



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

**CHAPTER 411
DIVISION 323**

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

EFFECTIVE JANUARY 1, 2024

Table of Contents

411-323-0010 Statement of Purpose	1
411-323-0020 Definitions and Acronyms	2
411-323-0024 Certification and Endorsement Fees	8
411-323-0029 Agency Executive Director Orientation.....	9
411-323-0030 Certification and Endorsement Application Process and Standards	10
411-323-0033 Administrative Sanctions.....	19
411-323-0040 Inspections and Investigations	30
411-323-0050 Agency Management and Personnel Practices.....	34
411-323-0055 Agency Operating Standards	41
411-323-0060 Policies and Procedures	43
411-323-0063 Abuse and Incident Handling and Reporting	47
411-323-0065 Payment to Agency Providers.....	50
411-323-0070 Variances.....	52
411-323-0075 Civil Penalties	53

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

**CHAPTER 411
DIVISION 323**

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

411-323-0010 Statement of Purpose
(Amended 10/01/2023)

(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.
- (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 services in the state of Oregon as described in OAR 411-323-0030.
- (b) An endorsement for each developmental disabilities program service as described in OAR 411-323-0030.
- (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.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0020 Definitions and Acronyms

(Amended 10/01/2023)

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) "Advisory Letter" means a written notification from the Department that informs an agency of a violation, or possible violation, and requirements to correct the violation or offer evidence that there is no violation.

(2) "Agency" means a public or private community organization that is formed to deliver developmental disabilities services and is certified and endorsed by the Department under these rules that:

- (a) Is in business to provide supports for individuals eligible to receive developmental disabilities services.

- (b) Provides supports for individuals through employees, contractors, or volunteers.

- (c) Receives compensation to recruit, supervise, and pay the people who provides support for the individuals.
- (3) "Agency Application" is the form required by the Department to apply for Medicaid certification.
- (4) "Applicant" means:
 - (a) A person or legal entity who applies for certification or endorsement to operate an agency delivering services to individuals with intellectual or developmental disabilities.
 - (b) A person with an ownership interest in, or is identified as the executive director of, an agency, entity, or governmental unit that applies for certification or endorsement to deliver program services to individuals with intellectual or developmental disabilities.
- (5) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting.
- (6) "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.
- (7) "CDDP" means "Community Developmental Disabilities Program" as defined in OAR 411-317-0000.
- (8) "Certificate" means the document issued by the Department to an agency that certifies the agency is qualified to seek endorsement to deliver a program service.
- (9) "Complete Application" means the submission of all information and documentation required by the Department to make a decision to approve or deny a certificate described in OAR 411-323-0030(3)(b) or endorsement described in OAR 411-323-0030(4)(b).
- (10) "Denial" means the refusal, after submission of an application, by the Department to issue a certificate or endorsement.

(11) "DOJ MFCU" means the Oregon Department of Justice, Medicaid Fraud Control Unit.

(12) "Endorsement" means the authorization of an agency with a current certificate to deliver a program service.

(13) "Executive Director" means the person designated by the board of directors or entity of an agency that is responsible for the administration of the services delivered by the agency.

(14) "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.

(15) "Initial Application" means an application for a certificate following a period of no less than twelve months when an applicant did not hold a current certificate.

(16) "ISP" means "Individual Support Plan" as defined in OAR 411-317-0000.

(17) "Managing Employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an entire organization or agency or the operations of the agency within Oregon.

(18) "ODDS" means the Oregon Department of Human Services, Office of Developmental Disabilities Services.

(19) "OTIS" means the Oregon Department of Human Services, Office of Training, Investigations, and Safety.

(20) "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.

(21) "Ownership or Control Interest" means a person or entity 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 an entity;
- (f) Is a partner in a disclosing entity that is organized as a partnership;
or
- (g) Is a member of the board of directors of the disclosing entity.

(22) "Plan of Correction" means a document developed by an agency that describes the actions the agency will take to correct violations and specifies the date by which those violations will be corrected.

(23) "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 delivered by a standard model agency as defined in OAR 411-450-0020.

(h) OAR chapter 411, division 450, excluding OAR 411-450-0090, for community living supports delivered by a community living supports agency as defined in OAR 411-450-0020.

(24) "Program Service" means a service delivered by an 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 delivered by a standard model agency as defined in OAR 411-450-0020.

(h) OAR chapter 411, division 450, excluding OAR 411-450-0090, for community living supports delivered by a community living supports agency as defined in OAR 411-450-0020.

(25) "Provider Enrollment Agreement" means the agreement between the Department and a qualified Medicaid provider to deliver services to a Medicaid eligible individual for compensation.

(26) "Revocation" means the action taken by the Department to rescind a certificate or endorsement in accordance with OAR 411-323-0033(3).

(27) "Serious Incident" is defined in OAR 411-317-0000.

(28) "Serious Violation Letter" means a written notification from the Department that informs an agency of a violation which poses a substantial risk to health and safety to any person and the necessary steps for correcting the violations as determined by the Department.

(29) "Support Document" means a written strategy intended to mitigate an identified risk. Support documents include, but are not limited to, protocols and professional behavior support plans.

(30) "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.

