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PERMANENT ADMINISTRATIVE ORDER

FILED
02/28/2025 10:13 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

BHS 4-2025

CHAPTER 309
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILING CAPTION: These permanent changes increase resident protections, reduce administrative burden, and align language with other requirements.

EFFECTIVE DATE: 03/01/2025

AGENCY APPROVED DATE: 02/27/2025

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RULES:
309-035-0100, 309-035-0105, 309-035-0110, 309-035-0114, 309-035-0115, 309-035-0120, 309-035-0125, 309-035-0130, 309-035-0135, 309-035-0140, 309-035-0145, 309-035-0150, 309-035-0155, 309-035-0163, 309-035-0165, 309-035-0170, 309-035-0175, 309-035-0183, 309-035-0185, 309-035-0190, 309-035-0195, 309-035-0200, 309-035-0205, 309-035-0210, 309-035-0215, 309-035-0217, 309-035-0220, 309-035-0225, 309-035-0251, 309-035-0255, 309-035-0265, 309-035-0271, 309-035-0275, 309-035-0281

AMEND: 309-035-0100

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Amend Existing Brief Summary of Rule Changes: Clarifications made. Changes made in this section and throughout revisions include changing "individual" to "resident" and “disorders” to “conditions.” All references throughout to crisis-respite are being moved to independent Crisis Services section.

CHANGES TO RULE:

309-035-0100
Purpose and Scope ¶

(1) These rules prescribe standards by which the Behavioral Health Division (Division) of the Oregon Health Authority (Authority) licenses community based residential treatment facilities and community based residential treatment homes for adults with mental health ~~disorder~~conditions. The standards promote optimum health, mental and social well-being, and recovery for adults with mental health ~~disorder~~conditions through the availability of a wide range of home and community based residential settings and services. They prescribe how services will be provided in safe, secure, and homelike environments that recognize the dignity, individuality, and right to self-determination of each ~~individual~~resident.¶
(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for Home and Community-Based Services (HCBS) authorized under section 1915(i) of the Social Security Act.¶
(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as individuals not receiving HCBS, consistent with

the standards set out in OAR chapter 411~~1~~0, division 4173.¶
(2) These rules apply to all Residential Treatment ~~Hom~~Facilities (RT~~H~~F) and Residential Treatment ~~Faciliti~~Homes (RT~~F~~H) providing services to adults with mental health ~~disorder~~conditions regardless of whether the program receives public funds. These rules prescribe distinct standards in some areas for Secure Residential Treatment Facilities (SRTF), and Crisis Respite Services, or are based on the number of ~~individual~~residents receiving services in the program.¶
(3) These rules recognize that some residents may have their rights limited through civil or forensic commitment processes as described in ORS chapters 161 and 426, guardianship proceedings as described in ORS chapter 125, or other legal mechanisms as described in ORS chapter 127.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

AMEND: 309-035-0105

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Brief Summary of Rule Changes: Clarifications made. Changes made in this section and throughout revisions include changing: "individual" to "resident", “disorders” to "conditions", and “crisis-respite” to “Crisis Services”. Definition (39) has changed “mental retardation” to “intellectual or developmental disability.” Definitions added for “culturally responsive”, “gender expression, “gender identity”, “incident report”, “Qualified Mental Health Professional”, “Self-Administration of Medication”, “Stock Supply”, and “Trauma Informed Services.”

CHANGES TO RULE:

309-035-0105
Definitions ¶

As used in these rules, the following definitions apply:¶
(1) "Abuse" ~~include~~means abu~~t is not limited to:~~se as defined in ORS 430.735.¶
(a2) ~~Any death caused by other than accidental or natural means or occurring in unusual circumstances;¶~~
~~(b) Any physical injury caused by other than accidental means or that appears to be at variance with the explanation given of the injury;¶~~
~~(c) Willful infliction of physical pain or injury;¶~~
~~(d) Sexual harassment or exploitation including but not limited to any sexual contact between an employee of a community facility or community program or provider or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;¶~~
~~(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;¶~~
~~(f) Abuse does not include spiritual treatments by~~"Activities of Daily Living (ADL)" means those personal and functional activities required by a resident for continued well-being, that are essential for health and safety. ADLs include eating, bathing, dressing, toileting, transferring (including mobility and ambulation) and maintaining continence.¶
(3) "Adult" means an individual 18 years of age or older.¶
(4) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions in the event the resident is no longer able to give directions regarding their wishes, as ~~duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.¶~~
~~(2) "Adult" means an individual 18 years of age or older~~escribed in ORS 127.505 to 127.660. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).¶
(~~3~~5) "Aid to Physical Functioning" means any special equipment ordered for a~~n individual~~ resident by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.¶
(~~4~~6) "Applicant" means the individual or entity, including the Division, who owns, seeks to own or operate, or maintains and operates a program and is applying for a license.¶
(~~5~~7) "Approved" means authorized or allowed by the Authority or designee.¶
(~~6~~8) "Authority" means the Oregon Health Authority or designee.¶
(~~7~~9) "Background Check" means criminal records check and an abuse check.¶
(10) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.¶
(~~8~~11) "Care" means services including but not limited to supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the provi~~ding~~sion of room and board.¶
(~~9~~12) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶
(1~~0~~3) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for individuals with mental health ~~disorder~~conditions, operated by or contractually affiliated with a local mental health authority. CMHP's operate in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.¶
(1~~1~~4) "Competitive Integrated Employment" means full-time or part-time work:¶

(a) At minimum wage or higher, at a rate that is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer, and who have similar training, experience, and skill;¶
(b) With eligibility for the level of benefits provided to other employees;¶
(c) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and¶
(d) As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.¶
(12~~5~~5) "Contract" means a formal written agreement between the CMHP, CCO, Oregon Health Plan contractor, or the Division and a provider.¶
(13~~) "Controlled" means a provider requires an individual to receive services from the provider or requires the individual to receive a particular service as a condition of living or remaining in the HCB setting.¶~~
(~~14~~6) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the CCO's members.¶
(15~~7~~) "Cri~~minal Records Check" means the Oregon Criminal Records Check and the processes and procedures required by OAR 943-007-0001 through 943-007-0501~~sis-Respite Services" means providing services to individuals who are RTF residents for up to 30 days.¶
(18) "Critical Incident" means any incident that caused harm or created a potential risk of harm to a resident including:¶
(a) Abuse, neglect, or exploitation;¶
(b) Misuse or unauthorized use of restraints or seclusion;¶
(c) Medication error resulting in consultation with a poison control center or medical professional, an emergency department or urgent care visit, hospitalization or death; and¶
(d) Suspected overdose.¶
(e) Serious injury.¶
(f) Contact with law enforcement or emergency services.¶
(g) Death.¶
(16~~9~~) "C~~risis-Respite Services" means providing services to individuals who are RTF residents for up to 30 days~~ulturally Responsive" means services that are respectful of and relevant to the beliefs, practices, culture and linguistic needs of diverse consumer/client populations and communities whose members identify as having particular cultural or linguistic affiliations. Cultural responsiveness describes the capacity to respond to the issues of diverse communities. It thus requires knowledge and capacity at different levels of intervention: systemic, organizational, professional, and patient.¶
(20) "Deputy Director" means the deputy director of the Behavioral Health Division of the Oregon Health Authority or designee.¶
(2~~17~~) "Designated Representative" means:¶
(a) Any adult who is not the individual's paid provider who the individual or the individual's legal representative has authorized to serve as the individual's representative;¶
(b) The power to act as a designated representative, valid until modified or rescinded. The individual or representative must notify the Division or provider of any change in designation. The notice ~~shall~~must include the individual's or the representative's signature as appropriate;¶
(c) A~~n individual~~ resident or the~~ir~~ individual's legal representative is not required to appoint a designated representative.¶
~~(18) "Deputy Director" means the deputy director of the Behavioral Health Division of the Oregon Health Authority or designee.¶~~
(~~19~~22) "Direct Care Staff" means program staff responsible for providing services for a~~n individual~~ resident.¶
(2~~0~~3) "Division" means the Behavioral Health Division of the Oregon Health Authority or designee.¶
(2~~1~~4) "Division Staff" means individuals employed by the Division or individuals delegated by the Division to conduct licensing activities under these rules.¶
(2~~2~~5) "DSM" means the most currently edition of the "Diagnostic and Statistical Manual of Mental Disorders ~~(DSM-5-TR)~~" published by the American Psychiatric Association.¶
(2~~3~~6) "Emergency Admission" means an admission to a program made on an urgent basis due to the pressing service needs of the individual.¶
(24~~7~~) "Employee" means a~~n individual~~ person, not residing at the program, who is employed by a ~~provider~~licensee who receives wages, a salary, or is otherwise paid by the ~~provider~~licensee for providing the service.¶

