

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Developmental Disabilities

411

| | | |
|--------------------------|--|-------------------------------------|
| Agency and Division | | Administrative Rules Chapter Number |
| Kimberly Colkitt-Hallman | 500 Summer Street NE, E-48 Salem, OR 97301-1074 | (503) 945-6398 |
| Rules Coordinator | Address | Telephone |

RULE CAPTION

ODDS: Contested Case Hearings and Rights of Individuals Receiving Developmental Disabilities Services

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

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|----------------|-----------|---|-------|
| April 18, 2016 | 3:30 p.m. | Human Services Building 500 Summer Street NE, Rm. 160 Salem, Oregon 97301 | Staff |
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|--------------|------|----------|------------------|
| Hearing Date | Time | Location | Hearings Officer |
|--------------|------|----------|------------------|

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

OAR chapter 411, division 318

REPEAL:

Temporary Rules: 411-318-0000(T); 411-318-0005(T); 411-318-0010(T)

Stat. Auth.: ORS 409.050, 427.107

Other Auth.:

Stats. Implemented: ORS 183.411-183.471, 409.010, 427.107, 427.109

RULE SUMMARY

The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to permanently update the rights for individuals receiving

developmental disabilities services and the process to request a contested case hearing in OAR chapter 411, division 318.

The rules in OAR chapter 411, division 318 are being amended to --

- Make permanent temporary changes that became effective January 1, 2016;
- Incorporate the standards for home and community-based (HCB) services and settings and person-centered service planning adopted by the Department in OAR chapter 411, division 004 to implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS);
- Clarify that a request for a contested case hearing must be in writing;
- Reflect current Department terminology and the restructuring of the rules relating to developmental disabilities services; and
- Perform minor grammar, punctuation, formatting, and housekeeping changes.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

May 23, 2016 at 5:00 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

ODDS: Contested Case Hearings and Rights of Individuals Receiving Developmental Disabilities Services

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The amendment of OAR chapter 411, division 318 and repeal of temporary OAR 411-318-0000(T), 411-318-0005(T), and 411-318-0010(T) relating to contested case hearings and the rights of individuals receiving developmental disabilities services.

Statutory Authority:

ORS 409.050, 427.107

Other Authority:

Stats. Implemented:

ORS 183.411-471, 409.010, 427.107, 427.109

Need for the Rule(s):

The Department needs to amend the rules in OAR chapter 411, division 318 to --

- Make permanent temporary changes that became effective January 1, 2016;
- Implement the regulations and expectations of CMS for Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning;
- Provide a uniform process for contested case hearing requests;
- Reflect current Department terminology and the restructuring of the rules relating to developmental disabilities services; and
- Perform minor grammar, punctuation, formatting, and housekeeping changes.

The Department is proposing to amend the rules in OAR chapter 411, division 318 to --

- Make permanent temporary changes that became effective January 1, 2016;
- Adopt the standards for HCB services and settings and person-centered service planning adopted by the Department in OAR chapter 411, division 004 on January 1, 2016;
- Clarify that a request for a contested case hearing must be in writing;

- Reflect current Department terminology and the restructuring of the rules relating to developmental disabilities services; and
- Perform minor grammar, punctuation, formatting, and housekeeping changes.

Documents Relied Upon, and where they are available:

Senate Bill 22 (2013 Regular Session)

Available at: <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/SB22/Enrolled>

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR chapter 411, division 318 will not have a fiscal or economic impact on individuals receiving services and the public because the proposed changes simply mirror existing statutory language and clarify existing processes.

The Department estimates that amending OAR chapter 411, division 318 may require additional training and form revision for State Agencies, Community Developmental Disabilities Programs (CDDPs), Support Service Brokerages, and Providers. The Department is unable to estimate the impact due to not having data on the number of employees that will need training. Revisions to forms will have a negligible fiscal impact.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

There are approximately 32 CDDPs and 14 Support Service Brokerages. Of these, no CDDPs or Support Service Brokerages are considered a small business as defined by ORS 183.310.

The Department is unable to estimate the number of service providers that may be considered a small business as defined by ORS 183.310.

Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The impact to providers is described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The impact to providers is described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included self-advocates and representation from CDDPs, Support Service Brokerages, SEIU 503, Oregon Council on Developmental Disabilities, Disability Rights Oregon, Oregon Rehabilitation Association, Association of Community Mental Health Programs, and Residential and Supported Living Provider Partnerships for Community Living.

Signed Lilia Teninty, Director, Developmental Disabilities

3/9/2016

Signature

Date

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~~ DISABILITIES SERVICES

411-318-0000 Statement of Purpose and Scope

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

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

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

(c) The requirements for notification in the event a developmental ~~disability~~ disabilities 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~~ disabilities 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~~ disabilities services and service settings described in: OAR chapter 411, divisions 004 and 300 to 450.

~~(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 183.411-183.471, 409.010, 427.107, 427.109

411-318-0005 Definitions

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.~~

~~(31) "CDDP" means "Community Developmental Disability Disabilities 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.~~

(72) "Claimant" means the individual person directly impacted by ~~the~~ an action that is the subject of a hearing request.