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

(32) "Violation" means a determination by the Department or Oregon Health Authority that an agency is not in compliance with any of the following:

(a) An Oregon statutory requirement.

(b) A rule in OAR chapter 411, division 323.

(c) A program rule that corresponds to a program service to which an agency is endorsed.

(d) A federal regulation applicable to the provision of developmental disabilities services program or health care services program.

(e) The Provider Enrollment Agreement.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0024 Certification and Endorsement Fees

(Adopted 01/01/2024)

The Department may waive or reduce an application fee if required for provider certification or endorsement if:

(1) The need for a certification or endorsement application occurs due to a crisis. The crisis must be likely to lead to a loss of services or present a serious risk to health or safety for an individual, with no reasonable alternative to address the crisis. A crisis may be indicated if:

(a) An individual is not receiving necessary supports to address life threatening issues resulting from behavioral or medical conditions;

(b) An individual engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;

(c) An individual undergoes, or is at imminent risk of undergoing, loss of caregiver due to caregiver inability to provide supports;

(d) An individual experiences a loss of home; or

(e) An individual is not receiving the necessary supports to address significant safety risks to others, including but not limited to:

(A) A pattern of physical aggression serious enough to cause injury;

(B) Fire-setting behaviors; or

(C) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(2) The Department or a case management entity requests a provider to take an action that prompts a new application for certification or endorsement to arise.

(3) The Department determines there is good cause to waive or reduce a fee.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91), SB 792 (2023 OR Law, Ch. 206)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91), SB 792 (2023 OR Law, Ch. 206)

411-323-0029 Agency Executive Director Orientation

(Amended 10/01/2023)

(1) The person identified as the executive director in an initial application, as defined in OAR 411-323-0020, must successfully complete the orientation offered by the Department for the initial application to be considered. Documentation of successful completion of the orientation must be included with the initial application as described in OAR 411-323-0030(3).

(2) A person newly designated as the executive director of a certified agency must successfully complete the orientation offered by the Department within 90 calendar days of being designated as the executive director. Documentation of successful completion of the orientation must be provided to the Department within 90 calendar days of the executive director's designation. Failure to pass the orientation may result in:

(a) Denial, suspension, or revocation of an agency's certificate.

(b) The attachment of one or more conditions to an agency's certificate.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0030 Certification and Endorsement Application Process and Standards

(Amended 10/01/2023)

(1) Except as described in section (2) of this rule, an application for a certificate and at least one endorsement must be approved by the Department, under these rules, before an agency may deliver program services. An agency may only deliver a program service when the agency has a certificate and an endorsement to the program service's corresponding program rules.

(2) A site licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for behavioral health services residential treatment facilities and residential treatment homes, OAR chapter 419, division 400 for child-caring agencies, or OAR chapter 416, division 550 for treatment foster care does not require additional certification as an agency under these rules to deliver 24-hour residential 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) **CERTIFICATE APPLICATION.** Except as described in section (2) of this rule, an applicant intending to deliver program services must apply for a certificate. The material submitted to the Department as part of an application shall be approved if the application and material demonstrates 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 applicant has the skills, knowledge, and ability to operate an agency and does not meet any criteria for denial or revocation of a certificate as described in OAR 411-323-0033(3).

- (a) An initial application for a certificate is not accepted if the person identified on the agency application as the executive director of the

agency has not successfully completed the orientation described in OAR 411-323-0029. Documentation of the successful completion must be retained by the executive director.

(b) The Department shall begin to evaluate an application when the Department has received a complete application. A complete application for a certificate must include:

(A) A complete and accurate agency application using a form supplied by the Department for this purpose. The application form must be signed and dated by the applicant before the form is considered complete.

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

(C) The agency's policies and procedures required by OAR 411-323-0050 sections (1) and (2) and OAR 411-323-0060. The policy and procedures document must identify where these are located. The policies and procedures must demonstrate to the satisfaction of the Department that the applicant can operate an agency.

(D) A business plan submitted to the Department that includes:

(i) A revenue and expense forecast and a balance sheet which indicate capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance.

(ii) Evidence of the financial ability to operate the agency and the ability to maintain sufficient liquid resources to pay the operating costs, including labor costs, wages, and benefits, for all programs and at least three months of cash on hand or equivalency.

(iii) A plan identifying the scope of services the applicant intends to provide, including the counties the applicant will operate in and staff recruitment and staff retention strategies.

(iv) The structure of any entity including any business entity with a controlling interest in another company or the entity itself.

(E) As required by 42 CFR 455.104:

(i) The name and address (including primary business address, every business location, and P.O. Box address) of any person who is an applicant.

(ii) The date of birth and social security number for any person who is an applicant.

(iii) In the case of an entity, the tax identification number of the entity with an ownership or control interest in the entity, fiscal agent, or managed care entity or of any subcontractor in which the entity, fiscal agent, or managed care entity has 5 percent or more interest.

(iv) The name of any other agency, fiscal agent, or managed care entity in which an owner of the agency, fiscal agent, or managed care entity has an ownership or control interest.

(v) The name, address, date of birth, and social security number of any managing employee of the agency, fiscal agent, or managed care entity.

(F) For the executive director:

(i) An approved background check.

(ii) Documentation of mandatory abuse training.