(25~~8~~) "Evacuation Capability" means the ability of occupants, including ~~individual~~residents and program staff as a group, to evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 20~~00~~25 edition worksheets. There are three categories of evacuation capability:¶
(a) Impractical ~~(SR-2)~~: A group, even with staff assistance, who cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes;¶
(b) Slow ~~(SR-1)~~: A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes;¶
(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. The Division shall determine evacuation capability for programs in accordance with the NFPA 101A 20~~00~~25 edition. Programs that are determined to be "Prompt" may be used in Group R occupancies classified by the building official in accordance with the building code.¶
~~(26) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.¶~~
~~(27) "HCB" means Home and Community-Based.¶~~
(~~28~~9) "Eviction" means a court action that may be initiated after the involuntary transfer or discharge process is complete by a program against a resident to remove the resident from their unit.¶
(30) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.¶
(31) "Gender expression" means a person's gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the person was assigned at birth.¶
(32) "Gender identity" means an individual's internal, deeply held knowledge or sense of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth, or name and sex as it appears in medical records or as it is described by any other individual, including a family member, guardian, or legal representative of the individual. An individual's gender identity is the last gender identity expressed by an individual who lacks the present ability to communicate.¶
(33) "Gender nonconforming" means having a gender expression that does not conform to stereotypical expectations of one's gender.¶
(34) "Gender transition" means a process by which an individual begins to live according to that individual's gender identity rather than the sex the person was assigned at birth. The process may include changing the individual's clothing, appearance, name or identification documents, or undergoing medical treatments.¶
(35) "HCB~~S~~" means Home and Community-Based ~~Services, services provided in th~~.¶
(36) "Home and Community Based Service (HCBS)" means services and supports that assist eligible individual~~'s home or community~~to remain in their home or community in accordance with the Code of Federal Regulations, approved Medicaid State Plan authorities and Oregon Administrative Rules.¶
(~~29~~37) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the ~~requirements of~~qualities of 42 CFR §441.710(a)(1) and (2), OAR 410-173-035, and OAR 411-004-0020 where a~~n individual~~ resident receives Home and Community-Based Services.¶
(3~~0~~8) "Home-Like" means an environment that promotes the dignity, security, and comfort of ~~individual~~residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the ~~individual~~resident.¶
(3~~1~~9) "~~Individual" means any individual being consider~~mminent Danger" means a situation in which a facility's non-compliance with one or more licensing requirements has caused ~~for place~~is likely to cause serious injury, harm, impairment, or ~~is currently residing in a licensed program recei~~death to one or more residents in the near future if the facility does not take immediate action to correct and protect resident health and safety.¶
(40) "Incident Report" means a written description of any incident involving a resident~~ial services regulated by these rules on a 24-hour basis, except as excluded under ORS 443.400.¶~~
~~(32) "Individual Service Record" means an individual's records maintain~~ receiving services including but not limited to injuries, major illness, accidents, acts of aggression, medication errors, or other incidents that present a risk to health and safety.¶
(41) "Independent and Qualified Agent (IQA)" means an entity meeting the provider qualification requirements identified in 42 CFR §441.730 and under contract with the Division who:¶
(a) Determines 1915(i) program eligibility initially, annually, when an individual's circumstances or needs change significantly, or upon individual request;¶
(b) Provides education and technical assistance regarding HCBS and settings;¶
(c) Coordinates and assists the individual in directing the person-centered planning process;¶
(d) Drafts, documents, regularly reviews and updates person-centered service plans;¶

(e) Prior authorizes HCBS Residential Services as described ~~by~~in the ~~program pursuant to OAR 309-035-0130(4)~~se rules;¶
(f) Conducts quality assurance and quality improvement activities;¶
(g) Completes the face-to-face needs-based assessment in person; and¶
(h) Performs transition management.¶
(~~33~~42) "Individually~~-~~ Based Limitation (IBL)" means any limitation to the qualities outlined in OAR 309-035-0195 and OAR 410-173-0040 due to health and safety risks. An ~~individually-based limitation~~IBL is based on ~~a~~ specific assessed needs and only implemented with the ~~individual's or individual~~resident's or resident's representative's informed consent as described in OAR 309-035-0195 and OAR 410-173-0005.¶
(~~34~~3) "Informed Consent" means:¶
~~(a)~~ That options, risks, and benefits of the services outlined in these rules have been explained to ~~an individual or the individual~~the resident or the resident's legal representative in a manner that the ~~individual comprehey~~ understand~~s~~; and¶
~~(b) That the individual or individual's legal representative consents to a person-centered service plan of action including~~44) "Instrumental Activities of Daily Living (IADLs)" means those self-management activities performed by an~~y~~ individual~~ly-based limitations to the rules prior to implementation of the initial or updated person-centered service plan or any individually-based limit~~ on a day-to-day basis that are essential to basic self-care and independent living. IADLs include, but are not limited to, housekeeping, including laundry, shopping, transportation, medication management, and meal preparation.¶
(~~34~~5) "Legal Representative" means a person w~~ith the legal authority to act for an individual and only~~ho has been legally designated by court order to make financial or health care decisions for a resident. The legal representative only has authority to act within the scope and limits to the authority designated by the court or other agreement. ~~A legal representative may include:¶~~
~~(a) For an individual under the age of 18, the parent, unless a court appoints another individual or agency to act as the guardian; or¶~~
~~(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative¶~~
(46) "Licensed Independent Practitioner (LIP)" means a physician, nurse practitioner, or naturopathic physician as defined in ORS 426.005.¶
(~~36~~47) "Licensed Medical Professional (LMP)" means an individual who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:¶
(a) Holds at least one of the following educational degrees and valid licensures:¶
(A) Physician licensed to practice in the State of Oregon;¶
(B) Nurse Practitioner licensed to practice in the State of Oregon; or¶
(C) Physician~~'s~~ Assistant licensed to practice in the State of Oregon.; and¶
(b) Whose training, experience, and competence demonstrate the ability to conduct a comprehensive mental health assessment and provide medication management.¶
(~~37~~48) "~~Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties operating a CMHP or MHO or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation that contracts with the Division to operate a CMHP or MHO for that county~~licensee" means the individual or entity who applied for and to whom a license has been issued to operate a residential treatment facility or residential treatment home.¶
(49) "Local Mental Health Authority (LMHA)" means a Local Mental Health Authority as defined in ORS 430.630.¶
(~~38~~50) "~~Medication~~LGBTQIA2S+" means ~~any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any individual.¶~~
~~(39) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder that limits an individual's ability to perform activities of daily living.¶~~
~~(40) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of an individual's need for mental health services. It involves collection and assessment of data pertinent to the individual's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services or a written statement that the person is not in need of community mental health services.¶~~
~~(41) "Naloxone" means an FDA-approved short-acting, non-injectable, opioid antagonist medication used for the emergency treatment and temporary rapid reversal of known or suspected opioid overdose. ¶~~
~~(42) "Mistreatment" means the following behaviors displayed by program staff when directed toward an individual:¶~~
~~(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;¶~~

(b) "Financial Exploitation" means:¶
(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;¶
(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual reasonably believes that the threat conveyed would be carried out;¶
(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;¶
(D) Failing to use the individual's income or assets effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.¶
(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a program staff or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or her room or a specific area or restriction from access to ordinarily accessible areas of the setting, residence, or program, unless agreed to by the service plan.¶
(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;¶
(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:¶
(A) Derogatory statements, inappropriate names, insults, verbal assaults, profanity, or ridicule;¶
(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;¶
(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the individual's well-being;¶
(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of the individual's ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;¶
(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.¶
(f) "Wrongful Restraint" means the use of physical or chemical restraint except for:¶
(A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or¶
(B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.¶
(43) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to an individual other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶
(44) "Opioid" means natural, synthetic, or semi-synthetic chemicals normally prescribed to treat pain. This class of drugs includes, but is not limited to, illegal drugs such as heroin, natural drugs such as morphine and codeine, synthetic drugs such as fentanyl and tramadol, and semi-synthetic drugs such as oxycodone, hydrocodone, and hydromorphone. ¶
(45) "Opioid Overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of taking opiates in an amount larger than can be physically tolerated.¶
(46) "Opioid Overdose Kit" means an ultraviolet light-protected hard case containing a minimum of two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication, one pair non-latex gloves, one face mask, one disposable face shield for rescue breathing, and a short-acting, non-injectable, opioid antagonist medication administration instruction card. ¶
(47) "Person-Centered Service Plan" means written documentation that includes details of the supports, desired outcomes, activities, and resources required for a to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.¶
(48) "Person-Centered Service Plan Coordinator" means the individual who may be a case manager, service coordinator, personal agent, or other individual designated by the Division to provide case management services or person-centered service planning for and with an individual.¶
(49) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.¶
(50) "Program" means the Residential Treatment Facility or Residential Treatment Home licensed by the Division

and may refer to the setting grounds, caregiver, staff, or services as applicable to the context.¶
(51) "Program Administrator" means the individual designated by the provider as responsible for the daily operation and maintenance of the RTH or RTF or the program administrator's designee.¶
(52) "Program Staff" means an employee, volunteer, direct care staff, or individual who, by contract with a program, provides a service to an individual.¶
(53) "Progress Notes" means the notations in the individual's record documenting significant information concerning the individual and summarizing progress made relevant to the objectives outlined in the residential service plan.¶
(54) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the individual to prevent self-destructive acts and to safeguard the individual's property and funds when used in the relevant context.¶
(55) "Provider" means the program administrator, individual, or organizational entity licensed by the Division that operates the program and provides services to individuals.¶
(56) "Representative" refers to both "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.¶
(57) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual or the individual's legal representative when the individual receives services. The Residency Agreement identifies the rights and responsibilities of the individual and the provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws, unless otherwise required by administrative rule or statute.¶
(58) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to an individual in or through the program based upon an individual assessment of needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the program is operated by a mental health service agency that provides other services to the individual.¶
(59) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-hour basis for six to 16 individuals as described in ORS 443.400(9). An RTF does not include the entities set out in ORS 443.405.¶
(60) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to provide services on a 24-hour basis for up to five individuals as defined in ORS 443.400(10). A RTH does not include the entities set out in ORS 443.405.¶
(61) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of an individual.¶
(62) "Room and Board" means compensation for the provision of meals, a place to sleep, and tasks such as housekeeping and laundry.¶
(63) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.¶
(64) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, approved by the Division that restricts an individual's exit from the setting through the use of approved locking devices on individual exit doors, gates, or other closures.¶
(65) "Services and Supports" means those services defined as habilitation services and psychosocial rehabilitation services under OAR 410-172-0700(1), (2) and 410-172-0710(1), (2).¶
(66) "Setting" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a program.¶
(67) "Supervision" means a program staff's observation and monitoring of an individual or oversight of a program staff by the program administrator applicable to the context.¶
(68) "Supervisory Entity" means the court or state agency that has the legal authority to place an individual with a provider or to set legal conditions for the individual to follow in order to be placed or remain in the community, as provided in ORS chapters 161 and 426. Supervisory entity includes the state agency's designee, and any individual or entity that is legally responsible for monitoring the individual, coordinating care, and providing status reports to the supervising court or state agency. ¶
(69) "Termination of Residency" means the time at which the individual ceases to reside in the program and includes the transfer of the individual to another program, but does not include absences from the setting for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.¶
(70) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical, or other symptoms or social, educational, or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability, or alcohol or drug problem.¶

