LICENSING REQUIREMENTS FOR HOME HEALTH AGENCIES FACT SHEET

The Oregon Health Authority, Public Health Division, Health Care Regulation and Quality Improvement section has amended the licensing requirements for Home Health Agencies effective January 13, 2022 in response to changes to federal regulations that conflicted with state administrative rules. In assessing the regulations to determine the changes necessary, the Authority has chosen to adopt by reference, 42 CFR Part 484.

With the adoption of these federal regulations, OAR chapter 333, division 27 administrative rules have been amended to remove all duplicative federal regulation language and identify Oregon specific licensure requirements.

The information provided below is a brief summary of the changes made to these rules. Agency staff are ultimately responsible for understanding and implementing the federal and state requirements for compliance. Interpretive guidance for the federal regulations can be found in the State Operations Manual, Appendix B – Guidance to Surveyors: Home Health Agencies. This fact sheet and future state interpretive guidance will be posted on the Health Facility Licensing and Certification web page.

Changes to Rules

333-027-0001 – Compliance with federal law

This new rule adopts 42 CFR Part 484 by reference requiring compliance with the federal law to be eligible for licensure. The rule further clarifies that while a naturopathic physician may order a plan of care for a patient under Oregon law, the services and supplies ordered by the naturopathic physician may not be reimbursed by the Centers for Medicare and Medicaid Services (CMS.)

- **What does adoption of the federal regulations mean?**
  Each person seeking to license a new Home Health Agency or a Home Health Agency seeking to renew its license must comply with all the federal standards in addition to state specific administrative rules in OAR 333-027.
- **Will this mean that the agency will be CMS certified?**
  Adoption of the federal standards does not mean a Home Health Agency is eligible for or will receive CMS certification. An agency wishing to seek CMS certification must first complete and submit an enrollment application. Information on enrollment, as well as applicable forms and instructions, may be found at: https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/Become-a-Medicare-Provider-or-Supplier.

333-027-0005 – Definitions
The following definitions were added:

- Abuse
- Clinical manager
- Geographic service area
- Naturopathic physician
- Patient representative
- These rules

333-027-0010 – Application for Licensure and Fees
Amendments were made specifying that if the Authority determines that an owner or administrator is subject to a nationwide criminal background check, the cost of this background check will be the responsibility of the agency. The Authority will be developing interpretive guidance that explains when an owner or administrator will be subject to a nationwide criminal records check. The current cost for a nationwide criminal background check is $58.75.

This rule further clarifies that an agency must inform the Authority within 30 days of any change in ownership, organizational structure or other information delineated in the agency's application. The agency will be subject to a change of ownership fee if a change of ownership occurs other than at the time of license renewal.

As noted above, any change in location must be reported to the Authority within 30 days. An agency must apply for a new license if the agency moves 30 or more miles from its current location.

A parent agency must provide supervision and administrative control of any branch office.

The Oregon legislature passed legislation in 2021 increasing licensing fees for Home Health Agencies (2021 Oregon Laws, chapter 447). These new fees are effective January 1, 2022:

- New agency license - $4,000
- License renewal - $2,125
- Change of ownership - $1,250

333-027-0015 – Review of License Application
This rule was amended to clarify the Authority's role in reviewing an application and clarify that an agency may provide other therapeutic services such as in-home care services and palliative care.

333-027-0017 – Approval of License Application
The rule was amended to specify that no person or agency shall in any manner represent, offer, provide or imply that they may render care or services other than what is permitted within the scope of the license.

333-027-0033 – Return of Agency License and Agency Closure
This rule provides guidance on the actions an agency must take if it discontinues operations including:

- Telling patients about the closure at least 14 days prior
- Providing information on how a person can get their clinical records
- Notifying the Authority at least 14 days prior to closure and submitting plans for the transfer, storage and disposal of clinical records.

333-027-0036 – Surveys
Additional clarification has been added to this rule relating to the Authority's acceptance of CMS certification by an approved organization or a survey conducted by an accrediting body in lieu of an in-person site inspection by the Authority.

333-027-0037 – Complaints
Amendments were made to clarify that information about a complainant is confidential including any personally identifiable information .

333-027-0038 – Investigations
The rule was amended to remove the requirement that a complaint investigation be conducted within 45 calendar days and replaces with 'as soon as practicable.'

333-027-0046 – Geographic Service Area
This new rule has been added to clarify the geographic service area requirements for an agency. An agency serves a geographic service area that is equal to or less than 60 miles from the agency's physical location. A branch office provides services to a portion of the area within the parent agency's geographic service area. If an agency moves its physical location a distance of 30 or more miles, it must apply for a new license and ensure the services provided are within 60 miles from the new physical location.

333-027-0050 – Changes in Services Provided
An agency must inform the Authority within 30 calendar days if it intends to permanently discontinue providing a service listed on its current license.

333-027-0060 – Administration of Home Health Agency
An agency is required to ensure that a clinical manager is employed who will be responsible for the oversight of all patient care services. The clinical manager must be available during all operating hours and ensure that all patient complaints are reviewed

including documentation and resolution. Duplicative language specified in the federal regulation was removed.

333-027-0064 – Criminal Records Check
The revised rule requires that any employee, contractor, temporary employee, volunteer, owner, or any prospective persons to serve in these roles who have or may have either direct contact with a patient or have or may have any access to personal information about a patient, including SSNs, DOBs, driver's license numbers, medical information, personal financial information or criminal background information must have a criminal records check prior to providing services to patients.

A new section has been added allowing an agency to employ an individual pending the outcome of a criminal records check if the agency ensures there is no direct contact with a patient, or any access to personal information about a patient. The agency must conduct a preliminary fitness determination, actively supervise the employee at all times and provide specified documentation in the personnel file.

The rule clarifies requirements for an agency's criminal records check policy and aligns weighing test factors with ORS 181A.195. In addition, a new section clarifies that if an agency has an agreement to provide in-home care services to an Oregon Department of Human Services (ODHS) client, the ODHS Background Check Unit is required to complete the background check and specifies additional administrative rules for compliance.

Definitions for "criminal records check," "fitness determination," and "weighing test" have been added.

333-027-0080 – Advance Directives
Updates to the policy relating to advance directives and patient notification requirements have been made and information pertaining to patient rights has been removed as those fall under the requirements in the federal regulations.

333-027-0130 – Nursing Services
Duplicative federal regulation language has been removed.

333-027-0140 - Therapeutic Services
Duplicative federal regulation language has been removed.

333-027-0150 – Clinical Records
Duplicative federal regulation language has been removed. In addition, clinical records retention period has been added – 7 years after the date of the patient's last discharge.

333-027-0155 – Infection Prevention and Control
A new rule has been added requiring an agency to develop an infection control program which shall include a tuberculosis infection control plan, appropriate disposal of sharps,

and development of policies and procedures including standard precautions, availability of PPE, and exposure to bloodborne pathogens.

333-027-0160 – Quality Assessment and Performance Improvement
A summary statement has been added that an agency must measure, analyze and track quality indicators, adverse patient events, infection control and other aspects of performance that include care and services furnished to a patient. The federal regulations have additional requirements.

333-027-0170 – Waivers
Changes have been made to align text with other licensing rules and clarify that in an emergency, the Authority may waive a rule that an agency is unable to meet for reasons beyond the agency's control.

333-027-0185 – Formal Enforcement
The rule has been amended to clarify that the Authority may reinstate an agency license that has been suspended after the Authority determines that compliance with the rules has been achieved.

