

# **OREGON HEALTH AUTHORITY**

## **Division 5**

### **INDIVIDUAL RIGHTS**

#### **Prohibiting Discrimination against Individuals Based on Protected Class**

##### **943-005-0000**

###### **Purpose and Applicability**

(1) These rules establish the Oregon Health Authority (Authority) policy of non-discrimination and a process for reporting and investigating complaints of discrimination based on protected class, in accordance with state and federal law, including but not limited to Title VI of the Civil Rights Act of 1964 (Title VI), the Americans with Disabilities Act of 1990 (ADA as amended), Section 504 of the Rehabilitation Act of 1973.

(2) These rules do not apply when the:

(a) Authority's Office of Equity and Inclusion (OEI) has determined that the report of discrimination does not involve an allegation of discrimination based on protected class status.

(b) Allegation of discrimination based on protected class status is against an entity other than the Authority or an Authority contractor or subcontractor.

(3) OAR 943-005-0060 applies to all client service delivery contracts involving the receipt of federal funds executed or amended on or after January 1, 2015.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

##### **943-005-0005**

###### **Definitions**

(1) "Alternate format communication" means printed material converted to a style allowing individuals with disabilities to achieve effective communication.

(2) "Auxiliary aids or services" mean devices or services that allow individuals with hearing, cognitive or speech impairments to achieve effective communication.

(3) "Client" means any individual receiving services, seeking services or information, or who is the intended recipient of Authority services.

(4) "Contractor" means any entity with which the Authority has an agreement or contract to provide services using federal funds to clients.

(5) "Direct threat" means a significant risk to the health or safety of others. A direct threat is one that:

(a) Cannot be eliminated or reduced to an acceptable level through the provision of auxiliary aids or services or through reasonably modifying policies, practices or processes.

(b) Is identified through an individual assessment that relies on current medical evidence, or the best available objective evidence that shows:

(A) The nature, duration and severity of the risk;

(B) The probability that a potential injury will actually occur; and

(C) Whether reasonable modifications of policies, practices or processes will lower or eliminate the risk.

(6) “Discrimination” means the denial of services to individuals or groups because the individual or group is part of a protected class. It includes policy, practice or treatment resulting in unequal access to Authority programs and services, or having a disparate impact on a protected class.

(7) “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake, surprise, excusable neglect, or the reasonable reliance on the statement of a party, Authority contractor, subcontractor or agency representative.

(8) “Harassment” means unwelcome, unwanted or offensive conduct directed at an individual based on the individual’s protected class status.

(9) “Individual with a disability” means an individual who:

(a) Has a physical or mental impairment that substantially limits one or more major life activities; or

(b) Has a record or history of such an impairment; or

(c) Is regarded as having such an impairment.

(10) “Protected class” means a group of people protected from discrimination by law, on the basis of sexual orientation, race, color, national origin, religion, disability, age, sex (includes pregnancy-related conditions and sexual harassment), marital or familial status, or other class protected by law.

(11) “Qualified individual with a disability” means an individual who can meet the essential eligibility requirements for a program, service or activity with or without reasonable modification of rules, policies or processes, or the provision of auxiliary aids or services.

(12) “Reasonable modifications” means a modification of policies, practices, or processes made to a program or service that allows an individual with a disability to participate equally in the program or benefit from the program or service.

(13) “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.

(14) “Subcontractor” means any entity or agent who enters into an agreement with an Authority contractor to perform part or all of the obligations of the contractor who has a contract with the Authority funded in whole or part with federal funds.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

## **943-005-0010**

### **Non-Discrimination Policy**

(1) The Authority shall not, either directly or through another entity, discriminate against any individual, or harass, exclude from participation, or deny the benefit of programs, services or activities because the individual belongs to a protected class.

(2) The Authority shall not discriminate against an individual in the granting of licenses and certificates because the individual is part of a protected class.

(3) The Authority shall not apply criteria, standards, or practices that screen out or tend to screen out individuals in a protected class from fully and equally enjoying any goods, programs, services, or activities unless:

(a) The criteria can be shown to be necessary for providing those goods, programs, services or activities; or

(b) The Authority determines the screening or exclusion identifies a direct threat to the health or safety of others.

