DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 323

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

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

411-323-0010 Statement of Purpose *(Amended 06/29/2016)*

(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 operate a program that delivers person-centered services to individuals with intellectual or developmental disabilities in a community-based setting as described in:

(a) OAR chapter 411, division 325 for 24-hour residential programs;

(b) OAR chapter 411, division 328 for supported living programs;

(c) OAR chapter 411, division 345 for employment supports; and

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

(2) To operate a program described in section (1) of this rule that delivers person-centered services to individuals with intellectual or developmental disabilities, agencies must have:

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

(b) Endorsement for each developmental disabilities program type as described in OAR 411-323-0035;

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

(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.

(e) Section (2) of this rule does not apply to an agency delivering community living supports that was certified, or that has applied for certification, according to OAR 411-340-0170 prior to January 1, 2016, until that organization requires renewal of its certification according to OAR 411-340-0030.

Stat. Auth. ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0020 Definitions *(Amended 06/29/2016)*

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 323:

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

(2) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting activities to ensure all state and federal funds are expended for the purpose the funds were contracted and intended for without fraudulent activity.

(3) "Audit Review" means a Certified Public Accountant, without applying comprehensive audit procedures, assesses the standards and accepted practices of accounting activities and ensures the accounting activities are in conformity with generally accepted accounting principles.

(4) "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.

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

(6) "Denial" means the refusal of the Department to issue:

(a) A certificate to operate an agency because the Department has determined the agency is not in compliance with these rules or the corresponding program rules; or

(b) An endorsement for an agency to operate a program because the Department has determined the agency is not in compliance with these rules or the corresponding program rules.

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

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

(9) "Informal Conference" means the discussion between the Department and an applicant or an agency that is held prior to a hearing to address any matters pertaining to the hearing. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

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

(11) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. A person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(12) "Program Rules" mean the rules in:

(a) OAR chapter 411, division 325 for 24-hour residential programs;

(b) OAR chapter 411, division 328 for supported living programs;

(c) OAR chapter 411, division 345 for employment supports; and

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

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

(a) OAR chapter 411, division 325 for 24-hour residential programs;

(b) OAR chapter 411, division 328 for supported living programs;

(c) OAR chapter 411, division 345 for employment programs; and

(d) OAR chapter 411, division 450 for community living programs.

(14) "Revocation" means the action taken by the Department to rescind:

(a) A certificate to operate an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules; or

(b) An endorsement for an agency to operate a program after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules.

(15) "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.

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

(17) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the agency.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0030 Certification *(Amended 06/29/2016)*

(1) CERTIFICATION. Except for an agency with a current certification, or that has applied for certification, according to OAR 411-340-0140 prior to January 1, 2016, a person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to operate a program as defined in OAR 411-323-0020 must be certified by the Department under these rules before establishing, conducting, maintaining, managing, or operating an agency.

(a) Certificates are not transferable.

(b) The Department issues or renews a certificate to an agency found to be in compliance with these rules, the rules in OAR chapter 411, division 004, and the corresponding program rules. The certificate is effective for two years from the date issued unless sooner revoked or suspended.

(c) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(d) For the purpose of certification, any applicant or person with an ownership interest in an agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(e) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(f) A review of the agency is conducted by the Department prior to the issuance or renewal of a certificate.

(2) CURRENT AGENCY CERTIFICATION.

(a) Within two years of January 1, 2016, all agency certification must be renewed as described in section (4) of this rule.

(b) All agencies, as of July 1, 2016, are certified for two years unless the certificate is sooner revoked or suspended.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential treatment facilities for people who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care, and as may be described in corresponding program rules, do not require additional certification as an agency under these rules to deliver services. Current license or certification is considered sufficient demonstration of ability to:

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

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

(C) Develop and implement operating policies and procedures required for managing an agency and delivering services, including provisions for safeguarding individuals receiving services.

(3) INITIAL CERTIFICATION. Notwithstanding section (2) of this rule, an applicant intending to provide program services as defined in OAR 411-323-0020 must apply for an initial certificate and demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules, the rules in OAR chapter 411, division 004, and the corresponding program rules.

(a) The applicant must submit an application to the Department at least 90 days prior to the proposed date of delivery of services to individuals. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(b) At a minimum, the applicant must provide:

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

(B) A financial plan that includes financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance; and

(C) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(c) The applicant must develop a plan identifying the scope of services the applicant intends to provide and request endorsement for each program type as described in OAR 411-323-0035.

(d) The applicant must demonstrate proof of liability and operational insurance coverage.

(A) The agency must, at the expense of the agency, maintain in effect with respect to all occurrences taking place during the certification period, liability and operational insurance as described in the contract the agency has with the Department including, but not limited to, automobile liability insurance, comprehensive or commercial general liability insurance, and workers' compensation coverage if required.

