

<b>Topic:</b>	HCBS Compliance for ODDS Employment and Day Services – Request for Additional Time for Transforming Sheltered Work Settings Variance Process & Timeline
<b>Date Issued/Updated:</b>	03/16/18

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## Overview

### **Sections included:**

- I. Purpose/Why Action Required
- II. Procedures
  - a. Timeline for Submitting a Variance Request for Additional Time
  - b. Process for requesting a Variance
  - c. Criteria for granting a Variance
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### I. Purpose / Why Action Required

This action is required to ensure Oregon and its providers of Home and Community Based Services (HCBS) have sufficient time to effectively support people to transition to integrated community settings in a manner that is collaborative, transparent, and timely.

Oregon sheltered work settings must transform to be in compliance with new setting requirements for Office of Developmental Disabilities Services (ODDS) and Medicaid funded Home and Community Based Services. Federal and State regulations have required that settings be in full compliance by September 1, 2018. Under new guidance, states and providers making substantial progress towards full compliance may request additional time.<sup>1</sup> Full compliance is required across all of Oregon's HCBS settings by July 1, 2021.

As a result, ODDS employment service providers making substantial progress towards full compliance may apply for a variance to the portion of the Oregon Administrative Rules (OARs) requiring full compliance by September 1, 2018. ODDS's approval of the variance request would effectively grant the provider additional time to come into full compliance. This transmittal outlines the procedures and timeframes for submitting a request for additional time in the form of a variance.

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<sup>1</sup> See [CMCS informational bulletin issued May 9, 2017](#).

## II. Procedures

### a. Timeline for Submitting a Variance:

<b><u>INITIAL VARIANCE PERIOD (September 1, 2018 - March 15, 2020)</u></b>	
<b>Submission dates for initial 2018 variance:</b>	
March 16, 2018	A request for a variance may be submitted
June 1, 2018	Deadline for submitting a 2018 variance request
<b>ODDS Review/Approval of initial 2018 variance:</b>	
August 1, 2018	ODDS review and approval of variance requests
September 1, 2018	OARs require full compliance of employment/day service settings
<b>Non-Compliant Settings without a 2018 Variance</b>	
September – December 2018	ODDS employment specialists will visit previously-identified sheltered work settings that have not submitted a variance.
January 15, 2019	If a variance has not been granted and a setting is not in full compliance, then ODDS will issue 60 days written notice regarding termination of service setting for the individuals who use services within the non-compliant setting. Termination of services will be effective March 15, 2019.
<b><u>SECOND VARIANCE PERIOD (September 1, 2019 – March 15, 2021)</u></b> (Note also timeline for issuing notice)	
<b>Submission dates for 2019 variance:</b>	
March 1, 2019	A request for a second variance may be submitted
June 1, 2019	Deadline for submitting a 2019 variance request
<b>ODDS Review/Approval of 2019 variance</b>	
August 1, 2019	ODDS review and approval of 2019 variance requests
<b>Non-Compliant Settings without a 2019 Variance</b>	
September – December 2019	ODDS employment specialists will visit previously-identified sheltered work settings that have not submitted a variance.
January 15, 2020	If a variance has not been granted and a setting is not in full compliance, then ODDS will issue 60 days written notice regarding termination of service setting for the individuals who use services within the non-compliant setting. Termination of services will be effective March 15, 2020.
<b>Notice regarding termination of service setting</b>	
On or before July 1, 2020	ODDS employment specialists will visit remaining sheltered work settings.
July 1, 2020	ODDS will issue 60 day advance written notice regarding termination of service setting for anyone using services in a non-

	compliant sheltered work setting. The termination of services will be effective September 1, 2020.
September 1, 2020	Plan of Care authorizations for support in sheltered work settings will end.
On or before July 1, 2021	Full Compliance verified for all Settings
<b>Ongoing Compliance Monitoring</b>	
See state transition plan for additional details (through standard licensing and QA monitoring)	

**b. Process for Requesting a Variance:**

Submit the following materials to [oddsemployment.pathreview@state.or.us](mailto:oddsemployment.pathreview@state.or.us) (using the timelines outlined above):

- Complete the enclosed provider variance request form identifying how the required criteria have been met, and information regarding the progress made towards compliance; and
- Complete the provided spreadsheet detailing individualized action plans for the individuals you are requesting a variance for (including a confirmation that the person’s case manager and ISP team have been notified regarding the request for additional time).