(4) The Authority shall provide programs, services, and activities in the most integrated setting possible to meet the needs of individuals within the context of the program, service, or activity.

(5) The Authority shall not require an individual to participate in programs, services, or activities that are separate or different, despite the existence of permissibly separate or different programs or activities.

(6) The Authority shall ensure each program, service, or activity, including public meetings, hearings and events, are usable by all individuals. This includes respecting the individual's dignity by providing individuals with disabilities the ability to safely approach, enter, operate, and participate in the program, service, or activity with or without reasonable modifications.

(7) The Authority shall ensure each program, service, or activity provides individuals with the opportunity to access translation, oral and sign language interpreters, auxiliary aids or services and other alternative methods of communications, including help for non-English speaking individuals and limited English proficiency (LEP) persons.

(8) The Authority shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(9) The Authority shall not deny individuals the opportunity to participate on planning or advisory boards based on the individual's protected class.

(10) The Authority shall not discriminate against individuals due to their relationship or association with one or more individuals in a protected class.

(11) The Authority shall not retaliate against any individual filing a report of discrimination or harassment.

(12) The Authority shall comply with the following statutes and regulations:

(a) Title VI of the Civil Rights Act of 1964 prohibiting discrimination in the delivery of services based on race, color or national origin (42 USC §2000d), and the United States Department of Justice (DOJ) implementing regulations at 28 C.F.R. Part 42, Subpart C.

(b) The Omnibus Crime Control and Safe Streets Act of 1968, prohibiting discrimination in the delivery of services based on race, color, national origin, religion, or sex (42 U.S.C. § 3789d(c)(1)), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart D.

(c) Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons at 67 Fed. Reg. 41455 (June 18, 2002), addressing the obligation of recipients to take reasonable steps to provide meaningful access to funded programs and activities to those persons who may be limited English proficient (LEP), pursuant to Title VI and the Safe Streets Act.

(d) Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination in the delivery of services based on disability (29 U.S.C. § 794), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart G.

(e) Title II of the Americans with Disabilities Act of 1990 (as amended), prohibiting discrimination in the delivery of services based on disability (42 U.S.C. § 12132), and the DOJ implementing regulations at 28 C.F.R. Part 35.

(f) Title III of the Americans with Disabilities Act of 1990 (as amended), prohibiting discrimination in places of public accommodation based on disability (42 U.S.C. § 12182), and the DOJ implementing regulations at 28 C.F.R. Part 36.

(g) Title IX of the Education Amendments of 1972, prohibiting discrimination in educational services based on sex (20 U.S.C. § 1681), and the DOJ implementing regulations at 28 C.F.R. Part 54.

(h) The Age Discrimination Act of 1975, prohibiting discrimination in the delivery of services based on age (42 U.S.C. § 6102), and the DOJ implementing regulations at 28 C.F.R. Part 42, Subpart I.

(i) Executive Order 13279 and the DOJ regulations on the Equal Treatment for Faith-Based Organizations, prohibiting discrimination in the delivery of services based on religion and prohibiting the use of federal funding for inherently religious activities (28 C.F.R. Part 38(i)).

(j) Section 1557 of the Patient Protection and Affordable Care Act of 2010, prohibiting discrimination in the delivery of services in health care programs or activities based on race, color, national origin, sex, sex stereotypes, gender identity, age or disability.

(k) Oregon Revised Statute 659A.403, prohibiting discrimination in places of public accommodation based on race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older.

(l) Oregon Revised Statute 659A.103, prohibiting discrimination on the basis of disability.

(m) All other applicable state or federal laws.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

## **943-005-0015**

### **Illegal Drug Use**

(1) Except as provided in OAR 943-005-0015(2), this rule does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The Authority shall not deny services to an eligible individual based on the individual's current illegal use of drugs when the requested or provided services are in connection with drug rehabilitation or other health services related to the individual's current illegal use of drugs.

(3) A drug rehabilitation or treatment program may deny participation to an individual who engages in illegal use of drugs while that individual is in the program.

