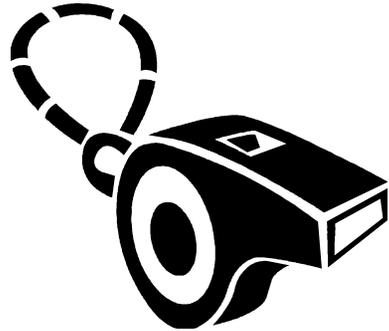


Agency Certification and Endorsement

Oregon Administrative Rule Changes
Chapter 411, Division 323

Disclaimer



OAR references to the 411–323 Agency Certification and Endorsement Rule are based on proposed language and is subject to change with public comment period and finalization of the Oregon Administrative Rules on December 29th, 2014.

This power point does not contain all of the content in the Agency Certification and Endorsement Rule. It is important that you read the rule in its entirety.

Overview

- ▶ Many of the changes noted in the rule are referred to as “housekeeping” changes.
- ▶ The proposed rules:
 - ✓ Implement Senate Bill 22 by updating the rights of individuals receiving developmental disability services.
 - ✓ Update provider qualifications and personnel requirements.
 - ✓ Reflect new Department terminology and current practice.
 - ✓ Streamline definitions by incorporating the general definitions in OAR 411–317–0000, updates the definitions to reflect correct terminology, and includes definitions for terms created by the proposed rulemaking.

New Definitions

411-323-0020

- ▶ A number of new definitions have been added to the rule.

“Complaint”

“Designated Representative”

“Informal Conference”

“Intellectual Disability”

“Mechanical Restraint”

“Positive Behavioral Theory and Practice”

“Provider”

“Service Setting”

Definitions Moved



- ▶ Some definitions that are commonly used across all Individuals with Intellectual or Developmental Disabilities Services Rules were moved to a new Definition Rule 411-317.

Updated Definitions

411-323-0020



A number of definitions have been updated to reflect correct terminology and for consistency across rules.

Certification
Current Agency Certification
411-323-0030 (2)

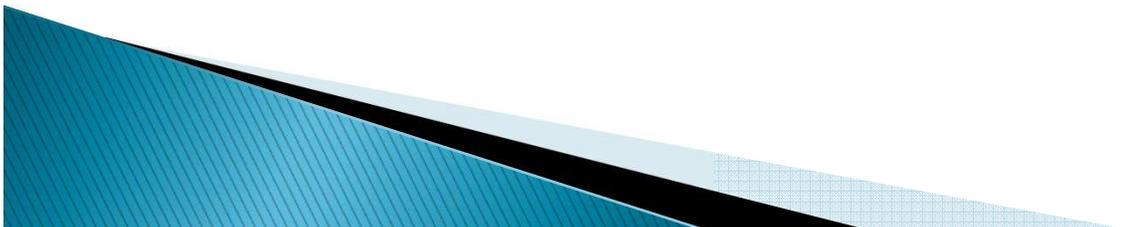


- ▶ This section of the rule has been updated to correctly reference residential “treatment” facilities for people who are mentally or emotionally disturbed.

Certification
Initial Certification
411-323-0030 (3) (a), (d) (D)

- ▶ The rule requires that applicants submit an application to the Department at least 90 days prior to the proposed date of provision of services to individuals.

- ▶ The rule now requires that an agency immediately notify the Department orally of cancellation or restriction of any insurance coverage required by the contract, and must confirm the cancellation or restriction in writing within 3 days of receiving notification from the insurance company.

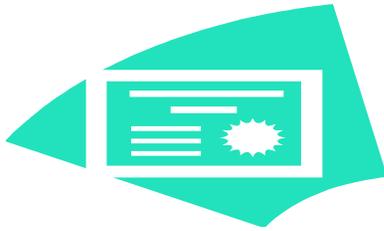


Certification
Certificate Renewal
411-323-0030 (4) (a) (B), (D)



- ▶ To renew a certificate an agency must:
 - ✓ Identify the scope of program services the agency provides and provide proof of endorsement for each program service.
 - ✓ Demonstrate proof of continued liability and operational insurance coverage.

Certification
Certificate Conditions
411-323-0030 (11) (c) (C)



- ▶ The Department may now impose conditions on a certificate that include restricting the type of support and services the agency may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals.

Certification
Certificate Conditions
411-323-0030 (11) (e) (B)

An agency may request a hearing in accordance with ORS Chapter 183 and this rule upon receipt of written notice of certificate conditions. The request for a hearing must be in writing.

Agencies may also request an administrative review. The request for an administrative review must be in writing.



Certification

Certificate Denial, Refusal to Renew, or Revocation
411-323-0030 (12) (a) (G)

- ▶ The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency, or any person holding 5 % or greater ownership interest in the agency has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers maintained by the Office of the Inspector General.

Hearing

411-323-0030 (12) (c) (C) (I)

- ✓ All requests for hearings and administrative reviews must be made in writing to the Department.