Oregon Health Authority – Contact Information
Public Health Division, Health Care Regulation & Quality Improvement
Please contact the Oregon Health Authority, Public Health Division for information about Home Health Agency compliance requirements at mailbox.hclc@state.or.us or 971-673-0540.

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

FILED
01/11/2022 1:15 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

PH 3-2022
CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILING CAPTION: Licensing Requirements for Home Health Agencies

EFFECTIVE DATE: 01/13/2022

AGENCY APPROVED DATE: 01/07/2022

CONTACT: Mellony Bernal
971-673-3152
publichealth.rules@dhsoha.state.or.us

800 NE Oregon St.
Portland,OR 97232

Filed By:
Public Health Division
Rules Coordinator

RULES:
333-027-0001, 333-027-0005, 333-027-0010, 333-027-0015, 333-027-0017, 333-027-0018, 333-027-0020, 333-027-0025, 333-027-0029, 333-027-0033, 333-027-0036, 333-027-0037, 333-027-0038, 333-027-0040, 333-027-0046, 333-027-0050, 333-027-0060, 333-027-0064, 333-027-0070, 333-027-0080, 333-027-0090, 333-027-0100, 333-027-0120, 333-027-0130, 333-027-0140, 333-027-0150, 333-027-0155, 333-027-0160, 333-027-0170, 333-027-0175, 333-027-0180, 333-027-0185, 333-027-0190

ADOPT: 333-027-0001

RULE TITLE: Compliance with Federal Law

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Adopt OAR 333-027-0001 – Adopts 42 CFR Part 484 by reference and requires a home health agency to comply with these regulations to obtain or retain a home health license. Clarifies that while a naturopathic physician may order a plan of care for a patient pursuant to Oregon law, the services and supplies ordered by the naturopathic physician may not be reimbursed by the Centers for Medicare and Medicaid Services. Clarifies that a home health agency must comply with both the federal regulations and the rules adopted under OAR chapter 333, division 027.

RULE TEXT:
(1) Every Home Health Agency subject to ORS 443.014 to 443.105 must comply with the Conditions of Participation governing home health agencies prescribed by the Centers for Medicare and Medicaid Services (CMS), under 42 CFR Part 484, adopted by reference. A licensed home health agency that is not currently certified by the CMS must ensure that it complies with this rule no later than [insert six months from effective date of rule.]
(2) Although a naturopathic physician may prescribe services and supplies under a plan of care pursuant to ORS 443.065, those services and supplies ordered by the naturopathic physician are not eligible for reimbursement by CMS.
(3) In addition to the requirements of 42 CFR Part 484, home health agencies licensed in Oregon must also comply with the rules in OAR 333-027-0000 through 333-027-0190.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.014 - 443.090

AMEND: 333-027-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0005 – Definitions have been amended and new terms added to provide further clarity. New definitions include "abuse," "clinical manager," "geographic service area," "patient representative," and "these rules." Definitions have been removed for terms that are no longer used in the rules.

RULE TEXT:

The following definitions shall apply in OAR 333-027-0000 through 333-027-0190:

(1) "Abuse" means:

(a) "Abuse" as it applies to an "adult" as those terms are defined in ORS 430.735;

(b) "Abuse" as it applies to a "child" as those terms are defined in ORS 419B.005; or

(c) "Abuse" as it applies to an "elderly person" or a "person with a disability" as those terms are defined in ORS 124.005.

(2) "Authority" means the Oregon Health Authority.

(3) "Agency" means Home Health Agency.

(4) "Allowed practitioner" means a physician assistant, nurse practitioner, or naturopathic physician.

(5) "Branch office" means a location or site from which a home health agency provides services to patients within a portion of the total geographic area served by the parent agency and does not exceed 60 miles from the parent agency.

(6) "Clinical manager" means a person who is a licensed physician, physical therapist, speech-language pathologist, occupational therapist, audiologist, social worker, or a registered nurse.

(7) "Clinical record" means all information and documentation pertaining to the care of a patient.

(8) "Geographic service area" means the area from which a home health agency provides services to patients and may not exceed a 60-mile radius from the physical location of the licensed home health agency.

(9) "Governing body" means the designated person(s) having ultimate responsibility for the home health agency.

(10) "Home health agency" means a public or private entity providing coordinated home health services on a home visiting basis in a geographic service area.

(11) "Home health aide" means a person who is certified as a nursing assistant by the Oregon State Board of Nursing in accordance with OAR chapter 851, division 062 and who assists licensed nursing personnel in providing home health services.

(12) "Home health service" means items and services furnished to an individual by a home health agency, or by others under arrangement with such agency, on a visiting basis in a place of temporary or permanent residence used as the individual's home for the purpose of maintaining that individual at home.

(13) "Naturopathic physician" means a person licensed by the Board of Naturopathic Examiners in accordance with ORS chapter 685.

(14) "Nurse practitioner" means a person licensed by the Oregon State Board of Nursing in accordance with ORS chapter 678.

(15) "Occupational therapist" means a person licensed by the Occupational Therapy Licensing Board in accordance with ORS chapter 675.

(16) "Parent home health agency" ("parent agency") means the agency that provides supervision and administrative control to a branch office that is within 60 miles from the parent agency's physical location.

(17) "Patient representative" means the patient's legal representative, such as a guardian, who makes health-care decisions on the patient's behalf, or a patient-selected representative who participates in making decisions related to the patient's care or well-being, including but not limited to, a family member or an advocate for the patient. To the extent practicable, the patient determines the role of the representative.

(18) "Physical therapist" means a person who is licensed by the Oregon Board of Physical Therapy in accordance with ORS chapter 688.

(19) "Physician" means a person who is licensed by the Oregon Medical Board in accordance with ORS chapter 677.

(20) "Physician assistant" means a person who is licensed by the Oregon Medical Board in accordance with ORS 677.505 to ORS 677.525.
(21) "Plan of care" means a document developed by the physician or allowed practitioner in consultation with agency staff after a patient assessment that identifies the patient's medical status and needs, and outlines the services that will be provided to the patient to meet identified needs.
(22) "Primary agency" means the agency that is responsible for the services rendered to a patient and for implementation of the plan of care either directly or under arrangement through a contract or affiliation agreement with another agency or organization.
(23) "Professional policy-making committee" means a group of individuals who are appointed by the agency, and who has authority and responsibility for the development and monitoring of all professional policies pertaining to the home health agency.
(24) "Registered nurse" means a person licensed by the Oregon State Board of Nursing in accordance with ORS chapter 678.
(25) "Skilled nursing" means the patient care services pertaining to the curative, rehabilitative, or preventive aspects of nursing performed by, or under the supervision of, a registered nurse pursuant to the plan of care.
(26) "Social worker" means a person licensed by the State Board of Licensed Social Workers in accordance with ORS chapter 675 as a:
(a) Licensed master of social work (LMSW). A LMSW may only provide medical social services that are within their scope of practice as defined in ORS chapter 675 and OAR chapter 877, division 15;
(b) Licensed clinical social worker (LCSW); or
(c) Clinical social worker associate (CSWA) working under the direct supervision of a LCSW.
(27) "Speech-language pathologist" means a person who is licensed by the Board of Examiners for Speech-Language Pathology and Audiology in accordance with ORS chapter 681 and has a Certificate of Clinical Competence in speech pathology or audiology from the American-Speech-Language-Hearing Association.
(28) "Survey" means an inspection of an applicant for a home health agency license or licensed home health agency to determine the extent to which the applicant or agency is in compliance with ORS chapter 443 and these rules.
(29) "Therapeutic services" means services provided for curative, rehabilitative, or preventive purposes.
(30) "These rules" means OAR 333-027-0000 through OAR 333-027-0190.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085, ORS 443.014

AMEND: 333-027-0010

RULE TITLE: Application for Licensure and Fees

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0010 – Corrects statutory references and updates the term "Division" to "Authority." Adds requirement that the cost of a nationwide background check, if determined necessary, is the responsibility of the agency. Clarifies that an agency must inform the Authority of any changes in ownership, organizational structure, or other information within 30 days of change and a change of ownership fee must be submitted if the change occurs other than at time of renewal. Clarifies that an agency must apply for a new license if the agency moves 30 or more miles from its current location. Specifies that a parent agency must provide supervision and administrative control of any branch office. Moves language from former fee rule (OAR 333-027-0025) to this rule.