~~(71) "Unit" means the bedroom and other space of an individual receiving services from a program, as agreed to in the Residency Agreement. Unit includes private single occupancy spaces and shared units with roommates.¶~~
~~(72) "Volunteer" means an individual who provides a service or takes part in a service provided to an individual~~lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary, or other minority gender identity or sexual orientation. These terms are defined below:¶
(a) "Lesbian" means the sexual orientation of an individual who is female, feminine, or nonbinary and who is physically, romantically, or emotionally attracted to other women. Some lesbians may prefer to identify as gay, a gay woman, queer, or in other ways.¶
(b) "Gay" means the sexual orientation of an individual attracted to people of the same gender. Although often used as an umbrella term, it is used more specifically to describe men attracted to men.¶
(c) "Bisexual" means an individual who has the potential to be physically, romantically, or emotionally attracted to people of more than one gender, not necessarily at the same time, in the same way, or to the same degree.¶
(d) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.¶
(e) "Queer" means individuals who do not identify as exclusively straight or an individual who has non-binary or gender-expansive identities:¶
(A) Queer is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole.¶
(B) This term was previously used as a slur but has been reclaimed by many parts of the LGBTQIA2S+ movement. It can also include transgender people who identify as male or female. The term should only be used to refer to a specific person if that person self-identifies as queer.¶
(f) "Intersex" means someone born with a variety of differences in their sex traits and reproductive anatomy. Intersex traits greatly vary, including differences in, but not limited to, hormone production and reproductive anatomy.¶
(g) "Asexual" or "Ace" means a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little, or conditional sexual attraction. Many people who are asexual still identify with a specific romantic orientation.¶
(h) "2S" or "Two-Spirit" is a term used within some Indigenous communities, encompassing cultural, spiritual, sexual, and gender identity. The term reflects complex indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. The definition and common use of the term two-spirit may vary among Tribes and Tribal communities.¶
(i) The "+" means other identities and expressions of gender, romantic and sexual orientation, including minority gender identities.¶
(51) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any individual.¶
(52) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than an intellectual or developmental disability or a substance abuse disorder that limits a resident's ability to perform activities of daily living.¶
(53) "Mental Health Assessment" means the process of obtaining sufficient and clinically relevant information through face-to-face interview, observation, examination, testing, and review of previous treatment records to determine a diagnosis and to plan individualized services and supports. Mental health assessments must be completed by a provider meeting the qualifications of a Qualified Mental Health Professional (QMHP).¶
(54) "Naloxone" means an FDA-approved short-acting, non-injectable, opioid antagonist medication used for the emergency treatment and temporary rapid reversal of known or suspected opioid overdose.¶
(55) "Nonbinary" means an individual who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer, or gender-fluid.¶
(56) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to an individual other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶
(57) "Opioid" means natural, synthetic, or semi-synthetic chemicals normally prescribed to treat pain. This class of drugs includes, but is not limited to, illegal drugs such as heroin, natural drugs such as morphine and codeine, synthetic drugs such as fentanyl and tramadol, and semi-synthetic drugs such as oxycodone, hydrocodone, and hydromorphone.¶
(58) "Opioid Overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of taking opiates in an amount larger than can be physically tolerated.¶

(59) "Opioid Overdose Kit" means an ultraviolet light-protected hard case containing a minimum of two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication, one pair non-latex gloves, one face mask, one disposable face shield for rescue breathing, and a short-acting, non-injectable, opioid antagonist medication administration instruction card.¶
(60) "Person-Centered Service Plan (PCSP)" means the written document prepared by the IQA or the person-centered service plan coordinator that details the supports, desired outcomes, activities, and resources required for an Individual to achieve and maintain personal goals, health, and safety as described in OAR 410-173-0025. The PCSP must be completed and signed. The PCSP is not satisfied by a document primarily prepared by a provider.¶
(61) "Person-Centered Service Plan Coordinator" means the individual who may be a case manager, service coordinator, personal agent, or other individual designated by the Division to provide case management services or person-centered service planning for and with a resident.¶
(62) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, chiropractor, dentist, ophthalmologist, or other healthcare practitioner with prescribing authority.¶
(63) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.¶
(64) "Program" means the Residential Treatment Facility or Residential Treatment Home licensed by the Division and may refer to the setting grounds, caregiver, staff, or services as applicable to the context.¶
(65) "Program Administrator" means the individual designated by the licensee as responsible for the daily operation and maintenance of the RTH or RTF or the program administrator's designee.¶
(66) "Program Staff" means an employee, volunteer, direct care staff, or individual who, by contract with a program, provides a service to a resident.¶
(67) "Progress Notes" means the continuous notations in the resident's record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.¶
(68) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the resident to prevent self-destructive acts and to safeguard the resident's property and funds when used in the relevant context.¶
(69) "Provider" means the program administrator, individual, or organizational entity licensed by the Division that operates the program and provides services to residents.¶
(70) "PSRB" means the Oregon Psychiatric Security Review Board.¶
(71) "Qualified Mental Health Professional (QMHP)" means mental health program staff LMP or any other program staff meeting the minimum qualifications as authorized by the LMHA or designee and specified in OAR 309-019-0125.¶
(72) "Representative" refers to both "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.¶
(73) "Residency Agreement" means the written, legally enforceable agreement between a provider and a resident or the resident's legal representative when the resident receives services. The Residency Agreement identifies the rights and responsibilities of the resident and the provider. The Residency Agreement provides the resident protection from eviction substantially equivalent to landlord-tenant laws, unless otherwise required by administrative rule or statute.¶
(74) "Resident" means any individual being considered for placement or is currently residing in a licensed program receiving residential services regulated by these rules on a 24-hour basis, except as excluded under ORS 443.400.¶
(75) "Resident Service Record" means a resident's records maintained by the program pursuant to OAR 309-035-0130(4).¶
(76) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the program based upon an individual assessment of needs. The residential service plan may be a section or subcomponent of the resident's overall mental health treatment plan when the program is operated by a mental health service agency that provides other services to the resident.¶
(77) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-hour basis for six to 16 residents as described in ORS 443.400(11). An RTF does not include the entities set out in ORS 443.405.¶
(78) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to provide services on a 24-hour basis for up to five residents as defined in ORS 443.400(12). A RTH does not include the entities set out in ORS 443.405.¶
(79) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.¶
(80) "Room and Board" means compensation for the provision of meals, a place to sleep, basic utilities, and tasks

such as housekeeping and laundry to residents.¶
(81) "Seclusion" means placing a resident in a locked room. A locked room includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.¶
(82) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, approved by the Division that restricts a resident's exit from the setting through the use of approved locking devices on exit doors, gates, or other closures.¶
(83) "Self-Administration of Medication" means the act of a resident placing a medication in or on the resident's own body. The resident identifies the medication and the times and manners of administration and places the medication internally or externally on the resident's own body without assistance.¶
(84) "Services and Supports" means those services defined as habilitation services and psychosocial rehabilitation services under OAR 410-172-0705(1), (2) and provided to residents as outlined in OAR 410-172-0710.¶
(85) "Setting" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a program.¶
(86) "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.¶
(87) "Stock supply" means any volume of medications that are not dispensed, or not labeled with the specific name of the resident.¶
(88) "Supervision" means a program staff's observation and monitoring of a resident or oversight of a program staff by the program administrator applicable to the context.¶
(89) "Supervisory Entity" means the court or state agency that has the legal authority to place an individual with a provider or to set legal conditions for the individual to follow in order to be placed or remain in the community, as provided in ORS chapters 161 and 426. Supervisory entity includes the state agency's designee, and any person or entity that is legally responsible for monitoring the individual, coordinating care, and providing status reports to the supervising court or state agency.¶
(90) "Residency Transfer" means the time at which the resident ceases to reside in the program and includes the transfer of the resident to another program, but does not include absences from the setting for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.¶
(91) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities, designed to relieve or minimize mental, emotional, physical, or other symptoms or social, educational, or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability, or alcohol or drug problem.¶
(92) "Unit" means the bedroom and other space of a resident receiving services from a program, as agreed to in the Residency Agreement. Unit includes private single occupancy and dual occupancy bedrooms shared with a roommate.¶
(93) "Volunteer" means an individual who provides a service or takes part in a service provided to one or more residents receiving supportive services in a program or other provider and who is not a paid employee of the program or other provider.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

AMEND: 309-035-0110

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Removing effective date for HCBS requirements and adds standards for culturally responsive services, Amend existing.

CHANGES TO RULE:

309-035-0110
Required Home-like Qualities ¶

~~This rule becomes effective July 1, 2016, and enforceable pursuant to OAR 309-035-0115 (17).¶~~
(1) A program, except for a SRTF, must have all of the following qualities:¶
(a) The setting is integrated in and supports the ~~individual~~resident's same degree of access to the greater community as individuals' not receiving HCBS including opportunities for a~~n individual~~ resident to:¶
(A) Seek employment and work in competitive integrated employment settings:¶
(i) For which a~~n individual~~ resident is compensated at a rate that:¶
(I) Is not less than the higher of the rate specified in federal, state, or local minimum wage law;¶
(II) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not persons with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or¶
(III) In the case of a~~n individual~~ resident who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills.¶
(ii) For which a~~n individual~~ resident is eligible for the level of benefits provided to other employees;¶
(iii) At a location where the ~~individual~~resident interacts with other individuals who are not individuals with disabilities. This does not include supervisory personnel or individuals providing services to the individual to the same extent as individuals without disabilities and who are in comparable positions who interact with others; and¶
(iv) That present opportunities for advancement similar to those for other employees who are not individuals with disabilities and who have similar positions.¶
(B) Engage in greater community life;¶
(C) Control personal resources; and¶
(D) Receive services in the greater community.¶
(b) The program is selected by a~~n individual or the individual~~ resident or the resident's legal representative from among available setting options for which the ~~individual~~resident meets medical necessity criteria including non-disability specific settings and an option for a private unit in a residential setting. The setting options ~~shall~~must be:¶
(A) Identified and documented in the ~~individual~~residents' person-centered service plan;¶
(B) Based on the ~~individual~~resident's needs and preference; and¶
(C) Based on the ~~individual~~resident's available resources for room and board.¶
(c) The program ensures ~~individual~~resident rights of privacy, dignity, culturally responsive care, respect, and freedom from coercion and restraint;¶
(d) The program optimizes, but does not regiment, ~~individual~~resident initiative, autonomy, self-direction, and independence in making life choices including but not limited to daily activities, physical environment, ~~and with whom to interact; and~~¶
~~(e) The program facilitates individual~~with whom to interact, and with whom to engage and maintain their culturally specific relationships with; and¶
(e) The provider must ensure that residents from the identified cultural group receive effective and respectful care that is provided in a manner compatible with their cultural beliefs and practices;¶
(f) The program facilitates resident choice regarding services and supports and ~~individual~~resident choice as to who provides the services and supports.¶
(2) The ~~individual or the individual~~resident or the resident's legal representative ~~shall~~must have the opportunity to select from among available setting options including non-disability specific settings and an option for a private unit in a setting. The setting options ~~shall~~must be:¶
(a) Identified and documented in the person-centered service plan for the ~~individual~~resident;¶
(b) Based on the ~~individual~~resident's needs and preferences; and¶
(c) Based on the ~~individual~~resident's available resources for room and board.¶
(3) The provider ~~shall~~must take reasonable steps to ensure that the program maintains the qualities identified in

