must submit an application for endorsement as described in section (3) of this rule to the Department at least 30 days prior to a change of the certification of the agency including, but not limited to, a change in ownership, legal entity, legal status, or management corporation.

(9) ENDORSEMENT ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on an endorsement includes one or more of the following actions:

(a) A condition as described in section (10) of this rule:

(b) Denial, revocation, or refusal to renew an endorsement as described in section (11) of this rule; or

(c) Immediate suspension of an endorsement as described in section (12) of this rule.

(10) ENDORSEMENT CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for program services. The type of condition attached to an endorsement must directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to an endorsement upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation;
or

(D) The agency is not being operated in compliance with these rules or the corresponding program rules.

(b) Conditions that the Department may impose on an endorsement include, but are not limited to:

- (A) Restricting the total number of individuals to whom a program may provide services;
- (B) Restricting the total number of individuals to whom a program may provide services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;
- (C) Restricting the type of support and services the program may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;
- (D) Requiring additional staff or staff qualifications;
- (E) Requiring additional training;
- (F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;
- (G) Requiring additional documentation; or
- (H) Restricting admissions.

(c) NOTICE OF ENDORSEMENT CONDITIONS. A written notice is issued to an agency by the Department when the Department imposes a condition on the endorsement of program services. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a final order of the Department unless later rescinded through the hearing process. The condition imposed remains in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(d) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of endorsement conditions.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(f) Conditions must be posted with the endorsement in a prominent location and be available for inspection at all times.

(11) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days from the receipt of the written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(D) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of program services;

(E) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(F) Falsifies information required by the Department to be maintained or submitted regarding individual program services, agency finances, or funds belonging to the individuals;

(G) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(H) Has been placed on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of an endorsement.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation. In addition to, or in lieu of a hearing, an agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation.

(12) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program service may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the endorsement.

(A) Notwithstanding OAR subsection (B) of this section, the endorsed agency must request a hearing within 21 days from the receipt of the written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(13) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, an agency may request an administrator review notwithstanding subsection (b) of this section.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrator review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrator review for imposition of conditions.

(c) The Department must receive a written request for an administrator review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrator review, any additional written materials the agency wishes to have considered during the review.

(d) The determination of the administrator review is issued in writing within 10 business days from the receipt of the written request for a review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation or condition. The Department must receive a request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(14) INFORMAL CONFERENCE. Unless an administrator review has been completed as described in subsection (13) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0040 Inspections and Investigations

(Amended 1/6/2012)

(1) Agencies certified and endorsed under these rules must allow the following types of investigations and inspections:

- (a) Quality assurance, onsite inspections, and certificate renewal;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

- (a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and
- (b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or the Department's designee has determined to initiate an investigation, the agency may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, OAR 411-323-0040(5), an "internal investigation" is defined as:

- (a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;
- (b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or
- (c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or the Department's designee shall conduct abuse investigations as described in OAR 407-045-0250 to 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate agency. The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) The agency must submit a plan of correction to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth. ORS 409.050 & 410.070

Stats. Implemented: ORS 409.050 & 410.070

411-323-0050 Agency Management and Personnel Practices
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member, program services provider, or subcontractor, including respite providers and volunteers, has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The agency or program services provider may not retaliate against any staff member or subcontractor, including relief providers and volunteers, that report in good faith suspected abuse or retaliate against the individual receiving services with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any agency, program services provider, or person that retaliates against any person because of a report of suspected abuse or neglect is liable according to ORS 430.755 in a private action to that person for actual damages and, in addition, is subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by an agency, program services provider, or person involved in a report against the person making the report or against the individual receiving services because of the report and includes, but is not limited to:

(A) Discharge or transfer from the agency, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for program services; or

(D) Restriction or prohibition of access to the agency or the individuals served by the agency.

(4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.

(a) Any staff, program services providers, substitute caregivers, independent contractors, and volunteers are mandatory reporters.

(b) The agency must notify all agency staff, program services providers, substitute caregivers, independent contractors, and volunteers of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all agency staff, program services providers, substitute caregivers, independent contractors, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) Agencies providing program services to adults must report suspected abuse to the CDDP where the adult resides. A report must also be made to law enforcement if there is reason to believe a crime has been committed.

(e) Agencies providing program services to children must report suspected abuse to the Department or law enforcement in the county where the child resides.

(5) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) BACKGROUND CHECKS. Any staff, volunteer, program services provider, relief care provider, crisis provider, advisor, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of an agency, who has or shall have contact with an individual in program services, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and ORS 181.534.

