DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES DIVISION
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 323

DEVELOPMENTAL DISABILITY CERTIFICATION AND ENDORSEMENT

411-323-0010 Statement of Purpose
(Temporary Effective 7/1/2011 – 12/28/2011)

The rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain a certificate and endorsement in order to provide the following person-centered services to individuals with developmental disabilities:

(1) 24-hour residential as described in OAR chapter 411, division 325;

(2) Supported living as described in OAR chapter 411, division 328;

(3) Proctor care as described in OAR chapter 411, division 335; or

(4) Employment and alternatives to employment as described in OAR chapter 411, division 345.

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

411-323-0020 Definitions
(Temporary Effective 7/1/2011 – 12/28/2011)

(1) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005, and for the purposes of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.

(3) "Administrator" means the administrator of the Department, or that person's designee.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(6) "Agency" means a public or private community agency or organization that provides recognized developmental disability services and is approved by the Department to provide these services. For the purpose of these rules, "provider", "service provider", "program", "applicant", and "licensee" are synonymous with "agency".

(7) "Appeal" means the process under ORS chapter 183 that the agency may use to petition conditions or the suspension, denial, or revocation of their application, certificate, or endorsement.

(8) "Applicant" means a person, agency, corporation, or governmental unit, who applies for certification to operate an agency providing services to individuals with developmental disabilities.

(9) "Assessment" means an evaluation of an individual's needs.

(10) "Board of Directors" mean a group of persons formed to set policy and give directions to an agency designed to provide services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(11) "Care" means supportive services, including but not limited to supervision, protection, and assistance in bathing, dressing, grooming,

eating, management of money, transportation, or recreation. Care also includes being aware of the individual's general whereabouts at all times and monitoring the activities of the individual to ensure the individual's health, safety, and welfare. The term "care" is synonymous with "services".

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

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice is communicated verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Department or a local mental health authority.

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

(17) "Condition" means a provision attached to:

> (a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency.
>
> (b) A new or existing endorsement that limits or restricts the scope of program services or imposes additional requirements on the certified agency.

(18) "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 services rules.

(b) An endorsement to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program services rules.

(19) "Department" means the Department of Human Services (DHS).

(20) "Developmental Disability" as defined in OAR 411-320-0020.

(21) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(22) "Endorsement" means authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program services rules.

(23) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the agency's services for individuals.

(24) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(25) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(26) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(27) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(28) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The ISP is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(29) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and family or other persons requested to develop the ISP.

(30) "Integration" means the use by individuals with developmental disabilities of the same community resources used by and available to other persons in the community, including participation in community activities and having contact with persons in their community.

(31) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the individual or a person or agency authorized by the court to make decisions about services for the individual.

(32) "Mandatory Reporter" means any public or private official including:

> (a) For the purposes of these rules, a staff or volunteer working with individuals birth to 17 years of age, and comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) For the purposes of these rules, a staff or volunteer working with adults eighteen years and older, and while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(33) "Medicaid Agency Identification Number" means the numeric identifier assigned to an agency as described in OAR chapter 411, division 370 following the agency's enrollment to manage service delivery sites or areas within Oregon under endorsement or license from the Department. .

(34) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(35) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. OIS is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(36) "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. 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 agency 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 agency that is organized as a corporation; or

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

(37) "Person-Centered Planning" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, 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.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(38) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(39) "Productivity" as defined in ORS 427.005 means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(40) "Program Services" mean, for the purpose of these rules, the services described in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(41) "Program Services Rules" mean, for the purpose of these rules, the rules in:

(a) OAR chapter 411, division 325, 24-hour Residential Services for Children and Adults with Developmental Disabilities;

(b) OAR chapter 411, division 328, Supported Living Services for Individuals with Developmental Disabilities;

(c) OAR chapter 411, division 335, Proctor Care Residential Services for Individuals with Developmental Disabilities; and

(d) OAR chapter 411, division 345, Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

(42) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

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

(a) An agency certificate after the Department has determined that the agency is not in compliance with these rules or the corresponding program services rules.

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

(44) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(45) "Staff" means paid employees responsible for providing services to individuals and whose wages are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Department.

