

*** Notification of
Planned Action &
Hearing Requests**

Jeanette Baxter

August, 2015

* What is the purpose of a Notification of planned action?

* The Notification of Planned Action (NPA) informs an individual/guardian about :

- A denial or change in their services
- The date when the change will be effective
- What rules were used to make the decision
- Hearing Rights or Due Process before the action is taken

*When to Issue a NPA

(OAR 411-318-0020(1))

- * A Notification of Planned Action **MUST** be issued 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 a new assessment determines no longer eligible for service)
 - Reduction (A plan is being reduced as a result of a new assessment)
 - Suspension (Current service level is suspended - person in hospital, no employer of record - less than a calendar month)

Effective Dates of Action!



The Date of Notice is the date that the Notification of Planned Action is either being mailed or hand delivered.

***Date of Notice**
OAR 411-318-0020 (2)(b)

*The Effective Date of Action for a Denial is the SAME date as the Date of Notice

*Denials

- * If issuing a Notice on or before the 18th of the calendar month, the effective date of action is the last day of the calendar month
- * If issuing a Notice on or after the 19th of the calendar month, the effective date of action is the last day of the NEXT calendar month
- * Other - there may be situations that arise in which the schedule above does not work. Regardless of the situation, the effective date of action must be NO LESS than 10 days.

* Terminations, Reductions, and Suspensions

* Notices

- Must be issued using form 0947
- Must include all rule required points
- Must be addressed to individual and legal guardian (if applicable)
- Must include the service being impacted
- Must include a Reason for Action written in plain language
- Must include OAR citation (down to subsections)
- Must include notification that the individual may be required to repay the Department for any continuing benefits during hearing if the Final Order is not favorable to the individual

* Required Components of a Notice

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



How to correctly cite 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

*Citing OARs

* Following an ANA for an adult receiving supports through a Brokerage, the assessed hours are less than the previous year. This reduction requires a Notification of Planned Action to be sent

* OARs

• 411-340-0020(53)(a); 411-340-0020(67); 411-340-0020(60); 411-340-0020(104); 411-340-0130(6)

• *Could also write this way:* 411-340-0020(53)(a); (67); 411-340-0130(6)

*Your Individual Support Plan has been reduced as a result of the Functional Needs Assessment the ISP Team completed on May 5th. Your Service Level is now authorized for 90hours per month of attendant care hours. Last year your Service Level was authorized for 127 hours per month of attendant care hours.

***Reason for Action**

This MUST be the date mailed, emailed, or hand delivered



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 (if applicable): _____

The purpose of this Notification is to inform you of the planned action below. The planned action is based on Oregon Administrative Rules and the records listed in this Notification. If you disagree with the decision, you have the right to request a hearing as provided in ORS chapter 183 and [OAR 411-318-0025](#). For information on how to request a hearing and the hearing process, see Parts 1-4 on the following pages.

If you have questions, if your situation changes, or if you have relevant records not included below, please contact the person at this agency:

Notifying agency: _____
Notification completed by: Select one Other: _____
Name: _____ Phone: _____

Planned Action

- Your request for services from the DHS Developmental Disabilities Program has been denied.
- Your current services will not change, but your specific request for _____ has been denied.
- Your services are going to be select one.
Specific services involved: _____

Reason for Action

After reviewing the following Oregon Administrative Rules and the records listed below, DHS is taking this action because _____.

Relevant Oregon Administrative Rules

The planned action is based on the following OAR(s) (include subsections):

943-001-0020(3); _____ ; _____ ; _____

Oregon Administrative Rules can be found on the website of the Oregon Office of the Secretary of State.

Denials= 'Date of Notice'
Terminations,
Reductions,
Suspensions =
Follow directions
in 411-318-0020
(2)(b)

Enter name of CDDP or Brokerage contact person

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 (if applicable): _____

The purpose of this Notification is to inform you of the planned action below. The planned action is based on Oregon Administrative Rules and the records listed in this Notification. If you disagree with the decision, **you have the right to request a hearing**, as provided in ORS chapter 183 and [OAR 411-318-0025](#). For information on how to request a hearing and the hearing process, see Parts 1-4 on the following pages.

If you have questions, if your situation changes, or if you have relevant records not included below, please contact the person at this agency:

Notifying agency: _____

Notification completed by: Select one Other: _____

Name: _____ Phone: _____

Planned Action	
<input type="checkbox"/>	Your request for services from the DHS Developmental Disabilities Program has been denied.
<input type="checkbox"/>	Your current services will not change, but your specific request for _____ has been denied.
<input type="checkbox"/>	Your services are going to be <u>select one</u> . Specific services involved: _____

Reason for Action
After reviewing the following Oregon Administrative Rules and the records listed below, DHS is taking this action because _____.