(iii) Proof of certification in CPR and First Aid by a recognized training agency if the executive director will provide care to individuals.

(iv) A resume that demonstrates the executive director meets the qualifications listed in OAR 411-323-0050(6).

(v) Documentation of successful completion of the orientation if required by OAR 411-323-0029.

(G) Additional information or documentation required by the Department after an agency submits an application.

(H) Proof of insurance coverage as required by the ODDS Provider Enrollment Agreement.

(I) Partnerships and S-Corporations are required to provide personal tax returns for all owners. Except for an initial application for a certificate, the application must include;

(i) An audit completed in the past year; or

(ii) Previous two years tax returns including all required schedules.

(J) Copies of bank statements from the last three months demonstrating banking activity in both checking and savings accounts, as applicable, or demonstration of cash on hand, if requested.

(K) For an initial application, a description of the organizational history of the applicant for the previous ten years preceding the request for certification.

(4) ENDORSEMENT APPLICATION. Only an applicant who has been approved for a certificate may apply for an endorsement. Separate endorsements are required for an agency to deliver each program service. The material submitted to the Department as part of a complete application shall be approved if the complete application demonstrates to the satisfaction of the Department that the applicant is in compliance with these rules, the rules in OAR chapter 411, division 004, the program rules, and the applicant has the skills, knowledge, and ability to deliver the program service and does not meet any criteria for denial or revocation of a certificate or endorsement as described in OAR 411-323-0033(3).

(a) An application for an endorsement will not be considered for approval by the Department unless the applicant has a current Medicaid certificate.

(b) The Department shall begin to evaluate an application when the Department has received a complete application. A complete application for an endorsement includes all of the following:

(A) A complete and accurate request for endorsement on a form supplied by the Department for this purpose. The endorsement request form must be signed and dated by the applicant before the form is considered complete.

(B) The policies and procedures required by corresponding program rules for all requested endorsements. The policy and procedures document must identify where these are located. The policies and procedures must demonstrate to the satisfaction of the Department that the agency can deliver services consistent with these rules and the corresponding program rules.

(C) For an endorsement to deliver professional behavior services:

(i) Documentation that any behavior professional who will be delivering professional behavior services meets the qualifications identified in OAR 411-304-0170(1) and (2); and

(ii) The information identified in OAR 411-304-0170(4).

(D) For an endorsement to deliver direct nursing services, a resume for each nurse who will be delivering direct nursing services.

(E) For an endorsement to deliver community living supports or employment services that are delivered in a provider owned, controlled, or operated setting, as defined in OAR 411-317-0000:

- (i) A copy of the fire, health, and safety inspections;
- (ii) A fire inspection report; and
- (iii) An insurance inspection report or Oregon Occupational Safety and Health (OSHA) safety inspection report.

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

(G) An agency must make a request to the Department, using a form provided by the Department, to add a geographic location to an existing endorsement when required by the program rules. The request to add a geographic location must include an updated business plan described in section (3)(b)(D) of this rule. The request shall be approved or denied based on the standards established in these rules and the corresponding program rules. The following considerations shall be given for approval of adding geographic locations:

- (i) Number of current geographic locations.
- (ii) Current status of geographic locations and if current locations are in compliance.
- (iii) History of current and previous endorsements and licenses.
- (iv) Financial stability of the agency.

(H) To add an additional endorsement for a program service, an agency must apply for the additional endorsement by submitting a request to the Department. The request must include the documentation described in sections (3)(b)(D) and (4)(b)(A)(B)(C)(D)(E) of this rule. The additional endorsement shall be approved or denied based on the standards established in these rules and the corresponding program rules.

(5) CERTIFICATE AND ENDORSEMENT STANDARDS.

- (a) Certificates and endorsements are not transferable to another person or organization.
- (b) Separate endorsements are required for each program service type operated by a certified agency.
- (c) An agency is certified for two years unless the certificate is sooner revoked or suspended.
- (d) An agency is endorsed through the end date of its current certificate unless the endorsement is sooner revoked or suspended.
- (e) An agency whose certificate was denied, voluntarily surrendered after service with corrective action, or revoked in accordance with OAR 411-323-0033(3), may not reapply for a certificate for three years from the date of the denial or revocation.
- (f) An applicant must provide complete, accurate, and truthful information during the application process. An applicant who voluntarily withdraws an application containing willfully incomplete, inaccurate, or untruthful information may not submit an application for a certificate or endorsement for three years from the date of the withdrawal. Withdrawal of an application does not limit or prevent the Department or other state or federal regulators from leveling other penalties or continuing investigations into potential criminal violations or other violations.
- (g) An agency applicant must be registered with the Oregon Secretary of State Business Division. The address used to register the business with the Oregon Secretary of State Business Division must be used as the primary address on both the certification and endorsement applications. Department correspondence is only sent to the primary mailing address used on the application.
- (h) An applicant is considered responsible for acts occurring during, and relating to, the operation of the agency.

(i) The Department may consider the background, operating, and financial history of an applicant when determining whether to issue a certificate or an endorsement. Sources may include, but are not limited to:

(A) Social and other media.

(B) Records kept by the Oregon Health Authority on enrolled providers and providers requesting enrollment in the Oregon Health Plan.