(46) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(47) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(48) "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 services rules.

(b) Endorsement to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program services rules.

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

(50) "Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons:

(a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or

(b) A background check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

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

(52) "Volunteer" means any person assisting in an agency without pay to support the services provided to individuals.

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

411-323-0030 Certification
(Temporary Effective 7/1/2011 – 12/28/2011)

(1) CERTIFICATE REQUIRED.

(a) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 shall establish, conduct, maintain, manage, or operate an agency without being certified by the Department under these rules.

(b) Certificates are not transferable.

(c) The Department shall issue a certificate to an applicant found to be in compliance with these rules. The certificate shall be in effect for five years from the date issued unless revoked or suspended.

(2) CURRENT AGENCY CERTIFICATION. All agencies providing program services as of July 1, 2011 shall be issued a certificate that expires in five years unless sooner revoked or suspended.

(3) CERTIFICATION. Notwithstanding section (2) of this rule, an agency requiring certification must apply for an initial certificate and for a certificate renewal.

(a) INITIAL APPLICATION.

(A) The applicant must submit an application at least 30 days prior to anticipated certification. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) The applicant requesting certification as an agency must identify the agency's business plan. At a minimum, the agency's business plan must include:

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

(ii) A financial plan that includes:

(I) If an existing agency, the last two years audits, as directed by the Office of Management and Budget circular A-133, completed by an outside firm; or

(II) If applying as a new firm, financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance.

(iii) The names, dates of birth, and social security numbers of those serving as the agency's Board of Directors as required by CFR 455.104;

(C) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request

endorsement for each program service as described in OAR 411-323-0035; and

(D) Liability and operational insurance coverage as described in subsection (b) of this section.

(b) LIABILITY AND OPERATIONAL INSURANCE COVERAGE.

(A) At a minimum, the agency must demonstrate proof, at the agencies expense, and maintain in effect with respect to all occurrences taking place during the certification period:

(i) Automobile liability insurance with a combined single limit per occurrence of not less than $500,000.

(ii) Comprehensive or commercial general liability insurance covering bodily injury and property damage including personal injury coverage and contractual liability coverage for the agency. The combined single limit per occurrence may not be less than $500,000 or the equivalent. Each annual aggregate limit may not be less than $500,000 when applicable.

(B) The agency, the agency's subcontractors if any, and all employers providing work, labor, or materials under the agency are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers including employers' liability insurance with coverage limits of not less than $100,000 each accident. Agencies who perform the work without the assistance of labor or any staff member need not obtain such coverage.

(C) The agency must name the State of Oregon, Department of Human Services, and their divisions, officers, and employees as additional insured's on any insurance policies required by these rules with respect to agency activities being performed under the agency's certification. 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.

(D) Prior to certification, the agency must forward to the Department certificates of insurance indicating coverage as required by this rule.

(E) In the event of unilateral cancellation or restriction by the agency's insurance company of any insurance coverage required by this rule, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the oral notification in writing within three days of notification by the insurance company to the agency.

(c) RENEWAL.

(A) The Department shall conduct a certification review of the agency prior to the renewal of the certificate. The review shall be conducted 30 to 120 days prior to expiration of the certificate.

(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 prior to the expiration date, the agency shall be treated as a non-certified Medicaid agency subject to termination of their Medicaid Agency Identification Number.

(D) The Department may not renew a certificate if the agency is not in substantial compliance with these rules or the corresponding program services rules.

(d) If an applicant 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.

(e) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of certification.

(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 a certificate.

(g) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules.

(h) The Department shall conduct a review of the agency prior to the issuance of a certificate.

(4) EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency shall expire five years following the date of issuance.

(5) TERMINATION. The certificate shall automatically terminate on the date agency operation is discontinued or if there is a change in ownership.

(6) 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.

(7) 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 agency's ownership or legal entity, legal status, or management corporation.

(b) A new certificate shall be required upon change in the agency's ownership or legal entity, legal status, or management corporation. The agency must submit a certificate application at least 30 days prior to change in ownership or legal entity, legal status, or management corporation.