Relevant Oregon Administrative Rules
The planned action is based on the following OAR(s) (include subsections): 943-001-0020(3); _____ ; _____ ; _____
Oregon Administrative Rules can be found on the website of the Oregon Office of the Secretary of State.

Indicate Action Being Taken



Cite Rules Here



Indicate Reason for Action



List records used in decision here

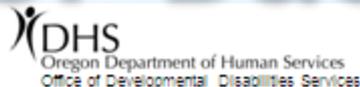
Records Used in the Decision		
Date	Type of record/report/evaluation	Author
Other information and comments:		
You have the right to review these records. You can request the records by contacting the person listed on page 1.		

Notice of Hearing Rights

- You have the right to challenge this decision by requesting a contested case hearing. Hearings are held by an Administrative Law Judge and the Office of Administrative Hearings, which is independent from DHS. If you want a hearing, you must request a hearing **within 90 calendar days** of the date of this Notification. If you are being denied services, see Parts 1, 2 and 4 (below). If your services will be reduced, suspended or terminated, see Parts 1 – 4 (below).
- You can request to have an informal discussion about this Notification by contacting the local office where you receive services (Brokerage, CIIS or CDDP). An informal discussion will not affect your right to a hearing. If you verbally request a hearing during the informal discussion, the person you are speaking with can request a hearing for you. If you choose to have an informal discussion, the deadline to request a hearing does not change.
- **Note to military personnel:** Active duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information, you may contact the Oregon State Bar (1-800-452-8260), the Oregon Military Department (1-800-452-7500) or find the nearest military legal assistance office here: <http://legalassistance.law.af.mil/content/locator.php>. (SB125).

Pop Quiz!

Good or Bad Notice?



Notification of Planned Action

Date of notice: June 25th, 2015 Effective date of planned action: June 1st, 2015

Individual's name: Jane Smith
Individual's date of birth: 08/26/2010 Individual's prime number:
Street address: 500 Summer St Ne
City: Salem State: Or ZIP code: 97301
Legal guardian's name (if applicable): John Smith

The purpose of this Notification is to inform you of the planned action below. The planned action is based on Oregon Administrative Rules and the records listed in this Notification. If you disagree with the decision, **you have the right to request a hearing**, as provided in ORS chapter 183 and [OAR 411-318-0025](#). For information on how to request a hearing and the hearing process, see Parts 1– 4 on the following pages.

If you have questions, if your situation changes, or if you have relevant records not included below, please contact the person at this agency:

Notifying agency: ABC Case Management
Notification completed by: Select one Other:
Name: Jeanette Baxter Phone: 503-945-6804

Planned Action	
<input type="checkbox"/>	Your request for services from the DHS Developmental Disabilities Program has been denied.
<input type="checkbox"/>	Your current services will not change, but your specific request for <u> </u> has been denied.
<input checked="" type="checkbox"/>	Your services are going to be <u>reduced</u> . Specific services involved: <u> </u>



Reason for Action
After reviewing the following Oregon Administrative Rules and the records listed below, DHS is taking this action because <u>your ANA hours are going down</u> .

Relevant Oregon Administrative Rules
The planned action is based on the following OAR(s) (include subsections): <u>943-001-0020(3); ; ; </u>
Oregon Administrative Rules can be found on the website of the Oregon Office of the Secretary of State.

WRONG!


Oregon Department of Human Services
Office of Developmental Disabilities Services

Notification of Planned Action

Date of notice: June 25th, 2015 Effective date of planned action: June 1st, 2015

Individual's name: Jane Smith

Individual's date of birth: 08/26/2010 Individual's prime number:

Street address: 500 Summer St Ne

City: Salem State: Or ZIP code: 97301

Legal guardian's name (if applicable): John Smith

The purpose of this Notification is to inform you of the planned action below. The planned action is based on Oregon Administrative Rules and the records listed in this Notification. If you disagree with the decision, you have the right to request a hearing, as provided in ORS chapter 183 and [OAR 411-318-0025](#). For information on how to request a hearing and the hearing process, see Parts 1– 4 on the following pages.

WRONG!

Planned Action

- Your request for services from the DHS Developmental Disabilities Program has been denied.
- Your current services will not change, but your specific request for [REDACTED] has been denied.
- Your services are going to be reduced.
Specific services involved: [REDACTED]



WRONG!

Reason for Action

After reviewing the following Oregon Administrative Rules and the records listed below, DHS is taking this action because your ANA hours are going down.

Relevant Oregon Administrative Rules

The planned action is based on the following OAR(s) (include subsections):

943-001-0020(3); [REDACTED]; [REDACTED]; [REDACTED]

Oregon Administrative Rules can be found on the website of the Oregon Office of the Secretary of State.

