DHS Oregon Department of Human Services

Aging and People with Disabilities

Policy Transmittal

Patrice Botsford
Authorized Signature

Number: **APD-PT-13-014**
Issue Date: 7/22/2013

Topic: Developmental Disabilities

Transmitting (check the box that best applies):

☒ New policy ☒ Policy change ☐ Policy clarification ☐ Executive letter
☒ Administrative Rule ☐ Manual update ☐ Other: _____

Applies to (check all that apply):

☐ All DHS employees
☐ Area Agencies on Aging
☐ Aging and People with Disabilities
☐ Children, Adults and Families
☒ County DD Program Managers
☐ County Mental Health Directors
☐ Health Services
☒ Other (please specify): DD service providers who provide services delivered at a service site , DD Brokerages, OLRO-DD, ODDS staff

Policy/rule title:	Notice of Involuntary Transfer and Exit		
Policy/rule number(s):	411-325-0390; 411-328-0790; 411-345-0140; 411-346-0180; and 411-360-0170	Release no:	
Effective date:	July 1, 2013	Expiration:	
References:	ORS 443		
Web Address:	http://www.dhs.state.or.us/policy/spd/numeric.htm, currently located under Temporary Rules		

Discussion/interpretation:

Effective July 1, 2013, to comply with Medicaid requirements, temporary emergency rules were implemented requiring providers owning or controlling the service site to issue a “Notice of Involuntary Transfer or Exit” to individuals when the individual has not chosen to leave the service site. The notice requirement applies to both residential and employment/Alternatives to Employment sites. Service providers must also notify the Services Coordinator or Personal Agent providing case management services to the individual receiving the notice.

A service provider may not transfer or exit an individual involuntarily without 30-days advance written notice to the individual and individuals have the right to a contested case hearing under ORS 183 to appeal an involuntary transfer or exit.

For rule language for specific settings, see the Oregon Administrative Rules applicable to the particular service or Service Element. General rule language for the policy changes is:

VOLUNTARY TRANSFERS AND EXITS

(a) If an individual or the individual's legal representative gives notice of the individual's intent to exit, or the individual abruptly exits, the service provider must promptly notify the individual's CDDP services coordinator.

(b) A service provider must notify an individual's ISP team prior to the individual's voluntary transfer or exit.

(c) Notification and authorization of the individual's voluntary transfer or exit must be documented in the individual's record.

(d) A service provider is responsible for the provision of services until an individual exits the home.

INVOLUNTARY TRANSFERS AND EXITS

(a) A service provider may only transfer or exit an individual involuntarily for one or more of the following reasons:

(A) To protect the health, safety, and welfare of the individual or others in the home;

(B) The individual's service needs exceed the ability of the service provider;

(C) The individual fails to pay for services; or

(D) The service provider’s Developmental Disability Certification or Endorsement as described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider may not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the individual's legal representative, and the CDDP services coordinator except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others at the service site as described in

subsection (c) of this section.

(A) The written notice must be provided on a form approved by the Department (form SDS 0719) and include:

(i) The reason for the transfer or exit; and

(ii) The individual's right to a hearing as described in subsection (e) of this section.

(B) A notice is not required when an individual or the individual's legal representative requests a transfer or exit.

(c) A service provider may give less than 30 days advanced written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the individual, the individual's legal representative, and CDDP services coordinator immediately upon determination of the need for a transfer or exit.

(d) A service provider is responsible for the provision of services until an individual exits the home.

(e) HEARING RIGHTS. An individual must be given the opportunity for a contested case hearing under ORS 183 to appeal an involuntary transfer or exit. If an individual or the individual's representative requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advanced written notice of an exit or transfer as described in subsection (c) of this section and the individual or the individual's representative has requested a hearing, the service provider must reserve the individual's room until receipt of the Final Order.

Implementation/Transition instructions:

CDDP and Brokerage staff must review and assure adherence to the transfer and exit rules applicable to services they authorize and monitor.

Effective immediately, service providers desiring an individual to permanently leave the service site through a transfer or exit must provide a minimum of 30 days written notice to the individual or their legal representative, using the DHS approved form. In addition, providers must notify the ISP team and the CDDP Services Coordinator (or the Brokerage Personal Agent if a Brokerage is providing case management services) of the notice of action. Transfer or exit from a site based upon an individual's choice and included in ISP team agreements does not require a notice. Exit notice is not required for individuals receiving respite care.