sections (~~2~~1) and (~~3~~2) of this rule. Failure to take reasonable steps may include but is not limited to:¶
(a) Failure to maintain a copy of the person-centered service plan at the setting;¶
(b) Failure to cooperate or provide necessary information to the person-centered planning coordinator; or¶
(c) Failure to attend or schedule a person-centered planning meeting where applicable.¶
(4) A program ~~shall~~must maintain the following:¶
(a) The setting ~~shall~~must be physically accessible to a~~n individual~~ resident;¶
(b) The provider ~~shall~~must provide the ~~individual~~resident a unit of specific physical spl~~l~~ace that the ~~individual may own,~~resident may rent~~,~~ or occupy under a legally enforceable Residency Agreement;¶
(c) The provider ~~shall~~must provide and include in the Residency Agreement that the ~~individual~~resident has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the Residency Agreement ~~shall~~must provide substantially equivalent protections for the ~~individual~~resident and address ~~eviction and appeal processes. The eviction and appeal~~the involuntary transfer and discharge administrative hearing processes. The involuntary transfer and discharge administrative hearing processes ~~shall~~must be substantially equivalent to the processes provided under landlord-tenant laws. The resident has a right to be free of retaliation after they have exercised their rights provided by law or rule;¶
(d) The provider ~~shall~~must provide each ~~individual~~resident with privacy in their own unit;¶
(e) The provider ~~shall~~must maintain units with entrance doors lockable by the ~~individual~~resident. The program ~~shall~~must ensure that only the ~~individual, the individual~~resident, the resident's roommate, where applicable, and only appropriate staff as described in the ~~individual~~resident's person-centered plan have keys to access the unit;¶
(f) The provider ~~shall~~must ensure that ~~individual~~residents sharing units have a choice of roommates;¶
(g) The provider ~~shall~~must provide and include in the Residency Agreement that ~~individual~~residents have the freedom to decorate and furnish their own unit;¶
(h) The provider ~~shall~~must allow each ~~individual~~resident to have visitors of their choosing at any time;¶
(i) The provider ~~shall~~must ensure each ~~individual~~resident has the freedom and support to control their own schedule and activities; and¶
(j) The provider ~~shall~~must ensure each ~~individual~~resident has the freedom and support to have access to food at any time.¶
(5) A SRTF is not required to maintain the qualities or meet the obligations identified in section (4)(d)(e)(f)(h)(i) of this rule ~~if limited by the indivual's legal representative or supervisory entity. The provider is required to seek an individually-based limitation to comply with these rules.¶~~
~~(6) A provider is not required to maintain the qualities or meet the obligations identified in section (4) (b) or (c) of this rule when providing crisis-respite services to an individual. The~~when these qualities are limited by the resident's legal representative or supervisory entity. The SRTF provider is not required to seek an individually-based limitation ~~for such an individual~~ to comply with these rules.¶
(~~7~~6) A supervisory entity or provider may modify or limit the rights identified in sections (1), (2), and 4(b) through (i) of this rule when providing services to a~~n individual~~ resident, who is placed with the provider by a court, OHA, CMHP or PSRB order under ORS chapters 161, 419C, or 426, as appropriate for the ~~individual~~resident's needs or as limited by the ~~individual~~resident's legal representative~~.~~. When an activity is restricted by the supervisory entity, the conditional release evaluation or other documents describing the limitations, must be included in the application for an individually-based limitation, when applicable, and incorporated in the ~~individual~~resident's Person-Centered Service Plan and included in the Residential ~~Car~~Service Plan.¶
(~~8~~7) When a provider is unable to meet ~~a~~the qualities outlined under section (4)(e) through (4)(j) of this rule due to threats to the health and safety of the ~~individual~~resident or others, the provider may seek an individually-based limitation with the consent of the ~~individual or the individual~~resident or the resident's legal representative. The provider may not apply an individually-based limitation until the limitation is approved, consented, and documented as outlined in OAR 309-035-0195.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0114

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Letter of Intent, The provision of the Letter of Intent ensures that prospective providers are referring to the correct licensing statutes and rules, are not planning to open programs on ineligible properties, and that the prospective program is integrated in the community.

CHANGES TO RULE:

309-035-0114
Letter of Intent
(1) Before applying for a building permit, final purchase, or entering into a lease or rental of an existing building with intent to request a license, a prospective applicant must submit a letter of intent to the Authority that includes the following information:¶
(a) Identification of the prospective applicant;¶
(b) Identification of the city and street address of the proposed facility;¶
(c) Identification of the intended facility type and maximum resident capacity;¶
(d) Description of the area and proximity to social, commercial and recreational facilities, transportation, shopping, and medical and behavioral health services);¶
(e) Description of the population to be served, including underserved populations;¶
(f) The need for such services in the area to be served;¶
(g) Statement of the prospective applicant's ability to serve the intended population;¶
(h) Identification of the number and professional qualifications of resident staff at the facility; and¶
(i) Identification of operations within Oregon or other states that provide a history of the prospective applicant's ability to serve the intended population.¶
(2) The Division must consider the applicant's stated intentions and compliance with the requirements of this rule, all structural and other licensing requirements, and ORS 443.422.¶
(a) The Division must identify the number and type of facilities within a 1,200-foot radius of the proposed facility location;¶
(b) The Division must determine such services are appropriate for the area and population to be served; and¶
(c) The Division must determine the proposed facility location does not perpetuate segregation of individual with disabilities.¶
(3) The Authority must issue a written decision of a potential license within 30 days of receiving all required information from the applicant.¶
(a) If the applicant is dissatisfied with the decision of the Authority, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.¶
(b) The contested case hearing must be in accordance with ORS chapter 183.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0115

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifies licensing requirements by including the provision of a letter of support from the local CMHP to ensure adequate planning exists for clinical service delivery. These amendments also ensure the provision of culturally responsive services, and the communication with the Division when critical incidents occur. Amendments also provide clarification by removing HCBS timeline requirement that is no longer relevant to programs.

CHANGES TO RULE:

309-035-0115
Licensing ¶

(1) The Division shall license a program that meets the definition of an RTF or RTH and demonstrates compliance with these and all applicable laws and rules. No person or governmental unit acting individually or jointly with any other person or governmental unit ~~shall~~may establish, maintain, manage, or operate a program, including receiving referrals for potential residents, without a license issued by the Division.~~¶~~
(2) When a program serves or seeks to serve another category of ~~individual~~residents in addition to adults with a mental health ~~disorder~~condition, the directors of the Authority and the Department ~~sha~~will determine the ~~department~~agency responsible for licensure.~~¶~~
(3) An initial application for a license must be accompanied by the required fee and submitted to the Division ~~us~~ing the form~~s or format~~ and manner required by the Division. The following information must be included in the application~~:~~ packet:¶
(a) Full and complete information as to the identity and financial interest of each individual, including stockholders, having a direct or indirect ownership interest of five percent or more in the program and all officers and directors in the case of a program operated or owned by a corporation;~~¶~~
(b) Name and resume of the program administrator;~~¶~~
(c) Name and resume of psychiatric treatment services provider;¶
(d) Physical address of the setting and mailing address;~~¶~~
(~~d~~e) Maximum number of ~~individual~~residents to be served at any one time, their age range and evacuation capability;~~¶~~
(~~e~~f) Proposed annual budget identifying sources of revenue and expenses;~~¶~~
(~~f~~g) Signed c~~riminal record~~urrent approved background check authorizations for all individuals involved in the operation of the program who has contact~~s the individual~~ with the residents, including but not limited to caregivers, administrators, QMHAs, QMHPs, RNs, and LMPs;¶
(~~g~~h) Written background information pertaining to any current or previous licensure or certification by a state agency, including those licenses or certificates granted to a business or person affiliated with the business, including:¶
(A) Copies of all current licenses or certificates;¶
(B) Documentation showing the final disposition of any suspension, denial, revocation, or other disciplinary actions initiated on any current or previous license or certificate, including settlement agreements, where applicable; and¶
(C) Documentation of any substantiated allegations of abuse or neglect pertaining to the applicant, or anyone employed by or contracted with the applicant.¶
(~~h~~i) A complete set of policies and procedures~~; ¶~~
~~(i) Setting plans and specifications; and~~ specific to the operation of the proposed facility or home;¶
(j) A signed letter of acknowledgement from the Local Mental Health Authority or designee¶
(k) A written statement describing the type and frequency of clinical services that will be offered to the program residents, including individual and group counseling, skills training, psychiatric treatment, and the contact information of the LMP that provides consultation and oversight of the services offered to the program residents.¶
(l) Strategies to recruit, retain, and promote a diverse staff at all levels; and¶
(m) A complete floor plan with all specifications for an existing structure without additions or alterations including the location, size and type of rooms, all exits, all secondary emergency egress, smoke and carbon monoxide alarms, fire extinguishers, planned evacuation routes, point of safety, any designated smoking areas outside the facility; and¶
(~~j~~n) Other information the Division may reasonably require.~~¶~~
(4) A complete set of plans and specifications must be submitted to the Division at the time of initial application,