Good or Bad Notice?



Notification of Planned Action



Date of notice: July 10th, 2015 Effective date of planned action: July 10th, 2015

Individual's name: Johnny Smith
Individual's date of birth: 07/01/2000 Individual's prime number:
Street address: 500 Summer St Ne
City: Salem State: Or ZIP code: 97301
Legal guardian's name (if applicable): Mike Smith

The purpose of this Notification is to inform you of the planned action below. The planned action is based on Oregon Administrative Rules and the records listed in this Notification. If you disagree with the decision, **you have the right to request a hearing**, as provided in ORS chapter 183 and [OAR 411-318-0026](#). For information on how to request a hearing and the hearing process, see Parts 1– 4 on the following pages.

If you have questions, if your situation changes, or if you have relevant records not included below, please contact the person at this agency:

Notifying agency: ABC Case Management Entity
Notification completed by: Select one Other:
Name: Jeanette Baxter Phone: 503-945-6804

Planned Action
<input checked="" type="checkbox"/> Your request for services from the DHS Developmental Disabilities Program has been denied.
<input type="checkbox"/> Your current services will not change, but your specific request for <u> </u> has been denied.
<input type="checkbox"/> Your services are going to be <u>select one</u> . Specific services involved: <u> </u>

Reason for Action
After reviewing the following Oregon Administrative Rules and the records listed below, DHS is taking this action because you do not have a qualifying diagnosis and your IQ is too high.

Relevant Oregon Administrative Rules
The planned action is based on the following OAR(s) (include subsections): <u>943-001-0020(3); 411-320-0080; ; </u>

Good or Bad Notice?

Oregon Administrative Rules can be found on the website of the Oregon Office of the Secretary of State.

Records Used in the Decision		
Date	Type of record/report/evaluation	Author
█	Physician Statement	█
█	Standardized Test	█
█	School Report Card	█
█	█	█
█	█	█
█	█	█
█	█	█
█	█	█
█	█	█
█	█	█
█	█	█
█	█	█

Other information and comments: █

You have the right to review these records. You can request the records by contacting the person listed on page 1.

Notice of Hearing Rights

- You have the right to challenge this decision by requesting a contested case hearing. Hearings are held by an Administrative Law Judge and the Office of Administrative Hearings, which is independent from DHS. If you want a hearing, you must request a hearing **within 90 calendar days** of the date of this Notification. If you are being denied services, see Parts 1, 2 and 4 (below). If your services will be reduced, suspended or terminated, see Parts 1 – 4 (below).
- You can request to have an informal discussion about this Notification by contacting the local office where you receive services (Brokerage, CIIS or CDDP). An informal discussion will not affect your right to a hearing. If you verbally request a hearing during the informal discussion, the person you are speaking with can request a hearing for you. If you choose to have an informal discussion, the deadline to request a hearing does not change.
- **Note to military personnel:** Active duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information, you may contact the Oregon State Bar (1-800-452-8260), the Oregon

WRONG!

Reason for Action

After reviewing the following Oregon Administrative Rules and the records listed below, DHS is taking this action because you do not have a qualifying diagnosis and your IQ is too high.

Relevant Oregon Administrative Rules

The planned action is based on the following OAR(s) *(include subsections)*:

943-001-0020(3); 411-320-0080; ;

* Why would a Notification of Planned Action need to be amended?

-To correct a NPA, including:

-Corrected Effective Date of Planned Action

-Corrected OAR Citation

-Corrected Reason for Planned Action

-other

*Amended Notices reset the 'clock' for effective dates of actions and may impact timelines for overpayments

*Department Hearing Representatives may also amend a notice if needed

* Amended Notices

*Why would a Notification of Planned Action need to be rescinded?

-NPA was issued and it is subsequently determined that the action is not needed, the Notice must be rescinded

***Rescinded Notices**

* A Notice can be rescinded by writing a letter identifying the following information:

- Date of Notice being amended
- Action that was identified in the Notice
- AND -
- Reason the Action will no longer be taken

* How to Rescind a Notice

* How to determine whether a Notice should be amended or rescinded

Action will still be taken,
some information needs
corrected



AMEND

No Longer taking Action



RESCIND

* Amend or Rescind ?

* 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.

