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DHS
Oregon Department of Human Services

December 1, 2014

To: Christina Hartman
DD Rules and Policy Analyst

From: Kimberly Colkitt-Hallman, Administrative Rules Coordinator
Aging and People with Disabilities and
Developmental Disabilities

Subject: Hearing Officer's Report
November 19, 2014 Rulemaking Hearing for ODDS - Definitions, Individual Rights, Complaints, Notification of Planned Action, and Contested Case Hearings

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The purpose of the hearing was to take public testimony regarding the proposal of the Department of Human Services (Department), Office of Developmental Disability Services (ODDS) to make permanent the July 1, 2014 temporary rule changes that became permanent on July 1, 2014.

The proposed rules adopt OAR 411-317-0000 to create a general rule for definitions and rules in OAR chapter 411, division 318 to prescribe:

- The rights of individuals receiving developmental disability services in accordance with Senate Bill 22 (2013 Regular Session);
- The process for reporting and investigating a complaint regarding dissatisfaction with a developmental disability service or provider;
- The requirements for a Notification of Planned Action in the event a developmental disability service is denied, reduced, suspended, or terminated;
- The contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disability service; and
- The contested case hearing processing for challenging a provider notice of involuntary reduction, transfer, or exit.

Public Comments

No one testified at the rulemaking hearing on November 19, 2014.

Written Comments

Clackamas County Health, Housing & Human Services, Pat Zullo, Program Manager Developmental Disabilities– Exhibit #1

The written comments provided by Ms. Zullo are summarized below.

Ms. Zullo feels all state forms need to be translated in Spanish, Russian, and at least one Southeast Asian language. Ms. Zullo feels this is critical information for individuals and families, in terms of informing them of expectations and services. Ms. Zullo says interpreters and phone translation services are a poor substitute for written forms and documents.

Ms. Zullo feels the workload model needs to be updated and revisited to incorporate new requirements in the OAR that were not accounted for in the existing workload model. Ms. Zullo gives the example of 411-318-0015(10)(a)(b)(C)(D) and 12(a)(b) which talks about a letter acknowledging complaints within five business days and scheduling an opportunity for "informal discussion". These are both new requirements and will have additional and unknown costs.

Ms. Zullo stated contested case hearings require testimony from service coordinators and the impact on staff and the relationship with their customer's and their families will cost money, along with the costs of county counsel in terms of hearing preparation and representation. Ms. Zullo then states the cost for their first contested case hearing, set for November 26, 2014.

For the hearing and hearing prep, the CDDP is charged an hourly rate for consultation with county counsel. The service coordinator, a supervisor, and two county attorneys spent an hour reviewing what they believe are the contested issues and the supporting documents in regards to that issue (an ANA and the guidelines for completing an ANA). County Counsel coached the service coordinator on how to give testimony and the potential for county liability. Ms. Zullo said a DHS staff person was supposed to be present for this initial meeting, but did now show up. DHS staff was available for a second meeting that lasted an hour and a half and also included the service coordinator, a supervisor, and one county attorney. The hearing is anticipated to take at least one hour of the county counsel's

time plus the service coordinator and supervisors time. They estimate the cost of all of this to be around $735 for the first case.

Ms. Zullo feels the desired outcome of her comments would be to adjust the workload model to incorporate additional workload. ODDS should represent the Department and local Program's interests in contested case hearings and, only in rare cases, involve CDDP staff.

IDD Coalition, Flory Ericksen, Director of Horizon Residential Services – Exhibit #2
The written comments provided by Ms. Ericksen are submitted on behalf of the IDD Coalition and are summarized below.

The first suggestion of the Coalition is that the title of the rule should say "Intellectual and" in front of "Developmental".

The Coalition also submitted a comment about tier reduction notices. It asked if a "person's tier is reduced, there is a direct correlation with a decrease of support need, ergo a decrease of services. Will NOPA's be sent by the Department for all SIS/Tier letters?"