(a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, any person described above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (a) of this section does not apply to agency staff who were hired prior to July 28, 2009 that remain in the current position for which the staff member was hired.

(c) Any person described above in section (6) of this rule must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.

(7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of an Executive Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in intellectual or developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) GENERAL STAFF QUALIFICATIONS. Any staff member providing program services to individuals must meet the following criteria:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 and section (6) of this rule;

(c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275:

(d) Be legally eligible to work in the United States;

(e) Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training, and skill;

- (f) Understand requirements of maintaining confidentiality and safeguarding individual information;
- (g) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General;
- (h) Be literate and capable of understanding written and oral orders;
- (i) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;
- (j) Be able to respond appropriately to emergency situations at all times;
- (k) Be certified in CPR and First Aid by a recognized training agency within 90 days of employment;
- (l) Receive 12 hours of job-related in-service training annually;
- (m) Have clear job responsibilities as described in a current signed and dated job description; and
- (n) If transporting individuals, have a valid license to drive and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(9) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the designee of the Department for inspection that includes written documentation of the following for each staff member:

- (a) Written documentation that references and qualifications were checked;
- (b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;

(c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action;

(e) Written documentation of any founded report of child abuse or substantiated abuse;

(f) Written documentation of 12 hours of job-related in-service training annually;

(g) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current; and

(h) For staff operating vehicles that transport individuals, documentation of a valid license to drive and proof of vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(10) DISSOLUTION OF AN AGENCY. Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of the records for the individuals.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0060 Policies and Procedures

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) INDIVIDUAL RIGHTS.

(a) The agency must have and implement written policies and procedures that protect the individual rights described in subsection (d) of this section.

(b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.

(c) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected 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, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed 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;

(C) 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;

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

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

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do

not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

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

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

(I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) 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;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

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

(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), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(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; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) 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, unless specifically prohibited by law in the case of children less than 18 years of age.

(f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to 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.

(g) 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.

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

(i) 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 the adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

(2) HEALTH. The agency must have and implement policies and procedures that maintain and protect the health of individuals.

(3) INDIVIDUAL AND FAMILY INVOLVEMENT. The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal and designated representatives, and significant others of the individuals to interact; and

(c) Opportunities for individuals, families, guardians, legal and designated representatives, and significant others to participate on the Board of Directors or on committees or to review policies of the agency that directly affect the individuals.

(4) INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION. As stated in ORS 427.007, the agency must have a written policy that states each ISP is developed to meet the level of independence, productivity, and integration into the local community.

(5) CONFIDENTIALITY OF RECORDS. The agency must have and implement written policies and procedures that ensure all records for individuals are kept confidential except as otherwise provided by applicable state and federal rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.

(b) Access to records by the Department does not require authorization by an individual or the legal or designated representative or family of the individual.

(c) For the purpose of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

(6) BEHAVIOR SUPPORT. The agency must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.

(7) PROTECTIVE PHYSICAL INTERVENTION. The agency must have and implement written policies and procedures for protective physical interventions that address the following:

(a) Circumstances allowing the use of protective physical intervention. The agency must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee.

(b) Protective physical intervention techniques must only be applied:

(A) When the health and safety of an individual or others is at risk, the ISP team has authorized the procedures as documented by the decision of the ISP team, the procedures are documented in the ISP, and the procedures are intended to lead to less restrictive intervention strategies;

(B) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(C) As a health related protection prescribed by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure or for the protection of an individual during the time that a medical condition exists.

(8) HANDLING AND MANAGING INDIVIDUALS' MONEY. The agency must have and implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) Financial planning and management of an individual's funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending his or her money; and

(d) Taking into account the interests and preferences of the individual.

(9) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The agency must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon enrollment, request, and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual.

(10) AGENCY DOCUMENTATION REQUIREMENTS. The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

- (a) Be prepared at the time or immediately following the event being recorded;
- (b) Be accurate and contain no willful falsifications;
- (c) Be legible, dated, and signed by the person making the entry; and
- (d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0070 Variances

(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The Department may grant a variance to these rules based upon a demonstration by the agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate federal Medicaid law.

(2) The agency requesting a variance must submit, in writing, an application to the Department that contains the following:

- (a) The section of the rule from which the variance is sought;
- (b) The reason for the proposed variance;
- (c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to the program services for an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The request for a variance is approved or denied by the Department.

(4) The decision of the Department is sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(5) The agency may request an administrator review of the denial of a variance request. The Department must receive a written request for an administrator review within 10 business days from the receipt of the denial. The decision of the Director is the final response from the Department.

(6) The Department determines the duration of the variance.

(7) The agency may implement a variance only after written approval from the Department.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050