

411-318-0015

Individual Rights
and
Complaints

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OAR references to the 411-318 rule are based on proposed
language and is
subject to change with public comment period and finalization of
Oregon Administrative Rules on December 29th, 2014

Individual Rights

- SB 22
- Right to ...
- In addition to statutory and constitutional rights
- Does not alter legal rights between parent and child

You will see all of these rights copied across program rules were included into this section of rules as well as the addition of the HB 22 around rights. Aligns with HCBS new rule regulations.

Complaints

411-318-0015

- Is an expression of dissatisfaction with a DD service, or
- An allegation of circumstance or event contrary to law, rule, policy

This rule does not apply to complaints filed anonymously; complaints being addressed by a judge, not related to a DD service or service provider.

In addition – this rule does not apply to complaints subject to items listed in 411-318-0015 (3)(d) – child abuse reports, services operated by OHA, discrimination, , personnel, APS, OHP, child welfare, child protective custody, adaptation placement or VRD.

This Complaint rule is specific to dissatisfaction or an allegation specific to the receipt or lack of receipt of a DD service, rule, or policy. If a service is denied, being terminated (stopped) reduced or suspended for any reason, a Notification of Planned Action must be provided to the individual receiving the DD service. The individual may choose to file a complaint or request a hearing, they have the right to do one or the other or both simultaneously.

Who is responsible for addressing complaints

- Local programs =
 - All providers
 - CIIS
 - CDDP
 - Brokerages
 - Department
 - Oregon Health Authority

In order to reduce the number of times in the rule that we spelled out 'CDDP, Brokerages, CIIS and/or providers', the rule defines "Local Programs" to mean all of these programs together. If the rule is specific to only one, two or three of the programs they will be listed out specifically.

It is also important to note that an individual may file a complaint with either the provider, the case management entity (CDDP, Brokerage or CIIS) or the Department (ODDS), by bypassing any level of review at any time.

Responsibility of Local Programs

- If a Local Program receives a complaint about another Local Program, the one receiving the complaint must assist the individual in filing a complaint with the appropriate program
 - Assisting program must progress note actions of support but does not log complaint in their own log

We all know that individuals cross paths with multiple providers and support staff each day. If one provider receives a complaint about another program the responsibility of the person receiving the complaint is to assist the individual in properly filing a complaint if this is their desire. This doesn't mean that every statement of dissatisfaction needs to be formally 'filed', but it does mean that follow up from the person who received the complaint must be completed in order to ensure that the issue is addressed. If the individual specifies that they are only expressing frustration and would prefer not to file an official or formal complaint and the issue does not rise to the level of a protective service issue, this must also be considered and possibly staffed with a supervisor or lead staff. No expression of dissatisfaction should go unnoticed.

Policies and Procedures

411-318-0015(6)

- Each Local Program must have written policies and procedures.
 - Policies and Procedures must include (but not limited to):
 - Method and form used to submit a complaint – can be form 0946
 - Process Local Program will use to review and resolve a complaint
 - Time frames associated with responding (rule dictates maximum time limits)
 - Documentation to use as a response by the Local Program

This is for every program to develop. The rule outlines what is required, but the program can add additional policies as appropriate. This must be available to all individuals receiving support from the program as well as anyone who requests it. The policies must be updated as regularly as necessary. Best practice would be to review annually at a minimum.

Complaint Log

411-318-0015(7)

- ▣ All Local Program's must have a complaint log in which each complaint is logged.
- ▣ Logs must include:
 - Name of individual complaint is in reference to
 - Name of person making complaint (may be the same)
 - Name of person receiving complaint (Local program)
 - Nature of the complaint
 - Determination of whether the complaint raises to the level of a hearable issue – should a Notification of Planned Action be issued?

Complaint logs must include all written complaints received AND all other complaints that rise to the level of management intervention or response. Additional categories that are required for documentation have been added to this rule. All programs must review the categories that are required to be part of a log and have these in place no later than the end of August.

Complaint Log (cont)

- Log must include (cont)
 - Date complaint was received
 - Date Local Program issued acknowledgment letter
 - Written outcome of complaint
 - Date written outcome was sent

The important change to the categories are that all complaints must be reviewed to determine if the issue/complaint warrants a Notification of Planned Action. If so, a Notification of Planned Action must be sent to the individual as part of the written outcome or prior to the outcome if necessary.

Complaint logs should not include Personnel complaints.

Complaint or Hearing?

411-318-0015(8)

- Each complaint must be screened to determine if the issue is a hearable issue
 - Is service denied, terminated, reduced or suspended?
 - Is there dissatisfaction with Service Plan (could include disagreement with needs assessment)
- If hearable – was a Notification of Planned Action issued? (if ‘no’ a Notification of Planned Action must be issued)

How to determine if a complaint is the appropriate avenue for someone to express their dissatisfaction with services or if a Notification of Planned Action is required?

If a service is being denied, services are being terminated or stopped completely, if the service is being reduced or if the services is suspended for any period of time, meaning that the individual is not eligible to receive the service for a specific amount of time, then a Notification of Planned Action must be issued. See later in this training for examples of all 4 categories.

Don't know if the issue is 'hearable'? Contact ODDS Complaint Coordinator

Complaint or Hearing (cont)

- Individual has the right to file a complaint even if the issue is a hearable issue.
- Individual has the right to file a complaint and request a hearing if the issue is hearable – in this case, both complaint and hearing may be addressed simultaneously.

