DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 318

INDIVIDUAL RIGHTS, COMPLAINTS, NOTIFICATION OF PLANNED ACTION, AND CONTESTED CASE HEARINGS FOR DEVELOPMENTAL DISABILITY SERVICES

411-318-0000 Statement of Purpose and Scope
(Adopted 12/28/2014)

(1) The rules in OAR chapter 411, division 318 prescribe:

(a) The rights of individuals receiving developmental disability services;

(b) The process for reporting and investigating a complaint regarding dissatisfaction with a developmental disability service or provider;

(c) The requirements for notification in the event a developmental disability service is denied, reduced, suspended, or terminated and the contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disability service; and

(d) The contested case hearing process for challenging an involuntary reduction, transfer, or exit.

(2) The rules in OAR chapter 411, division 318 apply to the developmental disability services and service settings described in:

(a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 305 for family support services for children with intellectual or developmental disabilities;

(c) OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities;

(d) OAR chapter 411, division 320 for community developmental disability programs;

(e) OAR chapter 411, division 323 for agency certification and endorsement to provide services to individuals with intellectual or developmental disabilities in community-based settings;

(f) OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities;

(g) OAR chapter 411, division 328 for supported living settings for adults with intellectual or developmental disabilities;

(h) OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities;

(i) OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities;

(j) OAR chapter 411, division 345 for employment services for adults with intellectual or developmental disabilities;

(k) OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities;

(l) OAR chapter 411, division 350 for medically fragile children's services;

(m) OAR chapter 411, division 355 for the Medically Involved Children's Program; and

(n) OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109

411-318-0005 Definitions
(Adopted 12/28/2014)

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 318:

(1) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(2) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(3) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(4) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(5) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.

(6) "CIIS" means "Children’s Intensive In-Home Services". CIIS include the services described in:

(a) OAR chapter 411, division 300 for the Children’s Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350 for the Medically Fragile Children's Services Program; or

(c) OAR chapter 411, division 355 for the Medically Involved Children's Program.

(7) "Claimant" means the individual directly impacted by the action that is the subject of a hearing request.

(8) "Complaint" means an oral or written expression of dissatisfaction with a developmental disability service or provider.

(9) "Complaint Investigation" means the investigation of a complaint that has been made to a proper authority that is not covered by an investigation of abuse.

(10) "Complaint Log" means the list of complaint-related information that is completed and maintained by a local program.

(11) "Continuing Services" means the continuation of a developmental disability service following the request for a hearing until a Final Order is issued.

(12) "DD Administrative Hearing Request" means form SDS 0443DD.

(13) "Denial" means any rejection of a request for a developmental disability service or an increase in a developmental disability service. A denial of a Medicaid service requires a Notification of Planned Action.

(14) "Department" means the Department of Human Services.

(15) "Department Hearing Representative" means the person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0500.

(16) "Department Staff" means the person employed by the Department who is knowledgeable in a particular subject matter. For the purposes of the complaint process, Department staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.

(17) "Developmental Disability Services" mean the services listed in OAR 411-318-0000 provided to an individual with an intellectual or developmental disability.

(18) "Director" means the Director of the Department of Human Services or the designee of the Director, which may include Department Staff.

(19) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a licensed or certified provider.

(20) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of an employee of the Department or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(21) "Guardian" means the parent of a minor child or a person or agency appointed and authorized by a court to make decisions about services for a child or an adult.

(22) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a Final Order.

(23) "Individual" means a child or an adult applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the representative of the individual, who has the ability to act for the individual and to exercise the rights of the individual.

(24) "Informal Conference" means the discussion between a claimant, the representative of the claimant, Department staff, and a Department representative that is help prior to a hearing to address any matters pertaining to the hearing, as described in OAR 411-318-0025. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

(25) "Informal Discussion" means the conversation between an individual or the representative of the individual and the designee of the Department

or local program who received the complaint to address the content of the complaint. The informal discussion may result in resolution of the issue.