In 411-318-0010, the Coalition states they do not see an inclusion of rights from the HCBS clarification of rights, such as "access to food at any time, locking bedroom doors, choice in roommates if sharing a bedroom, freedom to furnish bedroom and general living areas, managing their schedules and activities, having visitors at any time, and a home physically accessible to the person."

Additional comments provided by Ms. Ericksen on behalf of the IDD Coalition are summarized below in Attachment A.

Oregon Self Advocacy Coalition, Leslie Sutton, Policy Analyst for Oregon Council on Developmental Disabilities – Exhibit #3
The written comments provided by Ms. Sutton on behalf of the Oregon Self Advocacy Coalition (OSAC) are summarized below in Attachment A.

The public comment period closed at 5 p.m. on November 28, 2014.

Department Response:

Translation: The Department agrees that all Department required and generated forms must be translated into Spanish, Russian and Vietnamese. The Department will continue to prioritize this work as new forms are developed or existing forms are modified.

Workload Model: The Department appreciates the efforts to estimate the fiscal impact of the proposed rule changes on CDDPs. The existing caseload model accounts for much of the administrative work efforts and accounts for the context of the work, including any efficiencies that may have been created, work that may be completed simultaneously with other tasks, and other mitigating factors.

Tier Reduction: The Department has confirmed that Tier rate reductions do not reduce the services to individuals who are residing in 24-hour settings and notices are not required to be sent to individuals who receive the services and supports in these settings. Providers receive prior notification (45 calendar days) when Tiers are being reduced.

HCBS: The Department appreciates the comments made that relate to HCBS but did not make any additional changes at this time. Language to comply with HCBS will be reflected in a future rulemaking.

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Rule Number and Proposed Rule Language	Comment	Department Response
411-317-0000 Definitions for Developmental Disability Services		
(31) "Integration" as defined in ORS 427.005 means: (a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people; (b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and (c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.	**Oregon Self Advocacy Coalition** - (31) - To OSAC, integration means equal opportunities to do the same things people without disabilities do. OSAC says the rules say integration is: individuals using the same community resources used by and available to others, participation by individual with IDD in the same community activities as those without IDD, and that people with IDD live in homes or home-like settings that are close to community resources and foster contact with those in the community. OSAC feels the rule about participation by those with IDD in the same activities as people without IDD, is too narrow. Under the rules, OSAC says a place could be "integrated" if it segregated individuals with disabilities other than IDD (e.g. a sensory disability or mental illness) from people without disabilities. OSAC states this is not integrated because it doesn't allow equal opportunity to do the same things as those without disabilities. OSAC feels this section should say integration is about participation by people with IDD in the same community activities as people	The Department considered the comments made by OSAC and made changes to the definition of "integration" as suggested. *"Integration" as defined in ORS 427.005 means:* *(a) Use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;* *(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and* *(c) Residence by individuals with intellectual or developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.*

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	without disabilities.	
411-318-0000 Statement of Purpose and Scope		
(2) The rules in OAR chapter 411, division 318 apply to the developmental disability services and service settings described in: (f) OAR chapter 411, division 325 for 24-hour residential programs for children and adults with intellectual or developmental disabilities;	**IDD Coalition** - (2)(f) - Replace "programs" with the term "homes" or "settings". There are related comments in 411-325 regarding this perspective on wording.	The Department considered the comments made by the IDD Coalition and made changes to section (2)(f) as suggested. *(f) OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities;*
411-318-0010 Individual Rights		
(2) While receiving developmental disability services, an individual has the right to: (k) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure; (w) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;	**IDD Coalition** - (2)(k) - The Coalition says there is no reference to the ISP team or ISP Financial plan. The Coalition says unless the Department is considering this a "legal procedure (which doesn't seem to technically fit)", the ISP team or Financial Plan need to be included. (2)(w) - The Coalition suggests the Department remove the requirement to have the rules prominently posted with "Have these rights and procedures shared with the individual in a manner that is understandable to the individual."	The Department considered the comments made by the IDD Coalition but did not make any additional changes at this time. The Department noted these concerns for future rule considerations.

