# 411-318-0020

# Notification of Planned Action

August 2014

Chelas Kronenberg

# What is purpose of Notice of Planned Action (NPA)

- Informs the individual/guardian:
  - About a denial or change in their services
  - The date when the change will be effective
  - About the rules used in the decision
  - About their hearing rights or Due Process before an unfavorable action is taken

# When to issue a NPA

OAR 411-318-0020(1)

- Any time a service is:
  - Denied - application for DD services, new request for services and found ineligible for that service
  - Terminated – determined no longer eligible for DD services or new assessment determines no longer eligible for service. Terminations are when a service is going to end.
  - Reduction – when a plan is being reduced as a result of a new assessment (lower number of hours of support)
  - Suspension – current service level is suspended (person is in hospital, no employer of record to assign services or verify timesheets, person is temporarily out of the Country and unavailable to receive services – less than a calendar month)

# Effective Dates of Action

411-318-0020(2)(b)

- Date of Notice = date that the Notice is being mailed or hand delivered
- Denials = <u>same</u> date of Date of Notice
- Terminations, Reductions, Suspensions
  - issuing notice on or before the 18th of the calendar month = effective date of action is the last day of the calendar month.
  - Issuing notice on or after the 19th of the calendar month = effective date of action is the last day of the NEXT calendar month.
  - Other – situations may arise when the schedule above does not work. Regardless of situation – effective date of action must be no LESS than 10 days.

# Notice must include

OAR 411-318-0020(2)(a-g)

- Use form 0947 (includes all rule required points)
- Must be addressed to individual and legal guardian (if applicable)
- Service being impacted (in-home attendant care hours, communication device, DD eligibility etc.)
- Reason for Action – do not copy language from OAR. Provide a brief explanation in common or “lay” terms that the individual can understand, about the action that is being taken.
- OAR citation – identify specific rule down to subsections
- Notification that individual may be required to repay the Department for any continuing benefits during hearing if the Final Order is not favorable to the individual

# Writing OARs - practice

- An ANA was completed for an adult who is receiving supports through a Brokerage. The individuals assessed hours are less than they were for the previous plan year. Because this will reduce the individuals' service plan, a Notification of Planned Action must be sent.

Must include OAR citation must:

- *411-340-0020(58)(a)(C); 411-340-0020(72);*

*411-340-0020(103); 411-340-0130(5)*

- *Could also write this way: 411-340-0020(58)(a)(C); (72); and (103); 411-340-0130(5)*

- Your Individual Support Plan has been reduced as a result of the Functional Needs Assessment that was completed on July 29th. Your Service Level is now authorized for 100 hours per month of attendant care hours. Last year your Service Level was authorized for 153 hours per month of attendant care hours.

Must be date either in mail, emailed or hand delivered

Must enter name of CDDP or Brokerage

Denials= same date as 'Date of Notice'

Terminations, reductions, suspensions = follow directions in 411-318-0020(2)(b) (see Notes below)

DHS
Oregon Department of Human Services
Office of Developmental Disabilities Services

**Notification of Planned Action**

Date of notice: Effective date of planned action:
Individual's name:
Individual's date of birth: Individual's prime number:
Street address:
City: State: ZIP code:
Legal guardian's name:
Notifying agency:
Caseworker name: Phone:

If you have questions call please call the caseworker listed above.

**This is to inform you of the planned action listed below.**
If you disagree with the action, you have the right to request a hearing per OAR 411-001-0325. Information on how to make a request is on page 2 and 3 of this Notification of Planned Action.

**Planned action**

☐ Your request for has been denied.
☐ There has been a:
☐ reduction ☐ suspension ☐ termination in the listed DD service
☐ voluntary reduction of services ☐ voluntary closure of services
☐ other reasons for denial listed below:

Describe the reason for the action below:

The determination is based on the following Oregon Administrative Rule(s) *(include subsections, and complete list of records on last page)*:

**If you disagree with this decision, you have the right to request a hearing.**
If your case is being denied, parts 1 and 3 on page 2 apply.
If your case is being terminated, reduced or suspended, parts 1,2, and 3 on page 2 apply.
If your situation changes, please notify the contact listed above.