whenever a new structure or addition to an existing structure is proposed or when significant alterations to an existing facility are proposed. Plans ~~shall~~must meet the following criteria:¶
(a) Plans ~~shall~~must be prepared in accordance with the Building Code and as outlined in OAR 309-035-0140;¶
(b) Plans ~~shall~~must be to scale and sufficiently complete to allow full review for compliance with these rules; and¶
(c) Plans ~~shall~~must bear the stamp of an Oregon licensed architect or engineer when required by the Building Code.¶
(5) Prior to approval of a license for a new or renovated setting, the applicant ~~shall~~must submit the following to the Division:¶
(a) One copy of a written approv~~al to occupy~~ed certificate of occupancy based on the change of use of the setting, issued by the city or county building codes authority having jurisdiction;¶
(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the setting complies with the Fire Code;¶
(c) When the setting is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has tested and certified safe the water supply in accordance with OAR chapter 333, Public Health Division rules to public water systems;¶
(d) When the setting is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.¶
(6) The following fees ~~shall~~must be submitted with an initial or renewal application:¶
(a) The RTF license application fee for initial or renewal licensing is $60. No fee is required in the case of a governmentally operated RTF;¶
(b) The RTH license application fee for initial or renewal licensing is $30. No fee is required in the case of a governmentally operated RTH.¶
(7) Incomplete initial applications are void after 60 calendar days from the date the Division receives the application and non-refundable fee, as applicable. The Division will deny the incomplete application if not withdrawn.¶
(~~7~~8) A license is renewable upon submission of a complete renewal application packet in the form ~~or format~~and manner required by the Division and a non-refundable fee as set out in section (6), except that no fee shall be required of a governmentally operated program:¶
(a) Filing of a~~n~~ complete application for renewal 60 days before the date of expiration extends the effective date of the current license until the Division takes action upon the renewal application;¶
(b) The Division ~~sha~~will deny renewal of a license if the program is not in substantial compliance with these rules or if the State Fire Marshal or authorized representative has given notice of noncompliance.~~¶~~
~~(~~8; and¶
(c) The Division will deny renewal of a license if the program does not submit a complete renewal application packet prior to the expiration of the license.¶
(9) Upon receipt of an application and fee, the Division shall conduct an application review. Initial action by the Division on the application ~~shall~~must begin within 30 days of receipt of all application materials. The review ~~shall:~~ must:¶
(a) Include a complete review of application materials;¶
(b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:¶
(A) Demonstrates an understanding and acceptance of these rules;¶
(B) Is mentally and physically capable of providing services for ~~individual~~residents;¶
(C) Employs or utilizes only persons whose presence does not jeopardize the health, safety, or welfare of ~~individual~~residents; and¶
(D) Provides evidence satisfactory to the Division of financial ability to comply with these rules.¶
(c) Include a site inspection; and¶
(d) Conclude with a report stating findings and a decision on licensing of the program.¶
(~~9~~10) The Division may ~~elect to~~ deny an application prior to review when:¶
(a) The applicant has previously had any action taken on a certificate or license; or¶
(b) Action taken on a certificate or license includes denial, suspension, conditions, intent to revoke, or revocation by the Division, the Authority, the Oregon Department of Human Services, or any other state agency.¶
(c) ~~The applicant may appeal the denial of the application by submitting a request for reconsideration in writing to the Division~~If a license is denied for any reason other than the results of a test or an inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within ~~14~~60 calendar days from ~~receipt of the denial notice. The Division shall make a decision on the appeal within 30 days of receipt of the appeal. T~~the date the notice was mailed. If no written request for a hearing is timely received, the Division shall issue a final order by default. The Division may designate its file as the ~~d~~rec~~ision of the Division shall be final~~ord for purposes of default.¶
(1~~0~~1) The provider ~~shall~~must submit and complete a plan of correction for each finding of noncompliance:¶

(a) If the findings of noncompliance substantially impact the welfare, health, and safety of ~~individual~~residents, the provider ~~shall~~must submit a plan of correction that ~~shall~~must be approved by the Division prior to issuance of a license. In the case of a currently operating program, the findings may result in suspension or revocation of a license;~~.~~¶
(b) If it is determined that the findings of noncompliance do not threaten the welfare, health, or safety of ~~individual~~residents and the program meets other requirements of licensing, the Division may issue or renew a license with the plan of correction submitted and completed as a condition of licensing;~~.~~¶
(c) The Division ~~shall~~must specify required documentation and set the timelines for the submission and completion of plans of correction in accordance with the severity of the findings;~~.~~¶
(d) The Division ~~shall~~must review and evaluate each plan of correction. If the plan of correction does not adequately remedy the findings of noncompliance, the Division ~~shall~~must require a revised plan of correction and may apply civil penalties or deny, revoke, or suspend the license;~~.~~¶
(e) The provider owner may appeal the finding of noncompliance or the disapproval of a plan of correction by submitting a request for ~~reconsideration~~appeal in writing to the Division. The Division ~~shall~~must make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Division shall be final.~~.~~¶
(1~~1~~2) The Division, in its discretion, may grant a variance to these rules based upon a demonstration by the applicant ~~or provider~~ that an alternative method or different approach provides equal or greater program ~~effectiveness~~ and does not adversely impact the welfare, health, or safety of ~~individual~~residents:~~.~~¶
(a) The provider seeking a variance ~~shall~~must submit in writing ~~a~~an application request to the Division, with CMHP review, that identifies the section of the rules from which the variance is sought, the reason for the proposed variance, and the proposed alternative method or different approach~~, and signed documentation from the CMHP indicating approval of the proposed variance; ;~~¶
(b) The director or designee ~~shall~~must review and approve or deny the request for a variance;~~.~~¶
(c) The Division ~~shall~~must notify the provider of the decision in writing within 30 days after receipt of the request. A variance may be implemented only after receipt of written approval from the Division;~~.~~¶
(d) The provider may appeal the denial of a variance request by submitting a request for ~~reconsideration~~appeal in writing to the Division's Director or designee. The Director ~~shall~~or their designee must make a decision within 30 days of receipt of the appeal. The decision of the Director or their designee shall be final;~~ and~~ ¶
(e) A variance ~~shall be reviewed by the Division at least every two years and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health, or safety of the individuals.~~ is not effective until granted in writing by the Division and are only valid for the length of the current issued license or shorter time as specified by the Division. The licensee must re-apply for a variance at the time of license renewal.; and¶
(f) In seeking a variance, the burden of proof that the requirements of these rules have been met is upon the applicant or licensee.¶
(1~~2~~3) Upon finding that the applicant is in substantial compliance with these rules, the Division shall issue a license:~~.~~¶
(a) The license issued ~~shall~~must state the name of the provider, the name of the program administrator, the address of the setting to which the license applies, the maximum number of ~~individual~~residents to be served at any one time and their evacuation capability, the type of program, and such other information as the Division deems necessary;~~.~~¶
(b) A ~~program~~ license ~~shall~~must be effective for two years from the date issued unless sooner revoked or suspended; and~~.~~¶
(c) A ~~program~~ license is not transferable or applicable to any setting, location, or management other than that indicated on the application and license.~~.~~¶
(1~~3~~4) The license ~~shall be~~remains valid only under the following conditions:~~.~~¶
(a) The provider ~~may~~does not operate or maintain the program in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part.¶
(b) Each program ~~shall~~must have sleeping, dining, and living areas for use only by its own ~~individual's~~residents, caregivers, and invited guests; and¶
(~~b~~c) The provider ~~shall~~must maintain the license posted in ~~the setting and available for inspection at all times; and~~ ¶
(~~c~~a prominent location accessible to the public within the setting.¶
(15) A license becomes void immediately upon suspension or ~~revocation~~final order of revocation or non-renewal of the license by the Division or if the operation is discontinued by voluntary action of the ~~provider~~licensee or if there is a change of ownership.~~.~~¶
(1~~4~~6) Division staff ~~shall visit and~~must conduct an in-person inspection of every setting at least once every two years to determine whether it is maintained and operated in accordance with these rules. The provider or applicant ~~shall~~must allow Division staff entry and access to the setting and ~~individual~~residents for the purpose of conducting the inspections:~~.~~¶

(a) Division staff ~~shall~~must review methods of ~~individual~~resident care and treatment, records, the condition of the setting and equipment, and other areas of operation;~~.~~¶
(b) All records, unless specifically excluded by law, ~~shall~~must be available to the Division for review; and~~.~~¶
(c) The State Fire Marshal or authorized representatives shall, upon request, be permitted access to the setting, fire safety equipment within the setting, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of setting occupants.~~¶~~
(15~~7~~) Incidents of alleged abuse covered by ORS 430.735 through 430.765 and reported complaints ~~shall b~~are investigated in accordance with OAR 943-045-0~~250 through 037~~00~~0~~. The Division may delegate the investigation to a CMHP or other appropriate entity~~.¶~~
~~(16:~~¶
(a) ~~T~~The ~~Division may deny, suspend, revoke or refuse to renew a license when it finds there has been substantial failure to comply with these rules or when the State Fire Marshal or authorized representative certifies that there is failure to comply with the Fire Code: ¶~~
~~(a) In cases where there exists an imminent danger to the health or safety of an individual or the public, a license may be suspended immediately; and~~ n abuse is alleged or death of a resident has occurred and a law enforcement agency or the Division, Office of Training, Investigations, and Safety, Oregon Department of Human Services, or their designee has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witnesses, the alleged perpetrators, or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:¶
(A) If there is reasonable cause to believe that abuse has occurred; or¶
(B) If the alleged victim is in danger or in need of immediate protective services; or¶
(C) If there is reason to believe that a crime has been committed; or¶
(D) What, if any, immediate personnel actions must be taken.¶
(b) ~~T~~The ~~revocation, suspension, or denial shall be done in accordance with ORS 443.440~~ n the program has been notified of the completion of the abuse investigation, the program may conduct an internal investigation without Division approval to determine if any other personnel actions are necessary.¶
(17~~8~~) The provider ~~shall~~must report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. Changes include but are not limited to changes in the setting or program name, provider, program administrator, telephone number, and mailing address. Changes also include but are not limited to changes in the physical nature of the setting, policies and procedures, or staffing pattern when the changes are significant or impact the ~~individual~~resident's health, safety, or well-being.~~¶~~
(18~~9~~) ~~Enforcement of Home and Community-Based Services and Settings Requirements: ¶~~
~~(a) All programs licensed on or after July 1, 2016, shall be in full compliance with all regulatory requirements under these rules at the time of initial licensure; ¶~~
~~(b) All programs licensed prior to July 1, 2016, shall come into compliance with rules as follows: ¶~~
~~(A) All programs shall be in full compliance with these rules no later than January 1, 2017; and ¶~~
~~(B) For the rules designated by the Division to become effective July 1, 2016, the provider shall make measureable progress towards compliance with those rules. The Division may not issue sanctions and penalties for failure to meet the rules effective July 1, 2016, or the obligations imposed by OAR Chapter 411, division 4 until January 1, 2017, if the provider is making measureable progress towards compliance~~The provider must submit critical incident reports to the Division within 48 hours of the incident occurring.¶
(20) The provider must submit all incident reports to the CMHP within 48 hours of the incident occurring.
Statutory/Other Authority: ORS 413.042, ORS 443.450, ORS 443.420
Statutes/Other Implemented: ORS 413.032, ORS 443.400 - 443.465, ORS 443.991

AMEND: 309-035-0120

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Brief Summary of Rule Changes: Consistency with wording change from “individual” to “resident.”