(8) 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 shall directly relate to a risk of harm or potential risk of harm to individuals. 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 or the corresponding program services rules.

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

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number and support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Reclassifying the level of individuals that may be served;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

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

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE. The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's 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 (11) of this rule. The administrative review does not diminish an agency's right to a hearing.

(e) 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.

(9) 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 or the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program services 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 service;

(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 care of individuals, program services finances, or individuals' funds;

(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.

(b) NOTICE. The Department may issue a notice of denial, refusal to renew, or revocation of the certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program services 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 contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the certificate.

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

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

(C) REVOCATION.

(i) Notwithstanding subsection (ii) below, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (11) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of revocation.

(10) 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 operation.

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

(A) Notwithstanding subsection (B) below, the agency must request a hearing within 21 days of receipt of the Department’s written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (11) of this rule. The administrative review does not diminish the agency's right to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of suspension.

(11) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) below, the agency, in addition to the right to a contested case hearing, may request an administrative review by the Department’s Administrator or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, may request an administrative review for imposition of conditions.

(c) The request for administrative review must be received by the Department within 10 days from the date of the Department’s notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the agency.

(e) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency, notwithstanding subsection (b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(12) INFORMAL CONFERENCE. After the Department has received a request for hearing, the Department shall offer the applicant or the agency

an opportunity for an informal conference unless an administrative review has been completed as described in section (11) of this rule.

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

411-323-0035 Endorsement
(Temporary Effective 7/1/2011 – 12/28/2011)

(1) ENDORSEMENT REQUIRED.

(a) To provide program services, an agency must have:

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

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

(C) For each licensed site or geographic location where direct services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370; and

(D) Approved endorsement for each program service as described in this rule.

(b) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate program services without being endorsed by the Department under these rules.

(c) Endorsements are not transferable or applicable to any other program services.

(d) The Department shall issue an endorsement to an applicant found to be in compliance with these rules and the corresponding program services rules. The endorsement shall be in effect for five years from the date issued unless revoked or suspended.

(2) CURRENT AGENCY ENDORSEMENT. All agencies providing program services as of July 1, 2011 shall be endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(3) ENDORSEMENT. A certified agency requiring endorsement must apply for an initial endorsement and for endorsement renewal notwithstanding section (2) of this rule.

(a) INITIAL APPLICATION. At least 30 days prior to providing program services, an agency must submit an application for endorsement that identifies the services that the agency intends to provide. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(b) RENEWAL.

(A) To renew endorsement, the agency must submit an application at least 30 days but not more than 120 days prior to the expiration date of the existing endorsement. On renewal, no additional program services shall be endorsed unless specifically approved by the Department.

(B) 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.

(C) If the renewal application is not submitted prior to the expiration date, the agency may not provide program services.

(D) The Department may not renew endorsement if the agency is not in substantial compliance with these rules or the corresponding program services rules.

(E) Renewal of endorsements for program services is contingent upon the successful renewal of the agency's certificate.

(c) If an applicant 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 for program services.

(d) Any applicant or person with an ownership interest in an agency shall be considered responsible for acts occurring during, and relating to, the operation of the agency for purpose of endorsement.

(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 an endorsement.

(f) Prior to issuance or renewal of the endorsement, the applicant must demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules and the corresponding program services rules.

(g) The Department shall conduct a review of the agency prior to the issuance of an endorsement.

(h) Separate endorsements are required for each endorsed program service.

(4) EXPIRATION. Unless revoked, suspended, or terminated earlier, each endorsement to provide program services shall expire five years following the date of issuance.

(5) TERMINATION. Endorsement shall automatically terminate on the date program services are discontinued or agency certification is terminated.

(6) CHANGE OF CERTIFICATION. New endorsement shall be required upon change of an agency's certification. The recertified agency must submit an application for endorsement at least 30 days prior to change of an agency's certification including but not limited to change in ownership or legal entity, legal status, or management corporation.

(7) CONDITIONS.

