

STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY

OAR #/ & Title : Temporary Rule:

Long-Term Care and Treatment (LTCT) Education Program Funding Formula/ 581-015-2572

Date: 9/17/2015

Staff/Office: Mitch Kruska, Office of Learning- Student Services

New Rule **Amend Existing Rule** **Repeal Rule**

Hearing Date: _____ **Hearings Officer Report Attached**

Prompted by: **State law changes** **Federal law changes** **Other**

Action Requested:

First Reading/Second Reading Agenda **Adoption** **Adoption/Consent**

PROPOSED/AMENDED RULE SUMMARY:

Amends LTCT OAR 581-015-2572 to create an emergency temporary rule that allows the department to implement the Minimum Staffing Level Model (MSL) required by the budget note contained in HB 5016.

BACKGROUND:

The Oregon Department of Education (ODE) contracts with local educational agencies to provide an education program for students who have been placed by the Department of Human Services, Oregon Youth Authority, School Districts or by their parents in day and residential treatment facilities. The children served by these programs have a variety of therapeutic and educational needs and have experienced serious difficulties at home, in school, and within the local community. The programs serve children who require schooling in a protected environment to safeguard themselves and/or others and to allow the treatment process to extend into the school day. The goal of ODE’s Long Term Care and Treatment Education Programs (LTCT) is to provide a high quality education within the therapeutic environment where the child will gain the behavioral skills to function successfully in a more mainstream non-institutional educational environment. There are currently 37 LTCT programs contracted by ODE to provide educational programs. These programs are currently situated throughout the state.

Currently OAR 581-015-2572 identifies a funding model based upon a predetermined formula which includes student counts as the basis for the allocation of state funding. HB 5016 contained a budget note which directs the department to allocate funding based upon an MSL model. This model bases the allocation of funding on a formula related to minimum classroom support rather than student count. Specifically, the MSL model requires that the funding support one teacher and two educational assistants for every classroom with up to 15 students. There are additional requirements for classrooms which have more than fifteen student, however, there are currently no LTCT classrooms that have this many students. The budget note requires that the MSL model be implemented immediately and so the department is asking that this emergency temporary rule be passed so that we can meet our obligations to fund the LTCT educational programs and meet the requirements of the legislative budget note.

This specific action has not been before the board.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

Current OAR 581-015-2572 uses a formula based upon student counts to allocate funding. The legislative budget note changes this funding method, replacing it with an MSL model.

CHANGED SINCE LAST BOARD MEETING?

- N/A; first read—hasn't been before board
- No; same as last month
- Yes – As follows:

FISCAL IMPACT(if any): The additional language recommended in OAR 581-015-2572 will require additional revenue from the legislature and the State School Fund to meet the requirements of the legislative mandate contained in the budget note. The suspected difference between the prior funding model and the MSL model will be approxiametely \$9,000,000 per biennium.

EFFECT OF YES VOTE: Allows the department to modify the funding formula and immediately allocate funds according to the legislative budget note

EFFECT OF NO VOTE: The Department of Education would not implement the budget note and continue to fund LTCT using the current funding formula found in the existing OAR.

STAFF RECOMMENDATION:

- Adopt administrative rule as prepared this month
- Adopt administrative rule next month
- No recommendation at this time (rarely used)

COMMENTS: This rule change needs to be implemented immediately to allow the department to comply with the legislative mandate outlined in the budget note requiring a change in the LTCT funding formula.

581-015-2572 Long-Term Care and Treatment (LTCT) Education Program Funding Formula

~~(1) The Department of Education shall provide funding to education programs based on the following:~~

~~(a) For the purpose of allocation of state funds under this rule, the following definitions apply:~~

~~(A) "Net operating expenditures (NOE)" means the sum of expenditures as defined in ORS 327.006(6), divided by the average daily membership of the school district, or in the case of an ESD, its districts, which contracts for education services offered in the program;~~

~~(B) "Service level factors" means:~~

~~(i) 1.75 for students in Psychiatric Day Treatment Programs; or~~

~~(ii) 2.00 for students in Psychiatric Residential Treatment Facilities.~~

~~(C) "State agency slots" means the number of slots available for students in education programs under ORS 343.961, as determined by the Department based on information received from the Oregon Department of Human Services, the Oregon Health Authority, the Oregon Youth Authority and eligible day treatment programs and eligible residential treatment programs for the school year;~~

~~(b) The Department shall use the following formula for distribution of funding: (Service level factors) x [(the contracting district's NOE in year one) x (state agency slots for year one) + (the contracting district's NOE in year two) x (state agency slots for year two)] = total state funding contract amount;~~

[The Department of Education shall provide funding to LTCT education programs based on a Minimum Staffing Level (MSL) model. The MSL model is based on standard classroom staffing that addresses the educational and safety needs of the students and educational staff in eligible LTCT day and residential treatment program classrooms.]

[(1) The MSL model is based on a ratio of staff to students per classroom that equals:

- (a) One teacher and two instructional assistants for up to 15 students per classroom; or
- (b) One teacher and three assistants for between 15-20 students per classroom; or
- (c) When there are more than 20 students in a classroom, the distribution may factor in opening an additional classroom staffed with one teacher and two additional assistants to bring the student number back to 10 students per classroom.
- (d) Staffing levels may vary from this guideline for safety, student characteristics, or treatment needs and still meet the MSL standard as determined by the department.
- (e) At the department's discretion up to 15.0 percent may be added to LTCT contracts to cover educational overhead costs such as indirect, administrative costs and other educational service related costs.]

~~(e)~~ [(2)] If the total state funding available for all LTCT programs is less than the total state funding needed to fully fund each LTCT contract **[under the MSL model,]** the amount of state funding in each contract determined under paragraph ~~(b)~~ [(1)] of this subsection will be prorated.

[(3) LTCT education programs shall use the funding from the department based on the MSL model to implement the MSL model as described under paragraph (1) of this rule. Any variation in staff to student classroom ratios under the MSL model must be approved by the department.]

~~(d)~~ [(4)] A special needs fund is established at the Oregon Department of Education which will be up to five percent of the total state monies made available for the LTCT program during a biennium:

- (a) Individual applications may be made to the Department for this fund to cover unexpected, emergency expenses;
- (b) Funds not utilized under this paragraph for the first year of the biennium will be carried forward by the Department to the next fiscal year **[and the remaining balance at the end of the biennium will be carried over as reserve funds into the next biennium].**

Stat. Auth. ORS 326.051 & 343.961

Stats. Implemented: ORS 343.243 & 343.961

Hist.: ODE 14-2009, f. & cert. ef. 12-10-09; ODE 15-2011, f. & cert. ef. 12-15-11