Page 1 of 4 SDS 0947 (05/2014)

This is where you indicate what action you are taking

If the **existing** service is being **terminated**, **reduced** or **suspended**, indicate this by checking the 2nd box and marking the appropriate selection

If the service is a **new** request and is being **denied**, indicate this by checking the first box, then going to the next section to Describe the reason for the Action

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Describe the reason for the action below:

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**If you disagree with this decision, you have the right to request a hearing.**
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Page 1 of 4 SDS 0947 (05/2014)

In layman's language, briefly describe the reason for issuing the notice. Do not copy OAR citations, emails, or other message. This is a message directly related to your decision

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**Notification of Planned Action**

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OAR citations should be specific to the rule that directs the action that you are taking

# Citing OARs

- OARs must be cited to their fullest and closest rule citation.
- DD rules always start with 411, then list:
  - the division of program
  - the rule section
  - the sub section
- Cite ALL OARs that apply to the action that is being taken, including definitions as applicable

# How do people request a hearing?

- Department must receive the request within 90 days of the Date of Notice?
  - Oral
  - In writing (email or letter)
  - Completing 0443DD (preferable)

- Department = CDDP, Brokerage, CIIS or ODDS
  - Can also be any other DHS office – APD or AAA

# Oral Hearing Request

- Have a conversation about what the individual or their representative really wants
- Filling out 0443DD and sending individual a copy of the letter
- Forwarding 0443DD and copy of Notice and supporting records to ODDS

- Avoid discouraging the individual from requesting a hearing
- Late hearing requests (being requested more than 90 days after the notice had been sent)

# Good Cause

411-318-0005(22)

- If a Request for a Hearing is not received within 90 days, the Hearing Representatives of the Administrative Law Judge may determine that there is “good cause” to accept the late hearing request.

- 411-318-0005(22)
  - Good cause is generally whether the delay was reasonably beyond the individual/claimant’s control

ODDS completes this section

Claimant or representative completes this section based on information found on the NPA

DHS Oregon Department of Human Services Seniors and People with Disabilities

## SPD/DD Administrative Hearing Request

**Department of Human Services (DHS) completes this part**

Date of notice: | Cost center: | Date of initial hearing request: | Date 0443DD rec'd by DHS:

Case number, (prime number or DD followed by last 4 digits of SSN):

Claimant speaks English? ☐ Yes ☐ No Claimant primary language:

Alternate format: ☐ Yes ☐ No If yes, specify below:

☐ Braille ☐ Audio tape ☐ Large print ☐ Diskette ☐ Oral presentation

**Claimant or claimant's representative completes this part**

**Name of claimant:** **Date of birth:**

**Full address:** **Phone:**

If you want a hearing regarding developmental disability services or eligibility determination, you or your representative must fill out this form. An employee at your Community Development Disabilities Program Office or Support Services Brokerage can help you complete this form.

**I am asking for a hearing because I do not agree with the decision to:**

☐ Deny services ☐ Terminate services ☐ Reduce services ☐ Suspend services

☐ Other

☐ **I received written notice** ☐ **I did not receive written notice** Date of notice:

Notifying agency:

**Program(s) involved:** ☐ Comprehensive services ☐ CIIS ☐ Support services

☐ Other developmental disability services (e.g., case management) ☐ Not receiving services

**Briefly explain the decision and why you disagree with it attach additional sheets as needed):**

**Before you answer this question, please read "part 2" on page 2 of this form.**

Do you want your services to stay the same *(not reduced or stopped)* while you wait for a hearing?

☐ Yes ☐ No

**Please read "part 3" on page 2 of this form for information about expedited hearings.**

Check this box if you meet the requirements for an expedited hearing: ☐

Name of my representative: Phone number:

Full address of representative:

Relationship of representative to claimant:

**The administrative law judge may conduct a hearing by phone.**

In a telephone hearing, the administrative law judge participates by phone. The claimant may be at the developmental disability office or another place. I understand that I will be asked to have an informal conference with an agency representative.