(26) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(27) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(28) "Legal Representative" means a person who has the legal authority to act for an individual.

> (a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and
>
> (b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the person acting under the authority granted in a power of attorney, or the person or agency authorized by a court to make decisions about services for the adult.

(29) "Local Program" means the local CDDP, Support Services Brokerage, provider organization, CIIS program, or other certified, licensed, or endorsed provider or agency with which the Department contracts to provide developmental disability services and is providing services to the individual with whom the complaint is associated.

(30) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual.

(31) "Notice of Involuntary Reduction, Transfer, or Exit" means form SDS 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.

(32) "Notification of Planned Action" means form SDS 0947. The Notification of Planned Action is the written decision notice issued to an

individual in the event that a developmental disability service is denied, reduced, suspended, or terminated.

(33) "OAH" means the Office of Administrative Hearings.

(34) "OHA" means the Oregon Health Authority.

(35) "Personal Agent" means personal agent as defined in OAR 411-340-0020.

(36) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary but all are consistent with the cultural considerations, needs, and preferences of the individual.

(37) "Program Director" means the Director of a local program or the designee of the Director.

(38) "Program Staff" means a person employed by the local program who is knowledgeable in a particular subject matter. For the purposes of the complaint process, program staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.

(39) "Protective Physical Intervention" means any manual physical holding of or contact with an individual that restricts freedom of movement.

(40) "Provider" means a person, agency, organization, or business selected by an individual that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services.

(41) "Provider Organization" means an entity selected by an individual or the representative of the individual and paid with service funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(42) "Representative" means any adult, such as a parent, family member, guardian, legal representative, advocate, or other person, who is chosen by an individual or the legal representative of the individual to represent the individual in connection with the provision of developmental disability services or during the complaint or hearing process. The representative may not be a Department, CDDP, or Support Services Brokerage employee acting in official capacity. An individual or a legal representative of the individual is not required to choose a representative.

(43) "Request for Service" means:

(a) Submission of a completed application for developmental disability services as described in OAR 411-320-0080;

(b) A written request for a new developmental disability service or provider; or

(c) A written request for a change in a developmental disability service currently provided.

(44) "Service" means "developmental disability services" as defined in this rule.

(45) "Service Funds" means state public funds or Medicaid funds used to purchase developmental disability services.

(46) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department, who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring developmental disability services.

(47) "Support Services Brokerage" means "brokerage" as defined in OAR 411-340-0020.

(48) "These Rules" mean the rules in OAR chapter 411, division 318.

(49) "Transfer" means movement of an individual from a service setting to another service setting administered or operated by the same provider.

(50) "Written Outcome" means the written response from the Department or the local program to a complaint following a review of the complaint.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109

411-318-0010 Individual Rights
(Adopted 12/28/2014)

(1) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(2) While receiving developmental disability services, an individual has the right to:

(a) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(b) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(c) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(d) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(e) Informed, voluntary, written consent prior to participating in any experimental programs;

(f) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, personal agent, and others chosen by the individual through personal visits, mail, telephone, or electronic means;

(g) Contact and visits with legal and medical professionals, legal and designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(h) Participate regularly in the community and use community resources, including recreation, developmental disability services,

employment services, school, educational opportunities, and health care resources;

(i) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(j) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(k) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(l) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(m) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(n) Seek a meaningful life by choosing from available services, service settings, and providers consistent with the support needs of the individual identified through a functional needs assessment and enjoying the benefits of community involvement and community integration:

> (A) Services must promote independence and dignity and reflect the age and preferences of the individual; and
>
> (B) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(o) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(p) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(q) Request a change in the plan for services and a reassessment of service needs;

(r) A timely decision upon request for a change in the plan for services;

(s) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service and notification of other available sources for necessary continued services;

(t) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(u) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(v) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(x) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(3) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law.