Form 0719 is the currently approved DHS-DD "Notice of Involuntary Transfer or Exit". The form is attached and found online at the DHS Forms website: https://apps.state.or.us/cf1/FORMS/

Training/communication plan: Information provided in this transmittal. ODDS staff will provide technical assistance and may be available to meet with provider organizations for training and discussion.

Local/branch action required: Services Coordinators and Personal Agents will receive notice from providers of "Notice of Involuntary Transfer or Exit" given to individuals and may assist individuals to exercise their grievance rights.

Central office action required: Provide technical assistance and process hearing requests, as necessary.

Field/stakeholder review: ☒ Yes ☐ No

If yes, reviewed by: rule language and form drafts reviewed by Exit Notice Workgroup

Filing Instructions: None

If you have any questions about this policy, contact:

Contact(s):	Mariah Forrest		
Phone:	503-947-1105	**Fax:**	503-945-6219
E-mail:	Mariah.forrest@state.or.us		

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DEVELOPMENTAL DISABILITIES
Mandatory Written Notice of Involuntary Transfer or Exit

A 30 day written notice of involuntary transfer or exit is required from a Medicaid agency provider when an individual is requested to change service locations or terminate services, unless the exit or transfer is due to a medical emergency or behavior presenting imminent danger to the individual or others. In a case of imminent danger, notice may be less than 30 (thirty) days. However, written notice must be provided as soon as possible and the services kept available for the individual's return per section "e" on page 2.

Notice issued to *(name of individual)*: _____ Date: _____

From *(name of provider)*: _____

Residence/service address: _____

City, State, ZIP: _____ Email: _____

Phone number of provider: _____

Copies of this notice have been issued to the following:

Name	Role/Relationship	Address
	Services Coordinator/Personal Agent	
	Legal guardian	

Date of transfer or exit: _____

You are relocating/transferring to *(if known)*: _____

This action is being taken because *(check all appropriate boxes)*:

- ☐ Your behavior poses an imminent danger to the health and safety of yourself or others in the home
- ☐ Your ISP team has decided that this move is in your best interest
- ☐ Medical emergency, including an increase in your level of care
- ☐ Your care needs exceed your provider's ability
- ☐ Non-payment for care
- ☐ Relocation of the home/service
- ☐ Provider's license, certification or endorsement has been revoked, surrendered, suspended or not renewed
- ☐ Provider intends to rent, sell or lease the home

Additional facts:

You have the right to request a formal administrative hearing with the Department of Human Services (DHS) if you are in disagreement with this notice. Individuals requesting a hearing while still receiving services in the place from which exit is ordered maintain the right to continue services until such time as the Final Order is received. If the provider is not renewing their license/certification, the license or endorsement has been revoked or suspended, or your current placement results in imminent danger to yourself or others, you do not have the right to continue receiving services at the service site. If the exit is due to a medical emergency or behavioral issue(s) posing imminent danger to yourself or others, the provider must reserve your room in the home or availability of your services until receipt of the Final Order. Hearings requested for action based upon a medical emergency or behavioral issue(s) posing imminent danger must occur within seven days of the exit. To request a hearing, please complete the attached Hearing Request form.

_____ _____

Signature of DD provider issuing notice Date

What to do when you do not agree with a written Notice of Involuntary Transfer or Exit

a. You have the right to appeal the Notice of Involuntary Transfer or Exit by requesting a formal administrative hearing, as is your right under Oregon Administrative Rules 411-325-0390; 411-328-0790; 411-345-0140; 411-346-0180; and 411-360-0170; and Oregon Regulatory Statute 443.738.

b. If you want a hearing, you must request it on time. **The Department of Human Services (DHS) must receive your postmarked request within *45 days* from the date of *the Notice of Involuntary Transfer or Exit*, entered at the top of page one. If you do not ask for a hearing within the 45 days, you may lose your right to have a hearing.**

c. If you request a hearing while still residing in the home or receiving supports for which you are appealing the Notice of Involuntary Transfer or Exit, you may continue to reside in that home and continue to receive supports from that provider, unless the provider is not renewing their license, the license has been revoked or suspended, or your current placement results in imminent danger to the health and safety of yourself or others at the service site.

d. To request a hearing, you must fill out the attached form titled **Administrative Hearing Request for Notice of Involuntary Transfer or Exit**. Your Services Coordinator, Personal Agent, or other personal representative can help you fill out the form if needed.