Signature of claimant: Date:

DHS representative for this matter: Phone:

Issue code: Date:

DHS
Oregon Department of Human Services
Seniors and People with Disabilities

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Full address of representative:

Relationship of representative to claimant:

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Signature of claimant: Date:

DHS representative for this matter: Phone:

Issue code: Date:

Claimant/ representative identifies the reason that they think the claimant should be eligible for the service in question.

Signature line

**Representative**: If the claimant has someone representing them during the hearing, that person's information goes here. **Cannot** be a Department employee acting in that capacity

# What are Continuing Services?

- If an individual is given notice to Terminate, Reduce or Suspend service, the individual has the right to request that services remain unchanged during the hearing process.
- Individual must request a hearing and continuing services (also called Aid Paid Pending) prior to the Effective Date of Action in order for services to remain the same.
- If a hearing is requested after the Effective Date of Action, may not be eligible for Continuing Services – Department has option to provide continuing services or denying
  - Services may already have ended and would have to be reinstated
  - If individual was in residential services, leaves and later requests continuing services, may not have the same placement option.
- Individual can change their choice of continuing services at any time during the hearing process.

DHS
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Seniors and People with Disabilities

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Case number, (prime number or DD followed by last 4 digits of SSN):

Claimant speaks English? ☐ Yes ☐ No Claimant primary language:

Alternate format: ☐ Yes ☐ No If yes, specify below:

☐ Braille ☐ Audio tape ☐ Large print ☐ Diskette ☐ Oral presentation

**Claimant or claimant's representative completes this part**

**Name of claimant:** **Date of birth:**

**Full address:** **Phone:**

If you want a hearing regarding developmental disability services or eligibility determination, you or your representative must fill out this form. An employee at your Community Development Disabilities Program Office or Support Services Brokerage can help you complete this form.

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Signature of claimant: Date:

DHS representative for this matter: Phone:

Issue code: Date:

**Continuing Services**:
If a claimant is currently receiving a service that will be terminated, reduced or suspended and wants to **continue** to receiving the service during the hearing, they identify 'yes' they want the service to remain the same.

# What happens next?

- 0443DD received by Department
  - ODDS will request a copy of the Notification of Planned Action and all supporting documents from the entity who issued the NPA
  - ODDS refers the case to the Department Hearing Representative Unit
  - Hearing rep is assigned

- Coordination of witnesses for the hearing
  - CDDP/Brokerage/CIIS to testify regarding decision that was made
  - ODDS to testify for rule interpretation, policy related decisions, ODDS denied support/service/expenditure

# Hearings Representatives

- Hearing Representatives are responsible for:
  - Coordinating informal conference with claimant and/or representative
  - Referring the case to the Office of Administrative Hearings
  - Organizing Exhibits
  - Writing Contested Case Notice (CCN)
  - Interviewing Witnesses during the hearing

# Informal Conferences

411-318-0025(4)

- This is an opportunity for:
  - The Department/CDDP/Brokerage/CIIS and the claimant/representative to explain different positions
  - Ensure that everyone has all the information
  - Ensure that everyone understands the issue at stake
  - Opportunity to reach a resolution

# Proceeding to a Hearing

- The Department Hearing Representative refers the case to the Office of Administrative Hearings (OAH)
- Hearing Representative notifies all witnesses when the hearing is scheduled
  - This is usually at least a month after referring the case to OAH
- Hearing representative will discuss potential questions with the witnesses prior to the hearing
  - When the CDDP, Brokerage or CIIS has issued a NPA related to a decision that has been made, the witness will be the person who made the decision.
  - When ODDS has completed a Funding Review decision related to the request for service(s), the witness will be ODDS staff.

# Claimant Withdraws

- If the claimant or the representative withdraws their request for a hearing, the decision identified within the Notification of Planned Action stands and the Action must be taken on the date identified within the Effective Date of Planned Action
  - If the Effective Date of Planned Action has already passed, the action is taken immediately and there may be an overpayment
- Order of Dismissal/Withdrawal
  - Issued by the Department Hearing Reps

# Department Withdraws

- If the Department withdraws the Notification of Planned Action, it is typically because there is a lack of evidence supporting the decision, there is inaccurate or additional information needed or additional information has been submitted.
  - If the Department withdraws the Notification of Planned Action, then services may resume or additional information may be needed before eligibility for the service can be determined.
- Department Hearing Representative
  - Issues Order of Dismissal/ Withdrawal

# Hearings

- If the case goes to a hearing:
  - All hearings are done over the phone unless the claimant/representative requests an in-person hearing
  - No shows = Department prevails/wins
  - After hearing:
    - Final Order is issued usually 3-6 weeks following the hearing.