(C) Abuse investigation history from ODDS, the Office of Aging and People with Disabilities, the Oregon Health Authority, and Child Welfare.

(D) The operating history of any other agency licensed or certified by the Department or Oregon Health Authority or similar bodies in other jurisdictions.

(E) Criminal history.

(F) Federal resources including, but not limited to:

(i) Social Security Administration's Death Master File.

(ii) The National Plan and Provider Enumeration System (NPPES).

(iii) The List of Excluded Individuals/Entities (LEIE), the Office of Inspector General exclusion list under sections 1128 or 1128A of the Social Security Act, or the Medicare Exclusion Database (MED).

(iv) The Excluded Parties List System (EPLS) or the System for Award Management (SAM).

(G) State resources including the Secretary of State and licensing or certification boards.

(j) An application may not be considered for approval if a completed application required by section (3)(b) or (4)(b) of this rule is not made available to the Department within 30 calendar days from the date the Department receives the signed application form as required in this rule unless the Department approves a request to extend the time frame.

(k) An application may not be considered for approval if an applicant does not respond to a request from the Department for information necessary to make a decision whether to approve or deny the application within 30 calendar days of the request.

(l) An application for a certificate or endorsement must be submitted to the Department prior to the expiration date of an agency's certificate. The Department may suspend an applicant's Medicaid Agency Identification Number and Medicaid Performing Provider Number, as described in OAR chapter 411, division 370, upon the expiration date of a certificate.

(m) An agency is considered to meet the requirement for certification and endorsement as required by section (1) of this rule when a complete application for a certificate and endorsement is filed with the Department before the date of expiration of the certificate or endorsement, until the Department issues a Final Order on the application.

(n) A certificate and endorsement expire on the date an agency ceases operation.

(o) A certificate or endorsement that is required to be returned to the Department is expired on the date the action that causes the certificate or endorsement to be returned is taken. A certificate or endorsement is required to be returned to the Department immediately upon:

(A) Suspension or revocation of the certificate or endorsement.

(B) When agency operation is discontinued.

(C) When an agency's Provider Enrollment Agreement is terminated by the Department in accordance with OAR 411-370-0030(14).

(D) When an agency's Medicaid Agency Identification Number or Medicaid Performing Provider Number is terminated.

(6) CHANGE OF EXECUTIVE DIRECTOR, OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION. An amended certificate and new endorsements are required upon a change of the executive director, ownership, legal entity, legal status, or management corporation of the agency 90 calendar days in advance of the change. If circumstances require more immediate action, the agency must notify the Department immediately.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0033 Administrative Sanctions

(Adopted 10/01/2023)

(1) 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 may be imposed immediately if necessary to protect the health and safety of an individual, otherwise, an administrative sanction shall be imposed when an agency fails to come into compliance in a time frame determined by the Department. An administrative sanction on a certificate or endorsement includes one or more of the following actions:

(a) A condition as described in section (2) of this rule.

(b) Denial or revocation of a certificate or endorsement as described in section (3) of this rule.

(c) Immediate suspension of a certificate or endorsement as described in section (4) of this rule.

(2) CONDITIONS.

(a) Conditions may be placed on an agency's certificate and any endorsements simultaneously. More than one type of condition may be placed on a certificate and any endorsements simultaneously.

(b) The Department may attach conditions to a certificate or endorsement that limit, restrict, or specify other criteria for operation of an agency.

(c) The Department may attach a condition to a certificate or endorsement upon any of the following findings including, but not limited to:

(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.

(E) A failure to correct a serious violation or health and safety violation within a time frame determined by the Department after receiving a serious violation letter from the Department.

(F) Failure to resolve a violation or demonstrate the absence of a violation identified in an advisory letter.

(G) There is evidence that agency employees or the agency executive director have not completed required training.

(H) The agency employs or contracts with any program staff for whom there is substantiated evidence of abuse, neglect, or mistreatment.

(I) The agency employs or contracts with any program staff that fails to meet relevant minimum qualifications described in these rules, program rules, or other applicable law.

(J) The agency fails to fully implement an ISP or other support documents or protocols.

(K) The Department has issued the agency through two or more consecutive certification reviews substantially similar findings of non-compliance with these rules, program rules, or other applicable administrative rules, statutes, or regulations.

(L) There is a need for increased regulatory oversight of the agency.

(M) The agency fails to comply with any reporting requirements.

(N) The agency's operation varies from the business plan submitted as part of the application process.

(O) There is evidence that the agency's financial situation poses a risk that an individual may lose access to services from the agency or be unable to remain in the setting of the individual's choice.

(P) The agency delivers services in a provider owned, controlled, or operated setting and the setting is unsafe for individuals receiving services.

(d) Conditions that the Department may impose include, but are not limited to:

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

(B) Restricting the type of support and services an agency may deliver.

(C) Requiring additional employees or employee qualifications.

(D) Requiring training for employees of the agency.

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

(F) Requiring additional documentation or reports.

(G) Restricting enrollment of individuals to the program.

(H) Other conditions deemed necessary by the Department to ensure the health and safety of individuals and the public.

(I) Other conditions deemed necessary by the Department for the purpose of ensuring regulatory compliance with these rules or other applicable administrative rules and law.

(e) NOTICE OF CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the certificate or endorsement of the agency. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the process 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 or rescinded through the hearing process.

