HCBS Webinar Questions and Answers
Regarding Home and Community-Based Services

1. **Question:** Does the client have to give consent to individually-based limitations if they are civilly committed or under PSRB?

   Answer:

2. **Question:** What would you suggest for late night or middle of the night house phone calls?
   Answer:

3. **Question:** Mental health is HCBS now? What is HSD?

   Answer: HCBS stands for Home and Community-Based Services and are federally mandated rights for individuals who receive services in HCBS facilities. HSD stands for Health Systems Division, which is a division of the Oregon Health Authority, who licenses and certifies behavioral health providers; such as Adult Foster Homes, Residential Treatment Facilities, and Residential Treatment Homes. HSD is responsible for implementing HCBS rights within these licensed program-types.

4. **Question:** Do the rules from HCBS and HSD both apply to our Mental Health Homes?

   Answer: The new HCBS rights and rules were incorporated into the Oregon Administrative Rules (OARs) for Adult Foster Homes (309-040), Residential Treatment Facilities, and Residential Treatment Homes (309-035). However, should a provider just want to view the HCBS rights and rules, they are OAR 411-004.

5. **Question:** Can the number of middle of the night visitors be limited?

   Answer: Yes, you can have limitations on the number of guests during nighttime hours; however, during daytime hours, individuals should be able to have the guest(s) of their choosing over for a visit.

6. **Question:** Please be specific between Adult Foster and treatment facilities.

Answer: Both adult foster homes and residential treatment facilities/homes provide supervision, training, support, and assistance with the activities of daily living described in a resident's individual care plan. In Residential treatment programs, professionally qualified staff (such as nurses, skills trainers and therapists) provide these services. In adult foster homes, a licensed provider and substitute caregivers provide these services.

7. **Question:** Did I understand correctly that the HCBS compliance review will take place as part of the standard biennial licensure reviews? Our program won't be due until Summer 2018.

   Answer: Yes, you did understand correctly. HCBS will continually be a part of the OARs during onsite reviews. However, there will a focus on the HCBS rules for each provider's next onsite review. Should a provider have their next review after June 30th, 2018, HSD will arrange a separate review with the provider that will focus only on the HCBS rules to ensure HCBS compliance by September 1, 2018.

8. **Question:** Given that the OAR's have limits to HCBS individual HCBS rights for individuals residing in SRTF / SRTH sites, why are there not similar limits built in for PSRB sites?

   Answer: I will need more time to answer this and any other specific questions regarding PSRB and HCBS. I am currently working with HSD and Juliet Britten, Executive Director of PSRB, in order to streamline regulatory processes within the context of the PSRB facilities and HCBS. There will be a presentation regarding HCBS and PSRB. Stay tuned!

9. **Question:** I see facilities where personal food is locked in fridges to prevent stealing. Is it allowed?

   Answer: If the resident has a key to the cabinet where they personal food storage is kept, this would be fine. If other's food is kept in the same cabinet, yet they do not have a key, this would not be okay. Personal food must be freely accessible to each resident. If stealing is a persistent problem at a residence or facility, the provider should develop a process to securely store each resident's personal food storage where each resident has allowable access, such as with a key, etc. Please note that it would not be okay if personal food storage was secured and staff were the only ones with the keys, even though

they would open it if requested. Again, if personal food storage is secured, each resident should have 24/7 free access to it.

10. **Question:** What if other residents complain about their peer's visitor? Is it okay to expect that residents agree to someone's visitor in a residential area of the facility?

    Answer: It is appropriate for a provider's house rules to include visitor rules and expectations. However, the visitor should be informed of these rules and expectations. If they do not abide by the rules and expectations, that could be reason to ask the visitor to 1) refrain from the behavior(s), or (2) ask that they move to another part of the residence. If still visitor is still violating rules and expectations, then the provider may request that the visit end early. If the issue is that a peer simply doesn't like the visitor, then this is not a reason to ask that the visit end early. The person who simply does not like the visitor has the choice to stay in the room where the visit in taking place, if in the living room per say, go to their room or another room in the residence, or leave the facility. Additionally, the resident who has a visitor over could also move to another part of the facility, etc.

11. **Question:** Do we have the capacity to require a resident to be with a visitor during the entire visit? For example, if a visitor comes, and the resident asks the visitor to stay in his or her private room while the resident is at a treatment group, are we in a position to ask the visitor to leave?

    Answer: Yes, you can certainly put in your visitor rules and expectations that residents need to be available for the entirety of the visit and if this is not possible, that the visit be moved to another time or be ended early.

12. **Question:** As the provider must provide the individual a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable Residency Agreement and the eviction and appeal processes must be substantially equivalent to the processes provided under landlord-tenant laws. For Residential Treatment Homes/Facilities, what is the rule in situations when clients are not meeting criteria for specific level of care. For instance, let`s say a client needs to transition from a Residential Treatment Home to lower level of care due to clinical assessments pointing to step down; however, the client refuses to transition. Does a client have a right to stay at RTH based on the Residency Agreement in this case?