Certification

Immediate Suspension of Certificate

411-323-0030 (13) (b) (i)

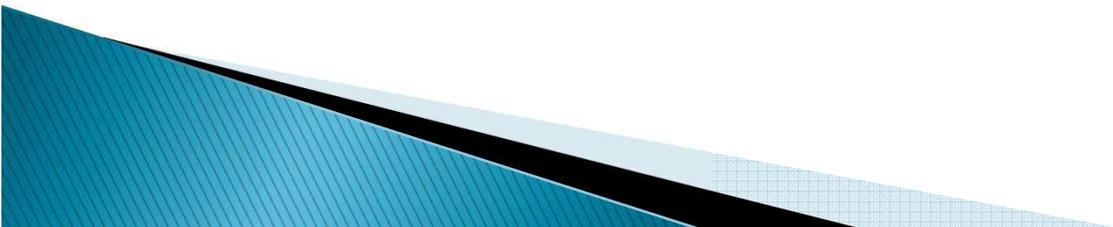
- ▶ Again all hearing and administrative review requests must be submitted in writing to the Department.
- ✓ There are specific timelines for submission of requests for hearings and administrative reviews.

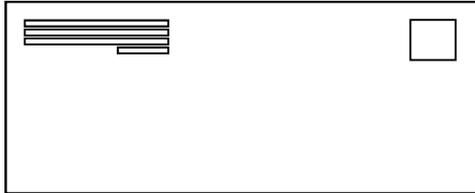


Certification
Administrative Review
411-323-0030 (14) (a) - (e)

- ▶ In addition to a hearing, an agency may request an administrative review when the Department is taking action on a certificate.
 - ✓ Conditions on Certificate
 - ✓ Certificate Denial, Refusal to Renew, or Revocations
 - ✓ Immediate Suspension of Certificate

- The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions.





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

- ❑ If the decision of the Department is to affirm the suspension, revocation , or condition, then the agency may choose to request a hearing.
 - ✓ The request must be in writing.

 - ✓ The Department must receive the written request within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

Endorsement 411-323-0035 (1)

- ▶ Language has been updated to state “service setting” instead of program services.



Current Agency Endorsement 411-323-0035 (2)

- This section of the rule has been updated to correctly reference residential “treatment” facilities for people who are mentally or emotionally disturbed.

Endorsement

Endorsement Renewal

411-323-0035 (4) (a) (A), (b)

- To renew an endorsement the certified agency must submit an application to the Department at least 90 days prior to the expiration date of the existing endorsement.
- Only existing program services are endorsed on renewal.

Existing Endorsement - Adding a Geographic Location

411-323-0035 (5)

- The agency must report the additional geographical location on a form provided by the Department at least 30 days prior to providing program services at the additional geographical location.



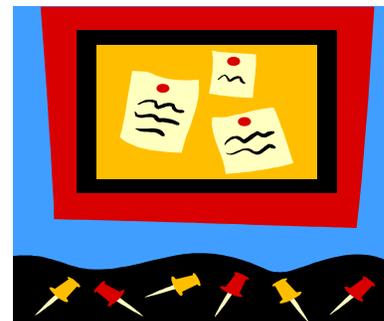
Endorsement Conditions 411-323-0035 (10) (c) (B) - (C), (d)



The Department may now impose conditions on an endorsement that include restricting the type of support and services the agency may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals.

- ✓ The Department must issue a written notice of the conditions being imposed.
- ✓ Conditions take effect immediately upon issuance of the written notice or a later date as indicated on the notice, and are a final order of the Department unless later rescinded through a hearing process.

- ✓ Conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.
- ✓ Agencies may request a hearing. The request for a hearing must be in writing.
- ✓ Agencies can also request an administrative review. The request for an administrative review must be in writing.
- ✓ Conditions must be posted with the endorsement in a prominent location and be available for inspection at all times.



Endorsement Denial, Refusal to Renew, or Revocation 411-323-0035 (11) (a) (H)

- ▶ The Department May deny, refuse to renew, or revoke a endorsement when the Department finds the agency, or any person holding 5 % or greater ownership interest in the agency has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers maintained by the Office of the Inspector General.
- ✓ Agencies can request a hearing.
- ✓ Agencies can request an administrative review.
- ✓ All requests for a hearing and administrative review must be submitted in writing to the Department.



Immediate Suspension of Endorsement 411-323-0035 (12) (a) (A) (i) (ii)

- ▶ Agencies can request a hearing and an administrative review.
- ▶ All requests must be submitted in writing to the Department.



- ▶ There are specific timelines associated with hearing and administrative review requests.



Endorsement Administrative Review 411-323-0035 (13)

- ▶ In addition to a hearing, an agency may request an administrative review when the Department is taking action on an endorsement.
 - The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions.
 - The determination of the administrative review is issued in writing within 10 business days from the receipt of a written request for an administrative review, or by a later date as agreed to by the agency.

- ❑ If the decision of the Department is to affirm the suspension, revocation , or condition, then the agency may choose to request a hearing.
 - ✓ The request must be in writing.



- ✓ The Department must receive the written request within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

Endorsement
Informal Conference
411-323-0035 (14)



Unless an administrative review has been completed an applicant or agency requesting a hearing may have an informal conference with the Department.