# Final Orders

- Summarize Hearing
- Identify Decision to be taken
- Claimant prevails = services implemented or continue
- Department prevails = action must be taken no more than 5 days after receipt of Final Order (ODDS policy – see AR -11-041)

- If the claimant does not agree with the findings in the Final Order, they may appeal to circuit court – instructions on listed in the Final Order.

# Dismissing Hearing Requests

- Only a Department Hearing Representative can dismiss a hearing request.
- If a hearing request has been completed and then either the individual or their representative decides not to move forward with the hearing request, or if the issue is resolved prior to the informal conference, the case worker or the individual/ representative must communicate the resolution to ODDS or the Department Hearing Representative, who will issue an Order of Dismissal/Withdrawal.
- ALL hearing requests MUST be forwarded to ODDS

# Over-Payments

- If someone asks for a hearing and continuing services, they may be required to pay back services/benefits that they were not eligible to receive If they do not prevail or win the hearing
- Over-payment starts accruing the day AFTER the Effective Date of Action
- Over-payment ends the date services are ended (either by choice of if the Department prevails at hearing and the services are ended)

# Notice of Overpayments

- If an overpayment occurred during the hearing (which would mean that the individual did not win the hearing), the Department completes the DHS 284 and forwards the information to Office of Payment Accuracy and Recovery (OPAR)
- OPAR issues an overpayment notice to the individual
- Individual/representative can request a hearing on overpayment issue

# Amended Notices

- Why an Amended Notification of Planned Action?
  - A Correction to a Notification of Planned Action
    - Corrected Effective Date of Planned Action
    - Corrected OAR citation
    - Corrected Reason for Planned Action statement
    - Other
  - Amended Notices reset the ‘clock’ for effective dates and possible overpayments.
  - Department hearing reps may also amend a notice if necessary

# Rescinded Notices

- If a Notification of Planned Action was issued and then it is determined that the action is not necessary or the action will not be taken, the Notice must be rescinded.
- This can be done by writing a letter identifying the following:
  - Date of Notice being rescinded
  - Action that was identified in the Notice, and
  - Reason that Action will no longer be taken

# Amend or Rescind?

- Amend = if you still plan to take the action identified within the Notice but need to correct something within the document

- Rescind = if you no longer plan to take the action identified within the Notice.
  - Example
    - an assessment showed that the individual went from 1200 hours per year to 1000 hours per year. A Notification of Planned Action was issued and the individual requested that a new assessment was completed.
    - New assessment completed and shows that the individual remains eligible for 1200 hours per year.
    - Case worker must rescind the Notice as no adverse action will be taken

# Voluntary changes

- When an individual or their legal guardian asks for a:
  - Reduction
  - Suspension, or
  - Termination

of their service plan (when plan is revised to show a change for the lesser amount or services are closed entirely) a Notification of Planned Action must be provided to the individual and their legal guardian.

# Examples – NPA is required
## (not an exclusive list)

- When to issue a Notification of Planned Action

In-Home Services

- Service level attendant care support reduced (this includes "temporary "services being decreased following temporary increase in support needs – this would be done following a needs assessment only) the overall ISP
- Service or attendant care support is denied (this includes one time purchase requests)
- request for increase of service level (support hours, respite, behavioral consultation) is denied
- Individual/guardian request for reduction/termination of services and plan (voluntary).
- Dissatisfaction with support plan
- Ancillary services denied by program or ODDS Funding Review

# Examples (cont.)

Residential Services

- Service eligibility is denied (individual is not eligible for residential services)
- Qualified provider of choice denied
- Dissatisfaction with support plan
- Ancillary service denied by program or ODDS funding review (not to be confused with provider rates or enhanced services)

