

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

**CHAPTER 411
DIVISION 323**

**AGENCY CERTIFICATION AND ENDORSEMENT TO
DELIVER DEVELOPMENTAL DISABILITIES SERVICES
IN COMMUNITY-BASED SETTINGS**

EFFECTIVE JULY 23, 2020

411-323-0010 Statement of Purpose

(Amended 11/01/2019)

(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 deliver the following person-centered services and supports to individuals with intellectual or developmental disabilities in a community-based setting:

(a) OAR chapter 411, division 304 for professional behavior services.

(b) OAR chapter 411, division 325 for 24-hour residential programs and settings.

(c) OAR chapter 411, division 328 for supported living programs.

(d) OAR chapter 411, division 345 for employment services.

(e) OAR chapter 411, division 348 for host home programs and settings.

(f) OAR chapter 411, division 380 for direct nursing services. The implementation and provision of direct nursing services for 24-hour residential programs and settings shall occur upon official approval from the Centers for Medicare and Medicaid Services.

(g) OAR chapter 411, division 450 for community living supports.

(2) To deliver the services and supports described in section (1) of this rule, agencies must have all of the following:

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

(b) Endorsement for each developmental disabilities program type in accordance with the program rules.

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

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

(3) Through January 1, 2021, sections (2)(a) and (b) of this rule do not apply to a provider organization currently certified under OAR chapter 411, division 340 whose certificate was issued or applied for prior to January 1, 2016.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 427.007, 430.215

411-323-0020 Definitions and Acronyms

(Amended 11/01/2019)

In addition to the following definitions, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 323. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

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

(2) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting.

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

(4) "CDDP" means "Community Developmental Disabilities Program".

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

(6) "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 operate a program because the Department has determined the agency is not in compliance with these rules or the corresponding program rules.

(7) "Endorsement" means the authorization to operate a program that delivers services. An endorsement is issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program rules.

(8) "Executive Director" means the person designated by a Board of Directors or corporate owner of an agency that is responsible for the administration of the services delivered by the agency.

(9) "Financial Statements" means a balance sheet and statement of income as filed with the Internal Revenue Service.

(10) "Fiscal Year" means the period beginning on July 1st through June 30th the following year.

(11) "Informal Conference" means the discussion between the Department and an applicant or an agency that is held prior to a hearing 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.

(12) "ISP" means "Individual Support Plan".

(13) "ODDS" means "Office of Developmental Disabilities Services".

(14) "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.

(15) "Program" means the services delivered by a provider agency as described in:

(a) OAR chapter 411, division 304 for professional behavior services.

(b) OAR chapter 411, division 325 for 24-hour residential programs and settings.

(c) OAR chapter 411, division 328 for supported living programs.

(d) OAR chapter 411, division 345 for employment services.

(e) OAR chapter 411, division 348 for host home programs and settings.

(f) OAR chapter 411, division 380 for direct nursing services.

(g) OAR chapter 411, division 450 for community living supports.

(16) "Program Rules" mean the following rules:

(a) OAR chapter 411, division 304 for professional behavior services.

(b) OAR chapter 411, division 325 for 24-hour residential programs and settings.

(c) OAR chapter 411, division 328 for supported living programs.

(d) OAR chapter 411, division 345 for employment services.

(e) OAR chapter 411, division 348 for host home programs and settings.

(f) OAR chapter 411, division 380 for direct nursing services.

(g) OAR chapter 411, division 450 for community living supports.

(17) "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 operate a program after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules.

(18) "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 operate a program after the Department determines that the agency is not in compliance with these rules or the corresponding program rules.

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

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 427.007, 430.215

411-323-0030 Certification

(Amended 11/01/2019)

(1) CERTIFICATION. A person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to operate a program 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, the rules in OAR chapter 411, division 004, and the corresponding program rules. The certificate is effective for two 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 are certified for two years unless the certificate is sooner revoked or suspended.

(b) An agency 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 and residential treatment homes for adults with mental health disorders, OAR chapter 413, division 215 for child-caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care, and as may be described in corresponding program rules, does not require additional certification as an agency under these rules to deliver services. Current license or certification is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Deliver services according to an ISP or Service Agreement;
and

(C) Develop and implement operating policies and procedures required for managing an agency and delivering services, including provisions for safeguarding individuals receiving 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, the rules in OAR chapter 411, division 004, and the corresponding program rules.