(4) An individual who is receiving developmental disability services has the right under ORS 430.212 and OAR 411-320-0090 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(5) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(6) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(7) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109

411-318-0015 Complaints
(Adopted 12/28/2014)

(1) The Department and local programs must address all complaints in accordance with their policies and procedures and these rules.

(2) An individual or the representative of the individual may file a complaint at any time. A complaint may include, but is not limited to:

(a) An expression of dissatisfaction with a developmental disability service; or

(b) An allegation of circumstances or events that are contrary to law, rule, policy, or otherwise adverse to the interests of an individual.

(3) The complaint process described in this rule does not apply to a complaint in the following situations:

(a) The complaint is filed anonymously. Anonymous complaints are reviewed by the Governor's Advocacy Office;

(b) The merits of the complaint have been, or are going to be, decided by a judge or a juvenile court ruling;

(c) The subject matter of the complaint is not related to a developmental disability service or a provider; or

(d) The subject matter of the complaint is subject to review under the following:

(A) ORS 419B.005 to 419B.050 for child abuse reports;

(B) OAR chapter 309, division 118 for state institutions operated by the Oregon Health Authority;

(C) OAR 407-005-0025 and 407-005-0030 for discrimination against people with disabilities;

(D) OAR 407-005-0100 to 407-005-0120 for conduct of Department personnel;

(E) OAR chapter 411, division 020 for adult protective services;

(F) OAR 410-141-0260 to 410-141-0266 for Oregon Health Plan, Prepaid Health Plans;

(G) OAR 413-010-0420 for Department child welfare decisions;

(H) OAR 413-010-0700 to 413-010-0750 for child protective services dispositions;

(I) OAR 413-120-0060 for adoption placement selections; and

(J) OAR chapter 582, division 020 for vocational rehabilitation service determinations.

(4) If a complaint alleges circumstances that meet the criteria for an investigation of abuse, the allegation must be immediately reported to the appropriate protective service entity, such as the Department, CDDP, Support Services Brokerage, CIIS, Office of Adult Abuse Prevention and Investigations, child welfare, or law enforcement.

(5) If an individual or the representative of the individual makes a complaint identified in section (3) of this rule, the local program or Department must assist the individual or the representative of the individual with filing the complaint with the appropriate entity, if requested by the individual or the representative of the individual.

(6) The local programs must have and implement written policies and procedures regarding individual complaints and the complaint process. A copy of the policies and procedures for resolving complaints must be maintained on file at the office of the local program and must be available to staff, individuals, representatives of the individuals, providers, and the Department. The policies and procedures must include, but are not limited to:

(a) Method and form used to submit a complaint (form SDS 0946 may be used);

(b) Process for reviewing and resolving a complaint;

(c) Time frames for responding to a complaint as set forth by this rule; and

(d) Documentation to be used in response to a complaint as set forth in this rule.

(7) COMPLAINT LOG.

(a) The local programs must maintain a complaint log. At a minimum, the complaint log must include:

(A) The name of the individual for which the complaint is being filed;

(B) The name of the person making the complaint, if known;

(C) The name of the person taking the complaint;

(D) The nature of the complaint, including if there was a request for new or changed developmental disability services which may result in a hearing;

(E) The date the complaint was received;

(F) The date the complaint was acknowledged in writing;

(G) The written outcome of the complaint; and

(H) The date that the written outcome was mailed.

(b) Complaints regarding personnel issues and allegations of abuse must be maintained separately from the complaint log.

(c) The complaint log for the local program documents only complaints pertaining to the local program.

(A) In the event that an individual or the representative of the individual has a complaint against another agency or program, the local program must assist the individual or the representative of the individual with filing the complaint against the other agency or program.

(B) The local program does not document complaints against another agency or program in the complaint log for the local program, but does document the support provided by the local program in the progress notes for the individual.