(4) A program may adopt reasonable drug testing policies designed to ensure that an individual who has illegally used drugs in the past is not now using drugs illegally.

(5) A psychoactive substance use disorder resulting from current illegal use of drugs is not a disability under these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

## **943-005-0020**

## **Reasonable Modifications**

(1) Unless the Authority Director or the Director's designee determines in writing that a modification or alteration will fundamentally alter the nature or benefit of the program, service or activity, or create an undue administrative or financial burden, the Authority shall:

(a) Make reasonable modifications to the policies, practices or processes of a program, service or activity when the modifications are necessary to avoid discrimination based on disability.

(b) Provide aids and services or alternate format communications to individuals with disabilities where necessary to ensure an equal opportunity to participate in, and enjoy the benefits of a program, service, or activity.

(2) The Authority shall decide which aid, service or format may be provided without fundamental alteration or undue burden, but shall consider first the choice of the requester.

(a) Except as authorized under specific programs, the Authority is not required to provide personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature.

(b) The Authority shall not assess a charge or fee to an individual with a disability or any group of individuals with disabilities to cover the costs of measures required to provide the individual with a reasonable modification.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

## **943-005-0025**

### **Requests for Reasonable Modification**

(1) Requests for reasonable modification to a program, service, or activity may be made to Authority staff either verbally, by completing the Request for Reasonable Modification form, or in any manner otherwise acceptable to the Authority.

(2) When the Authority receives a request for reasonable modification, the Authority shall:

(a) Make a determination about any additional documentation needed and request the documentation.

(b) Communicate with the individual requesting the reasonable modification about the process, additional required documentation and the possibility of acceptable alternate modifications.

(c) Authority staff shall consider the requester a partner, communicating routinely and respectfully in an effort to achieve a swift and satisfactory resolution to requests for reasonable modification.

(3) When a request for reasonable modification is related to an event or activity that is fixed in time, such as a public meeting, Authority staff shall make a decision as soon as reasonably possible, and in no case less than eight hours prior to the event or activity, provided the request is received at least 12 hours prior to the event or activity.

(4) No more than 15 days after receiving a request or any additional required documentation, whichever is later, the Authority shall notify the requester in writing that the requested modification was approved, approved with alternate modification, or denied.

(a) Notification related to a request for reasonable modification approved with alternate modifications or denied shall be clearly labeled "Preliminary Notification Subject to Review".

(b) The Authority shall ensure the approved modification occurs within a reasonable time.

- (5) The Authority's ADA Coordinator shall review all preliminary notifications.
- (6) An individual or the individual's representative may request a review meeting with the ADA Coordinator after receiving a preliminary notification approving alternate modifications or denying modifications.
- (a) If a review meeting is not requested within 60 days of the preliminary notification, the decision shall become final.
- (b) Within 15 days of receiving a request for a review meeting, the ADA Coordinator will meet with the individual or the individual's representative and attempt to resolve the individual's concerns.
- (c) Within 15 days of the review meeting, the ADA Coordinator will respond in writing and shall notify the requestor of the final result of the review.
- (7) An individual whose request for reasonable modification has been denied or approved with an alternate modification that the individual believes to be inadequate may file:
- (a) A report of discrimination as described in these rules; or
- (b) A complaint with the appropriate federal or state regulatory agency.
- (8) The Authority shall retain all written requests for meetings with the ADA Coordinator for at least three years.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042

#### **943-005-0030**

##### **Reporting Discrimination and Available Remedies**

- (1) Any individual, or individual's representative, who believes an individual has been discriminated against, harassed, excluded from participation or denied the benefit of programs, services, or activities because the individual is a member of a protected class may file a report of discrimination based on protected class.
- (a) The Authority shall accept anonymous reports and investigate them to the extent possible.
- (b) The Authority shall maintain confidentiality when conducting investigations to the extent possible.
- (c) The Authority shall ask the reporter or affected individual to sign a release of information indicating authorization for the Authority to access information to assist the investigation.
- (2) The Authority shall accept a report of discrimination based on a request for reasonable modification only if:
- (a) The request for reasonable modification, including requests for auxiliary aids or services, an interpreter, or an alternate format communication, was made as provided for in these rules; and
- (b) The final result under these rules was a denial or provision of an alternate modification that the requester believes to be inadequate.
- (3) A report of discrimination shall be filed within 180 days of the date of the alleged discrimination unless good cause exists for the delay in reporting.