(a) The applicant must submit an application to the Department at least 90 calendar days prior to the proposed date of delivery of services to individuals. The completed application must be on the applicable Department form 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; and

(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 services the applicant intends to provide and request endorsement for each program type 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 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 their contract, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the cancellation or restriction in writing within three calendar days of receiving notification from the insurance company.

(4) CERTIFICATE RENEWAL.

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

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

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

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

(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 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, the rules in OAR chapter 411, division 004, and the corresponding program rules.

(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.

(a) An agency certified and endorsed to provide program services, receiving revenue of \$1,000,000 or more per fiscal year, must obtain an audit at least once during the biennium.

(b) An agency certified and endorsed to provide program services, receiving less than \$1,000,000 in revenue per fiscal year, must submit financial statements that have been audited, reviewed, or compiled by a Certified Public Accountant at least once during the biennium.

(c) An audit or the audited financial statements must be submitted to the Department within 90 calendar days of the end of the fiscal year following.

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

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

(8) RETURN OF CERTIFICATE. A 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) An 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. An agency must submit an application as described in section (3) of this rule to the Department at least 30 calendar 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, the rules in OAR chapter 411 division 004, or the corresponding program 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.

(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 an agency. The type of condition attached to a certificate must directly relate to a risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to a certificate upon any of the following findings:

(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 evidence of abuse, neglect, or exploitation.

(D) The agency is not being operated in compliance with these rules, the rules in OAR chapter 411, division 004, or the corresponding program rules.

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

(A) Restricting the total number of individuals to whom an agency may deliver services.

(B) Restricting the total number of individuals to whom an agency may deliver 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 an agency may deliver 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 an 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.

(H) Restricting enrollments.

(d) NOTICE OF CERTIFICATE CONDITIONS. The Department issues a written notice to the agency 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.

(A) 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.

(B) The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING.

(A) An agency may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of certificate conditions. The request for a hearing must be in writing. An agency must request a hearing within 21 calendar 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 administrative review as described in section (14) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the agency to a hearing.

(C) The Department shall be allowed reasonable requests for setting or postponement of any hearing to allow for the conclusion of a protective services investigation when a condition is imposed related to the protective services investigation.

(f) An 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.

(g) 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 an agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules, the rules in OAR chapter 411, division 004, 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, the rules in OAR chapter 411, division 004, 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 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 current Centers for Medicare and Medicaid Services 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, the rules in OAR chapter 411, division 004, 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 a 24-hour residential or host home program, upon written notice from the Department of denial, refusal to renew, or revocation of a certificate. The request for a hearing must be in writing.

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

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

(I) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing.

(II) The administrative review does not diminish the right of the agency to a hearing.

(ii) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 411, division 348, must request a hearing within 10 calendar days from the receipt of the written notice of revocation.

(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 an 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 a 24-hour residential or host home program, upon written notice from the Department of the immediate suspension of the certificate. The request for a hearing must be in writing.

(A) Notwithstanding subsection (B) of this section, the agency must request a hearing within 21 calendar days from the receipt of the written notice of suspension.

(i) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing.

(ii) The administrative review does not diminish the right of the agency to a hearing.

(B) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 411, division 348, must request a hearing within 10 calendar days from the receipt of the written notice of suspension.

(14) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) of this section, an agency, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 411, division 348, may not request an administrative review for revocation or suspension. An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 411, division 348 may request an administrative review for imposition of conditions.

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

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

(e) An 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 request for a hearing must be in writing. The Department must receive the written request for a

hearing within 21 calendar days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(15) INFORMAL CONFERENCE. Unless an administrative 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 427.007, 430.215

411-323-0035 Endorsement

(Amended 11/01/2019)

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

(a) Except as described in OAR 411-450-0070, endorsements are not transferable or applicable to any other program type. Separate endorsements are required for each program type operated by a certified agency. A certified agency intending to operate additional program types once initial endorsement has been issued must apply for an additional endorsement as described in section (3) of this rule.

(b) If required by the program rules, each geographic location where a program operates must be reported by the agency 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, the rules in OAR chapter 411 division 004, 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 of the program.

(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 endorsed to operate a program are endorsed for not more than two years.

(b) A certified agency intending to operate additional program types must apply for endorsement as described in section (3) of this rule.