Agency Management and Personnel Practices 411-323-0050 (2)

- ▶ Agencies must have and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a “relief provider” has been identified as an accused person in an abuse investigation or when an allegation of abuse has been substantiated.

Agency Management and Personnel Practices
Background Checks
411-323-0050 (6)



This section of the rule is being amended to require that relief care providers and any staff who are not identified in this rule but use public funds intended for the operation of an agency must also have an approved background check.

Agency Management and Personnel Practices
General Staff Qualifications
411-323-0050 (8)

- ▶ This section of the rule has been updated to include that any staff member providing services to individuals must meet the following criteria:
 - Consent to and pass a background check by the Department, and be free of convictions or founded allegations of abuse by the appropriate agency including, but not limited to the Department.
 - ✓ Background rechecks must be performed biannually, or as needed, if a report of criminal activity has been received by the Department.

- ✓ The rule allows for portability of background check approval.

“A subject individual as defined in OAR 407-007-0210 may be approved for one position to work in multiple locations within the qualified entity as defined in OAR 407-007-0210. The Background Check Request form must be completed by the subject individual to show intent to work at various locations.”

- The rule has also been updated to include that any staff member providing services to individuals must meet the additional following criteria:

- ✓ Be legally eligible to work in the United States.

- ✓ Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training and skills.

- ✓ Understand the requirements of maintaining confidentiality and safeguarding individual information.
- ✓ Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General.
- ✓ Be able to respond appropriately to emergency situations at all times.
- ✓ If transporting an individual, have a valid license to drive and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.



Policies and Procedures
Individual Rights
411-323-0060 (1)



Please read this section of the rule carefully. The Department has updated this section of the rule in response to Senate Bill 22.

- ▶ Senate Bill 22 required that the Department have uniform rules that update and provide consistent requirements related to rights of individuals receiving developmental disability services.



- ✓ The changes noted in this section of the rule require agencies to update their policies and procedures and train their staff accordingly.



A training has been provided on Rights. Look for the power point on our website.

Policies and Procedures
Individual and Family Involvement
411-323-0060 (3) (b) - (c)

- ▶ This section of the rule has been updated to include “designated representatives.”
- ✓ Agencies will need to update their policies and procedures on Individual and Family Involvement to include designated representatives and train their staff accordingly.



Policies and Procedures
Confidentiality of Records
411-323-0060 (5) (b) - (c)

- ▶ The proposed changes in this section of the rule include the following:
 - ✓ Access to records by the Department does not require authorization by an individual or the legal or designated representative or family of the individual.



- ✓ Agencies will need to update their policies and procedures on Confidentiality of Records and train their staff accordingly.

Policies and Procedures
Behavior Support
411-323-0060 (6)

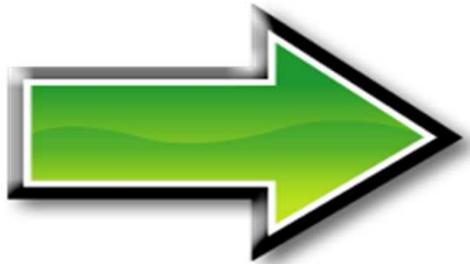
- ▶ The proposed change in this section of the rule includes the following:
 - ✓ The agency must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.



- ✓ Agencies will need to update their policies and procedures on Behavior Support and train their staff accordingly.

Policies and Procedures Protective Physical Intervention 411-323-0060 (7)

- ▶ The proposed changes in this section of the rule include the following:
 - ❑ The agency must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee.
 - ❑ Protective physical intervention procedures must be documented in the ISP.



Agencies will need to **update their policies and procedures on Behavior Support and train their staff accordingly.**

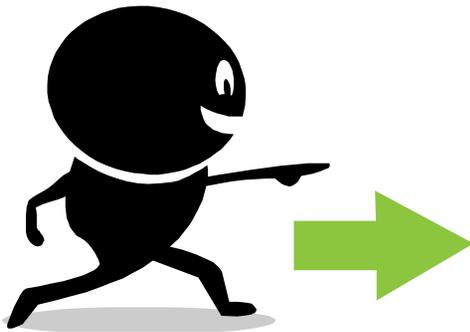
Policies and Procedures
Handling and Managing Individuals' Money
411-323-0060 (8)



This section of the rule has been updated to require that the agency have and implement written policies and procedures for the handling and management of money for the individuals.

Policies and Procedures Complaints 411-323-0060 (9)

- ▶ All complaints made by an individual or on behalf of an individual must be addressed in accordance with OAR 411-318-0015.



Agencies will need to update their policies and procedures related to Complaints and train staff accordingly.



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



Refer to OAR 411-318-0000 for more information on complaint requirements including additional information that must be maintained in compliant logs.

Variations

411-323-0070

- ▶ The rule has been updated to clarify that the Department will not grant a variance when the request violates state or federal laws.
- ▶ Requires that the Department send the decision on a variance request to the agency, the CDDP, and to all relevant Department programs or offices within 30 days from receipt of the variance request.
- ▶ Clarifies that and agency may request an administrative review of the denial of a variance request.
- ▶ Specifies that the Department must receive a request for an administrative review from an agency within 10 business days form receipt of the denial from the Department.