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

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

(A) Restricting the total number of individuals that may be served;

(B) Restricting the number and support level of individuals allowed within program services based upon the capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Reclassifying the level of individuals that may be served;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

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

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE. The Department shall notify the agency in writing of any conditions imposed, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the notice, or at such later date as indicated on the notice, and shall continue until removed by the Department.

(d) HEARING. The agency may request a contested case hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the imposition of conditions.

(A) The agency must request a hearing within 21 days of receipt of the Department's written notice of endorsement conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrative review as described in section (10) of this rule. The administrative review does not diminish the agency's right to a hearing.

(e) 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.

(8) 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 and the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized and the

agency fails to correct the non-compliance within 30 calendar days of receipt of written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules and the corresponding program services rules such that the health, safety, or welfare of individuals is jeopardized;

(D) Has demonstrated a failure to comply with applicable laws relating to safety from fire;

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

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

(G) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, program services finances, or individuals' funds;

(H) 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

(I) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(b) NOTICE. 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 or the corresponding program services 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 contested case hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of the endorsement.

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

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

(C) REVOCATION.

(i) Notwithstanding subsection (ii) below, the agency must request a hearing within 21 days of receipt of the Department's written notice of revocation. In addition to, or in lieu of a hearing, an agency may request an administrative review as described in section (10) of this rule. The administrative review does not diminish the agency's right to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325, must request a hearing within 10 days of receipt of the Department's written notice of revocation.

(9) 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 service may not continue operation.

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

(A) Notwithstanding subsection (B) below, the endorsed agency must request a hearing within 21 days of receipt of the Department’s written notice of suspension. In addition to, or in-

lieu of a hearing, the agency may request an administrative review as described in section (10) of this rule. The administrative review does not diminish the agency's right to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days of receipt of the Department's written notice of suspension.

(10) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) below, the agency, in addition to the right to a contested case hearing, may request an administrative review by the Department's Administrator or designee.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The request for administrative review must be received by the Department within 10 days from the date of the Department’s notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the request for administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The Department shall conduct the administrative review and issue a decision within 10 days from the date of receipt of the request for administrative review, or by a later date as agreed to by the agency.

(e) If the decision of the Department is to affirm the suspension, revocation, or condition, the agency, notwithstanding subsection (b) of this section, may appeal the decision to a contested case hearing as long as the request for a contested case hearing was received by the Department within 21 days of the original written notice of suspension, revocation, or imposition of conditions.

(11) INFORMAL CONFERENCE. After the Department has received a request for hearing, the Department shall offer the applicant or agency an opportunity for an informal conference unless an administrative review has been completed as described in section (10) of this rule.

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

411-323-0040 Inspections and Investigations
(Temporary Effective 7/1/2011 – 12/28/2011)

(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 Department's designee, 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 Department's designee, 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 Department's designee 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 Department's designee 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 Department's designee, or a law enforcement agency, the agency may conduct an investigation without further Department approval to determine if any personnel actions are necessary.

(8) 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 7/1/2011 – 12/28/2011)

(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 or subcontractor including respite providers and volunteers has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

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

> (a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be 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 subsection, "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the child or adult 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 services; or

(D) Restriction or prohibition of access to the agency or the individuals served by the agencies.

(4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. All agency staff are mandatory reporters. The agency must notify all staff of mandatory reporting status at least annually on forms provided by the Department. The agency must provide all staff with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following shall apply:

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

(b) Agencies providing services to children must report 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 abuse.

(6) BACKGROUND CHECKS. Any staff, volunteer, proctor provider, respite provider, crisis provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will 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 under ORS 181.534.

(a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, a person as 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 (6)(a) of this section does not apply to agency staff who were hired prior to July 28, 2009 and remain in the current position for which the staff member was hired.

(c) Any staff, volunteer, respite provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in 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 direct assistance to individuals must meet the following criteria:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and procedures for background checks in OAR 407-007-0200 to 407-007-0370 and section (6) of this rule;

(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 literate and capable of understanding written and oral orders;

(e) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;

(f) Be able to respond to emergency situations at all times; and

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

(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 Department's designee 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 as defined in OAR 407-007-0210;

(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 abuse; and

(f) Written documentation of required training and hours of training received as described in the program services rules.