(B) The agency must name the State of Oregon, Department of Human Services and the divisions, officers, and employees of the Department as additionally insured on any insurance policies required by their contract with respect to agency activities being performed under the certification of the agency. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(C) The agency must forward certificates of insurance indicating coverage to the Department as required by this rule.

(D) In the event of unilateral cancellation or restriction by the insurance company of any insurance coverage required by their contract, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the cancellation or restriction in writing within three days of receiving notification from the insurance company.

(4) CERTIFICATE RENEWAL.

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

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing certificate for the

agency. The completed application must be on a form provided by the Department and must include all information requested by the Department. At a minimum, the agency must provide:

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

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

(iii) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(B) Identify the scope of services the agency provides and provide proof of endorsement for each program service as described in OAR 411-323-0035;

(C) Demonstrate to the satisfaction of the Department that the agency is in compliance with these rules, the rules in OAR chapter 411, division 004, and the corresponding program rules; and

(D) Demonstrate proof of continued liability and operational insurance coverage as described in section (3)(d) of this rule.

(b) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(c) If the renewal application is not submitted to the Department prior to the date the certificate expires, the agency is considered a non-certified Medicaid agency and is subject to termination of their Medicaid Agency Identification Number.

(5) FINANCIAL AUDITS. Agencies certified and endorsed to provide program services, receiving revenue of $1,000,000 or more per fiscal year, must obtain an audit at least once during the biennium. Agencies certified and endorsed receiving less than $1,000,000 in revenue per fiscal year

must submit an audit review as defined in OAR 411-323-0020 or another financial audit. The audit or the audit review must be submitted to the Department within 90 days of the end of the fiscal year.

(6) CERTIFICATE EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid provider agency expires two years following the date of issuance or December 31, 2017 if issued prior to January 1, 2016.

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

(8) RETURN OF CERTIFICATE. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(9) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

> (a) The agency must notify the Department in writing of any pending change in the ownership, legal entity, legal status, or management corporation of the agency.
>
> (b) A new certificate is required upon a change in the ownership, legal entity, legal status, or management corporation of the agency. The agency must submit an application as described in section (3) of this rule to the Department at least 30 days prior to a change in ownership, legal entity, legal status, or management corporation.

(10) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules, the rules in OAR chapter 411 division 004, or the corresponding program rules. An administrative sanction on a certificate includes one or more of the following actions:

> (a) A condition as described in section (11) of this rule;
>
> (b) Denial, revocation, or refusal to renew a certificate as described in section (12) of this rule; or

(c) Immediate suspension of a certificate as described in section (13) of this rule.

(11) CERTIFICATE CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency. The type of condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to a certificate upon a finding that:

(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 reliable evidence of abuse, neglect, or exploitation; or

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

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

(A) Restricting the total number of individuals to whom an agency may provide services;

(B) Restricting the total number of individuals to whom an agency may provide services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the agency may provide to individuals based upon the capability and capacity of

the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

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

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF CERTIFICATE CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the certificate of the agency. The written notice of certificate conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. 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. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The 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.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the agency to a hearing.

(f) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(g) Conditions must be posted with the certificate in a prominent location and be available for inspection at all times.

(12) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules, the rules in OAR chapter 411, division 004, or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 days from the receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules, the rules in OAR chapter 411, division 004, or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

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

(D) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

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

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

(G) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of a certificate following a Department finding that there is a substantial failure to comply with these rules, the rules in OAR chapter 411, division 004, or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of a certificate. The request for a hearing must be in writing.

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

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

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation.

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

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

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

(13) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of the immediate suspension of the certificate. The request for a hearing must be in writing.

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

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

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

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

(14) ADMINISTRATIVE REVIEW.

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

(b) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 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 may request an administrative review for imposition of conditions.

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

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

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(15) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in section (14) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0035 Endorsement *(Amended 06/29/2016)*

(1) ENDORSEMENT REQUIRED. Except for an agency with a current certification, or that has applied for certification, according to OAR 411-340-0140 prior to January 1, 2016, a person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to operate a program type as defined in OAR 411-323-0020 must be endorsed by the Department under these rules before establishing, conducting, maintaining, managing, or operating a program.

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

(b) If required by the program rules, each geographic location where a program operates must be reported by the agency to the Department and to the corresponding CDDP of the geographic location as described in this rule.

(c) The Department issues or renews an endorsement to a certified agency found to be in compliance with these rules, the rules in OAR chapter 411 division 004, and the corresponding program rules. The effective date for each endorsement corresponds with the effective date for the certification of the agency unless sooner revoked or suspended.

(d) If a certified agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement of the program.

(e) For the purpose of endorsement, any applicant or person with an ownership interest in a certified agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.

(g) A review of the certified agency is conducted by the Department prior to the issuance or renewal of an endorsement.

(2) CURRENT AGENCY ENDORSEMENT.