# Examples – NPA not required

(Not an exclusive list)

Case worker does NOT issue a Notification of Planned Action:

- Provider issues a Notice of Involuntary Exits/Transfers
  - Department doesn't issue if providers choose to terminate or move the individual
- Provider reductions based on ISP agreement (example: someone has 5 days of employment and reduces to 3 days a week with ISP team agreement
- When individuals/guardians choose not to use all authorized attendant care hours or services in their plan, but the actual plan is not amended or changed.
- Provider rates and enhancements denied by program or odds funding review

# Giving Effective Testimony in Administrative Hearings

Chris Ellis

August 2014

# Contents

- What is an administrative hearing?
- What is evidence?
- Who can be a witness?
- What is testimony?
- What can I expect as a witness in an administrative hearing?
- What can I do to be a good witness?

# What is an administrative hearing?

- An administrative hearing is an official proceeding which involves:
  - An Administrative Law Judge (ALJ)
  - A claimant
  - A claimant’s lawyer or representative
  - Claimant’s witnesses
  - A Department representative
  - Department witnesses

# What is an administrative hearing? (continued)

- The ALJ is an impartial individual who conducts the administrative hearing and issues a written order.

- ALJs work for the Office of Administrative Hearings (OAH). OAH is completely separate from DHS or OHA.

# What is an administrative hearing? (continued)

- A claimant is a person who has been notified that a Department action has been taken with respect to his/her case or his/her application, and who contests that action.

- One must be a claimant in order to be entitled to an administrative hearing.*

# What is an administrative hearing? (continued)

- In DD hearings, most of the time the claimant has either a lawyer or a representative.

- The claimant’s lawyer or representative will speak for the claimant during the hearing, will question witnesses, and will provide and receive evidence for the claimant

# What is an administrative hearing? (continued)

- The claimant has a right to call witnesses. Most often these are people who have specific knowledge and can testify about the claimant, the claimant’s condition or the claimant’s needs.
- Both the claimant’s representative and the Department representative can ask claimant’s witnesses questions.

# What is an administrative hearing? (continued)

- The Department representative is the person who prepares the Department's case for hearing and who represents the Department at the hearing.
- The Department representative asks questions of the Department's witnesses and the claimant's witnesses. Sometimes the Department representative testifies at the hearing.

# What is an administrative hearing? (continued)

- Department witnesses are people who have direct knowledge of the claimant’s case.
- Most of the time, the Department’s witness is a person who has made a decision in a claimant’s case.

# What is evidence?

- Evidence is something that tends to show that something else is true. This is kinda confusion statement… can we say that evidence is documentation that either supports a decision or identifies the lack of support?

- In administrative hearings, most evidence is documentary (i.e. records, narratives, test scores).

- Witness testimony is also evidence.

# Who can be a witness?

- A witness is someone who testifies about a fact that he/she knows.

- In administrative hearings, witnesses are generally called to testify because they have knowledge <u>specific to the claimant</u>, not just knowledge of a certain program or condition.

# Who can be a witness? (continued)

- In DD hearings, Service Coordinators will often be called upon to testify about the outcomes their assessments.
- In addition to testifying at the hearing, the witness will also need to participate in the informal conference with the Department hearing representative and the claimant’s lawyer or representative.*

# What is testimony?

- Testimony is a statement or series of statements made under oath.

- By giving testimony in an administrative hearing, you are swearing under penalty of perjury that you are telling the truth.

# What is testimony? (continued)

- A witness giving testimony can offer detail and context that documentary evidence cannot.*

- Testimony is valuable because the person giving testimony can be questioned by the Department representative, the ALJ, or the claimant’s lawyer or representative.

# What can I expect as a witness in an administrative hearing?

- As a witness, you will be asked about your education, knowledge and experience about DD programs.
- You will also be asked about your involvement with the claimant’s case.
- You will be subject to direct examination (by the Department representative) and cross examination (by the claimant’s lawyer or representative).