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	The Coalition believes this is more meaningful and person-centered than to just have them on a wall where an individual might not understand them. The Coalition thinks it is institutional to post it and doesn't really ensure people are receiving the information.	
411-318-0015 Complaints		
(10) PROCESS FOR ADDRESSING COMPLAINTS. (b) The written acknowledgement must inform the individual or the representative of the individual of the opportunity for an informal discussion. (B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or the Director of the Department. (c) The local program or Department must complete a review of the complaint and issue a written outcome to the individual and the representative of the individual within 45 days from the receipt of the complaint, unless both parties mutually agree to extend the	**IDD Coalition** - (10)(b)(B) and (c)(A) - Add "or designee" after "Program Director" and "Department".	The Department considered the comments made by the IDD Coalition but did not many any additional changes. The definition for Program Director and Department include the designee.

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timeframe. The extension may not exceed an additional 45 days. (A) The review of the complaint must include, but is not limited to, an investigation and records review of the complaint by the Program Director of the local program or the Director of the Department.		
(11) REQUEST FOR REVIEW. (a) An individual or the representative of the individual may request a review of a written outcome issued by a local program within 30 days of the date identified on the written outcome. (A) If a provider organization issued the written outcome, the individual or the representative of the individual may request a review of the written outcome by: (i) The local CDDP, support services brokerage, or CIIS program; or (b) The local CDDP, support services brokerage, CIIS program, Department, may uphold, alter, or overturn a written outcome issued by a provider organization. (c) The Department may uphold, alter, or overturn a written outcome issued	**IDD Coalition** - (11)(a)(A)(i) and (b) - The Coalition asks the Department insert "associated" after "the" because it will make it clear a person can't send their request to any agency or program. (11)(b), (c) - The Coalition feels the term "overturn" is unclear and the term "disagree" may be clearer. The Coalition provides an example that if an individual files a complaint because the agency is not providing a third staff (from (8)(a) - (9)(a)) and the CDDP or Department overturns that decision/complaint, the Coalition says they are not in the position to necessarily say there has to be three staff on shift for that exact hour. The Coalition says it seems there should be some reference to negotiating another alternative or reference. The Coalition	The Department considered the comments made by the IDD Coalition but did not make any additional changes. The definition of 'Local Program' provides the requested clarity. The phrase including "overturn" was decided by the RAC for the complaint rule and will remain as this is a consistent term used in other program rules as well as Department hearing rules.

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by a provider organization, local CDDP, support services brokerage, or CIIS.	feels this sentence is confusing and unclear.	
411-318-0020 Notification of Planned Action		
(1) An individual and the representative of the individual must receive a written Notification of Planned Action in the event that a developmental disability service is denied, reduced, suspended, or terminated.	**IDD Coalition** - (1) - The Provider and CDDP need copies of this as well and should be included in this section.	The Department considered the comments made by the IDD Coalition but did not make any additional changes. The Department expects that each program will identify how they will share information about actions they are taking.
(2) The Notification of Planned Action must be on the form prescribed by the Department (SDS 0947). The Notification of Planned Action must include: (b) The effective date of the denial, reduction, suspension, or termination; (B) For a reduction, suspension, or termination of service, the effective date is: (i) For a Notification of Planned Action mailed or hand delivered on or before the 18th of the month, the end of the calendar month in which the Notification of Planned Action is mailed or hand delivered to the	**IDD Coalition** - (2)(b)(B)(i) & (iii) - The Coalition says less than a 30 day notice is not reasonable as providers need to give staff notices on staffing changes and individuals and providers have rental agreements that require a 30 day notice. (2)(g)(D) - The Coalition asks if services are to stay in place during the appeal process, is there a written agreement from the Department of continued funding during the appeal process?	The Department considered the comments made by the IDD Coalition but did not make any additional changes. (2)(b) The timelines identified in this rule are consistent with other program rules. These timelines are specific to changing services, not staffing levels of programs. Staffing levels for residential programs are managed in a different manner when funding levels are reduced. (2)(g) Written notice or confirmation of continuation of benefits is issued to claimants who ask that their benefits remain the same during the hearing