RULE TEXT:

(1) An agency that establishes, purports to manage or operate as a home health agency must be licensed by the Authority and comply with ORS 443.014–443.095 and these rules.

(2) An applicant wishing to apply for a new or renewal license to operate a home health agency shall submit an application on a form prescribed by the Authority and pay the applicable fee as specified in ORS 443.035.

(3) The owner or administrator must submit background information to the Authority, in accordance with OAR 333-027-0064 for the purposes of conducting a criminal records check. If a nationwide criminal records check is determined necessary by the Authority, the cost for the nationwide check shall be the responsibility of the agency and shall not exceed the cost charged to the Authority.

(4) An agency must inform the Authority in writing of any changes in ownership, organizational structure, or other information delineated in the agency's most recent application within 30 days of the change.

(a) If the ownership of an agency changes, other than at the time of the annual renewal, the agency shall submit a change of ownership form along with the applicable fee specified in ORS 443.035.

(b) If an agency moves 30 miles or more from its current physical location, the agency must apply for a new license.

(c) Failure to notify the Authority may result in denial or revocation of a license.

(5) A branch office is overseen by the parent agency and therefore need not independently comply with the licensure requirements specified in these rules.

(a) A parent agency must provide supervision and administrative control of any branch office.

(b) The Authority shall determine on a case-by-case basis exceptions to the 60 mile travel distance from the parent agency requirement for a branch office as defined in OAR 333-027-0005.

(6) A hospital may provide home health services without maintaining a separate governing body and administrative services so long as the services provided meet the requirements of ORS 443.014 through 443.095 and the hospital pays the home health licensing fee under ORS 443.035.

(7) License fees will not be prorated and are non-refundable.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.015, ORS 443.065, ORS 443.025

AMEND: 333-027-0015

RULE TITLE: Review of License Application

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0015 – Clarifies that the Authority will confirm receipt of required fee and determine whether a license application is complete. Clarifies that other therapeutic services may be offered such as in-home care services and palliative care. Removes duplicative information that is covered by adoption of the federal regulations.

RULE TEXT:

In reviewing an application for a home health agency license, the Authority shall:

(1) Confirm receipt of required fee and determine the application is complete;

(2) Verify that the agency is primarily engaged in providing skilled nursing and at least one of the following other services:

(a) Physical therapy, occupational therapy, speech therapy, medical social services, or home health aide services;

(b) Other therapeutic services such as in-home care services as defined in ORS 443.305 or palliative care as defined in ORS 413.273 may be provided in addition to a service required under subsection (2)(a).

(3) Verify that the agency has policies established by a professional policy-making committee ;

(4) Assess compliance with 42 CFR Part 484 and the Conditions of Participation specified by the CMS for purposes of state licensure.

(5) Assess compliance with ORS 443.014 through 443.105 and these rules;

(6) Conduct a survey of an agency in accordance with OAR 333-027-0036, which may include branch locations to determine if the agency is in compliance with ORS chapter 443 and these rules.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.015

AMEND: 333-027-0017

RULE TITLE: Approval of License Application

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0017 – Specifies that no person or agency shall act in such a manner that implies the agency may render care or services other than that which it is licensed to provide.

RULE TEXT:

(1) The Authority shall notify an applicant in writing if a license application is approved.

(2) A license shall be issued only for the agency and person(s) named in the application and may not be transferred or assigned.

(3) The license shall be conspicuously posted in an office that is viewable by the public.

(4) A licensed home health agency that also provides personal care services that are necessary to assist an individual's daily needs, but do not include curative or rehabilitative services is not required to be licensed as an in-home care agency. Such agencies shall comply with ORS 443.305 through 443.355 and OAR 333-536-0000 through 333-536-0125 with the exception of the licensing requirements.

(5) No person or home health agency licensed pursuant to the provisions of ORS chapter 443 and these rules, shall in any manner or by any means assert, represent, offer, provide or imply that such person or agency is or may render care or services other than that which is permitted by or which is within the scope of the license issued to such person or agency by the Authority nor shall any service be offered or provided which is not authorized within the scope of the license issued to such person or facility.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.015, 443.085, 443.090

AMEND: 333-027-0018

RULE TITLE: Denial of License Application

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0018 – Replaces term "Division" with "Authority" and updates terminology.

RULE TEXT:

If the Authority intends to deny a license application, it shall issue a Notice of Intent to Deny in accordance with ORS 183.411 through 183.470.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.045

AMEND: 333-027-0020

RULE TITLE: Expiration and Renewal of License

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0020 – Replaces the term "Division" with "Authority" and makes minor grammatical corrections.

RULE TEXT:

(1) Each license to operate a home health agency shall expire on December 31 of each calendar year following the date of issue.

(2) An agency shall submit a completed application for renewal on a form prescribed by the Authority, accompanied by the required fee, to the Authority not less than 30 days prior to the license expiration date.

(3) The Authority may issue a renewal license contingent upon evidence of the agency's compliance with ORS chapter 443 and these rules; attestation to the delivery of agency services to patient(s) during the last calendar year; and, if requested, receipt of an annual statistical report containing such information as may be prescribed by the Authority.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.015

REPEAL: 333-027-0025

RULE TITLE: Fees

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Repeal OAR 333-027-0025 – Repeals the rule regarding fees since fees are adopted in statute.

RULE TEXT:

(1) The fee for an initial agency license shall be $1,600 plus an additional $1,600 for each subunit of a parent agency.
(2) If the ownership of an agency changes, other than at the time of the annual renewal, the agency's licensure fee shall be $500, plus an additional $500 for each subunit. If the change of ownership of the agency does not involve the majority owner or partner, or the administrator operating the agency, the license fee shall be $100.
(3) The annual license renewal fee for an agency shall be $850 plus an additional $850 for each subunit.
(4) A hospital exempted under ORS 443.025 may provide home health services without maintaining a separate governing body and administrative services so long as the services provided meet the requirements of 443.005 through 443.095 and the hospital pays the home health licensing fee under 443.035.
(5) License fees will not be prorated and are non-refundable.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.015, 443.035

AMEND: 333-027-0029

RULE TITLE: Denial, Suspension, or Revocation of License

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0029 – Replaces the term "Division" with "Authority," clarifies the Authority may impose a civil penalty and makes minor grammatical corrections.