CHANGES TO RULE:

309-035-0120
Contracts and Rates ¶

(1) A provider receiving service payments ~~shall~~must enroll with OHA's Medicaid program or enter into a contract with the local CMHP, statewide coordinated care organizations, the Division, or other Division-approved party. ~~The~~Enrollment or contracting does not guarantee that any number of ~~individual~~residents eligible for Division funded services shall be referred to or maintained in the program.¶
(2) The provider ~~shall~~must specify in a fee policy and procedure rates for all services and the procedures for collecting payments from ~~individual~~residents and payees. The fee policy and procedures ~~shall~~must describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of ~~termination of residency:¶~~
~~(a) For individual~~residency transfer or discharge:¶
(a) For residents whose services are funded by the Division, reimbursement for services shall be made according to the rate schedule outlined in Behavioral Health Rate Schedule or the contract. Room and board payments for ~~individual~~residents receiving Social Security benefits or public assistance shall be in accordance with rates determined by the Division;¶
(b) For ~~private paying individuals~~residents paying privately, the program ~~shall~~must enter into a signed agreement with the ~~individual~~resident, and, if applicable, the ~~individual~~resident's designated representative. This agreement ~~shall~~must include but is not limited to a description of the services to be provided, the schedule of rates, conditions under which the rates may be changed, and policy on refunds at the time of ~~termination of residency~~residency transfer or discharge; and¶
(c) Before increasing rates or modifying payment procedures, the program ~~shall~~must provide a 30-day advance notice of the change to all ~~individual~~residents, representatives, payees, guardians, or conservators.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0125

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: This change limits the amount of time a program administrator can be absent. One change also incorporates the culturally competency as one of the required program policies and procedures. One change also limits the number of hours that can go between served meals.

CHANGES TO RULE:

309-035-0125
Administrative Management ¶

(1) The ~~provider shall~~licensee must ensure that the program and setting are maintained and operated in compliance with these rules and all other applicable federal, state, and local laws and regulations.¶
(2) The ~~provider shall~~licensee must employ a program administrator who meets the following qualifications and complies with the following standards:¶
(a) Background including specialized training, experience, and other demonstrated ability in providing care and treatment appropriate to ~~the individual~~residents with mental health conditions served in the program;¶
(b) Documented current approved ~~criminal recor~~background checks processed in compliance with the procedures required by OAR 943-007-0001 through 0501 and no history of abus~~ive behaviore~~;¶
(c) Ensure ~~that~~ the program operates in accordance with the standards outlined in these rules;¶
(d) Oversee the daily operation and maintenance of the program and ~~shall~~must be available to perform administrative duties at the setting for at least 20 hours per week;¶
(e) Develop and administer written policies and procedures to direct the operation of the program and the provision of services to ~~individual~~residents;¶
(f) Ensure ~~tha~~sufficient qualified program staff are available to provide direct services to residents in accordance with the staffing requirements specified in these rules;¶
~~(g~~ to assure resident safety and resident rights, freedoms, and protections, provision of HCBS services, and that resident's attain or maintain the highest practical physical, mental and psychosocial well-being as determined by the resident assessments and person-centered service plans, and considering the number, acuity and diagnoses of the facility's resident population;¶
(g) The licensee, administrator and all caregivers must be literate in the English language and have the ability to understand and communicate in orally and in writing with residents, medical professionals, care coordinators and others involved in the care of residents.¶
(h) Supervise or provide for the supervision of program staff and others involved in the operation of the program;¶
(~~h~~i) Maintain setting, personnel, and ~~individual~~resident service records;¶
(~~i~~j) Report regularly to the ~~provider~~licensee on the operation of the program; and¶
(~~j~~k) Delegate authority and responsibility for the operation and maintenance of the program to a responsible staff person whenever the program administrator is absent from the setting.~~:~~¶
(A) This authority and responsibility may not be delegated to a~~n individual.~~¶
~~(3) The provider shall~~ resident.¶
(B) If the program administrator is absent from the setting for a period exceeding 60 days, an interim program administrator, who meets all qualification requirements, must be designated. Upon designating an interim program administrator, a notification must be made to the Division.¶
(3) The licensee must develop and update policies and procedures ~~and~~specific to the licensed setting, maintain a copy in a location easily accessible for staff reference and made available to others upon reasonable request. ~~They shall~~Policies and procedures must be consistent with requirements of these rules and ~~shall~~must address at a minimum the following:¶
(a) Personnel practices and staff training;¶
(b) ~~Individual~~Resident screening, admission, and t~~ermination~~ransfer and discharge;¶
(c) Fire drills, emergency procedures, ~~individual~~resident safety and abuse reporting;¶
(d) Health and sanitation;¶
(e) Records maintenance and confidentiality;¶
(f) Residential service plan, services, and activities;¶
(g) Behavior management interventions including the use of seclusion or restraints;¶
(h) Food ~~S~~service;¶
(i) Medication administration and storage;¶
(j) ~~Individual~~Resident belongings, storage~~,~~ and funds;¶

(k) ~~Individual rights and advance~~Resident rights, freedoms, and protections;¶
(l) Advanced mental health and medical health directives;¶
(~~l~~m) Complaints and grievances;¶
(~~m~~n) Setting maintenance;¶
(~~n~~o) Evacuation capability determination~~; and~~.¶
(~~o~~p) Fees and money management.~~¶~~
~~(4) The provider shall develop reasonable house rules outlining operating protocols concerning, but not limited to, meal times, night-time quiet hours, guest policies, smoking, and as follows:¶~~
~~(a) House rules shall be consistent with individual rights as set forth in OAR 309-035-0175;¶~~
~~(b) House rules shall be posted in an area readily accessible to individuals;¶~~
~~(c) House rules shall be reviewed and updated as necessary;¶~~
~~(d) Individuals shall be provided an opportunity to review and provide input into any proposed changes to house rules before the revisions become effective; and¶~~
~~(e) Effective July 1, 2016, house rules may not restrict or limit the program qualities identified in OAR 309-035-0110~~; and¶
(q) Cultural competency.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.460, 443.991

AMEND: 309-035-0130

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes update rule language, removing implementation date for HCBS requirements, and remove crisis-respite services as they will be renamed and moved to an independent section of rule.

CHANGES TO RULE:

309-035-0130
Records ¶

(1) Records ~~shall~~must be maintained to document the legal operation of the program, personnel practices, and ~~individual~~resident services and supports provided. All records ~~shall~~must be properly obtained, accurately prepared, safely stored, and readily available or electronically accessible within the setting. All entries in records required by these rules ~~shall~~must be in ink, indelible pencil, or approved electronic equivalent prepared at the time or immediately following the occurrence of the event being recorded~~;~~, be legible~~;~~, and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.¶
(2) Records documenting the legal operation of the program ~~shall~~must include but not limited to:¶
(a) ~~Written approval for occupancy~~Certificate of occupancy for proposed use of the setting by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports, or other documentation pertaining to the safe and sanitary operation of the program issued during the development or operation of the program;¶
(b) Application for license, related correspondence, and site inspection reports;¶
(c) Program operating budget and related financial records;¶
(d) Payroll records, program staff schedules and time sheets;¶
(e) ~~Materials s~~Safety ~~and~~ data sheets;¶
(f) Fire drill documentation;¶
(g) Fire alarm and sprinkler system maintenance and testing records;¶
(h) Incident reports; and¶
(i) Policy and procedure manual.¶
(3) Personnel records ~~shall~~must document and include:¶
(a) Job descriptions for all positions; and¶
(b) Separate program staff records including, but not limited to~~, w~~:¶
(A) Written documentation of program staff identifying information and qualifications~~, criminal record clearance, T.B. test results, d~~;¶
(B) Background check approval;¶
(C) Documentation that Hepatitis B inoculations have been given or made available~~, p~~;¶
(D) Performance appraisals~~;~~ and ~~d~~¶
(E) Documentation of pre-service orientation and other training.¶
(4) ~~Individual~~Resident service records ~~shall~~must be maintained for each ~~individual~~resident and include:¶
(a) An easily accessible summary sheet that includes, but is not limited to, the ~~individual's~~resident's legal name for billing purposes, chosen name, previous address, date of admission to the program, ~~gender, biological sex~~pronouns, gender identity, date of birth, marital status, legal status, religious preference, health provider information, evacuation capability, DSM diagnosis, physical health diagnosis, medication allergies, food allergies, information indicating whether advance mental health and health directives ~~and burial plan~~ have been executed, and the name of individuals to contact in case of emergency;¶
(b) The names, addresses, and telephone numbers of the ~~individual~~resident's legal representative, legal guardian or conservator, parents, next of kin, supervisory entity, or other significant persons~~;~~, physicians or other medical practitioners~~;~~, dentist~~;~~, case manager or therapist~~;~~, day program, school, or employer~~;~~, and any governmental or other agency representatives providing services to the ~~individual;¶~~
~~(c) A mental health assessment~~resident, as applicable;¶
(c) A current mental health assessment, conducted within the last year, and background information identifying the ~~individual~~resident's residential service needs;¶
(d) Advance mental health and medical health directives, burial plans, or location of these;¶
(e) A residential service plan and copy of plans from other service providers;¶
(f) ~~Effective July 1, 2016, and pursuant to OAR 309-035-0115(17), a~~A person-centered service plan;¶
(g) Documentation of the ~~individual~~resident's progress as described in OAR 410-120-1360(2), OAR 410-172-0620, and OAR 410-172-0045 and any other significant information including, but not limited to, progress notes,