(c) An agency 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 and residential treatment homes for adults with mental health disorders, OAR chapter 413, division 215 for child-caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care, and as may be described in corresponding program rules, does not require additional endorsement as an agency under these rules to deliver services described in the program rules.

(3) INITIAL ENDORSEMENT.

(a) Notwithstanding section (2) of this rule, a certified agency intending to operate a program 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,

the rules in OAR chapter 411 division 004, and the corresponding program rules.

(b) The certified agency must submit an application to the Department at least 90 calendar days prior to delivering services that identifies the program type that the certified agency intends to operate.

(A) All geographic locations where programs are to be operated must be identified on the application, if required by the program rules.

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

(C) Each licensed site or geographic location where direct 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 to the Department at least 90 calendar days prior to the expiration date of the existing endorsement for the certified agency. The completed application must identify the program type that the certified agency provides and all geographic locations where program services are provided, when required by the program rules. 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, the rules in OAR chapter 411 division 004, and the corresponding program rules.

(b) Only existing program types are endorsed on renewal. A certified agency requesting to operate additional program types must apply 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 operate a program if a renewal application is not submitted to the Department prior to the date the endorsement expires.

(e) Renewal of endorsements for a program 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 calendar days prior to delivering 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 programs 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 calendar 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, the

corresponding program rules, or the rules in OAR chapter 411 division 004. 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.
- (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 a program. The type of condition attached to an endorsement must directly relate to a risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to an endorsement upon any of the following findings:

(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 evidence of abuse, neglect, or exploitation.

(D) The agency is not being operated in compliance with these rules, the rules in OAR chapter 411 division 004, or the corresponding program rules.

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

(A) Restricting the total number of individuals to whom an agency may deliver services.

(B) Restricting the total number of individuals to whom an agency may deliver 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 an agency may deliver 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 an 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.

(H) Restricting enrollments into the endorsed program.

(d) The Department shall impose a condition prohibiting new entry or transfer into services provided under an agency endorsement when there is a death of an individual served by the agency that results in a protective services investigation and the agency was responsible for delivering supports to the individual during the time associated with the individual's death.

(A) The agency may accept a new entry or transfer while the condition is in place, if the entry or transfer approval is granted by the Department and the case management entity.

(B) The condition may be terminated:

(i) Following the protective services investigation determination that abuse or neglect was not a factor in the individual's death; or

(ii) At the discretion of the Department upon satisfactory demonstration by the agency that:

(I) There are adequate protections in place to prevent or minimize risk of harm to other individuals receiving the same or similar type of services; and

(II) Entry of additional individuals in services does not negatively impact the agency's ability to safely serve individuals.

(e) NOTICE OF ENDORSEMENT CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the endorsement of a program. The written notice of endorsement conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183.

(A) 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.

(B) The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(f) HEARING.

(A) An agency may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of endorsement conditions. The request for a hearing must be in writing. An agency must request a hearing within 21 calendar days from the receipt of the written notice of conditions.

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

(C) The Department shall be allowed reasonable requests for setting or postponement of any hearing to allow for the conclusion of a protective services investigation when a condition is imposed related to the protective services investigation.

(g) 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.

(h) 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, the rules in OAR chapter 411, division 004, 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, the rules in OAR chapter 411, division 004, 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 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 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, the rules in OAR chapter 411, division 004, 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 a 24-hour residential or host home program, upon written notice from the Department of denial, refusal to renew, or revocation of an endorsement. The request for a hearing must be in writing.

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

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

(I) In addition to, or in lieu of a hearing, an agency may request an administrative review as described in section (13) of this rule. The request for an administrative review must be in writing.

(II) The administrative review does not diminish the right of the agency to a hearing.

(ii) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 411, division 348, must request a hearing within 10 calendar 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 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 a 24-hour residential or host home program, upon written notice from the Department of the immediate suspension of the endorsement. The request for a hearing must be in writing.

(A) Notwithstanding subsection (B) of this section, the endorsed agency must request a hearing within 21 calendar days from the receipt of the written notice of suspension.

(i) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section

(13) of this rule. The request for an administrative review must be in writing.

(ii) The administrative review does not diminish the right of the agency to a hearing.

(B) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 411, division 348, must request a hearing within 10 calendar days from the receipt of the written notice of suspension.