RULE TEXT:
(1) The Authority may impose a civil penalty or deny, suspend or revoke an agency's license for failure to comply with ORS 443.004, 443.014 through 443.095 or these rules.
(2) If the Authority intends to impose a civil penalty or deny, suspend or revoke an agency license, it shall do so in accordance with ORS 183.411 through 183.470.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.045

AMEND: 333-027-0033

RULE TITLE: Return of Agency License and Agency Closure

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0033 – Clarifies the action that an agency must take if it chooses to cease operating or providing services.

RULE TEXT:

(1) If an agency license is suspended, revoked, or if the facility decides to discontinue operations, the license certificate in the licensee's possession shall be returned to the Authority immediately.

(2) An agency that discontinues operations must:

(a) Inform patients or the patient's representative about the closure at least 14 calendar days prior to closure;

(b) Provide information about how an individual may obtain their clinical records;

(c) Notify the Authority at least 14 calendar days prior to closure and submit plans for the transfer, storage and disposal of clinical records.

(3) Clinical records not claimed that are less than seven years old from the last date of discharge shall be stored until they are more than seven years old from last date of discharge. Clinical records that are greater than seven years old from last date of discharge may be destroyed.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085

AMEND: 333-027-0036

RULE TITLE: Surveys

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0036 – Replaces the term "Division" with "Authority." Provides additional clarity on the acceptance of a survey conducted by an accrediting body in lieu of the Authority conducting its own survey. Specifies additional documentation requirements that must be submitted to the Authority. Specifies that if the deemed status of an agency changes, the Authority must be notified within 30 calendar days of the change. Removes references to gender pronouns.

RULE TEXT:

(1) The Authority shall, in addition to any investigations conducted pursuant to OAR 333-027-0038, conduct at least one in-person inspection of each agency prior to licensure and once every three years thereafter as requirement of licensing and at such other times as the Authority deems necessary.

(2) In lieu of the in-person inspection required by section (1) of this rule, the Authority may accept:

(a) CMS certification by a federal agency or an approved accrediting organization; or

(b) A survey conducted within the previous three years by an accrediting organization approved by the Authority if:

(A) The certification or accreditation is recognized by the Authority as addressing the standards and Condition for Participation requirements of the CMS and other standards set by the Authority;

(B) The agency notifies the Authority to participate in any exit interview conducted by the federal agency or accrediting body; and

(C) The agency provides copies of all documentation concerning the certification or accreditation requested by the Authority including:

(i) Written evidence of all corrective actions underway, or completed, in response to approved accrediting organizations recommendations;

(ii) All progress reports; and

(iii) The letter from CMS indicating the agency's deemed status.

(3) If the deemed status of an agency changes, the agency administrator must notify the Authority within 30 calendar days.

(4) An agency shall permit Authority staff access to any location from which it is operating its agency or providing services during a survey.

(5) A survey may include but is not limited to:

(a) Interviews of patients, patient family members, agency management and staff;

(b) On-site observations of patients and staff performance;

(c) Review of documents and records; and

(d) Patient audits.

(6) An agency shall make all requested documents and records available to the surveyor for review and copying.

(7) Following a survey, Authority staff may conduct an exit conference with the agency owner or their designee. During the exit conference, Authority staff shall:

(a) Inform the agency representative of the preliminary findings of the inspection; and

(b) Give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings.

(8) Following the survey, Authority staff shall prepare and provide the agency owner or their designee specific and timely written notice of the findings.

(9) If the findings result in a referral to another regulatory agency, Authority staff shall submit the applicable information to that referral agency for its review and determination of appropriate action.

(10) If no deficiencies are found during a survey, the Authority shall issue written findings to the agency owner indicating that fact.

(11) If deficiencies are found, the Authority shall take informal or formal enforcement action in accordance with OAR 333-027-0180 or 333-027-0185.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.019, ORS 443.085

AMEND: 333-027-0037

RULE TITLE: Complaints

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0037 - Replaces term "Division" with "Authority." Defines personally identifiable information and clarifies that information will be kept confidential. Provides that an investigation may be carried out after receipt of complaint in accordance with OAR 333-027-0038. Moves investigation language to OAR 333-027-0038.

RULE TEXT:

(1) Any person may make a complaint verbally or in writing to the Authority regarding an allegation as to the care or services provided by a home health agency or violations of home health agency laws or regulations.

(2) The identity of a person making a complaint and any personally identifiable information, as that is defined in ORS 432.005 is confidential and not subject to disclosure under ORS 192.311 to 192.478.

(3) An investigation may be carried out after receipt of a complaint in accordance with OAR 333-027-0038.

(4) An employee or contract provider with knowledge of a violation of ORS chapter 443 or these rules, shall use the reporting procedures established by the home health agency before notifying the Authority or other state agency of the inappropriate care or violation, unless the employee or contract provider:

(a) Believes a patient's health or safety is in immediate jeopardy; or

(b) Files a complaint in accordance with section (1) of this rule.

(5) If the complaint involves an allegation of criminal conduct or an allegation that is within the jurisdiction of another local, state, or federal agency, the Authority will refer the matter to that agency.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.355

AMEND: 333-027-0038

RULE TITLE: Investigations

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0038 - Replaces term "Division" with "Authority" and removes requirement that an investigation be conducted within 45 days. Adds information relating to the confidentiality of investigation information that was previously under OAR 333-027-0037.

RULE TEXT:

(1) An unannounced complaint investigation will be carried out as soon as practicable of the receipt of the complaint and may include, but is not limited to:

(a) Interviews of the complainant, caregivers, patients, a patient's representative, a patient's family members, witnesses, and agency management and staff;

(b) On-site observations of the patient(s), staff performance, patient environment; and

(c) Review of documents and records.

(2) Should the complaint allegation represent an immediate threat to the health or safety of a patient, the Authority will notify appropriate authorities to ensure a patient's safety, and an investigation will be commenced within two working days.

(3) An agency shall permit Authority staff access to the agency during an investigation.

(4) The agency shall cooperate with investigations of allegations of patient abuse and neglect conducted by the Oregon Department of Human Services (ODHS), Oregon Health Authority, Adult Protective Services, and other agencies such as law enforcement.

(5) Information obtained by the Authority during an investigation of a complaint or reported violation under this rule is confidential and not subject to public disclosure under ORS 192.311 to 192.478. Upon the conclusion of the investigation, the Authority may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any patient of a home health agency. The Authority may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a home health agency and may report information obtained during an investigation to a health professional licensing regulatory board as defined in ORS 676.160 as that information pertains to a licensee of the board.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.355

REPEAL: 333-027-0040

RULE TITLE: Services and Supplies

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Repeals OAR 333-027-0040 – Rule has been repealed as the language is duplicative to the requirements specified in federal regulation which have been adopted by reference.

RULE TEXT:

If services or supplies are required by law to be prescribed by a physician or allowed practitioner, the agency shall offer or provide such services and supplies only under an order for treatment and plan of treatment. Services and supplies offered or provided by an agency shall include only the following:

(1) Nursing care provided by or under the supervision of a registered nurse;

(2) Physical, occupational, or speech therapy, or medical social services;

(3) Other therapeutic services conforming to generally accepted and established standards;

(4) Home health aide services; and

(5) Medical supplies, other than drugs and biologicals, and medical appliances. When patient care supplies are stored in the agency, the agency shall store such supplies in a manner that prevents their contamination and ensures that the supplies do not exceed the manufacturer's expiration date.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.075

ADOPT: 333-027-0046

RULE TITLE: Geographic Service Area

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Adopt OAR 333-027-0046 – Adds a rule that clarifies the geographic service area requirements for a home health agency.