Answer: Firstly, it is recommended that residency agreements are month-to-month so that should a provider need to transition a client, they can issue a 30-day notice and visa-versa, or follow the OAR on Emergency Termination of Residency (309-035-0150 (3). Secondly, no, the client does not have the right to stay if clinical documentation shows that a lower-level of care is more appropriate. More than likely, Medicaid will not approve/pay for the current level of care; which is a reason to transition/terminate a resident. Refer to OAR 309-035-0150 "Termination of Residency".

13. **Question:** The same situation as question 17 but at the supportive housing level. Let`s say at our shared supportive programs where clients have rental agreements with Cascadia Housing: what if a client refuses to transition to lower level of care, however the program's mission is to work with clients on independent skills to transition them to lower level of care.

    Answer: You will need to contact the Contracts Unit within the Health Systems Division to answer any questions related to the contracts associated with supportive or supported housing. You may contact Sue Lind at 503-947-5533 or susan.g.lind@state.or.us.

14. **Question:** When a provider is unable to meet a quality described under sections (4)(e) to (4)(j) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the consent of the individual or, as applicable, the individual's legal representative, through the process set out in OAR 411-004-0040 and incorporated by 309-035-0161. The provider may not apply an individually-based limitation until the limitation is approved and documented as required by OAR 309-035-0000. Can you point me (or send link) to the following OARs (I couldn`t find any of them on-line) 309-035-0000, 309-035-0161, 411-004-0040.

    Answer: Below you will find links to each of the program rules (309-035 and 309-040) and for Oregon's overarching HCBS rules (411-004).

    Residential Treatment Facilities and Residential Treatment Homes
    http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_309/309_035.html

    Adult Foster Homes
    http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_309/309_040.html

    Oregon's Overarching HCBS rules

http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_004.html

15. **Question:** I understand that Person-Centered Service Plan is different document than Residential Service Plan. Are "person-centered service plan" and "person-centered plan" the same documents? I found both terms used in OARs.

    Answer: They are not the same document. The process for the conflict free person-center plan has not changed and has been in effect since 2010. The only change is that as of July 1, 2016, Accumentra became KEPRO. Other than this change, the process for the conflict free person centered plan has not changed and will remain. The Residential Service Plans have also always been required by OAR and regulated through the Licensing and Certification Unit of the Health Systems Division. I am hoping that there will be a presentation geared toward this topic to further explain the difference between these documents.

16. **Question:** Re: (d) The provider must attach the Residential Service Plan to the Person Centered Service Plan as an addendum. I understood from the initial information about Person Centered Plans (PCP), that they are in addition to the treatment provided at the program and are aimed to assist in transitioning to lower level of care. If that is the case, then PCP, would be a secondary to the Residential Service Plan. In the above stated rule, it would indicate otherwise. Comment?

    Answer: The Person Centered Plan (which is the same at the Person Centered Service Plan) should come first and the Residential Service Plan (or called the Personal Care Plan in Adult Foster Homes) should come second, therefore, OAR is requiring the Residential Service Plan be attached, as an addendum, to the Person Centered Service Plan, though the Residential Service Plan (Personal Care Plans) are standalone documents.

    There is a distinction between the two and the provider is only responsible for the Residential Service Plan (Personal Care Plan) and to implement any provider responsibilities within the Person Centered Service Plan into their Residential Service Plan (Personal Care Plan). Both plans really work in tandem together for the care and treatment of the individual. A presentation on Person Centered Service Plans and the Residential Service Plan (Personal Care Plans) will be forthcoming. Keep in mind that there is an OAR that speaks to the providers responsibility with developing the Person Centered Service Plan. This will only be in the instance that the Division (HSD) grants an exception to who develops this initial plan, much like using variance to the rule dependent

on location, etc.; however, it is only an exception to the rule and should not be the rule.

Please note that the process for the Person Centered Service Plans and Residential Service Plans (Personal Care Plans) is not changing from what has been happening since 2010. The only difference is that the Person Centered Service Plan language is now embedded in the OAR.

17. **Question:** (b) Where the provider is responsible for developing the person-centered service plan, the provider must ensure that the plan includes the following: (Q) Provisions to prevent unnecessary or inappropriate services and supports. What does that mean in practice?

    Answer: The rule you cited is only in those instances where the Division (HSD) grants an exception with who creates the person centered plans, refer to the (a) just before the (b) that you mention. KEPRO is the entity responsible for developing the person centered service plans. In the event that your facility would need to develop the person centered plan, what (Q) means is that the Division would want to ensure that the provider has taken into account the potential conflict of interest in developing the person centered plan and documents how the provider is going to prevent any unnecessary or inappropriate service and supports. One of the reasons why KEPRO develops the person centered service plans is because they are not the provider nor the Division, they are an independent contractor. This gives them more of an ability to remain neutral to assist in determining the most necessary and appropriate services and supports each individual needs.