* Voluntary Changes

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

*** Scenarios when a NPA is required
(Not an Exclusive List)**

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

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

*** Scenarios when a NPA is not required
(Not an exclusive list)**

Department must receive the request within 90 days of the Date of NPA

- Verbal
- In writing (email or letter)
- Completing 0443DD (preferable)
- Department = CDDP, Brokerage, CIIS or ODDS
- Can also be any other DHS office - APD or AAA

 **Requesting a Hearing**

If an individual/guardian calls about a hearing

DO:

- Start with a conversation about what the individual or their representative really wants
- Fill out a copy of the 0443DD and send a copy to the individual
- Forward records and a copy of the Notice and supporting records to ODDS

* Verbal Request for a Hearing

If an individual/guardian calls about a hearing

AVOID:

- Discouraging an individual from requesting a hearing
- Discouraging an individual from requesting continuing benefits
- Discouraging an individual from filing a late hearing request (requested more than 90 days after the Notice has been sent)

 **Verbal Hearing
Requests**

Office of Developmental
Disability Services
Administrative Hearing Request



If you want an administrative hearing to contest an action related to developmental disability services, you can fill out this form and mail or fax it to the address under Part 2 on page 2. If you prefer, a DHS employee or an employee at your Community Development Disabilities Program or Support Services Brokerage can fill out this form for you. Please contact your local office if you need this form in another language or an alternate format.

Consumer,
Brokerage or
CDDP
Completes



Claimant or claimant's representative completes this part			
Name of claimant		Date of birth:	
Full address		Phone:	
Name of representative		Relationship to claimant:	
Representative's address		Phone:	
Does the claimant speak English? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If no, what is the claimant's primary spoken language: _____			
Does the claimant need written materials in an alternate format? <input type="checkbox"/> Yes (specify below) <input type="checkbox"/> No			
<input type="checkbox"/> Braille	<input type="checkbox"/> Audio tape	<input type="checkbox"/> Large print	<input type="checkbox"/> Diskette
<input type="checkbox"/> Other / Written materials in another language: _____		<input type="checkbox"/> Oral presentation	
I received a written notice: <input type="checkbox"/> Yes <input type="checkbox"/> No Notifying agency or CDDP: _____			
Date of notice:	_____	Service(s) involved:	_____
I am asking for a hearing because I do not agree with the decision to:			
<input type="checkbox"/> Deny services <input type="checkbox"/> Terminate services <input type="checkbox"/> Reduce services <input type="checkbox"/> Suspend services			
<input type="checkbox"/> Other: _____			
Briefly explain why you disagree with the decision (attach additional sheets as needed): _____			
Before you answer this question, please read "Part 4" on page 3.			
Do you want your services to stay the same (not reduced or stopped) while you wait for a hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Before you answer this question, please read "Part 5" on page 3.			
Check this box if you meet the requirements in part 5 and want to request an expedited hearing: <input type="checkbox"/>			



Claimant's signature	
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. By signing below, I understand that I will be asked to have an informal conference with an agency representative.	
Signature of claimant: _____	Date: _____

Department of Human Services (DHS) completes this part		
Date of decision notice: _____	Date of initial hearing request: _____	Date 0443DD rec'd by DHS: _____
Case number (prime number or DD followed by last 4 digits of SSN): _____		
DHS representative for this matter: _____	Phone: _____	
Issue code: _____	Date: _____	

ODDS
Completes





*The Hearing Process

Following Receipt of the 0443DD:

- ODDS will request a copy of the Notification of Planned Action and all supporting documents from the issuing entity
- ODDS will refer the case to the Department Hearing Representative Unit
- A Hearing Representative is assigned

***0443DD Received By
ODDS**

CDDP/Brokerage/CIIS



Testifies regarding
decision made

ODDS



Testifies regarding rule
interpretation, policy related
decisions, ODDS denied
support/service/expenditure

Coordination of Witnesses

-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

* Dismissing Hearing Requests

- 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

*** Good Cause**
411-318-0005 (22)

* 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.

* **Continuing Services**
(aka Continuing Benefits or Aid Paid Pending)

* An 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.

(Don't try and determine this yourself...if a person requests continuing benefits, advise either ODDS or the Department Hearing Representative)

* Continuing Services

(aka Continuing Benefits or Aid Paid Pending)

* If a hearing is requested after the Effective Date of Action, the individual may not be eligible for Continuing Services. The Department has option to provide continuing services or deny.

- 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.

* Continuing Services

(aka Continuing Benefits or Aid Paid Pending)

* Important to remember:

An Individual can change their choice of continuing services at any time during the hearing process.

* **Continuing Services**
(aka Continuing Benefits or Aid Paid Pending)

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

* Role of the Hearing Representative

The informal conference 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

* Informal Conferences

411-318-0025 (4)



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

 **Proceeding to
Hearing**

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.

 **Proceeding to
Hearing**

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

An Order of Dismissal/Withdrawal will be issued by the Department Hearing Representative

*Claimant 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.

 **Department
Withdraws**

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.

An Order of Dismissal/Withdrawal will be issued by the Department Hearing Representative

 **Department
Withdraws**

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, a Final Order is issued (usually 3-6 weeks) following the hearing.

Hearings

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 listed in the Final Order.

* Final Orders

Questions