RULE TEXT:

(1) A home health agency serves a geographic service area that is equal to or less than 60 miles from the physical location of the agency.

(2) A branch office provides services to the parent agency's location within a portion of the area served by the parent agency.

(3) A home health agency that moves its physical location:

(a) Must apply for a new license in accordance with OAR 333-027-0010; and

(b) Ensure that the services it provides to patients is within 60 miles from the new physical location.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.075

AMEND: 333-027-0050

RULE TITLE: Changes in Services Provided

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0050 - Replaces the term "Division" with "Authority," removes duplicative language that is specified in the federal regulation adopted by reference. Clarifies that an agency must notify the Authority within 30 calendar days if the agency discontinues providing a service listed on its license.

RULE TEXT:

(1) An agency must obtain written approval from the Authority prior to the implementation of the provision of additional services. When an agency applies for approval of additional services, the agency must provide evidence of:

(a) Governing body approval of addition of the services and all revisions in agency policies pertaining to the new services;

(b) Governing body approval of the agency's policies and procedures pertaining to the new services; and

(c) Adherence to agency personnel policies and ORS chapter 443 and these rules by all individuals providing services through the agency.

(2) An agency must notify the Authority within 30 calendar days if it discontinues providing a service listed on its current license.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085

AMEND: 333-027-0060

RULE TITLE: Administration of Home Health Agency

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0060 - Removes duplicative language that is specified in the federal regulation adopted by reference. Clarifies the responsibilities of the agency, agency administrator and agency governing body.

RULE TEXT:

(1) An agency shall clearly set forth in writing the organization, services provided, administrative control, and lines of authority for the delegation of responsibility to the patient care level. An agency shall not delegate administrative and supervisory functions to another agency, individual, or organization.

(2) An agency shall ensure that:

(a) A clinical manager is employed who is responsible for the oversight of all patient care services and personnel and that the clinical manager is available during all operating hours;

(b) A professional policy-making committee is established in accordance with ORS 443.065; and

(c) All patient complaints are reviewed including documentation and resolution.

(3) If an agency chooses to provide professional students with a practicum in home health, the agency must ensure that:

(a) A contract between the agency and the accredited educational institution is in effect and includes at a minimum, a description of:

(A) Program objectives;

(B) Program coordination;

(C) Student supervision;

(D) Adherence to agency policy; and

(E) Conformance with applicable professional practice laws, rules, and regulations.

(b) The governing body shall be informed about the contract specified in subsection (3)(a) prior to its implementation.

(c) The agency maintains documentation of each practicum and the student's activities, supervision, and the evaluation of these activities.

(d) The agency maintains documentation of patient care services provided by the student.

(4) An agency's governing body shall assume full legal and fiscal responsibility for the agency's operation. The agency's governing body shall provide for effective communication with administration of the agency and the owner of the agency.

(5) An agency's governing body shall:

(a) Employ a qualified administrator, unless exempted under ORS 443.025;

(b) Regularly monitor the performance of the administrator; and

(c) Ensure there is a quality assessment and performance improvement program established and maintained in accordance with OAR 333-027-0160.

(6) The administrator shall identify a qualified alternate, designated in writing by the administrator and the governing body to assume responsibilities and obligations of the agency during the administrator's absence. The clinical manager may be designated to serve in this role.

(7)(a) The agency shall develop personnel policies which must be appropriate to the agency, be documented, and include:

(A) Hours of work;

(B) Orientation that is appropriate to the classification of the employee;

(C) An inservice program that provides ongoing education to ensure that staff skills are maintained for the responsibilities assigned and ensures that staff are educated in their responsibility in infection control;

(D) Work performance evaluations;

(E) Employee health program;

(F) A tuberculosis infection control plan that includes provisions for employee assessment and screening for protecting

patient and employees from tuberculosis in accordance with OAR 333-019-0041; and
(G) Provisions for the completion of criminal records checks in accordance with ORS 443.004 and OAR 333-027-0064.
(b) Personnel records shall include job descriptions, personnel qualifications, evidence of any required licensure or certification, evidence of orientation and performance evaluations, evidence of a completed criminal records check and fitness determination.
(8) An agency contracting with individual personnel or public or private entities for home health care services shall maintain written contracts and shall clearly designate:
(a) That patients are accepted for care only by the primary agency;
(b) The services to be provided;
(c) The rights and responsibilities of the contracting individual or entity in the coordination, supervision, and evaluation of the care or service provided;
(d) The obligation to comply with all applicable agency policies;
(e) The party with responsibility for development and revisions of the plan of care, patient assessment, progress reports, and patient care conferences, scheduling of visits or hours, and discharge planning;
(f) Appropriate documentation of services provided on record forms provided by the agency; and
(g) The terms of the agreement and basis for renewal or termination.
(9) The professional policy-making committee appointed by the agency shall:
(a) Be composed of personnel associated with the agency and that meet the requirements in ORS 443.065.
(b) Establish in writing and review annually, the agency's policies governing scope of services, admission and discharge policies, medical supervision, plans of treatment, emergency care, clinical records, personnel qualifications, and quality assessment and performance improvement.
(c) Meet as needed to advise the agency on other professional issues.
(d) Participate with the agency staff in the annual evaluation of the agency's program.
(10) The agency shall document the professional-policy making committee's systematic involvement and effective communication with the governing body and the management of the agency.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.014, 443.055, 443.065, 443.085

AMEND: 333-027-0064

RULE TITLE: Criminal Records Check

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0064 – Adds definition for term "fitness determination" and "weighing test." Removes the definition for term "direct contact with" and amends the definition of term "subject individual." Adds provision that an agency may employ an individual on preliminary basis pending the outcome of the background check and specifies requirements. Clarifies requirements for the criminal records check policy. Aligns weighing test factors with ORS 181A.195. Clarifies that an agency providing in-home care services to an Oregon Department of Human Services (ODHS) client must have the criminal records check completed by the ODHS, Background Check Unit. Specifies the applicable administrative rules for compliance. Removes outdated provisions. Defines criminal records check and clarifies that the cost of nationwide check, if determined necessary by the Authority, is the responsibility of the agency.

RULE TEXT:

(1) For the purposes of this rule, the following definitions apply:

(a) "Disqualifying condition" means a non-criminal personal history issue that makes an individual unsuitable for employment, contracting or volunteering for an agency, including but not limited to discipline by a licensing or certifying agency, or drug or alcohol dependency;

(b) "Fitness determination" means a decision made by an agency pursuant to the policy established in accordance with section (5) of this rule, that a subject individual is or is not fit to hold a position, paid or not paid, have direct access, or otherwise provide services to a patient.

(c) "Subject Individual" (SI) means an individual on whom an agency may conduct a criminal records check and from whom an agency may require fingerprints for the purpose of conducting a national criminal records check, including:

(A) An employee or prospective employee;

(B) A contractor, temporary worker, volunteer or owner of an agency who may have contact with patients or has access to personal information about patients, including but not limited to Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information;

(C) A prospective contractor, temporary worker, or volunteer or owner who may have contact with patients or has access to personal information about patients, including but not limited to Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information.

(d) "Vendor" means a researcher or company hired to provide a criminal records check on a subject individual.

(e) "Weighing test" means a process in which an agency considers available information to make a fitness determination when an SI has potentially disqualifying convictions or conditions.

(2) An agency shall conduct a criminal records check and make a fitness determination before hiring or contracting with an SI and before allowing an SI to volunteer to provide services on behalf of the agency.