(f) 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, and clearly identify the certificate conditions for which

the agency is requesting a hearing. 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 (5) of this rule. The request for an administrative review must be in writing, and clearly identify the certificate conditions for which the agency is requesting the administrative review. 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) 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.

(3) DENIAL OR REVOCATION.

(a) The Department may deny or revoke a certificate or endorsement when the Department finds an agency, an executive director, or any person with an ownership interest in the agency:

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

(B) Has been convicted of a crime associated with the operation of an agency or program services.

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

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

(E) Based on an evaluation of the background and operating history conducted under OAR 411-323-0030(5)(i), the applicant:

(i) Has demonstrated an inability to operate an agency under applicable rules; or

(ii) Has an association with anyone who had an ownership interest in, or was the executive director for, an agency that has had a certificate issued under these rules denied or revoked within three years preceding the submission of an application due to the abuse of an individual or failure to possess the physical or mental health, or good personal character necessary. An application shall be denied unless the applicant demonstrates to the Department by clear and convincing evidence that the applicant, or the person associated with the applicant, does not pose a threat to any individual. An applicant is "associated with" a person as described above if the applicant receives financial backing from the person for the benefit of the agency or is a family member of the applicant.

(F) Has had a previous certificate issued under these rules denied or revoked, or voluntarily surrendered while corrective action was pending, within three years preceding the submission of an application.

(G) Has had any certification or license suspended or revoked, or voluntarily surrendered while corrective action was pending, by ODDS, the Oregon Health Authority, the Oregon Department of Human Services, or any other similar state agency outside of Oregon within the previous ten years from the date of the application.

(H) Has surrendered a certificate or endorsement following the service of a notice by the Department that would have resulted in a revocation of a certificate or endorsement under this rule.

(I) Has been found to have willfully submitted incomplete, inaccurate, or untruthful information on an application for a certificate or endorsement.

(J) Has been sanctioned by the Oregon Health Authority or is excluded, terminated, or suspended from the Medicaid program in Oregon.

(K) Has been found responsible for fraud or abuse by a state or federal court, or when there exists a credible allegation of fraud or abuse presented by the Department, the Oregon Health Authority's Office of Program Integrity, DOJ MFCU, or law enforcement entity, or where there is a pending investigation or conclusion of legal proceedings related to the alleged fraud or abuse.

(L) Is listed on any Office of Inspector General exclusion list under sections 1128 or 1128A of the Social Security Act or has been convicted of a criminal offense in the last 10 years related to that person's involvement in any program established under Medicare, Medicaid, or Title XX.

(M) Failed to comply with a request from the Department for fingerprinting, background check, documents, records, or access to any agency location for the purpose of a site visit or other inspection by the Department.

(b) The Department may deny or revoke a certificate or endorsement when, after having an opportunity to correct the reason for the denial or revocation:

(A) An agency demonstrates 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 from the receipt of an advisory

letter, serious violation letter, or other written communication from the Department directing the agency to correct a violation within a time frame specified by the Department.

(B) An agency is not in substantial compliance with the rules of any program for which an agency is licensed or certified by the Department or Oregon Health Authority to operate.

(C) An agency violates the terms of their Provider Enrollment Agreement as described in OAR 411-370-0030(8).

(D) A request for information or documentation related to an application as described in OAR 411-323-0030(3)(b) or (4)(b) is not fulfilled within 30 calendar days of the request.

(E) Upon a change in the executive director, ownership interest, legal entity, legal status, or management corporation of the agency:

(i) The agency does not inform the Department of the change as required in OAR 411-323-0030(6); or

(ii) If the change results in a determination by the Department that following the change the agency no longer qualifies to have a certificate or endorsement.

(F) An agency requires three follow ups during an investigation by the Department, described in OAR 411-323-0040(1), without an adequate response from the agency.

(G) The agency does not have a qualified executive director and fails to implement the policy required in OAR 411-323-0060(13), or has an executive director who:

(i) Does not possess, to the satisfaction of the Department, the skills, knowledge, and ability to deliver a program service; or

(ii) Has not successfully completed the orientation offered by the Department when required.

(H) The agency is not registered as a business with the Oregon Secretary of State in accordance with ORS chapter 648.

(I) The agency does not have adequate policies and procedures required by OAR 411-323-0050 sections (1) and (2), OAR 411-323-0060, and the program rule corresponding to any endorsement.

(J) The agency's business plan does not demonstrate sustainability or demonstrates unacceptable levels of risk that may jeopardize an individual's safety or residential setting.

(K) The agency fails to maintain insurance coverage outlined in the Provider Enrollment Agreement.

(L) The agency delivers services in a provider owned, controlled, or operated setting and the setting is unsafe for individuals receiving services in the setting.

(M) The identity of an applicant cannot be verified by the Department.

(c) The denial or revocation of a certificate by the Department is a denial or revocation of the endorsements associated with the certificate.

(d) NOTICE OF DENIAL OR REVOCATION. The Department must issue a written notice to the agency when the Department denies or revokes a certificate or endorsement.

(e) When the Department issues a notice of denial or revocation of a certificate or endorsement, the Department may inform other state or federal regulatory entities as appropriate and make referrals to OTIS for suspected abuse, law enforcement where required by law, or the Department of Justice for Medicaid fraud investigation if indicated.