progress summaries, any use of seclusion or restraints, and correspondence concerning the ~~individual~~resident; and¶
(h) Health-related information and up-to-date information on medications.¶
(~~5~~i) ~~The program shall~~Current copies of documentation relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions;¶
(5) The program must retain all referral packets, screening materials, and screening responses-placement determinations for a minimum of three years from the date of the referral.¶
(6) ~~For an individual receiving crisis-respite services, the provider shall obtain and maintain records as outlined in these rules. Because it may not be possible to obtain and maintain complete records during a crisis-respite stay, the program shall, at a minimum, maintain records that are deemed reasonable to provide services in the program.¶~~
~~(7) All individual service records shall be stored in a weatherproof and secure location. Access to records shall be limited to the program administrator and direct care staff unless otherwise allowed in these rules~~The program must establish a resident service record upon the resident's admission. Prior to admission or within five days after an emergency admission, the program must determine with whom communication needs to occur and make good faith efforts to obtain the needed authorizations for release of information. The record established upon admission must include the materials reviewed in screening the individual, the summary sheet, and any other available information.¶
(~~8~~7) All ~~individual~~resident service records ~~shall~~must be kept confidential as required by law. A signed release of information ~~shall~~must be obtained for any disclosure from a~~n individual~~ resident service record, except as otherwise authorized by law. Release of information is not required to provide information to the ~~individual~~resident's legal representative or supervisory entity.¶
(~~9~~8) ~~An individual or the individual's legal representative shall be allowed to review and obtain a copy of the individual service record as requir~~In accordance with ORS 179.505, the program must obtain and maintain authorizations for the disclosure of any confidential information concerning prospective residents and current residents in the form and manner described ~~by~~in ORS 1~~79.505(9).~~¶
~~(10) Pertinent information from records of an individual being transferred to another facility shall be transferred with the individual. A signed release of information shall first be obtained in accordance with applicable laws and rules.¶~~
~~(11) The program shall keep all records, except those transferred with an individual, for a period of three years.¶~~
~~(12) If a program changes ownership or program administrator, all individual and personnel records shall remain at the setting. Prior to the dissolution of any program, the program~~92.566:¶
(a) Unless required or allowed by state or federal law, a provider must not disclose any personally identifiable information regarding:¶
(A) A resident's sexual orientation.¶
(B) Whether a resident is LGBTQIA2S+.¶
(C) A resident's gender transition status.¶
(D) A resident's human immunodeficiency virus status.¶
(b) Programs must take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (a) of this section to other residents, visitors, or staff, except to the minimum extent necessary for staff to perform their duties. Appropriate steps may include policies and procedures, training, or other documented actions or plans that address record disclosure by the provider and staff. The licensee or administrator ~~shall~~must notify the ~~Division in writing as to the location and storage of individual service records or those records shall be transferred with the individual~~individual or individuals legal guardian or representative if a resident is affected by a disclosure of information.¶
(9) A resident or the resident's legal representative must be allowed to review and obtain a copy of the resident service record as required by ORS 179.505(9).¶
(1~~3~~0) If a~~n individual~~ resident or the individual's legal representative disagrees with the content of the individual service record, or otherwise desires to provide documentation for the record, the individual or the individual's legal representative may provide material in writing that ~~then shall~~must become part of the individual service record.¶
(1~~4~~1) ~~The program sha~~All r~~establish an individual service record upon the individual's admission. Prior to admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the program shall determine with whom communication needs to occur and make good faith efforts to obtain the needed authorizations for release of information. The record established upon admission shall include the materials reviewed in screening the individual, the summary sheet, and any other available information. The program shall make every effort to complete the individual service record in a timely manner. The assessment and residential service plan shall be completed in accordance with OAR 309-035-0185. Records on prescribed medications and health needs shall be completed as outlined in OAR 309-035-0215~~ident service records must be

stored in a weatherproof and secure location. Access to records must be limited to the program administrator and direct care staff unless otherwise allowed in these rules.¶
(12) Pertinent information from records of a resident being transferred to another facility must be transferred with the individual. A signed release of information must first be obtained in accordance with applicable laws and rules.¶
(13) If a program changes ownership or program administrator, all individual and personnel records must remain at the setting. Prior to the dissolution of any program, the program administrator must notify the Division in writing as to the location and storage of individual service records or those records must be transferred with the individual.¶
(14) The program must keep all records, except those transferred with a resident, for a period of three years.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0135

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes update and clarify language and training requirements to include CPR, and overdose response.

CHANGES TO RULE:

309-035-0135
Staffing ¶

(1) The provider ~~shall~~must maintain a written job description for each staff position that specifies the position's qualifications and job duties:¶
(a) A direct care staff person ~~shall be a~~must be:¶
(A) At least 18 years of age~~, b~~;¶
(B) Be capable of implementing the setting's emergency procedures and disaster plan~~,~~; and ~~b~~¶
(C) Be capable of performing other duties of the job as described in the job description;¶
(b) All program staff having contact with a~~n individual~~ resident must have a documented current approved ~~criminal record clearance~~background check in accordance with OAR 943-007-0001 through 943-007-0501 prior to working alone with residents. All program staff must have a preliminary background check prior to working with residents under supervision of qualified staff. The provider must maintain documentation of current approved ~~criminal records clearance~~or preliminary background checks for each applicable staff person~~;~~.¶
(c) ~~Program staff who will have contact with individual's must be tested for tuberculosis within two weeks of first employment; additional testing shall take place as deemed necessary; and the~~A new background check must be completed:¶
(A) Every two years;¶
(B) Prior to any subject individual's change in employment ~~of program staff who test positive for tuberculosis shall be restricted~~position; and¶
(C) If the Division has reason to believe a new background check ~~if~~s ne~~cessary; and~~eded.¶
(d) All program staff ~~shall~~must meet other qualifications when required by a contract or financing arrangement approved by the Division.¶
(2) Personnel policies ~~shall~~must be made available to all program staff and ~~shall~~must describe hiring, leave, promotion, and disciplinary practices.¶
(3) The program administrator ~~shall~~must provide or arrange a minimum of 16 hours pre-service orientation ~~and eight hours in-service training annually for each program staff including:~~¶
~~(a)~~for each program staff within 60 days of hire and prior to working alone with residents, Pre-service training for direct care staff ~~shall~~must include, but is not limited to ~~a~~:¶
(a) A comprehensive tour of the setting; ~~a~~¶
(b) A review of emergency procedures developed in accordance with OAR 309-035-0145; ~~a~~¶
(c) A review of setting ~~house rules,~~ policies~~,~~ and procedures; ~~b~~¶
(d) Background on mental ~~and~~, emotional ~~disorders; a~~, or behavioral disorders and conditions;¶
(e) Behavior management including de-escalation techniques;¶
(f) An overview of ~~individual~~resident rights; ~~m~~¶
(g) Medication management procedures; ~~f~~¶
(h) Food service arrangements; ~~a~~¶
(i) Grievances, complaints, and an overview of the Oregon Residential Facilities Ombudsperson program;¶
(j) A summary of each ~~individual~~resident's assessment and residential service plan; ~~and o~~¶
(k) Culturally responsive care;¶
(l) Completion of the approved course Mandatory Reporting for Individuals Working in Community Mental Health Programs; and¶
(m) Other information relevant to the job description and scheduled shifts~~; and.~~¶
(~~b~~4) ~~In-service training shall be provided on topics relevant to improving the care and treatment of individuals in the program and meeting the requirements in these administrative rules. In-service training topics~~The program administrator must provide or arrange a minimum of 8 hours annual in-service training for each program staff:¶
(a) Annual in-service training topics for direct care staff must include~~,~~ but are not limited to~~, i~~:¶
(A) Culturally responsive care;¶
(B) Implementing ~~the~~ residential service plan~~, b~~s;¶
(C) Behavior management~~, d~~ including de-escalation techniques;¶
(D) Daily living skills development~~, n~~;¶