(3) An SI may not be employed, contract with, or volunteer with an agency in any capacity if the criminal records check conducted reveals the SI has been convicted of a crime as described in ORS 443.004.

(4)(a) Notwithstanding sections (2) and (3) of this rule, an agency may employ an individual pending the outcome of a criminal records check if the agency ensures that there is no direct contact with any patient, including access to personal information about patients such as Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information, prior to making a final fitness determination. The agency shall:

(A) Conduct a preliminary fitness determination to determine if an individual may participate in employment orientation, training, or otherwise perform in the position without direct contact with any patient;

(B) Ensure that an individual employed based on a preliminary fitness determination is actively supervised at all times; and

(C) Provide clear documentation in the personnel record of the following:

(i) Date of preliminary fitness determination and documentation that preliminary hire is appropriate; and
(ii) Employee disclosure that clearly states until a criminal records check has been completed, the employee may not have any direct contact with any patient.
(b) A preliminary fitness determination of an SI working with an ODHS client shall comply with subsection (9)(b) of this rule.
(5) An agency shall have a policy on criminal records check requirements which shall include at a minimum:
(a) Any person convicted of a crime described in ORS 443.004 may not be employed;
(b) Preliminary fitness determination requirements for purposes of preliminary hire;
(c) Weighing test actions should a criminal records check indicate that an SI has been convicted for crimes against an individual or property other than those identified in ORS 443.004; and
(d) Provisions for performing a weighing test.
(6) In performing a weighing test, the agency shall consider circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:
(a) The nature of the crime and details of incidents leading to the charges of potentially disqualifying convictions or potentially disqualifying conditions;
(b) Facts that support the convictions or potentially disqualifying conditions;
(c) The relevancy, if any, of the potentially disqualifying convictions or conditions to the specific requirements of the SI's current or proposed position and any services provided;
(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, such as:
(A) Passage of time since commission of the potentially disqualifying conviction;
(B) The age of the subject individual at the time of the potentially disqualifying conviction or condition;
(C) The likelihood of a commission of another potentially disqualifying conviction or condition;
(D) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
(E) Recommendation of an employer.
(e) Other factors which should be considered when available including but not limited to:
(A) Other information related to criminal activity including charges, arrests, pending indictments and convictions. Behavior involving contact with law enforcement may also be reviewed if information is relevant to potentially disqualifying convictions or conditions;
(B) Periods of incarceration for any potentially disqualifying conviction or condition;
(C) Status of and compliance with parole, post-prison supervision or probation for any potentially disqualifying conviction or condition;
(D) Evidence of alcohol or drug issues directly related to potentially disqualifying conviction or condition;
(E) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conviction or condition;
(F) Changes in circumstances subsequent to the potentially disqualifying conviction or condition including but not limited to:
(i) History of high school, college or other education related accomplishments;
(ii) Work history (employee or volunteer); or
(iii) History regarding licensure, certification or training for licensure or certification;
(G) Indication of the SI's cooperation, honesty or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying convictions or conditions.
(f) An agency shall consider the relevancy of the SI's criminal activity or potentially disqualifying convictions or conditions to the paid or volunteer position, or to the environment in which the SI will work, especially, but not exclusively:
(A) Access to medication;
(B) Access to patients' personal information;

(C) Access to vulnerable populations.
(7) An agency shall document the weighing test and place in the employee's file.
(8) A criminal records check shall be performed by a vendor that:
(a) Is accredited by the National Association of Professional Background Screeners (NAPBS); or
(b) Meets the following criteria:
(A) Has been in business for at least two years;
(B) Has a current business license and private investigator license, if required in the company's home state; and
(C) Maintains an errors and omissions insurance policy in an amount not less than $1 million.
(9) If an agency is providing Medicaid in-home care services to ODHS clients under OAR chapter 411, division 033, the agency shall submit a criminal records check request on any SI working with an ODHS client to the ODHS, Background Check Unit (BCU).
(a) The agency shall comply with OAR chapter 943, division 007 and OAR 407-007-0200 to 407-007-0370 for these SIs.
(b) When completing a criminal records check through the BCU on an SI for the first time, an agency may allow an SI to be hired on a preliminary basis in accordance with OAR 407-007-0315 after the SI completes authorization and disclosure for the criminal records check.
(c) Notwithstanding section (2) of this rule, the BCU shall make the final fitness determination for an SI working with an ODHS client.
(d) The agency shall maintain documentation of the BCU criminal records check in the SI's personnel record.
(e) An agency that submits a criminal records check for an SI through the BCU is not required to submit a separate criminal records check through a vendor specified in section (8) of this rule.
(10) A criminal records check must include the following:
(a) Name and address history trace;
(b) Verification that the SI's records have been correctly identified, via date of birth check and Social Security number trace;
(c) A local criminal records check, including city and county records for SI's places of residence for the last seven years;
(d) A nationwide multijurisdictional criminal database search, including state and federal records;
(e) A nationwide sex offender registry search;
(f) The name and contact information of the vendor who completed the criminal records check;
(g) Arrest, warrant and conviction data, including but not limited to:
(A) Charge(s);
(B) Jurisdiction; and
(C) Date.
(h) Source(s) for data included in the report.
(11) An agency shall perform and document a query of an SI with the National Practitioner Data Bank (NPDB) and the List of Excluded Individuals and Entities (LEIE).
(12) All criminal records checks conducted under this rule shall be documented in writing and made part of the agency's personnel files.
(13) An agency shall ensure that a criminal records check is performed on an SI every three years from the date of the SIs last criminal records check in accordance with these rules.
(14) Notwithstanding sections (2) and (13) of this rule, the Authority and not the agency shall conduct a criminal records check on an owner of any agency who is subject to a criminal records check under subsection (1)(c) of this rule.
(a) As used in this section, a criminal records check means obtaining and reviewing criminal records including but not limited to:
(A) A check of criminal offender information and driving records conducted through the use of the Law Enforcement Data System maintained by the Oregon State Police (OSP), in accordance with the rules adopted and procedures established by OSP;
(B) A check of Oregon or other state criminal offender information, including through fingerprint identification or other

means, conducted by OSP at the Authority's request; or
(C) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by OSP through the Federal Bureau of Investigation.
(b) Any cost for a nationwide check of criminal records shall be the responsibility of the agency and shall not exceed the cost charged to the Authority.
(c) The Authority shall conduct a criminal records check at the time of application for a person who applies for an agency license and every three years thereafter;
(d) The Authority may use information obtained through a criminal records check to make a fitness determination on the administrator or owner.
(A) If the Authority determines the information contained in the record may result in a denial, the owner or administrator will be afforded reasonable time to complete, challenge, or correct the accuracy of the record before a final fitness determination is made.
(B) Procedures for obtaining a change, correction or updating of an FBI record are set forth in Title 28, CFR 16.34.
(C) Procedures for obtaining a change, correction or updating of an Oregon criminal history record are set forth in OAR 257-010-0035.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.004, 443.085

REPEAL: 333-027-0070

RULE TITLE: Acceptance of Patients

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Repeal OAR 333-027-0070 - Rule has been repealed as the language is duplicative to the requirements specified in federal regulation which have been adopted by reference.