(4) The Authority shall accept a report of discrimination on the Authority's form, in a verbal report or in any other format that contains enough information to allow the Authority to investigate the report.

(a) A report of discrimination may be submitted to any Authority office, in person, by phone, fax or electronically.

(b) Any Authority employee who receives a report of discrimination based on protected class shall notify OEI in accordance with approved Authority policies and processes.

(c) OEI or its designee shall coordinate and conduct investigations related to reports of discrimination.

(5) A complete report of discrimination includes:

(a) The name of all parties involved, including any witnesses.

(b) A specific and detailed description of the conduct or action that the individual believes is discriminatory or harassing.

(c) The name and location of the building or facility the individual was unable to access or the program, service, or activity in which the individual was denied participation.

(d) The date or time period in which the discrimination or harassment occurred.

(f) A description of the remedy the client or the individual filing the report desires.

(g) A statement of good cause that justifies waiving the time limit, if more than 180 days have passed since the discrimination or harassment occurred.

(6) Authority staff shall assist reporters and make every effort to obtain a complete report.

(7) The Authority shall investigate all reports of discrimination to the fullest extent possible.

(a) All investigations shall include an interview with the individual filing the report, when that individual is known.

(b) All Authority employees shall fully cooperate with investigations.

(8) The Authority shall provide as requested, at no cost to the parties, reasonable modifications or alternate means of participation in order to aid the investigation. Such modifications or alternate means include but are not limited to the provision of an interpreter or written material in large print.

(9) Within seven days of receiving a report of discrimination based on protected class, the Authority shall provide written notification to:

(a) The individual who was allegedly discriminated against or harassed, the individual's representative, or the reporter, if different.

(b) The alleged perpetrator in accordance with the respective collective bargaining agreements and related state policies.

(c) The notice to the alleged perpetrator shall state that retaliation is prohibited.

(10) When the investigation is complete, the Authority shall provide written notification to the:

(a) Individual who filed the report.

(b) Individual who was allegedly discriminated against or harassed, or the individual's representative, if different from (a).

(c) The alleged perpetrator in accordance with appropriate collective bargaining agreements and related policies.

(11) The closing notice shall include, as appropriate:

(a) The findings of the investigation.

(b) An explanation about the process and timelines for a request for reconsideration.

(12) When the Authority substantiates a report of discrimination or harassment, the Authority shall take prompt and appropriate action in accordance with policy, contracts, and collective bargaining agreements.

(13) Authority employees who violate these rules may be subject to disciplinary action up to and including termination from state service.

(14) The remedies provided under these rules are in addition to other remedies available under state or federal rule or law, except where exhaustion of these remedies is a requirement of seeking remedies in another forum.

(15) The Authority shall make available:

(a) Information about an individual's right to file a complaint with the other entities, including the U.S. Department of Justice (USDOJ), U.S. Department of Health and Human Services Office of Civil Rights (OCR), and the Oregon Bureau of Labor and Industries (BOLI); and

(b) Applicable timelines for reporting complaints of discrimination and harassment with other entities.

(16) These rules and remedies do not create a contested case subject to judicial review.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

## **943-005-0040**

### **Request for Reconsideration**

(1) When the investigation of a report of discrimination or harassment is complete, the individual who filed the report of discrimination or harassment, the aggrieved individual, or the person accused of discrimination or harassment may submit a written request for reconsideration within 20 days of the date the closing notice is issued.

(2) Written requests for reconsideration must be dated and submitted to the Authority's Director's Office.

(3) The Director or Director's designee shall issue a final written response to the request for reconsideration.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

## **943-005-0050**

### **Data Collection**

(1) OEI shall maintain records related to reports of alleged discrimination and harassment including data on the:

(a) Number of reports received.