(f) HEARING. An applicant or a certified agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.421 upon service of a written notice from the Department of

denial or revocation of a certificate or endorsement. The request for a hearing must be in writing.

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

(B) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 calendar days from the service of the written notice of revocation clearly stating the reason for the request and what is being appealed.

(I) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (5) of this rule. The request for an administrative review must be in writing clearly stating the reason for the request and what is being appealed.

(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.

(4) IMMEDIATE SUSPENSION.

(a) When the Department finds a serious and immediate threat to an individual's 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 or endorsement without a pre-suspension hearing and the agency may not continue to deliver any program services under a suspended endorsement. A suspended certificate is a suspension of any attached endorsements.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183 upon written notice from the Department of the immediate suspension. The request for a hearing must be in writing.

(A) Notwithstanding subsection (B) of this section, the agency must request a hearing within 90 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 (5) 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.

(5) 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 clearly stating the reason for the request and what is being appealed.

(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 clearly stating the reason for the request and what is being appealed.

(c) The Department must receive a written request for an administrative review within 10 business days from the service 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 shall be issued by the Department 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.

(6) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in section (5) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department. The informal conference may result in resolution of the issue.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91) Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0035 Endorsement

(Repealed 10/01/2023 - See OAR 411-323-0030)

411-323-0040 Inspections and Investigations

(Amended 10/01/2023)

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

(a) Quality assurance, onsite inspections, and certificate and endorsement request reviews.

- (b) Complaint investigations.
 - (c) Abuse investigations.
 - (d) Death reviews.
 - (e) Financial reviews or audits.
 - (f) Fraud, waste, or financial investigations.
 - (g) Service monitoring by a case management entity.
- (2) The Department or the designee of the Department, including case management entities, are authorized to perform inspections and investigations.
- (3) Any inspection or investigation may be unannounced.
- (4) All documentation and written reports required by these rules or program rules must be:
- (a) Open to inspection and investigation by the Department, the designee of the Department, including a case management entity, or proper authority; and
 - (b) Provided to the Department, the designee of the Department, including the case management entity that authorized the agency to deliver a service, or proper authority within the time frame established by the Department, the designee of the Department, or proper authority. All copies of the requested documentation and written reports are made at the expense of the agency.
- (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 or cause to 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) Any immediate personnel actions necessary to ensure 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 notification to an agency of the completion of an abuse investigation by the Department, the Department's designee, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) For all violations discovered under an investigation or inspection listed in section (1) of this rule, the Department shall provide a statement of deficiency to the agency. The agency must submit a plan of correction to the Department within 30 calendar days of receiving a written notification of a violation when required by the Department. Agencies requiring more than 30 calendar days must contact the Department for approval of an extension. An agency's submitted plan of correction must include documented evidence demonstrating the violations were corrected, when

applicable as determined by the Department, and identify systemic causes of the failures to comply with program rules and affirmative steps the agency will take to ensure future compliance. The Department may reject a plan of correction the Department determines is inadequate to ensure compliance with a rule, statute, or regulation.

(9) An agency must correct a violation within the time frame determined by the Department after receiving a serious violation letter identifying a violation.

(10) An agency must correct a violation within the time frame specified by the Department upon receiving an advisory letter.

(11) When the Department or the Oregon Health Authority receives an allegation of fraud it determines is credible, the Department or Oregon Health Authority is required to suspend all payments to the agency unless there is good cause to not suspend payments. 42 CFR 455.23(a).

(12) When an agency or an agency executive director is notified of investigation of Medicaid fraud, the agency and executive director are prohibited from notifying, discussing the matter, or taking any administrative action against the employee, contractor, or vendor who is subject to the investigation unless necessary to assure individual safety.

(13) In accordance with 42 CFR 455.21(a), the agency must comply with, and cause subcontractors and providers to comply with, a request from DOJ MFCU for records and information related to program services when DOJ MFCU determines the information is necessary to carry out its responsibilities. The records and information must be provided without charge and in the form requested by DOJ MFCU.

(a) The agency must make available and cause subcontractors and providers to make available to the Department, the Oregon Health Authority, or DOJ MFCU, copies of all procedural and policy statements, directives, and proposed or adopted regulations concerning the Medicaid program, and any other information relevant to the work of DOJ MFCU.

(b) The agency must comply with and cause subcontractors and providers to comply with, a request from the Department, the Oregon

Health Authority, or DOJ MFCU for access to any records and information kept by providers to which the Oregon Health Authority, the Department, and DOJ MFCU are authorized access by 42 CFR 431.107, including, but not limited to, any records necessary to disclose the extent of services provided to beneficiaries and any information regarding payments claimed by the provider for furnishing said services. The records and information must be provided without charge and in the form requested by DOJ MFCU.

(14) The agency must comply and cause all subcontractors and providers to comply with federal regulations and refer all cases of suspected provider fraud to the Oregon Health Authority and DOJ MFCU.

(15) The agency must not undertake independent administrative action related to program services, including termination of any provider agreement or contract, against a provider, employee, or executive director who has been referred to the DOJ MFCU or is being investigated by the DOJ MFCU unless the health and safety of individuals are endangered or the Department provides written approval of the planned action.