RULE TEXT:

An agency shall accept patients for treatment on the basis of a reasonable expectation that the patient's needs can adequately be met by the agency in the patient's residence. The agency shall consider the following in relation to acceptance of its patients:

(1) Adequacy and suitability of the agency's staff and resources to provide needed services;

(2) Assessment of the patients' medical, nursing, and social needs as they relate to the benefits of home care;

(3) The services provided by the agency;

(4) Assurance that services can be effectively coordinated with care provided by other organizations and individuals;

(5) Degree of patient and family awareness of their rights and responsibilities;

(6) A plan to meet medical emergencies;

(7) Availability, ability, and willingness of others to participate in the care;

(8) Adequacy of physical facilities and equipment; and

(9) Attitudes of the patient and family.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085

AMEND: 333-027-0080

RULE TITLE: Advance Directives

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amends OAR 333-027-0080 – Removes references to patient rights which are addressed by the federal regulations adopted by reference. Updates the requirements for a policy relating to advance directives and patient notification requirements.

RULE TEXT:

(1) An agency shall maintain written policies and procedures, applicable to any person 18 years of age or older, or to any adult as defined under ORS 127.505, who is receiving health care by, or through, the agency relating to advance directives and appointing a health care representative. The policy shall include provisions for the education of agency personnel and the community on issues relating to advance directives.

(2) An agency shall ensure that each patient receives the following information and materials, in written form, without recommendation:

(a) Information on the rights of the individual under Oregon law to make health care decisions, including the right to accept or refuse medical treatment and the right to execute an advance directive or appoint a health care representative;

(b) Information on the policies of the agency with respect to the implementation of the rights of the individual under Oregon law to make health care decisions;

(c) A copy of the advance directive set forth in ORS chapter 127; and

(d) The name of a person who can provide additional information concerning the forms for advance directives or appointing a health care representative.

(3) An agency shall place documentation prominently in the patient's clinical record reflecting whether the patient has executed an advance directive or appointed a health care representative.

(4) An agency shall provide the written information described in section (1) to the patient not later than 15 days after the initial provision of care by the agency, but in any event before discharge of the patient;

(5) An agency need not furnish a copy of an advance directive to a patient or the patient's representative if it has reason to believe that the patient has received a copy of an advance directive in the form set forth in ORS chapter 127 within the preceding 12-month period or has previously executed an advance directive or a form appointing a health care representative.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085, ORS 127.649, ORS 127.652

REPEAL: 333-027-0090

RULE TITLE: Plan of Treatment

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Repeal OAR 333-027-0090 - Rule has been repealed as the language is duplicative to the requirements specified in federal regulation which have been adopted by reference.

RULE TEXT:

The primary agency is responsible for the patient's plan of treatment including home health services provided to the patient through contractual arrangements with other organizations or individuals. A registered nurse must conduct an initial assessment visit to determine the immediate care and support needs of the patient. When rehabilitation therapy service (speech therapy, physical therapy or occupational therapy) is the only service ordered in the plan of treatment and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

(1) The agency shall ensure that the plan of treatment is developed in consultation with the agency personnel and established at the time of, or prior to, acceptance of the patient.

(2) The agency shall ensure that the plan of treatment is transmitted to the patient's physician or allowed practitioner for signature within 10 calendar days of admission to service.

(3) The plan of treatment shall cover the following:

(a) All pertinent diagnoses, mental status, types of services and equipment required;

(b) Frequency of visits;

(c) Prognosis;

(d) Rehabilitation potential;

(e) Functional limitations;

(f) Activities permitted;

(g) Nutritional requirements;

(h) Medications and treatments;

(i) Safety measures to protect against injury;

(j) Instructions for timely discharge or referral; and

(k) Any other appropriate items.

(4) If a patient is accepted under a plan of treatment that cannot be completed until after an evaluation visit, the physician or allowed practitioner shall be consulted to approve revisions to the original plan.

(5) Orders for therapy services shall include the specific procedures and modalities to be used and, as appropriate, the amount, frequency, and duration.

(6) The therapist and other agency personnel shall participate in developing the plan of treatment.

(7) The plan of treatment shall be signed by the physician or allowed practitioner and included in the patient's clinical record within the time period specified in the agency's policy but no longer than 30 calendar days after admission.

(8) The agency shall submit all plans of treatment to the physician or allowed practitioner and shall send copies to other practitioners involved in the patient's care.

(9) To receive reimbursement by the Centers for Medicare and Medicaid Services, agencies may be subject to additional or more restrictive requirements beyond what is required in OAR 333-027-0000 through 333-027-0190. Agencies should refer to 42 CFR Part 484 to review applicable conditions of participation, including limitations on allowed practitioners.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.075, 443.085

REPEAL: 333-027-0100

RULE TITLE: Periodic Review of Plan of Treatment

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Repeal OAR 333-027-0100 - Rule has been repealed as the language is duplicative to the requirements specified in federal regulation which have been adopted by reference.

RULE TEXT:

An agency shall ensure that:

(1) The plan of treatment shall be reviewed by the physician or allowed practitioner and agency personnel as often as the patient's condition requires, but at least once every two months;

(2) Agency professional personnel promptly alert the physician or allowed practitioner to any changes that suggest a need to alter the plan of treatment;

(3) Information provided to the physician or allowed practitioner is documented in the clinical record; and

(4) The updated plan of treatment is included in the patient's clinical record within 30 calendar days of the revision.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.075, 443.085

REPEAL: 333-027-0120

RULE TITLE: Coordination of Patient Services

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Repeal OAR 333-027-0120 - Rule has been repealed as the language is duplicative to the requirements specified in federal regulation which have been adopted by reference.

RULE TEXT:
(1) All personnel furnishing services shall ensure that their efforts are coordinated effectively and support the objectives outlined in the patient's plan of care.
(2) The clinical record or minutes of case conferences shall reflect that effective communication and coordination of patient care occurs.
(3) A written summary report for each patient shall be sent to the physician or allowed practitioner at least every 62 days.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085

AMEND: 333-027-0130

RULE TITLE: Nursing Services

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0130 – Removes duplicative language that is specified in the federal regulation adopted by reference. Clarifies that a home health aide must be a certified nursing assistant (CNA) and who has successfully completed a competency evaluation program.

RULE TEXT:

(1) The agency shall provide skilled nursing service by or under the supervision of a registered nurse in accordance with agency policies and the plan of care.

(2) The registered nurse is responsible for supervising for quality and appropriateness of care provided by the home health aide service. The registered nurse shall be readily available to the home health aide by telephone at all hours services are provided.

(3) A home health aide must have the following minimum qualifications:

(a) An Oregon Certified Nursing Assistant (CNA) certification and inclusion on the Oregon State Board of Nursing OBRA Federal CNA Registry; and

(b) Successful completion of a competency evaluation program.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.065, 443.085

AMEND: 333-027-0140

RULE TITLE: Therapeutic Services

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0140 – Removes duplicative language that is specified in the federal regulation adopted by reference. Clarifies that services may include skilled nursing, home health aide, or medical supplies and medical devices. Specifies that a plan of care must be reviewed by the physician or allowed practitioner in accordance with federal regulations.

RULE TEXT:

(1) Pursuant to ORS 443.075, an agency must have an order for a plan of care from a physician or allowed practitioner for at least one of the following services and supplies for each patient:

(a) Skilled nursing;

(b) Physical therapy services;

(c) Occupational therapy services;

(d) Speech therapy services;

(e) Medical social services;

(f) Home health aide services; or

(g) Medical supplies, other than drugs and biologicals, and medical devices;

(2) The plan of care shall be reviewed by the physician or allowed practitioner in accordance with CMS Conditions of Participation.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.065, ORS 443.085, ORS 443.075

AMEND: 333-027-0150

RULE TITLE: Clinical Records

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0150 - Removes duplicative language that is specified in the federal regulation adopted by reference. Update's retention of clinical records from 10 years to seven years. Removes outdated language. Updates statutory references.