(8) SCREENING OF COMPLAINTS. The local programs must screen all complaints for potential hearing related issues. In the event that a complaint appears to allege a denial, reduction, suspension, or termination of a developmental disability service, the local program must issue a Notification of Planned Action and advise the individual or the representative of the individual of the right to a hearing and assist the individual or the representative of the individual with filing a hearing request, if so desired. In the event that the individual or the representative of the individual decides to file a complaint rather than a hearing request, the decision of the individual or the representative of the individual must be documented in the file for the individual.

(9) FILING A COMPLAINT.

(a) Complaints may be made orally, in writing, or on a complaint form (SDS 0946 may be used).

(b) A complaint regarding dissatisfaction with the services of a provider organization may be filed with the Department or directly with the provider organization, Support Services Brokerage, or CDDP.

(c) A complaint regarding dissatisfaction with the services of a Support Services Brokerage or CDDP may be filed with the Department or directly with the Support Services Brokerage or CDDP.

(d) A complaint regarding dissatisfaction with CIIS may be filed with the Department or directly with the CIIS program.

(e) A complaint regarding dissatisfaction with the Department must be filed with the Department.

(10) PROCESS FOR ADDRESSING COMPLAINTS.

(a) The local program or Department must provide written acknowledgement of a complaint to the individual or the representative of the individual within five business days from the receipt of the complaint.

(b) The written acknowledgement must inform the individual or the representative of the individual of the opportunity for an informal discussion.

(A) Choosing to engage in an informal discussion does not preclude the individual or the representative of the individual from receiving a written outcome following review of the complaint by the local program or Department.

(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or the Director of the Department.

(C) The informal discussion must occur within 10 business days of the written acknowledgement of the complaint.

(D) In the event that a resolution is reached during the informal discussion, the local program or Department must mail a written outcome to the individual and the representative of the individual within 10 business days of the informal discussion. A copy of the written outcome must be maintained in the file for the individual.

(c) The local program or Department must complete a review of the complaint and issue a written outcome to the individual and the representative of the individual within 45 days from the receipt of the

complaint, unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 days.

(A) The review of the complaint must include, but is not limited to, an investigation and records review of the complaint by the Program Director of the local program or the Director of the Department.

(B) The written outcome of the complaint may be issued on the complaint form or may be issued in a separate document. The written outcome must include:

(i) The rationale for the outcome;

(ii) The reports, documents, and other information relied upon in deciding the outcome of the complaint, or a summary of the reports, documents, and other information relied upon;

(iii) Information about the right of the individual or the representative of the individual to review the documents relied upon in determining the outcome (Notification of Rights SDS 0948); and

(iv) Information about the right of the individual or the representative of the individual to request a review of the written outcome (Notification of Rights SDS 0948).

(11) REQUEST FOR REVIEW.

(a) An individual or the representative of the individual may request a review of a written outcome issued by a local program within 30 days of the date identified on the written outcome.

(A) If a provider organization issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by:

(i) The local CDDP, Support Services Brokerage, or CIIS program; or

(ii) The Department.

(B) If a CDDP, Support Services Brokerage, or CIIS program issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by the Department.

(C) If the Department issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by OHA.

(D)The written outcome issued by the OHA is the final response.

(b) The local CDDP, Support Services Brokerage, CIIS program, Department, may uphold, alter, or overturn a written outcome issued by a provider organization.

(c) The Department may uphold, alter, or overturn a written outcome issued by a provider organization, local CDDP, Support Services Brokerage, or CIIS.

(d) OHA may uphold, alter, or overturn a written outcome issued by the Department.

(12) PROCESS FOR ADDRESSING AND RESOLVING A REQUEST FOR REVIEW.

(a) The receiving entity of a request for a review of a written outcome must acknowledge receipt of the request by issuing a written acknowledgement to the individual and the representative of the individual within five business days from the receipt of the request for a review.

(b) The written acknowledgement must inform the individual and the representative of the individual of the opportunity for an informal discussion.

(A) Choosing to engage in an informal discussion does not preclude the individual or the representative of the individual from pursuing a review of the written outcome by the receiving entity.