(16) NON-RETALIATION. An agency shall not discharge, demote, suspend, or in any manner discriminate or retaliate against an employee with regard to promotion, compensation, or other terms, conditions, or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule, or regulation.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0050 Agency Management and Personnel Practices (Amended 10/01/2023)

(1) NON-DISCRIMINATION. An agency's personnel policies and practices must comply with all applicable state and federal statutes, rules, regulations, and Department policy 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) NON-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, suspension, 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 agency must use an application for employment that inquires 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 407-007-0281 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. After October 1, 2023, a newly named executive director must have a minimum of a bachelor's degree in a related field and two years of experience in the field of intellectual or developmental disabilities, including at least one year providing supervision.

(a) Four years of experience in developmental disabilities services in Oregon may substitute for a bachelor's degree.

(b) Six years of experience in a related field may substitute for a degree. For the purposes of this subsection a related field is psychology, sociology, human services, education, or social work.

(c) For the purposes of this section, supervision is having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Supervision solely of family members does not satisfy this requirement.

(7) EXECUTIVE DIRECTOR RESPONSIBILITIES. The executive director is responsible for:

(a) Coordinating and directing the overall daily operations of the agency.

(b) Assuring a timely response from the agency to communication from the Department regarding the agency.

(c) Ensuring implementation of operational and administrative policies and procedures.

(d) Oversight of the fiscal budget and oversight of fiscal staff or management.

(e) Maintaining a high level of ongoing communication with individuals and families and being consistently responsive to questions from employees.

(f) Directing the hiring, training, and evaluation of all personnel.

(8) 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) Receive training on support documents, when a support document is present, for every individual the staff member will support. Training must occur before working unsupervised with an individual who has a support document. A staff member is supervised only when a person

who has received training on the support document is in the same building or within line of sight and hearing of the untrained staff member.

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

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

(n) Additional qualifications required by applicable program rules for the staff of an agency engaging in the delivery of the program service.

(9) **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 in compliance with the laws of the Department of Motor Vehicles.

(10) An agency must implement all directives related to staffing and operation of the agency during a public health emergency or declared state of emergency 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.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, 443.007, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, 443.007, SB 1548 (2022 OR Law, Ch. 91)

411-323-0055 Agency Operating Standards

(Adopted 10/01/2023)

(1) An agency must implement a Positive Behavior Support Plan when there is one, including the completion of required documentation.

(2) An agency must implement the requirements of an advisory letter or a serious violation letter.

(3) An agency must cooperate with, and follow instructions from, the Department, case management entity, physician, registered nurse, or other health care provider in carrying out the ISP or Service Agreement for an individual upon receipt of the instructions, the consent of the individual, and when individual rights are not violated.

(4) An agency must maintain documentation to demonstrate compliance with these rules and program rules to which the agency is endorsed. An agency must not falsify any individual or agency record or cause another person to falsify the individual or agency record.

(5) An agency must maintain documentation that services were delivered as described in the signed ISP or Service Agreement.

(6) STAFFING SURVEY.

(a) An agency must submit annual staffing data to a nationally standardized reporting survey organization specified by the Department.

(b) An agency must ensure completion of the direct support worker staffing survey by the agency's employees when required by the Department.

(7) An agency must submit an annual report to the Department that includes:

(a) A disclosure of executive compensation and benefits;

(b) A disclosure of starting, average, and highest wages for direct support professionals that are employed by, under contract with, or otherwise engaged with the agency to deliver community-based services to individuals with intellectual or developmental disabilities;

(c) A disclosure of the agency's overhead expenses and expenditures; and

(d) Any other fiscal matters prescribed by the Department.

(8) An agency must notify the Department who to contact in the event the executive director is unable to be contacted by the Department.

(9) An agency shall not require or ask individuals or their heirs, next of kin, executors, administrators, or any other representative of the individual to sign any documentation that will waive, release, hold harmless, or indemnify the agency, the agency's officers, trustees, agents, or employees

from any or all liability from the delivery of developmental disabilities services provided to the individual or to waive the individual's legal rights.

(10) An agency must be registered and maintain registration with the Oregon Secretary of State Business Division for the duration of their Provider Enrollment Agreement with the Department.

(11) 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 or the surrender of a certificate or endorsement and make appropriate arrangements for the transfer of individual records.

(12) Change of demographic or contact information for endorsement authorizations must be provided 30 calendar days prior to the change occurring on the Department approved form.

(13) Reimbursement for money or property that are missing due to the theft or mismanagement on the part of any staff or volunteers of the agency, or of any funds within the custody of the agency that are missing due to theft or mismanagement, must be made to the individual within 10 business days from the verification that funds are missing.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0060 Policies and Procedures

(Amended 10/01/2023)

(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 with individuals.

(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) **PROFESSIONAL BEHAVIOR SERVICES.** An agency with an endorsement to deliver professional behavior services 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.

(5) **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 consistent with positive behavior theory and practice.

(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.

(6) 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.

(7) DIRECT NURSING SERVICES. An agency with an endorsement to deliver direct nursing services 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.

(8) 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.