Forms must be submitted to:

Complaint Coordinator, ODDS
500 Summer Street NE, E-10
Salem, OR 97301

e. If you have received a Notice of Involuntary Transfer or Exit due to a medical emergency or behavioral issue(s) which places you or others in imminent danger, you may be granted a hearing within 7 days of the Department's receipt of your request for Administrative Hearing. The provider must maintain your room/unit at the home or availability of services, if you were exited or transferred for medical or behavioral risks, until the Final Order is issued.

f. If you do not ask for a hearing on time, withdraw a hearing request or do not appear at your hearing, the agency's file and anything you have submitted will be the record of your case and the Notice of Involuntary Transfer or Exit will be the department's final decision, called the Final Order by Default. You will not get a separate Order by Default. The record submitted is used to support DHS's decision upon default. If you disagree with the decision in the Final Order, you may appeal the Final Order under ORS 183.482 if you file a petition in the Oregon Court of Appeals. **The appeal must be filed within 60 days of the date of the Final Order**.

g. You will receive a written Notice of Hearing from the Office of Administrative Hearings, which will tell you the date, time and place of your hearing. You may attend your hearing in person or by telephone.

h. You can request a delay of your hearing, but you must contact the Hearing Coordinator listed on your Notice of Hearing immediately. Only the Office of Administrative Hearings (OAH) can postpone a hearing.

i. NOTE TO MILITARY PERSONNEL: Active duty service-members have a right to stay these proceedings under the federal Service-members Civil Relief Act. For more information, you may contact the Oregon State Bar (800-452-8260), the Oregon Military Department (800-452-7500), or the nearest legal assistance office, http://legalassistance.law.af.mil.

j. Hearings are held before an Administrative Law Judge who works for the Office of Administrative Hearings, not for DHS. Hearings are conducted under rules that start at OAR 137-003-0501 and statutes that start at ORS 183.411. At the hearing, you can explain why you do not agree with the Notice of Involuntary Transfer or Exit. You can have people testify for you, and you may submit materials and your case file information related to this matter (which is called "the record").

k. At the hearing, you may have a legal representative or friend help you. DHS does not pay the costs for witnesses or an attorney. You may be able to get free legal services from Disability Rights Oregon or your local Legal Aid Office may be able to assist you if you have limited financial resources. If you withdraw a hearing request or miss a hearing, the appeals deadline is described in the Dismissal Order.

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Administrative Hearing Request for Notice of Involuntary Transfer or Exit

If you want a hearing regarding a Notice of Involuntary Transfer or Exit from your residential home for individuals with developmental disabilities, you or your legal representative (*guardian*) must fill out this form **within 45 days of the date the notice is issued.** You may also get assistance to complete the form from your Services Coordinator, Personal Agent, or another representative such as an advocate or other legal counsel.

Claimant or claimant's representative completes this part

Name of claimant *(individual receiving notice)*: _____

Date of birth: _____ Phone: _____

Address: _____

Name of provider issuing notice: _____

☐ I did not receive written notice ☐ I received written notice Date of notice: _____

I am asking for a hearing because I do not agree with the decision to:

☐ Exit ☐ Transfer ☐ Relocate with provider

Briefly explain why you disagree with the Notice of Involuntary Transfer or Exit *(attach additional sheets as needed)*:

_____

Check the box if your Notice of Involuntary Transfer or Exit was due to:

☐ Medical emergency ☐ Behavior posing imminent danger to yourself or others

If you checked one of the boxes above, you are entitled to an expedited hearing within 7 days from the date the department receives this request for an Administrative Hearing.

Name of person, if other than claimant completing this form: _____

Phone number: _____

Address: _____

Relationship to claimant *(guardian, legal counsel, advocate)*: _____

Signature: _____

The Administrative Law Judge may conduct the hearing by phone. In a telephone hearing, the Administrative Law Judge participates by phone. You may participate in your administrative hearing from the developmental disability office or another location.

Signature of claimant: _____ Date: _____

Department of Human Services (DHS) completes this part			
DHS contact for this matter:			Phone:
Issue code:			Date:
Date of notice:	Cost center:	Date of initial hearing request:	Date request rec'd by DHS:
Case number, prime number or DD followed by last 4 digits of SSN:			
Claimant speaks English? ☐ Yes ☐ No	Claimant primary language:		
Alternate format? ☐ Yes ☐ No If yes, specify:			
☐ Braille	☐ Audio tape	☐ Large print	☐ Diskette ☐ Oral presentation