(a) All certified agencies endorsed to operate a program as of January 1, 2016 are endorsed for not more than two years.

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

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential care treatment facilities for individuals who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care, and as may be described in corresponding program rules, do not require additional endorsement as an agency under these rules to deliver services described in the program rules.

(3) INITIAL ENDORSEMENT.

(a) Notwithstanding section (2) of this rule, a certified agency intending to operate a program as defined in OAR 411-323-0020 must apply for initial endorsement and demonstrate to the satisfaction of the Department that the agency is in compliance with these rules, the rules in OAR chapter 411 division 004, and the corresponding program rules.

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

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

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

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

(4) ENDORSEMENT RENEWAL.

(a) To renew endorsement, the certified agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing endorsement for the certified agency. The completed application must identify the program type that the certified agency provides and all geographic locations where program services are provided, when required by the program rules. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Demonstrate to the satisfaction of the Department that the certified agency is in compliance with these rules, the rules in OAR chapter 411 division 004, and the corresponding program rules.

(b) Only existing program types are endorsed on renewal. A certified agency requesting to operate additional program types must apply for initial endorsement as described in section (3) of this rule.

(c) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(d) A certified agency may not operate a program if a renewal application is not submitted to the Department prior to the date the endorsement expires.

(e) Renewal of endorsements for a program is contingent upon the successful renewal of the certificate of the agency.

(5) EXISTING ENDORSEMENT - ADDING A GEOGRAPHIC LOCATION. Adding a geographic location to an existing endorsement must be reported by the agency to the Department and to the corresponding CDDP of the geographic location. The agency must report the additional geographical location on a form provided by the Department at least 30 days prior to delivering services at the additional geographic location.

(6) ENDORSEMENT EXPIRATION. Unless revoked, suspended, or terminated earlier, the effective date of each endorsement corresponds with the effective date of the certification of the agency.

(7) ENDORSEMENT TERMINATION. Endorsement automatically terminates on the date programs are discontinued or agency certification is terminated.

(8) CHANGE OF CERTIFICATION. New endorsement is required upon a change of the certification of an agency. The recertified agency must submit an application for endorsement as described in section (3) of this rule to the Department at least 30 days prior to a change of the certification of the agency including, but not limited to, a change in ownership, legal entity, legal status, or management corporation.

(9) ENDORSEMENT ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules, the corresponding program rules, or the rules in OAR chapter 411 division 004. An administrative sanction on an endorsement includes one or more of the following actions:

(a) A condition as described in section (10) of this rule:

(b) Denial, revocation, or refusal to renew an endorsement as described in section (11) of this rule; or

(c) Immediate suspension of an endorsement as described in section (12) of this rule.

(10) ENDORSEMENT CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for a program. The type of condition attached to an endorsement must directly relate to a risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to an endorsement upon a finding that:

(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 reliable evidence of abuse, neglect, or exploitation; or

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

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

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

(B) Restricting the total number of individuals to whom an agency may deliver services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the agency may deliver to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

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

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF ENDORSEMENT CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the endorsement of a program The written notice of endorsement conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of endorsement conditions. The request for a hearing must be in writing.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of conditions.

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

(f) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(g) Conditions must be posted with the endorsement in a prominent location and be available for inspection at all times.

(11) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules, the rules in OAR chapter 411, division 004, or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 days from the receipt of the written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules, the rules in OAR chapter 411, division 004, or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

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

(E) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

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

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

(H) Has been placed on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules, the rules in OAR chapter 411, division 004, or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of an endorsement. The request for a hearing must be in writing.

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

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

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation.

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

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

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

(12) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential program, upon written notice from the Department of the immediate suspension of the endorsement. The request for a hearing must be in writing.

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

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

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

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

(13) ADMINISTRATIVE REVIEW.

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

(b) An agency endorsed to operate a 24-hour residential program as described in OAR chapter 411, division 325 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 may request an administrative review for imposition of conditions.

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

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

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(14) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in subsection (13) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0040 Inspections and Investigations *(Amended 12/28/2014)*

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

(a) Quality assurance, onsite inspections, and certificate renewal;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, the designee of the Department, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, the designee of the Department, or proper authority; and

(b) Submitted to, or be made available for review by, the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or the designee of the Department has determined to initiate an investigation, the agency may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an "internal investigation" is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or the designee of the Department shall conduct abuse investigations as described in OAR 407-045-0250 to 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, the designee of the Department, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate agency. The agency must implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(9) The agency must submit a plan of correction to the Department for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050, 410.070
Stats. Implemented: ORS 409.050, 410.070

411-323-0050 Agency Management and Personnel Practices
(Temporary Effective 12/16/16 to 4/21/2017)

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member, provider, or subcontractor, including relief providers and volunteers, has been identified as an accused person in an abuse investigation or when an allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The agency or provider may not retaliate against any staff member or subcontractor including relief providers and volunteers that report in good faith suspected abuse or retaliate against the individual with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any agency, provider, or person that retaliates against any person because of a report of suspected abuse or neglect is liable according to ORS 430.755 in a private action to the reporting person for actual damages and, in addition, is subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes 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:

(A) Discharge or transfer from the agency, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for program services; or

(D) Restriction or prohibition of access to the agency or the individuals receiving services by the agency.