RULE TEXT:

(1) An agency shall maintain, for each patient, a clinical record that covers the service(s) the agency provides directly, or through contract with another agency.

(2) An agency shall keep all clinical records for a period of seven years after the date of the patient's last discharge from the agency.

(3) If an agency changes ownership, the agency shall retain all clinical records in original or digital form and it shall be the responsibility of the successor agency to protect and maintain these records.

(4) In the event of dissolution of an agency, the agency administrator shall notify the Authority where the clinical records will be stored in accordance with OAR 333-027-0033.

(5) The agency shall retain non-medical records according to the policy of the individual agency.

(6) An agency shall comply with ORS 192.553 through 192.581, which governs the use and disclosure of patient’s protected health information.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.065, 443.085

ADOPT: 333-027-0155

RULE TITLE: Infection Prevention and Control

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Adopt OAR 333-027-0155 – Adds requirement that an agency develop an infection control program to prevent and control infections and communicable diseases. Specifies minimum requirements including requirements for policies and procedures.

RULE TEXT:

An agency shall develop an infection control program to prevent and control infections and communicable diseases. The program shall include at a minimum:

(1) A tuberculosis infection control plan in accordance with OAR 333-019-0041;

(2) Appropriate disposal of sharp instruments in accordance with OAR 333-056-0050;

(3) Development of policies and procedures that include, at a minimum:

(a) Standard precautions such as hand hygiene, respiratory hygiene and cough etiquette, and personal protective equipment;

(b) Availability of personal protective equipment and other equipment necessary to implement plan of care; and

(c) Exposure to bloodborne pathogens such as Hepatitis B and HIV and other potentially infectious agents.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085, ORS 443.065

AMEND: 333-027-0160

RULE TITLE: Quality Assessment and Performance Improvement

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0160 – Revises language pertaining to requirements necessary for measuring, analyzing, and tracking quality assessment and performance improvement activities.

RULE TEXT:
An agency must measure, analyze, and track quality indicators, adverse patient events, infection control and other aspects of performance that includes care and services furnished to a patient. Written documentation of quality assessment and performance improvement activities shall be recorded at least quarterly.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085

AMEND: 333-027-0170

RULE TITLE: Waivers

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0170 – Updates language relating to waivers to align with other facility licensing rules. Clarifies that during an emergency the Authority may waive a rule that an agency is unable to meet for reasons beyond the agency's control.

RULE TEXT:

(1) While all agencies are required to maintain continuous compliance with these rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. A request for a waiver from a rule must:

(a) Be submitted to the Authority in writing;

(b) Identify the specific rule for which a waiver is requested;

(c) Identify the special circumstances relied upon to justify the waiver;

(d) Explain why the agency is unable to be in compliance, what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(e) Demonstrate that the proposed waiver is desirable to maintain or improve the health and safety of the patients, to meet the individual and aggregate needs of patients, and will not jeopardize patient health and safety; and

(f) Include the proposed duration of the waiver.

(2) Upon finding that the agency has satisfied the conditions of this rule, the Authority may grant the waiver.

(3) An agency may not implement a waiver until it has received written approval from the Authority.

(4) During an emergency the Authority may waive a rule that an agency is unable to meet, for reasons beyond the agency's control. If the Authority waives a rule under this section it shall issue an order, in writing, specifying which rules are waived, which agencies are subject to the order, and how long the order shall remain in effect.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.085

AMEND: 333-027-0175

RULE TITLE: Violations

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0175 – Replaces the term "Division" with the term "Authority."

RULE TEXT:

In addition to non-compliance with any law that governs a home health agency, it is a violation to:

(1) Refuse to cooperate with an investigation or survey, including but not limited to failure to permit Authority staff access to the agency, its documents or records;

(2) Fail to implement an approved plan of correction;

(3) Refuse or fail to comply with an order issued by the Authority;

(4) Refuse or fail to pay a civil penalty;

(5) Fail to comply with rules governing the storage of records following the closure of an agency;

(6) Fail to report suspected abuse of elderly persons as defined in ORS 124.050;

(7) Fail to return a license as provided in OAR 333-027-0033; or

(8) Operate without a license.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.045, 443.085

AMEND: 333-027-0180

RULE TITLE: Informal Enforcement

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0180 – Replaces the term "Division" with the term "Authority."

RULE TEXT:

(1) If during an investigation or survey Authority staff document violations of home health licensing rules or laws, the Authority may issue a statement of deficiencies that cites the law alleged to have been violated and the facts supporting the allegation.

(2) A signed plan of correction must be mailed to the Authority within 10 business days from the date the statement of deficiencies was received by the agency. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the statement of deficiencies.

(3) An agency shall correct all deficiencies within 60 days from the date of the exit conference, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(4) The Authority shall determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority, the Authority shall notify the agency owner in writing or by telephone:

(a) Identifying which provisions in the plan the Authority finds unacceptable;

(b) Citing the reasons the Authority finds them unacceptable; and

(c) Requesting that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was received by the owner.

(5) If the agency does not come into compliance by the date of correction reflected on the plan of correction or 60 days from date of the exit conference, whichever is sooner, the Authority may propose to deny, suspend, or revoke the agency license, or impose civil penalties.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.045, 443.085

AMEND: 333-027-0185

RULE TITLE: Formal Enforcement

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0185 – Replaces the term "Division" with the term "Authority." Clarifies that Authority may reinstate a license that has been suspended only after the Authority determines that the agency is in compliance with Oregon administrative rules.

RULE TEXT:

(1) If during an investigation or survey Authority staff document a substantial failure to comply with home health licensing laws or rules, or if an agency fails to pay a civil penalty imposed under ORS 443.045 and these rules, the Authority may issue a Notice of Proposed Suspension or Notice of Proposed Revocation in accordance with 183.411 through 183.470.

(2) The Authority may issue a Notice of Imposition of Civil Penalty for violations of home health licensing laws.

(3) At any time the Authority may issue a Notice of Emergency License Suspension under ORS 183.430.

(4) If the Authority revokes an agency license, the order shall specify when, if ever, the agency may reapply for a license.

(5) The Authority may reinstate an agency license that has been suspended after the Authority determines that compliance with these rules have been achieved.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.045, 443.085

AMEND: 333-027-0190

RULE TITLE: Civil Penalties

NOTICE FILED DATE: 11/24/2021

RULE SUMMARY: Amend OAR 333-027-0190 – Replaces the term "Division" with the term "Authority."

RULE TEXT:

(1) An agency that violates home health licensing laws or rules, an administrative order, or settlement agreement is subject to the imposition of a civil penalty not to exceed $1,000 per violation and may not total more than $2,000.

(2) In determining the amount of a civil penalty, the Authority shall consider whether:

(a) The Authority made repeated attempts to obtain compliance;

(b) The licensee has a history of non-compliance with home health licensing laws and rules;

(c) The violation poses a serious risk to the public's health; and

(d) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(3) The Authority shall document its consideration of the factors in section (2) of this rule.

(4) Each day a violation continues is an additional violation.

(5) A civil penalty imposed under this rule shall comply with ORS 183.746.

STATUTORY/OTHER AUTHORITY: ORS 443.085

STATUTES/OTHER IMPLEMENTED: ORS 443.045, 443.085