- (b) Types of discrimination or harassment alleged.
- (c) Location of the alleged discrimination.
- (d) Resolution status of individual reports.
- (e) Number of requests for reconsideration.
- (2) OEI shall establish reporting standards for designees.
- (3) OEI shall retain all collected reporting records for at least three years.

Stat. Auth.: ORS 413.042  
Stats. Implemented: ORS 413.042

## **943-005-0060**

### **Authority Contractors and Subcontractors**

- (1) Authority contractors and subcontractors shall:
  - (a) Comply with all applicable state and federal statutes and rules.
  - (b) Designate an individual to serve as the Authority contact for tracking and compliance purposes.
  - (c) Establish non-discrimination and reasonable modifications policies similar to those described in these rules.
  - (d) Establish written processes for documenting and resolving reports of discrimination, harassment, and requests for reasonable modification.
  - (e) Provide a copy of their non-discrimination policies and processes to OEI upon request.
  - (f) Maintain records related to reports of alleged discrimination and harassment substantially similar to the data collection requirements established by these rules and provide them to the Authority upon request.
  - (g) Retain these records for at least three years.
- (2) Authority contractors or subcontractors with 15 or more employees shall designate at least one person to coordinate its efforts to adopt grievance procedures.
- (3) The name and contact information of the coordinator shall be communicated to individuals requesting information, or applying for or receiving the benefit of programs, services, or activities in handbooks and other general information materials, including but not limited to appropriate websites and publications.
- (4) Contractor and subcontractor grievance procedures shall:
  - (a) Incorporate appropriate due process standards.
  - (b) Provide for the prompt and equitable resolution of complaints alleging discrimination or harassment based on protected class.
- (5) Authority contractors and subcontractors shall provide timely and meaningful notice to individuals about the:
  - (a) Contractor's or subcontractor's non-discrimination policies and processes;

(b) Individual's right to file a complaint with the Authority, U.S. Department of Justice (USDOJ), U.S. Department of Health and Human Services Office of Civil Rights (OCR), and the Oregon Bureau of Labor and Industries (BOLI); and

(c) Applicable timelines for reporting complaints of discrimination and harassment with the Authority, USDOJ, OCR and BOLI.

(6) Authority contractors and subcontractors shall include the information required by this rule in handbooks and other general information materials including but not limited to appropriate websites and publications provided to individuals requesting information, or applying for or receiving the benefit of programs, services, or activities.

(7) If the Authority receives a report of discrimination or harassment involving the conduct of an Authority contractor or subcontractor:

(a) The Authority shall inform the Authority contractor or subcontractor of the report.

(b) The Authority contractor or subcontractor shall:

(A) Cooperate with the Authority's investigative process;

(B) Take prompt and appropriate action consistent with this rule, Authority contracts, and all applicable Authority administrative rules, policies and processes.

(8) Authority contractors who violate these rules may be subject to action including, but not limited to requests to cure, implementation of compliance work plans, contract amendments, or termination and non-renewal of contract.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042

## **943-005-0070**

### **Implementation and Training**

(1) OEI shall develop a plan to communicate the Authority's non-discrimination rules and associated policies and processes to individuals who interact with the Authority, including regular and temporary employees, volunteers, contractors and subcontractors and clients.

(2) OEI shall coordinate the Authority's civil rights compliance activities.

(3) All Authority employees shall receive training regarding this policy that includes:

(a) Information about where to find these rules and associated policies; and

(b) An opportunity to ask questions and have their questions answered.

(4) OEI shall work collaboratively within the Authority to:

(a) Bring existing processes into compliance with this rule and Authority policy.

(b) Increase uniformity within Authority programs in policy and processes related to civil rights violations and investigations.

(c) Improve identification of civil rights violations.

(d) Ensure uniformity in tracking and compiling data related to civil rights complaints and violations.

(e) Communicate the Authority's non-discrimination rules, policies, and processes in handbooks and other general information materials to individuals requesting information, or applying for or receiving the benefit of programs, services, or activities.

(5) The Authority shall provide contractors and subcontractors with communication and training materials developed as a part of the implementation of these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042