(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or Director of the Department.

(C) The informal discussion must occur within 10 business days of the written acknowledgement of the request for a review.

(D) In the event that a resolution is reached during the informal discussion, the local program, the Department, or OHA must mail a written determination to the individual and the representative of the individual within 10 business days of the informal discussion. A copy of the written determination must be maintained in the file for the individual.

(c) The local program, the Department, or OHA must review the written outcome and issue a written determination to the individual and the representative of the individual within 45 days from the receipt of the request for a review unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 days.

(A) The review of the written outcome must include, but is not limited to, an investigation and records review by the Program Director of the local program or the Director of the Department or OHA.

(B) The written determination must include:

(i) The rationale for the determination;

(ii) The reports, documents, and other information relied upon in making the determination or a summary of the reports, documents, and other information relied upon; and

(iii) Information about the right of the individual or the representative of the individual to review the documents relied upon in making the determination.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109

411-318-0020 Notification of Planned Action
(Adopted 12/28/2014)

(1) An individual and the representative of the individual must receive a written Notification of Planned Action in the event that a developmental disability service is denied, reduced, suspended, or terminated.

(2) The Notification of Planned Action must be on the form prescribed by the Department (SDS 0947). The Notification of Planned Action must include:

(a) The specific date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual;

(b) The effective date of the denial, reduction, suspension, or termination;

(A) For a denial of service, the effective date is the same date that the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual.

(B) For a reduction, suspension, or termination of service, the effective date is:

(i) For a Notification of Planned Action mailed or hand delivered on or before the 18th of the month, the end of the calendar month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable; or

(ii) For a Notification of Planned Action mailed or hand delivered on or after the 19th of the month, the end of the calendar month following the month in which the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable; or

(iii) No fewer than 10 days after the date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable.

(c) The specific service or unit of service to be denied, reduced, suspended, or terminated;

(d) The rationale for the denial, reduction, suspension, or termination, including a reference to the specific reports, documents, or other information relied on in making the determination;

(e) The specific sections of the rules or statutes upon which the determination is based;

(f) Notification that the documents relied upon may be reviewed by the individual or the representative of the individual; and

(g) Notification that if the individual or the representative of the individual disagrees with the determination to deny, reduce, suspend, or terminate a service, the individual has the right to request a hearing, or the representative of the individual has the right to request a hearing on the behalf of the individual, as provided in ORS chapter 183 and OAR 411-318-0025. The notification of the right to a hearing must include:

(A) The timeline for requesting a hearing;

(B) How to request a hearing;

(C) The right to receive assistance from the local program in completing and submitting a request for hearing;

(D) The right of the individual to receive continuing services at the same level until a Final Order has been issued or, at the request of the individual or the representative of the individual, or until the individual has exhausted the appeals processes identified in OAR 411-318-0025;

(E) Notification of the time frame within which the individual or the representative of the individual must request continuing services;

(F) Notification of how, when, and where the individual or the representative of the individual may request continuing services; and

(G) Notification that the individual may be required to repay the Department for any continuing services received during the hearing process if the Final Order upholds the determination to reduce, suspend, or terminate the services.

(3) The Notification of Planned Action must be made available using language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and the representative of the individual.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109

411-318-0025 Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials
(Adopted 12/28/2014)

(1) An individual or the representative of the individual may request a hearing, as provided in ORS chapter 183, if the individual experiences a denial, reduction, suspension, or termination of a developmental disability service or in instances when a timely Notification of Planned Action has not been provided.

(2) HEARING REQUESTS.

(a) The request for a hearing must be made within 90 days from the date on a Notification of Planned Action.

(b) The request for a hearing may be made orally, in writing, or by completing the DD Administrative Hearing Request (form SDS 0443DD).

(A) ORAL HEARING REQUESTS.

(i) The individual or the representative of the individual may orally express a desire for a hearing to the local program or Department staff.

(ii) Upon receipt of an oral request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form to the Central Office of the Department within three business days of receiving the request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual.