(e) Reimbursement for money or property that are missing due to the theft or mismanagement on the part of any staff or volunteers of the agency, or of any funds within the custody of the agency that are missing due to theft or mismanagement. Reimbursement must be made to the individual within 10 business days from the verification that funds are missing.

(9) 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).

(10) INDIVIDUAL RIGHTS. An agency must have and implement written policies and procedures that individual's rights described in OAR 411-318-0010 are protected and able to be exercised.

(11) 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 seven years.

(12) An agency must have and implement policies and procedures to describe who, by role, may enter into agreements to deliver program services to an individual as required by OAR 411-323-0065(3).

(13) An agency must have and implement policies and procedures to address the temporary unavailability of an executive director.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0063 Abuse and Incident Handling and Reporting
(Amended 10/01/2023)

(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 or supporting documents, 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) An agency must complete a written incident report for any of the following:

(A) Serious incident as defined in OAR 411-317-0000.

(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 agency 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 an agency must take a protective services action following a report of abuse, the agency must implement the action. If unable to implement the action, the agency 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 agency must report the outcome of protective services to the abuse investigator upon completion.

(8) RECOMMENDED ACTIONS. When an agency 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 agency 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.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0065 Payment to Agency Providers

(Amended 10/01/2023)

(1) Service authorization by a case management entity or the Department for payment in the appropriate electronic payment system must occur prior to the delivery of services.

(2) Payment shall only be made after services are delivered.

(3) An agency is responsible for verification of the type and amount of support delivered by agency staff and may not require an individual or an individual's representative or family member to verify support.

(4) For a service to be eligible for payment, the service 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 individual's case manager, the individual or their designated representative, and the executive director of the agency or their designee. The written agreement may be:

(a) The individual ISP; or

(b) A Service Agreement specific to the individual.

(5) The agency 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.

(6) The Department does not reimburse an agency for travel time of agency staff to reach a setting where services are delivered, when not directly providing services to an individual.

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

(8) Department funds are the payer of last resort. An agency must bill all third party resources until all third party resources are exhausted.

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

(10) Upon submission of a request for payment, an agency 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.

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

(12) The agency must submit true and accurate information with request for payment.

(13) 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.

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

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

(16) The Department may recoup overpayments as described in OAR chapter 407, division 120.

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

(18) To be eligible to receive payments, an agency and agency providers must meet all requirements in OAR 411-370-0030 about provider enrollment and OAR 411-370-0020 about provider requirements.

(19) 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.

(20) Payment is only made to an agency with a current certificate and only for services for which the agency has a current endorsement.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0070 Variances

(Amended 10/01/2023)

(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 calendar 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.

Statutory/Other Authority: ORS 409.050, 427.104, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 409.010, 427.007, 427.104, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)

411-323-0075 Civil Penalties

(Amended 10/01/2023)

(1) In addition to any other liability or penalty, the Department may impose a civil penalty for a violation in accordance with ORS 427.900 when, after being notified of the violation, an agency does not come into compliance within the time frame specified by the Department. Violations that may result in a civil penalty are limited to:

(a) Failure to complete a recommended action that resulted from a serious incident, or from an abuse investigation as required in OAR 411-323-0063(8).

(b) Failure to implement the requirements of an advisory letter or a serious violation letter as required by OAR 411-323-0055(2).

(c) Failure to allow or cooperate with an abuse investigation as required by OAR 411-323-0040(1).

(d) Failure to complete the staffing survey as required by OAR 411-323-0055(6) or the report required by OAR 411-323-0055(7).

(e) A violation of OAR 411-323-0050(10) or OAR 411-450-0080(28).

(2) In addition to any other liability or penalty, the Department may impose a civil penalty in accordance with ORS 427.900 for a substantiated finding of abuse arising from deliberate or other than accidental action or inaction where the abuse resulted in the death, serious injury, rape, or sexual abuse of an individual. For this section:

(a) "Rape" means rape in the first degree as defined in ORS 163.375, rape in the second degree as defined in ORS 163.365, and rape in the third degree as defined in ORS 163.355.

(b) "Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(c) "Sexual abuse" has the meaning defined in ORS 430.735.

(3) 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.

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

(5) The amount of a civil penalty assessed under section (2) of this rule is not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in 90 calendar days.

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

(7) The Department shall provide the executive director of the agency, or their designee, 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 frame 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.

(8) The executive director, or their designee, has 21 calendar days from the receipt of the notice of civil penalty in which to make a written application for a hearing before the Department.

(9) If the agency fails to request a hearing within 21 calendar days, a Final Order may be entered by the Department assessing a civil penalty.

(10) All hearings are conducted in accordance with the applicable provisions of ORS chapter 183.

(11) If, after a hearing, the agency is found to be in violation, a Final Order shall be mailed by the Department assessing a civil penalty.

(12) If the order is not appealed, the amount of the civil penalty is payable within 10 calendar days after the order imposing the civil penalty becomes final by operation of law. 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.

(13) 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.

(14) 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 Oregon 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.

Statutory/Other Authority: ORS 409.050, 427.104, 427.900, 430.662, SB 1548 (2022 OR Law, Ch. 91)

Statutes/Other Implemented: ORS 183.745, 409.010, 427.007, 427.104, 427.900, 430.215, 430.610, 430.662, SB 1548 (2022 OR Law, Ch. 91)