(13) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) of this section, the agency, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 441, division 348, may not request an administrative review for revocation or suspension. An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 or a host home program as described in OAR chapter 411, division 348, may request an administrative review for imposition of conditions.

(c) The Department must receive a written request for an administrative 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 administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative 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 request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 calendar days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(14) **INFORMAL CONFERENCE.** Unless an administrative 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 427.007, 430.215

411-323-0040 Inspections and Investigations

(Amended 11/01/2019)

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

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

(2) The Department, the designee of the Department, 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 designee of the Department, 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 designee of the Department 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, 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 designee of the Department, shall conduct abuse investigations as described in OAR 407-045-0250 through 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 designee of the Department, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) 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
Stats. Implemented: ORS 427.007, 430.215

411-323-0050 Agency Management and Personnel Practices
(Temporary Effective 07/23/2020 - 10/26/2020)

(1) NON-DISCRIMINATION. An agency's personnel policies and practices must comply with all applicable state and federal statutes, rules, and regulations regarding non-discrimination.

(2) ABUSE REPORTING.

(a) An agency must notify each mandatory reporter of abuse reporting requirements at least annually on the applicable Department form.

(b) An agency must provide each mandatory reporter with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(c) An agency must maintain and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary action when a staff member, provider, subcontractor, relief provider, or volunteer, has been identified as an accused person in an abuse investigation or a founded report of child abuse or substantiated adult abuse.

(d) RETALIATION. An agency or provider may not retaliate against a person who reports in good faith suspected abuse or retaliate against an individual with respect to a report. An accused person may not self-report solely to claim retaliation.

(A) An agency, provider, or person that retaliates against a person because of a report of suspected abuse is liable under ORS 430.755 in a private action for actual damages and, in addition, is subject to a penalty up to \$1,000, notwithstanding any other remedy provided by law.

(B) Any adverse action is evidence of retaliation if taken within 90 calendar days of a report of abuse.

(C) For the purpose of this section, "adverse action" means any action taken by an agency, provider, or person involved in a report against the person making the report or against the individual because of the report and includes, but is not limited to, the following:

- (i) Discharge or transfer from the agency, except for clinical reasons.
- (ii) Discharge from, or termination of, employment.
- (iii) Demotion or reduction in remuneration for program services.
- (iv) Restriction or prohibition of access to the agency or the individuals receiving services delivered by the agency.

(3) APPLICATION FOR EMPLOYMENT. An application for employment at an agency must inquire whether an applicant has had a founded report of child abuse or substantiated adult abuse.

(4) BACKGROUND CHECKS – NON-DEPARTMENT PROVIDER AGENCY. This section applies to a subject individual, as defined in OAR 407-007-0210, employed or contracted by an agency to provide program services.

(a) A background check must be approved for each subject individual in accordance with the following:

- (A) OAR 407-007-0200 through 407-007-0370;
- (B) OAR 407-007-0600 through 407-007-0640;
- (C) ORS 181A.200; and
- (D) ORS 409.027.

(b) A subject individual may be approved for one position to work in multiple locations within a qualified entity as defined in OAR 407-007-

0210. The Background Check Request Form must be completed by the subject individual to show intent to work at various locations.

(c) An agency must perform a background check on all subject individuals at least every two years.

(d) As of July 28, 2009, an agency may not use public funds to support a subject individual convicted of a disqualifying crime in ORS 443.004, unless the subject individual remains in the position the subject individual held prior to July 28, 2009.

(e) A subject individual must notify the Department, or the designee of the Department, within 24 hours of any potentially disqualifying crime under OAR 125-007-0270 or potentially disqualifying condition under OAR 407-007-0290.

(5) BACKGROUND CHECKS – DEPARTMENT. This section applies to a subject individual, as defined in OAR 407-007-0010, employed or contracted by the Department to provide services in a residential training facility as defined in ORS 443.400 or a residential training home as defined in ORS 443.400.

(a) A background check must be approved for each subject individual in accordance with the following:

(A) OAR 407-007-0000 through 407-007-0100;

(B) OAR 407-007-0400 through 407-007-0460;

(C) ORS 181A.200; and

(D) ORS 409.027.

(b) The Department shall perform a background check on all subject individuals at least every two years.

(c) As of January 1, 2018, the Department may not use public funds to support a subject individual ineligible under OAR 407-007-0445.