(B) WRITTEN HEARING REQUESTS.

(i) The individual or the representative of the individual may provide a written request for a hearing to the local program or Department staff.

(ii) Upon receipt of a written request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form to the Central Office of the Department within three business days of receiving the request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual.

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

(3) CONTINUING SERVICES PENDING A FINAL ORDER.

(a) In the event of a reduction, suspension, or termination of a developmental disability service, a claimant or the representative of the claimant may request continuing services for the claimant during the hearing process. To receive continuing services, a claimant or the representative of the claimant must either:

(A) Request a hearing before the effective date of action; or

(B) Within 10 business days after the effective date of action identified on the Notification of Planned Action, request a hearing and continuing services.

(b) The Department grants a late request for continuing services when the Department determines a claimant or the representative of a claimant has good cause for the late request.

(c) The claimant may be required to pay back any benefits received during the hearing process if the Final Order is not in the favor of the claimant.

(4) INFORMAL CONFERENCE.

(a) The Department staff, Department representative, and the claimant or the representative of the claimant may have an informal conference, without the presence of an administrative law judge, to discuss the action that is the subject of the hearing request. An informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the representative of the claimant to settle the matter;

(B) Ensure the claimant or the representative of the claimant understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant or representative of the claimant an opportunity to review the information that is the basis for the action that is the subject of the hearing request;

(D) Inform the claimant or the representative of the claimant of the rules that serve as the basis for the action that is the subject of the hearing request;

(E) Give the Department and the claimant or the representative of the claimant the chance to correct any misunderstanding of the facts;

(F) Give the claimant or the representative of the claimant an opportunity to provide additional information to the Department; and

(G) Give the Department an opportunity to review the action that is the subject of the hearing request.

(b) At any time prior to the hearing date, the claimant or the representative of the claimant may request an additional informal conference with a Department representative. At the discretion of the Department representative, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the reprieve sought at any time before a Final Order is issued.

(5) REPRESENTATION.

(a) A representative may be chosen by a claimant to represent the interests of the claimant during an informal conference and hearing.

(b) Employees for the Department, CDDP, and Support Services Brokerage are authorized to appear as a witness on behalf of the Department during an informal conference and hearing.

(6) HEARINGS NOT OPEN TO THE PUBLIC. Non-participants may attend a hearing only with the consent of the claimant or the representative of the claimant and the Department representative.

(7) WITHDRAWAL OF HEARING REQUEST. A claimant or the representative of a claimant may withdraw a hearing request at any time prior to the issuance of a Final Order. The withdrawal is effective on the

date the request for the withdrawal is received by OAH. The Department shall issue an order of withdrawal to the last known address of the claimant. The claimant or the representative of the claimant may cancel the withdrawal up to 10 business days following the date the order of withdrawal is issued.

(8) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the representative of the claimant appears by phone or in person at the hearing. The dismissal order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the representative of the claimant upon a showing that the claimant or the representative of the claimant has good cause for not attending the hearing or requesting a postponement.

(9) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

> (a) Whether the Department is authorizing OAH to issue a Final Order, a proposed order, or a proposed and Final Order; and
>
> (b) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing request is being referred for an expedited hearing.

(10) FINAL ORDER. A Final Order is the final action expressed in writing by OAH as described in OAR 137-003-0665. A Final Order is issued within 90 days of the request for a hearing or within 90 days from the receipt of a proposed order or a proposed and Final Order from OAH.

(11) PROPOSED ORDERS. The Department issues a Final Order after OAH issues a proposed order unless the Department authorizes OAH to issue the Final Order under OAR 137-003-0655.

(12) PROPOSED AND FINAL ORDERS. A proposed and Final Order becomes a Final Order 21 days after OAH issues a proposed and Final Order unless:

(a) The claimant or the representative of the claimant has filed written exception and written argument as described in section (13) of this rule;

(b) The Department has issued a revised order; or

(c) The Department has notified OAH and the claimant or the representative of the claimant that the Department shall issue the Final Order.

