

# Department of Human Services

## [Aging and People with Disabilities and Developmental Disabilities - Chapter 411](#)

### [Division 318](#)

### [INDIVIDUAL RIGHTS, COMPLAINTS, NOTIFICATION OF PLANNED ACTION, AND CONTESTED CASE HEARINGS FOR DEVELOPMENTAL DISABILITIES SERVICES](#)

#### **411-318-0010**

#### **Individual Rights**

- (1) While receiving developmental disabilities services, an individual has the right to:
- (a) Be free 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, and personal, chemical, and mechanical 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 medication is administered only for the clinical needs of the individual as 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;
  - (d) 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;
  - (e) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;
  - (f) Informed, voluntary, written consent prior to participating in any experimental programs;
  - (g) A humane service environment that affords reasonable privacy and the ability to engage in private communications with people chosen by the individual through personal visits, mail, telephone, or electronic means;
  - (h) Visit with legal and designated representatives, family members, friends, advocates, legal and medical professionals, and others chosen by the individual, except where prohibited by court order;
  - (i) Participate regularly in the community and use community resources, including recreation, developmental disabilities services, employment services, school, educational opportunities, and health care resources;

- (j) 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;
- (k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;
- (l) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;
- (m) Keep and use personal property and have a reasonable amount of personal storage space;
- (n) Food, housing, clothing, medical and health care, supportive services, and training;
- (o) Seek a meaningful life by choosing from available services 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;
- (p) 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;
- (q) Ongoing participation in the planning of services, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with an explanation of all service considerations 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;
- (r) Request a change in the plan for services and a reassessment of service needs;
- (s) 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;
- (u) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, notification of available sources of necessary continued services, and a hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;
- (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), and the procedures for filing complaints, reviews, hearings, or appeals if services have been or are proposed to be terminated, suspended, reduced, or denied;
- (w) Be encouraged and assisted in exercising all legal, civil, and human rights;

(x) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(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;

(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.

(5) 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.

(6) 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.

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

(8) 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).

**Statutory/Other Authority:** ORS 409.050 & 427.107

**Statutes/Other Implemented:** ORS 183.411-471, 409.010, 427.107 & 427.109