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

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

411-323-0060 Policies and Procedures
(Temporary Effective 7/1/2011 – 12/28/2011)

(1) INDIVIDUAL RIGHTS. The agency must have and implement written policies and procedures that protect an individual's rights that address the following:

(a) ABUSE. Individuals as defined in OAR 411-323-0020 must not be abused nor shall abuse be tolerated by any staff or volunteer of the agency.

(b) PROTECTION AND WELLBEING. The agency must ensure the health and safety of individuals from abuse including the protection of individual rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18, where reasonable limitations have been placed by a parent or guardian, these rights must at a minimum allow for:

(A) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order:

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

(C) Visits with family members, guardians, friends, advocates and others of the individual's choosing, and legal and medical professionals;

(D) Confidential communication including personal mail and telephone;

(E) Personal property and fostering of personal control and freedom regarding that property;

(F) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(G) Protection from abuse and neglect, including freedom from unauthorized training, treatment, and chemical, mechanical, or physical restraints;

(H) Freedom to choose whether or not to participate in religious activity;

(I) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(J) Expression of sexuality within the framework of state and federal laws, and for adults over the age of 18, freedom to marry and to have children;

(K) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities, and health care resources;

(L) Individual choice for children and adults that allows for decision making and control of personal affairs appropriate to age;

(M) Services that promote independence, dignity, and self-esteem and reflect the age and preferences of the individual;

(N) Individual choice for adults to consent to or refuse treatment, unless incapable, and then an alternative decision maker must be allowed to consent or refuse for the individual. For children, the child's parent or guardian must be allowed to consent to or refuse treatment except as described in ORS 109.610 or limited by court order;

(O) Individual choice to participate in community activities; and

(P) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

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

(3) 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 representatives, and significant others of the individuals served by the agency to interact; and

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

(4) CONFIDENTIALITY OF RECORDS. The agency must have and implement written policies and procedures that ensure all individuals' records are 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) For the purpose of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

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

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

(a) Circumstances allowing the use of physical intervention. The agency must only employ physical intervention techniques that are included in the OIS curriculum approved by the Department or the OIS Steering Committee.

(b) Physical intervention techniques must only be applied:

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

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

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

(7) HANDLING AND MANAGING INDIVIDUALS' MONEY. The agency must have written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his or her own funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

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

(8) INFORMAL COMPLAINTS AND GRIEVANCES. The agency must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

(a) INFORMAL COMPLAINT RESOLUTION. An individual or someone acting on behalf of the individual must be given the opportunity to informally discuss and resolve any allegation that an agency has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity does not preclude the individual or someone acting

on behalf of the individual to pursue resolution through formal grievance processes.

(b) FORMAL GRIEVANCE AND GRIEVANCE LOG.

(A) The agency's formal grievance policies and procedures must include:

(i) A description of how the agency receives and documents grievances from individuals and others acting on the individuals' behalf; and

(ii) Investigation of the facts supporting or disproving the grievance.

(B) The Executive Director or designee must provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolved to the grievant’s satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant of the availability of assistance in appealing the grievance and how to access that assistance.

(C) The Executive Director or designee must submit to the Department for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the Department.

(D) Documentation of each grievance and its resolution must be filed or noted in the complainant’s record. In addition, the agency must maintain a grievance log, which must, at a minimum, identify the person making the complaint, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(c) If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, the Department, and notify the Executive Director or designee.

(9) 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 & 410.070
Stats. Implemented: ORS 409.050 & 410.070

411-323-0070 Variances
(Temporary Effective 7/1/2011 – 12/28/2011)

(1) The Department may grant a variance to these rules based upon a demonstration by the 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.

(2) The agency requesting a variance must submit, in writing, an 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; and

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

(3) The Department shall approve or deny the request for a variance.

(4) The Department's decision shall be sent to the agency and to all relevant Department programs or offices within 30 calendar days of the receipt of the variance request.

(5) The agency may appeal the denial of a variance request by sending a written request for review to the Administrator, whose decision is final.

(6) The Department shall determine the duration of the variance.

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

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