(6) EXECUTIVE DIRECTOR QUALIFICATIONS. An 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 substitute for a degree.

(7) GENERAL STAFF QUALIFICATIONS. A staff member delivering services to an individual must meet the following criteria:

- (a) Be at least 18 years of age.
- (b) Be legally eligible to work in the United States demonstrated by:
 - (A) A completed U.S. Citizenship and Immigration Services Form I-9;
 - (B) Other documents that prove legal ability to work in the United States; or
 - (C) A notarized letter from the Executive Director or Board of Directors acknowledging the agency understands the responsibility to maintain I-9s for all employees and attesting the agency has a completed I-9 for each employee.
- (c) Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training, and skill.
- (d) Understand requirements of maintaining confidentiality and safeguarding individual information.
- (e) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General.
- (f) Be literate and capable of understanding written and oral orders.
- (g) Be able to communicate with individuals, health care providers, case managers, and appropriate others.

(h) Be able to respond to emergency situations at all times services are being delivered.

(i) Be certified in CPR and First Aid by a recognized training agency within 90 calendar days of employment.

(j) Receive 12 hours of job-related in-service training annually.

(k) Have clear job responsibilities as described in a current signed and dated job description.

(l) If transporting individuals, have a valid driver's license and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(m) Additional qualifications required by applicable program rules for the staff of an agency endorsed to those rules.

(8) PERSONNEL FILES AND QUALIFICATION RECORDS. An agency must maintain up-to-date written job descriptions for each staff member as well as a personnel file, available to the Department or the designee of the Department for inspection. The personnel file must include, but is not limited to, the following:

(a) Written documentation that references and qualifications were checked.

(b) Written documentation by the Department of an approved background check in accordance with sections (4) or (5) of this rule.

(c) Written documentation of mandatory abuse training and notification of mandatory reporter status prior to delivering services 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 adult abuse.

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

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

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

(9) COVID-19. An agency must implement all directives related to staffing and operation of the agency to reduce the spread of the Coronavirus (COVID-19) issued by any of the following:

(a) Governor's Executive Order.

(b) Written instruction to the agency from the Local Public Health Authority or the Oregon Health Authority Public Health Division.

(c) Written guidance directed at the agency through Department policy.

(10) DISSOLUTION OF AN AGENCY. A representative of the governing body or owner of an agency must notify the Department in writing 30 calendar days prior to the dissolution of the agency and make appropriate arrangements for the transfer of individual records.

Stat. Auth. ORS 409.050, 443.007

Stats. Implemented: ORS 409.010, 409.050, 427.007, 430.215, 443.007

411-323-0060 Policies and Procedures

(Amended 11/01/2019)

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

(2) INDIVIDUAL AND FAMILY INVOLVEMENT. An agency must have and implement a written policy that addresses opportunities for all of the following:

(a) Participation of individuals in decisions regarding the agency's operations.

(b) Interaction of families, guardians, legal and designated representatives, and significant others.

(c) For individuals, families, guardians, legal and designated representatives, and significant others:

(A) Participation on the Board of Directors or on committees; or

(B) Review of the agency's policies directly affecting the individuals receiving services from the agency.

(3) CONFIDENTIALITY OF RECORDS. An 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 their legal or designated representative or family.

(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.

(4) BEHAVIOR POLICIES.

(a) PROFESSIONAL BEHAVIOR SERVICES. An agency must have and implement written policies and procedures to assure professional behavior services are delivered by a qualified behavior professional in accordance with OAR chapter 411, division 304.

(b) BEHAVIOR SUPPORTS. An agency must have and implement written policies and procedures for the delivery of behavior supports that prohibits abusive practices and assures behavior supports are included in a Positive Behavior Support Plan.

(A) The agency must inform each individual, and as applicable their legal or designated representative, of the behavior support policies and procedures at the time of entry and as changes occur.

(B) A decision to alter an individual's behavior must be made by the individual or their legal or designated representative.

(5) EMERGENCY PHYSICAL RESTRAINT. An agency must have and implement written policies and procedures to assure that the use of any emergency physical restraint is reviewed by an agency's Executive Director, or as applicable their designee, within two hours of the emergency physical restraint.

(6) DIRECT NURSING SERVICES. An agency must have and implement written policies and procedures to assure direct nursing services are delivered by a qualified registered or licensed professional nurse in accordance with OAR chapter 411, division 380.