(13) EXCEPTIONS.

(a) The claimant or the representative of the claimant may file a written exception and written argument to be considered by the Department once OAH has issued either a proposed order or a proposed and Final Order. The written exception and written argument must be postmarked to the location indicated in the OAH order no later than 20 days after service of the proposed order or proposed and Final Order unless an earlier deadline has been established pursuant to section (9)(b) of this rule.

(b) Unless the Department receives a timely written exception and written argument as described above, the Department shall issue the Final Order unless the Department authorizes OAH to issue the Final Order in compliance with OAR 137-003-0655.

(14) PETITION OF FINAL ORDER. A claimant or the representative of the claimant may file a petition for reconsideration or rehearing up to 60 days after a Final Order is served. The petition must be filed with the entity that issued the Final Order unless stated otherwise on the Final Order.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109

411-318-0030 Contested Case Hearings for Provider Notices of Involuntary Reductions, Transfers, or Exits
(Adopted 12/28/2014)

(1) This rule applies to involuntary reductions, transfers, or exits by a provider, including a licensed or certified provider organization, who has a

contract with the Department, CDDP, or Support Services Brokerage. This rule does not apply to providers who have a direct employer-employee relationship with an individual or the employer representative of the individual.

(2) The individual must be given the opportunity to dispute an involuntary reduction, transfer, or exit by requesting a hearing as provided in ORS chapter 183.

(3) An individual or the representative of the individual may request a hearing either orally or in writing when the individual and the representative of the individual receives a Notice of Involuntary Reduction, Transfer, or Exit (SDS 0719DD).

(a) To request a hearing in writing:

(A) The individual or the representative of the individual must complete the Administrative Hearing Request form included with the Notice of Involuntary Reduction, Transfer, or Exit and submit the form to the Central Office of the Department for processing as described on the form; or

(B) The individual or the representative of the individual may meet with a staff person of the local program or Department to complete the Administrative Hearing Request form included with the Notice of Involuntary Reduction, Transfer, or Exit. After meeting with the individual or the representative of the individual, the CDDP, Support Services Brokerage, or Department must submit the Administrative Hearing Request form to the Central Office of the Department within three business days. A copy of the form must be mailed to the individual and the representative of the individual.

(b) To request a hearing orally, the individual or the representative of the individual must orally express the desire for a hearing to a staff person of the CDDP, Support Services Brokerage, or Department. Upon receipt of an oral request for a hearing, the CDDP, Support Services Brokerage, or Department must complete the Administrative Hearing Request form included with the Notice of Involuntary Reduction, Transfer, or Exit and submit the Administrative Hearing

Request form to the Central Office of the Department within three business days. A copy of the form must be mailed to the individual and the representative of the individual.

(4) Upon receipt of the Administrative Hearing Request form for a Notice of Involuntary Reduction, Transfer, or Exit, the Central Office of the Department must:

(a) Refer the hearing request to OAH within five business days from the receipt of the hearing request;

(b) Assist the claimant or the representative of the claimant in gathering and submitting exhibits; and

(c) Act as liaison between OAH and the CDDP or Support Services Brokerage responsible for the services of the claimant.

(5) OAH communicates directly with the claimant and the representative of the claimant regarding informal conference dates, hearing dates, and the Final Order as defined in OAR 137-003-0070.

(6) If an individual or the representative of an individual requests a hearing prior to the effective date of the action reported on the Notice of Involuntary Reduction, Transfer, or Exit, the individual must receive the same services until receipt of the Final Order.

(7) When an individual has been given less than 30 days advanced written Notice of Involuntary Reduction, Transfer, or Exit due to a medical emergency or because the individual is engaging in behavior that poses an imminent danger to self or others, and the individual or the representative of the individual has requested a hearing as described in this rule, the provider must continue provision of service to the individual until receipt of the Final Order.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109