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individual and the representative of the individual, if applicable; or (iii) No fewer than 10 days after the date the Notification of Planned Action is mailed or hand delivered to the individual and the representative of the individual, if applicable. (g) Notification that if the individual or the representative of the individual disagrees with the determination to deny, reduce, suspend, or terminate a service, the individual has the right to request a hearing, or the representative of the individual has the right to request a hearing on the behalf of the individual, as provided in ORS chapter 183 and OAR 411-318-0025. The notification of the right to a hearing must include: (D) The right of the individual to receive continuing services at the same level until a final order has been issued or, at the request of the individual or the representative of the individual, or until the individual has exhausted the appeals processes identified in OAR 411-318-0025;		process, regardless of approval or denial of the request for continuing benefits.

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411-318-0025 Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials		
(2) HEARING REQUESTS. (b) The request for a hearing may be made orally, in writing, or by completing the DD Administrative Hearing Request (form SDS 0443DD). (A) ORAL HEARING REQUESTS. (ii) Upon receipt of an oral request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form to the Central Office of the Department within three business days of receiving the request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual. (B) WRITTEN HEARING REQUESTS. (ii) Upon receipt of a written request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form to the Central Office of the Department within three business days of receiving the	**IDD Coalition** - (2)(b)(A)(ii) and (B)(ii) - the local provider and CDDP need a copy also. *Note: it says (4)(ii), but there is no (4)(ii), states same comment as above. (3) - (14) - Says need to substitute "individual" for "claimant" as individual is used throughout the rest of the rule (Note: I did not put the entire text in as that would be a lot of rule text). (5)(b) - After "Department" it is suggested the Department insert "during an informal conference or hearing". (13)(b) - The Coalition says this sentence is confusing. The Coalition thinks that it would make more sense if the Department deletes the word "When" and replace with "Unless".	The Department considered the comments made by the IDD Coalition but did not make any additional changes to sections (2) and (3)-(14). (2) ODDS expects each program to establish policies for keeping each program informed of changes to consumer benefits (3)-(14) claimant is the term used throughout the hearing process and is defined as such in this rule. The Department made changes to section (5)(b) and (13)(b) as suggested by the IDD Coalition. *(b) Employees for the Department, CDDP, and Support Services Brokerage are authorized to appear as a witness on behalf of the Department during an informal conference and hearing.* *(b) Unless the Department receives a timely written exception and written argument as described above, the*

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request for a hearing. A copy of the form must be mailed to the individual and the representative of the individual. (5) REPRESENTATION. (b) Employees for the Department, CDDP, and support services brokerage are authorized to appear as a witness on behalf of the Department. (13) EXCEPTIONS. (b) When the Department receives a timely written exception and written argument as described above, the Department shall issue the final order unless the Department authorizes OAH to issue the final order in compliance with OAR 137-003-0655.		*Department shall issue the Final Order unless the Department authorizes OAH to issue the Final Order in compliance with OAR 137-003-0655.*
411-318-0030 Contested Case Hearings for Provider Notices of Involuntary Reductions, Transfers, or Exits		
(4) Upon receipt of the Administrative Hearing Request form for a Notice of Involuntary Reduction, Transfer, or Exit, the Central Office of the Department must: (b) Assist the claimant or the representative of the claimant in gathering and submitting exhibits; and	(4)(b), (c) - Substitute "individual" for the word "claimant". (5) - Substitute "individual" for the word "claimant".	The Department considered the comments made by the IDD Coalition but did not make any additional changes. Claimant is the term used throughout the hearing process and is defined as such in this rule.

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(c) Act as liaison between OAH and the CDDP or support services brokerage responsible for the services of the claimant. (5) OAH communicates directly with the claimant and the representative of the claimant regarding informal conference dates, hearing dates, and the final order as defined in OAR 137-003-0070.		