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

(a) Financial planning and management of the funds for an individual.

(b) Safeguarding the funds for an individual.

(c) Individuals receiving and spending their own money.

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

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

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) Upon an individual's entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and their legal or designated representative (as applicable).

(9) AGENCY DOCUMENTATION REQUIREMENTS. An agency must have and implement policies and procedures that address agency documentation requirements. Documentation must be:

(a) Prepared at the time or immediately following the event being recorded.

(b) Accurate and contain no willful falsifications.

(c) Legible, dated, and signed by the person making the entry.

(d) Maintained for no less than five years.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 427.007, 430.215

411-323-0063 Abuse and Incident Handling and Reporting

(Adopted 11/01/2019)

(1) ABUSE REPORTING. If a mandatory reporter has a reasonable cause to believe that abuse of an individual has occurred, the mandatory reporter must report or cause a report to be made immediately by phone or otherwise to the local CDDP, local law enforcement agency, or the Department. The duty to report suspected abuse is personal and is not fulfilled by reporting the abuse to the agency, provider, or any other staff

even if the agency, provider, or other staff reports the abuse. A provider must also immediately notify the following:

(a) The local law enforcement agency if there is reason to suspect a crime has occurred.

(b) Child Welfare if the allegation of abuse involves a child.

(2) In the case of a serious illness, serious injury, or death of an individual, a provider must immediately, but not later than one business day, notify all of the following (as applicable):

(a) The individual's legal or designated representative, family (if known), and other significant person identified by the individual to be contacted under these circumstances.

(b) The individual's case management entity.

(c) Any other agency responsible for, or delivering services to, the individual.

(3) A provider must immediately, but not later than one business day, notify an individual's case management entity of:

(a) The use of an emergency physical restraint. Timelines for notification included in a Temporary Emergency Safety Plan supersede the timeline established by this section.

(b) The use of a safeguarding intervention or safeguarding equipment resulting in an injury to the individual.

(4) In the case where an individual is missing without support beyond the time frame identified in the individual's ISP, the provider responsible for the care of the individual at the time the individual is discovered to be missing must immediately notify all of the following:

(a) The individual's legal or designated representative (if applicable).

(b) The local law enforcement agency.

(c) The individual's case management entity.

(5) A notification required by sections (1), (2), (3), or (4) of this rule must occur by phone, in-person, email, writing, or verbally and maintain confidentiality.

(6) INCIDENT REPORTS.

(a) A provider must complete a written incident report for any of the following:

(A) Serious incident.

(B) Allegation of abuse.

(C) Use of a safeguarding intervention.

(D) Use of an emergency crisis strategy when an individual has a Temporary Emergency Safety Plan.

(E) Fire requiring the services of a fire department.

(b) An incident report, when completed as required in subsection (a) of this section, must be:

(A) Submitted to the individual's case management entity within five business days of the incident.

(B) Maintained by the provider in the individual's record.

(C) If requested, provided to the individual's legal or designated representative within five business days of the request. A copy of an incident report may not be provided to an individual's legal representative when the report is part of an abuse investigation.

(c) A copy of an incident report provided to an individual's legal representative or other service providers must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(7) **PROTECTIVE SERVICES.** When a CDDP or OTIS abuse investigator determines that a provider must take a protective services action following a report of abuse, the provider must implement the action. If unable to implement the action, the provider must immediately notify the abuse investigator.

(a) Any protective services must be provided in a manner that is least intrusive to adult individuals and provide for the greatest degree of independence available within existing resources.

(b) The provider must report the outcome of protective services to the abuse investigator upon completion.

(8) **RECOMMENDED ACTIONS.** When a provider receives a recommended action included in an Abuse Investigation and Protective Services Report, as described in OAR 407-045-0320, or serious incident report review from a case management entity, the provider must:

(a) Implement the recommended actions within specified timelines and report back to the case management entity that the recommended actions were completed; or

(b) Contact the case management entity to develop alternative actions that are designed to prevent the recurrence of abuse or serious incident.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 427.007, 430.215

411-323-0065 Payment to Agency Providers

(Adopted 06/29/2016)

(1) Authorization for payment in the appropriate electronic payment system must occur prior to the delivery of services

(2) Payment is made after services are delivered.