*\*To streamline your organization’s variance request, ODDS will auto fill information in the "individual variance request" spreadsheet. Therefore, please notify ODDS as soon as your organization determines it will be requesting a variance for additional time (ensure your notification is prior to completing the variance documentation). You can email this notification to: [oddsemployment.pathreview@state.or.us](mailto:oddsemployment.pathreview@state.or.us)*

- Any available CDP, IPE (VR), and provider action plans must also be submitted.

Note, an approved variance will become part of the provider transformation plan.

**Criteria for granting a Variance:**

The documents outlined under section 2 above and other available information (e.g. provider HCBS transformation plan) will be reviewed to determine whether the following criteria have been met and whether a Sheltered Workshop will be granted additional time:

Required:

- ODDS-approved HCBS transformation plan;
- Evidence of substantial progress towards implementing the plan;
- Individualized requests for additional time explaining, for each person using services in the sheltered work setting, how continuing to use services within the setting will best support the person to achieve his or her goals and result in the best outcome

for that person including goals related to obtaining competitive integrated employment;

- Individualized implementation strategies and action plans that show how those using services in the setting are going to use it to obtain Competitive Integrated Employment (CIE);
- Alignment among employment planning documents (CDP, IPE (VR), etc).
- The provider is making substantial progress towards the goals identified, including target numbers and mile stones for reducing the number of people in sheltered work settings;
- The Board in agreement with the provider's plan;
- A date is identified for closure, winding down contracts, or winding down services in sheltered work settings;
- The provider is effectively communicating with individuals using services, families, and ISP teams that services in the setting are time limited;
- The provider has a plan and timeframe for issuing notice, if applicable;
- The provider has a plan for communicating changes with individuals and families.
- Plan for working with ISP teams to support individuals to obtain or advance in CIE; and identify all service options; and
- If provider intends to maintain a business and support people in the setting through HCBS employment path services, then the provider has a plan to ensure the workforce is integrated, services are time limited, and support individuals to explore and work towards competitive integrated employment.
- Any other information that is relevant for determining whether a provider is making substantial progress towards implementation of an HCBS transformation plan.

Preferred:

- Target numbers for placement in competitive integrated employment (CIE) and correlating milestones between 2016 and 2022. Making placements in CIE. Making progress towards meeting identified goals although may not always meet goals identified exactly.
- VR Vendor
- Discovery provider

## FAQs

### What are the notice requirements relating to the closure of sheltered workshops?

- If an employment service provider makes a decision to reduce or terminate services, then a person has notice and hearing rights as outlined under OAR 411-345. A provider must provide the person with 30 days advance written notice using [notice form 0719](#). If a provider makes a decision to reduce or terminate services for more than 10 individuals within a 30 day calendar period, then provider must provide the person with 60 days advance written notice. The provider must also notify the Department (ODDS), and the person's case manager.
- After September 1, 2018, the State will no longer fund services in sheltered work settings, unless the provider has received a variance for additional time. If individuals continue to use services in sheltered work settings without a variance beyond September 1, 2018, the State will be issuing a **Notice of Planned Action (form SDS 0947)** as outlined under OAR 411-318-0020. For additional information and a more detailed timeline, see the above section II.a. regarding "Timeline for Submitting a Variance."

Please note that some people have voluntarily chosen alternative services before a provider closure, or before state required closure. Advance notice is not required if a person has voluntarily chosen alternative services. However, an ISP meeting must be held in order to discuss a planful transition for the individual.

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