Both a complaint and a hearing can occur simultaneously. It will be beneficial for all parties involved in resolution of the complaint and the issue before the court if both are working collaboratively with the services coordinator.

If one is resolved prior to the other, the individual may choose to withdraw the other. For example if the complaint is addressed and an agreement reached, prior to having a hearing on the hearable issue, the individual may choose to withdraw their request for a hearing.

How to file a complaint

- May be filed:
 - Orally
 - Written – email, letter or on the form 0946

An individual, their representative or any other concerned party may file a complaint in one of 2 ways; they may state that they are wanting to file a complaint or they may write it. The person receiving the complaint can discuss action steps and affirm that the person is indeed wanting further review of the issue.

Once a complaint is officially made, the person receiving the complaint (or other designated person in the office) must send the individual (regardless of who filed it) and the person filing the complaint, a letter acknowledging that the complaint has been received and offering the chance of an informal discussion to ideally reach resolution.

Type of Complaint

- Related to dissatisfaction with service (general):
 - May be filed with (which program)
 - Provider organization
 - CDDP, Brokerage or CIIS, or
 - Department (ODDS)
- Related to dissatisfaction with services from a Brokerage or CDDP:
 - May be filed with:
 - CDDP, Brokerage or
 - Department

Essentially a three tiered approach. Provider -> CDDP, Brokerage or CIIS-> Department. Any step may be bypassed if desired by the individual.

Type of Complaint (cont)

- Related to dissatisfaction with CIIS
 - May be filed with:
 - CIIS, or
 - ODDS
- Related to dissatisfaction with the Department:
 - May be filed with:
 - ODDS
 - Oregon Health Authority (OHA)

What happens next

411-318-0015 (10)

- Local Program sends an acknowledgment to the individual/representative – 5 days
- Provides opportunity for informal conference – should occur within 10 days.
 - Informal conference provides opportunity to resolve issue – outcome must then be summarized in written response
- Written outcome to individual and representative -45 days from receipt of complaint.

Acknowledgement letter must:

- Include:
 - Brief summary of complaint
 - Opportunity for informal discussion within next 10 days
 - Complaint received = day 1
 - Acknowledgement letter must be sent no later than day 5
 - Informal conference offered within 10 days from acknowledgement letter.
 - Individual does not need to accept offer of informal conference – we just need to offer opportunity
 - Contact person for the Local Program

ODDS has a template available that may be used – form 0373. If ODDS form is not used, program letter must contain all required information.

Review of complaint

411-318-0015(10)(c)

- Review of complaint must include (but not limited to):
 - An investigation and record review by Program Director/ Director or designee
- Once the review of the complaint has been completed, a written outcome must be issued within 45 days. The written outcome must include (but not limited to):
 - Rationale for outcome
 - All reports and documents relied upon in outcome
 - Information that individual may review all reports and documents relied upon
 - Information about the right of the individual to request a review of the written outcome (appeal) (Notification of Rights document includes this)

Once a complaint is received, the program has 45 days to send a written outcome letter (beginning to end).

Appeal/Review of complaint

411-318-0015(11)

- After Written Outcome is sent to the individual, they may request a review of the outcome decision.
- In order to Request a review:
 - Must be requested within 30 days of (receiving) the date that the written outcome was sent (how to determine this?)

As part of the written outcome, the individual is told how to request a review (or appeal) if they are dissatisfied with the outcome of the complaint review. In order for the request for a review to be considered, it must be received by the program that issued the written outcome no later than 30 days following the date the written outcome was mailed.

The emergency temp rule indicates in section 411-318-0015(11)(a) that the appeal must be received within 30 days of *receiving* the written outcome. As there is no way to determine when an individual received a letter in the mail, this is being changed in the permanent rule to read ' 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.

Letters must be dated on the day that the letter is going out in the mail or was emailed or hand delivered to the individual. If the letter is written and ends up not being sent/emailed/hand delivered on the date identified on the letter, a new letter must be written to indicate the accurate date.

The previous Administrative Review Committee with ODDS is no longer an option through the Complaint process.

Who reviews request for review?

411-318-0015(11)

- Provider organization provided written outcome 411-318-0015(11)(a)(A)
 - Local CDDP or Brokerage or CIIS
 - Department (ODDS)
- CDDP, Brokerage or CIIS provided written outcome 411-318-0015(11)(a)(B)
 - Department (ODDS)
- Department provided written outcome 411-318-0015(11)(a)(C)
 - Oregon Health Authority (OAH) – final review

If an employer or residential provider receives a complaint from an adult individual, and issues a written outcome, and the individual wants to appeal the decision, they will appeal to *either* the CDDP/Brokerage/CIIS OR the Department (ODDS).

An individual can also contact the Governor's Advocacy Office at any time.

What happens with Request for Review

411-318-0015(12)

- If a request for review is received within 30 days...
 - Same process for sending acknowledgement letter
 - Same process for informal conference within 10 days of sending acknowledgement letter
 - Resolution agreed upon? Send written outcome
 - Resolution not agreed upon? – full review must occur within 45 days of receipt of review request

All requests for review must be acknowledge and an informal discussion arranged with the intent to resolve the issue. If resolution is reached during the informal discussion a summarizing letter must be issued.

Written outcome of Review

- By Program Director or Director of Department:
 - Investigation and record review
 - Then...
 - Written outcome to include:
 - Rational for determination
 - List of records, documents and other information relied upon for decision
 - Information about the right to review all documentation reviewed

Administrator Review shall include consultation with Oregon Health Authority as needed and appropriate