(4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.

(a) Any staff, providers, substitute caregivers, independent contractors of the agency, and volunteers are mandatory reporters.

(b) The agency must notify all staff, providers, substitute caregivers, independent contractors of the agency, and volunteers of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all staff, providers, substitute caregivers, independent contractors of the agency, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) Agencies providing services to adults must report suspected abuse to the CDDP where the adult resides. A report must also be made to law enforcement if there is reason to believe a crime has been committed.

(e) Agencies providing services to children must report suspected abuse to the Department or law enforcement in the county where the child resides.

(5) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated adult abuse.

(6) BACKGROUND CHECKS. Any staff, volunteer, provider, relief care provider, crisis provider, advisor, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of an agency, who has or shall have contact with an individual in services, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and ORS 181A.190.

(a) The agency may not use public funds to support, in whole or in part, any person described above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subsection (a) of this section does not apply to agency staff who were hired prior to July 28, 2009 that remain in the current position for which the staff member was hired.

(c) Any person described above in section (6) of this rule must self-report any potentially disqualifying crimes under OAR 125-007-0270 and potentially disqualifying conditions under OAR 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.

(7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of an Executive Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in intellectual or developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.

(8) GENERAL STAFF QUALIFICATIONS. Any staff member providing services to individuals must meet the following criteria:

(a) Be at least 18 years of age.

(b) Consent to a background check by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (6) of this rule, resulting in a final fitness determination of approval or restricted approval.

(A) Background rechecks must be performed biennially and in accordance with OAR 407-007-0220.

(B) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple locations within the 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) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(d) Be legally eligible to work in the United States.

(e) Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training, and skill.

(f) Understand requirements of maintaining confidentiality and safeguarding individual information.

(g) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(h) Be literate and capable of understanding written and oral orders.

(i) Be able to communicate with individuals, health care providers, case managers, and appropriate others.

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

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

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

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

(n) If transporting individuals, have a valid license to drive and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(o) Additional qualifications in the applicable program rules for the staff of an agency endorsed to those rules.

(9) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the designee of the Department for inspection that includes written documentation of the following for each staff member:

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

(b) Written documentation by the Department of an approved background check in accordance with OAR 407-007-0200 to 407-007-0370.

(c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals 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 that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current.

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

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

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0060 Policies and Procedures *(Amended 06/29/2016)*

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

(2) INDIVIDUAL AND FAMILY INVOLVEMENT. The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal and designated representatives, and significant others of the individuals to interact; and

(c) Opportunities for individuals, families, guardians, legal and designated representatives, and significant others to participate on the Board of Directors or on committees or to review policies of the agency that directly affect the individuals receiving services from the agency.

(3) CONFIDENTIALITY OF RECORDS. The 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 the legal or designated representative or family of the individual.

(c) For the purpose of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

(4) BEHAVIOR SUPPORT. The agency must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.

(5) PROTECTIVE PHYSICAL INTERVENTION. The agency must have and implement written policies and procedures for protective physical interventions that address the following:

(a) The agency must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee.

(b) Protective physical intervention techniques must only be applied:

(A) When the health and safety of an individual or others is at risk, the ISP team has authorized the procedures as documented by the decision of the ISP team, the procedures are documented in the ISP, and the procedures are intended to lead to less restrictive intervention strategies;

(B) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(C) As a health-related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the protection of an individual during the time that a medical condition exists.

(6) HANDLING AND MANAGING INDIVIDUALS' MONEY. The 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:

(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; and

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

(7) COMPLAINTS.

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

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

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

(8) AGENCY DOCUMENTATION REQUIREMENTS. The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

(a) Be prepared at the time or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0065 Payment to Agency Providers *(Adopted 06/29/2016)*

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

(2) Payment is made after services are delivered.

(3) For a service to be eligible for payment it must be included on a written agreement that specifies, at a minimum, the type and amount of services to be delivered. The written agreement must be signed by the provider and may be:

(a) The individual ISP; or

(b) A service agreement specific to the individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A false request for payment;

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

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

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

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

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

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

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215

411-323-0070 Variances *(Amended 06/29/2016)*

(1) The Department may grant a variance to these rules or the corresponding program rules based upon a demonstration by an agency that an alternative method or different approach provides equal or greater

agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate state or federal laws.

(2) The agency requesting a variance must submit a written application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to the services for an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

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

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

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

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050