(3) For a service to be eligible for payment it must be included on a written agreement that specifies, at a minimum, the type and amount of services to

be delivered. The written agreement must be signed by the provider and may be:

(a) The individual ISP; or

(b) A service agreement specific to the individual.

(4) A provider must request payment authorization from the case management entity for services provided during an unforeseeable emergency on the first business day following the emergency service. A case manager must determine if the service is eligible for payment.

(5) Travel time of the provider to reach the setting where services are delivered, when not directly providing services to the individual, is not reimbursable.

(6) Payment by the Department for a service is considered full payment for the services rendered under Medicaid. A provider may not demand or receive additional payment for services rendered under Medicaid from the individual, parent, guardian, or any other source, under any circumstances.

(7) Medicaid funds are the payer of last resort. A provider must bill all third party resources until all third party resources are exhausted.

(8) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider.

(9) Upon submission of a request for payment, a provider must comply with:

(a) All applicable rules in OAR chapter 407 and OAR chapter 411;

(b) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973 as amended;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(10) All billings must be for services provided within the licensure and certification of the provider.

(11) The provider must submit true and accurate information with request for payment.

(12) An agency may not submit the following to the Department:

(a) A false request for payment;

(b) A request for payment that has been, or is expected to be, paid by another source; or

(c) Any request for payment for services that have not been provided.

(13) The Department only makes payment to an enrolled provider who actually performs the services or the enrolled provider organization. Federal regulations prohibit the Department from making payment to a collection agency.

(14) Payment is denied if any provisions of these rules, the rules in OAR chapter 411, division 004, or the associated program rules are not complied with.

(15) The Department may recoup overpayments as described in OAR 407-120.

(16) In order to be eligible for payment, requests for payments must be submitted to the Department within 12 months of the delivery of services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

411-323-0070 Variances

(Amended 06/29/2016)

(1) The Department may grant a variance to these rules or the corresponding program rules based upon a demonstration by an 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 state or federal laws.

(2) The agency requesting a variance must submit a written 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 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. The decision of the Department is sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

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

(5) The duration of the variance is determined by the Department.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0075 Civil Penalties

(Temporary Effective 07/23/2020 - 01/18/2021)

(1) The Department may impose a civil penalty under ORS 427.900 on an agency for a violation of OAR 411-323-0050(9).

(2) In considering whether to impose a civil penalty and the size of the civil penalty, the Department shall consider all of the following:

(a) The past history of the agency incurring a civil penalty in taking all reasonable steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes or rules pertaining to the agency's program.

(c) The economic and financial conditions of the agency incurring the civil penalty.

(d) The immediacy and extent to which a violation threatens or threatened the health, safety, and welfare of individuals.

(3) Unless otherwise specified in rule, the amount of a civil penalty may not exceed \$500 for each violation.

(4) When an agency receives notification from the Department of a violation for which a civil penalty or other liability may be imposed, the agency must take action to immediately eliminate the violation.

(5) The Department shall provide the Executive Director of the agency written notice of the imposition of a civil penalty consistent with ORS 183.415 including all of the following:

(a) A statement of the agency's right to a hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A reference to the specific sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted or charged.

(e) A statement indicating whether and under what circumstances an order by default may be entered.

(f) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

(6) The Executive Director or their designee has 20 calendar days from the date of service of the notice in which to make a written application for a hearing before the Department.

(7) If the agency fails to request a hearing within 20 calendar days, a final order may be entered by the Department assessing a civil penalty.

(8) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(9) If, after a hearing, the agency is found to be in violation of OAR 411-323-0050(9), an order may be entered by the Department assessing a civil penalty.

(10) If the order is not appealed, the amount of the civil penalty is payable within 10 calendar days after the order is entered. If the order is appealed and is sustained, the amount of the civil penalty is payable within 10 calendar days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(11) Judicial review of civil penalties imposed under ORS 427.900 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the civil penalty.

(12) Unless otherwise directed by statute, all civil penalties recovered under ORS 427.900 are paid into the State Treasury and shall be

deposited to the Department of Human Services Account established under ORS 409.060 and may be used by the division of the Department that provides developmental disabilities services for system improvements and the implementation of policies.

Stat. Auth. ORS 409.050, 427.900

Stats. Implemented: ORS 183.745, 409.010, 409.050, 427.007, 427.900, 430.215