# What can I expect as a witness in an administrative hearing? (cont.)

- Direct examination:
  - Is done by the Department for Department witnesses
  - Asks open-ended questions
  - Requires that the witness provide detail in his/her answers
  - Must not ‘suggest’ the answer that the witness gives

# What can I expect as a witness in an administrative hearing? (cont.)

- Direct examination examples:
  - “Did you assess <claimant>?”
  - “When did you complete your assessment?”
  - “Who was present during your assessment?”
  - “Please discuss your findings.”*
  - “What action did you take on <claimant’s> case based on your assessment?”

# What can I expect as a witness in an administrative hearing? (cont.)

- Direct examination responses:
  - Some of your responses will be very brief and completely fact-based:
    - “<claimant>, <claimant’s mother>, and myself participated in the assessment.”
    - “I determined that <claimant’s> application for services must be denied.”

# What can I expect as a witness in an administrative hearing? (cont.)

- Direct examination responses:
  - Some of your responses will be much more lengthy and detailed:
    - Be prepared to ‘tell a story’ about the assessment you did that led to the decision.
    - The value in your testimony will come from things that you directly saw, heard, or observed.*
    - Tell in your own words how the information that you gathered enabled you to reach your decision.

# What can I expect as a witness in an administrative hearing? (cont.)

- Cross examination:
  - Is done by the claimant’s lawyer or representative
  - Can ask very pointed questions that suggest an answer
  - Can put words in your mouth, even words that you did not say

# What can I expect as a witness in an administrative hearing? (cont.)

- Cross examination examples:
  - “Isn’t it true that you only spent 5 minutes doing your assessment?”
  - “You had your mind made up that <claimant> was ineligible before you even did the assessment, didn’t you?”
  - “Why did you tell me at first that <claimant> would get more services, then give him less services?”
  - “True or false:  You deny all applicants?”

# What can I expect as a witness in an administrative hearing? (cont.)

- Cross examination responses:
  - Always answer questions 100% truthfully.
  - Don’t give testimony beyond what is necessary to answer the question.*
  - If you’re asked a question that requires you to look up some information, it is OK to say “I need to look that up.” And if the answer you give is in the exhibits, point it out.**

# What can I expect as a witness in an administrative hearing? (cont.)

- Cross examination responses:
  - Use rule citations to support your testimony if appropriate.
  - “I don’t know” is a perfectly valid response if it is the truth.
  - If you find that you’ve made a mistake, say so.

# What can I do to be a good witness?

- Most of what you need in order to be a good witness comes down to:
  - Being well prepared, and
  - Telling the truth

# What can I do to be a good witness? (cont.)

- Being well prepared starts well before the hearing.
  - Be sharp on rules and policies
  - Narrate actions clearly and completely
  - Take an active role in hearing preparation with the hearing representative.
    - Hearing representatives are not DD experts. Make sure they understand your decision.

# What can I do to be a good witness? (cont.)

- Be very familiar with the exhibits before the hearing.
- Point out any flaws or inconsistencies you find in the exhibits to the hearing representative before you get to hearing if possible.
- When you testify, be confident and firm.
- Don’t editorialize unless you’re specifically asked for your opinion.

# What can I do to be a good witness? (cont.)

- Tell the truth
  - Even if the truth results in the Department or ALJ reversing the decision
  - Even if you think it makes you look bad
  - Even if you think making a small comment or correction won’t change the outcome

# And finally…

- <u>Remember that ALJs are just people.</u>
  - While you certainly need to take testifying in an administrative hearing seriously, you are not being judged.
  - As a Department witness, your purpose is to provide information through testimony that you and only you can provide.

# And finally…(cont.)

- The ALJ and the hearing representative appreciate that you're testifying and want your testimony to go smoothly as much as you want it to.

# What happens next?

- ALJ’s do not make a decision during the hearing

- ALJ will issue a Final Order following the conclusion of the hearing.

# Claimant prevails

- If the claimant prevails (wins) the hearing, the service must be provided

- ODDS will provide assistance with coordinating next steps in these instances

# Department prevails

- If the Department prevails (wins) the hearing, the action identified in the Notification of Planned Action must be followed.

- ODDS will provide assistance with next steps

- Claimant may have an overpayment – ODDS will coordinate this.