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

(94) "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.

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

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

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

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

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

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

(1610) "Department Staff" means ~~the a~~ 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.~~

(1911) "Exit" means termination or discontinuance of a Department-funded developmental ~~disability disabilities~~ service ~~by a licensed or certified provider.~~

(2012) "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.~~

(2213) "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.~~

(2414) "Informal Conference" means the discussion between a claimant, the representative of the claimant, Department staff, and a Department

representative that is ~~help~~held 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.

~~(2515)~~ "Informal Discussion" means the conversation between an individual ~~or~~making a complaint, or as applicable 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.

~~(2616)~~ "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

~~(2717)~~ "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.~~

~~(2918)~~ "Local Program" means the ~~local CDDP, Support Services Brokerage~~case management entity, provider organization, ~~GIS Program,~~ or other certified, licensed, or endorsed provider or agency with which the Department contracts to provide developmental ~~disability~~disabilities services and is providing services to the individual with whom ~~the~~a 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.~~

(~~3119~~) "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.

(~~3220~~) "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~~ disabilities service is denied, reduced, suspended, or terminated.

(~~3321~~) "OAH" means the Office of Administrative Hearings.

(~~3422~~) "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~~23) "Program Director" means the Director of a local program or the designee of the Director.

(~~38~~24) "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~~25) "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-disabilities~~ services or during the complaint or hearing process. The representative may not be ~~an employee of the~~ Department, CDDP, or Support Services Brokerage ~~employee~~ acting in official capacity. An individual or ~~athe~~ legal representative ~~effor~~ the individual is not required to choose a representative.

(~~4326~~) "Request for Service" means:

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

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

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

(~~4427~~) "Service" means ~~the developmental disabilities services and service settings described in OAR chapter 411, divisions 004 and 300 to 450~~ "developmental disability services" as defined in this rule.

(~~4528~~) "Service Funds" ~~means~~ mean state public funds or Medicaid funds used to purchase developmental ~~disability-disabilities~~ 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.~~

(~~4829~~) "These Rules" mean the rules in OAR chapter 411, division 318.

(~~4930~~) "Transfer" means movement of an individual from ~~a one~~ service setting to ~~another a different~~ service setting administered or operated by the same provider.

(~~5031~~) "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-~~183~~.471, 409.010, 427.107, 427.109

411-318-0010 Individual Rights

~~(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.~~

(~~21~~) While receiving developmental ~~disability~~ disabilities 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 and personal~~, chemical ~~restraint, or~~, and mechanical restraint and restraints, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(~~c~~) Be assured that ~~prescribed~~ medication is administered only for the clinical needs of the individual as ~~prescribed~~ indicated 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;

(~~ed~~) 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;

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

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

(~~fg~~) 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~~people chosen by the individual through personal visits, mail, telephone, or electronic means;

(~~gh~~) ~~Contact and v~~isits 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~~legal and medical professionals;

(~~hi~~) Participate regularly in the community and use community resources, including recreation, developmental ~~disability~~disabilities services, employment services, school, educational opportunities, and health care resources;

(~~ij~~) 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;

(~~jk~~) ~~Reasonable and lawful compensation for performance of~~Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;

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

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

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

~~(nq)~~ 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 in a manner that is most integrated, considering the preferences and age of the individual;

~~(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;~~

(op) 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;

~~(pq)~~ Ongoing ~~opportunity to participate~~participation 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~~in a manner that ensures meaningful individual participation, and the right to invite others chosen by the individual to participate in the plan for services;

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

~~(rs)~~ A timely decision upon request for a change in the plan for services and a reassessment of service needs;

~~(t) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services, and exercise of a complaint procedure;~~

(su) 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~~of necessary continued services; ~~(t)~~, and 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, or appeals 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~~w) Be encouraged and assisted in exercising all legal, civil, and human rights;

~~(x) Exercise all rights accorded to other citizens of set forth in ORS 426.385 and 427.031 if the individual is committed to the Department 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.; and

(aa) 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, as provided under ORS 430.212 and OAR 411-320-0090.

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

(3) In addition to the rights described in section (1) of this rule, individuals receiving home and community-based services in residential and non-residential home and community-based settings have the right to home and community-based settings with the qualities described in OAR 411-004-0020(1).

(4) In addition to the rights described in sections (1) of this rule, individuals receiving home and community-based services in provider owned, controlled, or operated residential settings have the right to provider owned, controlled, or operated residential settings with the qualities described in OAR 411-004-0020(2).

(a) For children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, the qualities described in OAR 411-004-0020(2) apply in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities.

(b) Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, must be addressed through a person-centered service planning process and documented in the ISP for the child.

(c) Limitations that deviate from and are more restrictive than what is typical for children of the same age without disabilities must comply with OAR 411-004-0040.

(35) 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.~~

(56) 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.

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

(78) 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-~~183.~~471, 409.010, 427.107, 427.109