(E) Nutrition~~, first aid o~~;¶
(F) Opioid overdose kits and administration of an FDA-approved short-acting, non-injectable, opioid antagonist medication;~~ u~~¶
(G) Understanding mental illness~~, s~~;¶
(H) Sanitary food handling~~, individual rights, identifying health care needs, and p~~;¶
(I) Resident rights, freedoms, and protections;¶
(J) Identifying health care needs;¶
(K) Complaints, grievances, incidents and abuse reporting; and¶
(L) Psychotropic medications.¶
(4b) The ~~provider and program administrator shall ensure that an adequate number of program and direct care staff are available at all times to meet the treatment, health, and safety needs of individuals. Program staff must be scheduled to meet the changing needs and ensure~~licensee must ensure that all direct care staff have and maintain current Cardiopulmonary Resuscitation (CPR) and First Aid certifications from a Division-approved entity within 60 days of hire and prior to working alone with residents:¶
(A) Accepted CPR and First Aid courses must be provided by or meet the standards of the American Heart Association or the American Red Cross.¶
(B) CPR or First Aid courses conducted online are only accepted by the Division when an in-person skills competency check is conducted by a qualified instructor meeting the standards of the American Heart Association or the American Red Cross.¶
(c) All program staff and entities contracting with the program to provide direct care must complete a Division-approved LGBTQIA2S+ training within 60 days of hire and prior to working alone with residents and every two years thereafter. This training must include the following elements:¶
(A) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency virus;¶
(B) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression, or human immunodeficiency virus status;¶
(C) The defined terms commonly associated with LGBTQIA2S+ individuals and human immunodeficiency virus status;¶
(D) Best practices for communicating with or about LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including the use of an individual's chosen name and pronouns;¶
(E) A description of the health and social challenges historically experienced by LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including discrimination when seeking or receiving care and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination; and¶
(F) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including suggested changes to policies and procedures, forms, signage, communication between residents and their families, activities, in-house services, and staf~~ety of individuals. Minimum staffing requirements are as fol~~f training.¶
(d) Proof of all training completion must be documented in the program staff member's individual personnel file as outlined in OAR 309-035-0125. Proof of training completion for entities contracting with the program must be maintained in the program files.¶
(5) All caregivers, including licensees and administrators are required to complete the Authority-approved HCBS training, as provided below~~s~~:¶
(a) ~~In RTHs serving one to five individuals, the~~Effective June 30, 2025, all caregivers must have completed the required training.¶
(b) All new caregivers, hired on or after July 1, 2025, must complete the required training prior to beginning job responsibilities.¶
(6) The provider must ensure ~~s~~th~~all be at least one direct care staff on duty at all times;¶~~
~~(b) In RTFs serving six to 16 individuals, there shall~~t an adequate number of trained and qualified program and direct care staff are available at all times to meet the treatment, health, and safety needs of all residents. Program staff must be scheduled to meet the changing needs and ensure safety of residents. Minimum staffing requirements are as follows:¶
(a) There must be at least one direct care staff on duty at all times;¶
(~~c~~b) In the case of a specialized program, staffing requirements outlined in the contractual agreement for specialized services ~~shall~~must be implemented and maintained at all times;¶
(~~d~~c) Class I and Class II SRTFs ~~shall~~must ensure staffing levels meet the requirements set forth in chapter 309, divisions 32 and 33 as applicable; and¶
(~~e~~d) Program and direct care staff on night duty ~~shall~~must be awake~~ and,~~ dressed~~ at all times. In settings where individuals are housed in two or more detached buildings, program staff shall monitor each building at least once an hour during the night shift. An approved method for alerting program staff to problems shall be in place and~~

~~implemented. This method shall be accessible to and usable by the individual~~, observant of program operations, and accessible to residents at all times.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0140

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify language regarding occupancy classification. These changes also clarify structural requirements. These changes also add a maximum indoor temperature during time of excessive heat.

CHANGES TO RULE:

309-035-0140
Setting Requirements ¶

(1) The provider ~~shall~~must ensure that the setting ~~meets the~~ requirements ~~for approved Group SR or I occupancies in the~~are met for the occupancy classification designated by the Oregon Building Code and the Oregon Fire Code ~~in effect at the time of origin~~prior to initial licensure. When a change in setting use results in a new building occupancy classification, the program's setting ~~shall~~must meet the requirements ~~for approved Group SR or I occupancies in the Building Code in effect at the time of such change. If occupants are capable of evacuation within three minutes, refer to Group R occupanci~~of the building occupancy classification. The provider must provide the Division a certificate of occupancy for the setting use upon request.¶
(2) Programs ~~shall~~must be accessible as follows:¶
(a) Those settings or portions of settings that are licensed, constructed, or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations ~~shall~~must meet the physical accessibility requirements in chapter 11 of the Oregon Structural Specialty Codes. These codes specify requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act as amended in 1988;¶
(b) In order to ensure program accessibility under Title II of the Americans with Disabilities Act, the Division may require additional accessibility improvements; and¶
(c) Any accessibility improvements made to accommodate an identified ~~individual shall~~resident must be in accordance with the specific needs of the ~~individual~~resident.¶
(3) An accessible outdoor area is required and ~~shall~~must be made available to all ~~individual~~residents. For programs or portions thereof licensed on or after June 1, 1998, a portion of the accessible outdoor area ~~shall~~must be covered and have an all-weather surface such as a patio or deck.¶
(4) The setting ~~shall~~must have sufficient and safe storage areas that include but not limited to:¶
(a) Storage for a reasonable amount of ~~individual~~resident belongings beyond that available in the ~~individual~~resident's unit ~~shall~~must be provided appropriate to the size of the setting;¶
(b) All maintenance equipment including yard maintenance tools ~~shall~~must be maintained in adequate storage space. ~~Equipment and tools that pose a dange~~Locked storage for equipment and tools is to be utilized if necessary for t~~o~~he individual~~s shall be kept in locked storage~~ized safety of one or more residents; and¶
(c) Storage areas necessary to ensure a functional, safe, and sanitary environment consistent with OAR 309-035-0140 through 0155 and 309-035-0210 through 0215.¶
(5) ~~For programs initially licensed on or after June 1, 1998, all individual use areas and individual units shall be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches except that a minimum width of 48 inches shall be provided along the route to accessible bedrooms and bathrooms and between common areas and required exits.¶~~
~~(6) The setting shall have sufficient space for confidential storage of both individual service records and business records, for program staff use in completing record-keeping tasks, and for a telephone. Other equipment including fire alarm panels and other annunciators shall be installed in an area readily accessible to staff in accordance with the Fire Code.¶~~
~~(7) The provider shall provide a unit for each individual~~The provider must provide a unit for each resident, although the program may maintain units to be shared by more than one ~~individual~~resident consistent with these rules. The unit ~~shall~~must include sleeping accommodations for the ~~individual~~resident and be separated from other areas of the setting by an operable door with an approved latching device. The provider ~~shall~~must maintain units as follows:¶
(a) For programs licensed prior to June 1, 1998, units ~~shall~~must be a minimum of 60 square feet per resident and allow for a minimum of three feet between beds;¶
(b) For programs or portions thereof initially licensed on or after June 1, 1998, units ~~shall~~must be limited to one or two ~~individual~~residents. At least ten percent of units, but no less than one unit, ~~shall~~must be accessible for ~~individual~~residents with mobility disabilities. All units ~~shall~~must include a minimum of 70 square feet per ~~individual~~resident exclusive of closets, vestibules, and bathroom facilities and allow a minimum of three feet between beds;¶

(c) The provider ~~shall~~must provide a lockable entrance door to each unit for the ~~individual~~resident's privacy, except as otherwise limited under OAR 309-035-0110(~~7~~5), as follows:¶
(A) The locking device ~~shall~~must release with a single-action lever on the inside of the room and open to a hall or common-use room;¶
(B) The provider ~~shall~~must provide each ~~individual~~resident with a personalized key that operates only the door to ~~his or he~~their unit from the corridor side;¶
(C) The provider ~~shall~~must maintain a master key to access all of the units that is easily and quickly available to the provider, program administrator, and appropriate program staff;¶
(D) The provider may not disable or remove a lock to a unit unless the provider has ~~written~~a signed consent ~~from the~~to an individual ~~or the individually~~-based limitation from the resident or the resident's legal representative, or as permitted under OAR 309-035-0110(5) through (8) and OAR 309-035-0195; and¶
~~(E) Section (7) of these rules are effective July 1, 2016 and enforceable as described in OAR 309-035-0115(17).¶~~
(d) A clothes closet with adequate clothes hanging rods ~~shall~~must be accessible within each unit for each resident residing in the unit, for storage of each ~~individual~~resident's clothing and personal belongings. For programs initially licensed on or after June 1, 1998, built-in closet space ~~shall~~must be provided totaling a minimum of 64 cubic feet for each ~~individual~~resident. In an accessible unit, the clothes hanging rod height ~~shall~~must be adjustable or no more than 54 inches in height to ensure accessibility for a~~n individual~~ resident using a wheelchair; and¶
(e) Each unit ~~shall~~must have exterior windows with a ~~combined area at least one-tenth of the floor area of~~minimum net clear opening of 5.7 square feet. The window must readily open from the inside without special tools and must provide a clear, unobstructed opening with the minimum dimensions not less than 24 inches in height or 20 inches in width. The bottom of the opening must not be greater than 44 inches from the ~~room.~~floor.¶
(f) Unit windows ~~shall~~must be equipped with curtains or blinds for privacy and light control. For programs or portions of programs initially licensed on or after June 1, 1998, an escape window ~~shall~~must be provided consistent with building code requirements.¶
(~~8) Bathing and toilet facilities shall~~6) For programs initially licensed on or after June 1, 1998, all resident use areas and resident units must:¶
(a) Be accessible through temperature controlled common areas or hallways;¶
(b) Meet the size requirements as established by the State of Oregon Building Codes Division or their designee; and¶
(c) Have accessible routes between accessible bedrooms and bathrooms and between common areas and required exits.¶
(7) The setting must have sufficient space for confidential storage of both resident service records and business records, for program staff use in completing record-keeping tasks, and for a telephone.¶
(8) Equipment, including fire alarm panels and other annunciators, must be installed in an area readily accessible to staff in accordance with the Oregon Fire Code.¶
(9) Bathing and toilet facilities must be conveniently located for ~~individual use, p~~resident use and must:¶
(a) Provide permanently wired light fixtures that illuminate all parts of the room~~, p~~;¶
(b) Provide individual privacy for ~~individuals, p~~residents;¶
(c) Provide a securely affixed mirror at eye level~~, b~~;¶
(d) Be adequately ventilated~~,~~; and ~~i~~¶
(e) Include sufficient facilities specially equipped for use by ~~individual~~residents with a physical disability in buildings serving such ~~individuals:¶~~
~~(a~~residents.¶
(10) In programs licensed prior to June 1, 1998, a minimum of one toilet and one lavatory ~~shall~~must be available for each eight ~~individual~~residents, and one bathtub or shower ~~shall~~must be available for each ten ~~individual~~residents; and¶
(~~b~~11) In programs or portions of programs initially licensed on or after June 1, 1998, a minimum of one toilet and one lavatory ~~shall~~must be available for each six ~~individual~~residents, and a minimum of one bathtub or shower ~~shall~~must be available for each ten ~~individual~~residents, when these fixtures are not available in units. At least one centralized bathroom along an accessible route ~~shall~~must be designed for disabled access in accordance with Chapter 11 of the Oregon Structural Specialty Code.¶
(~~9~~12) The setting ~~shall~~must include lounge and activity areas for social and recreational use by ~~individual~~residents, program staff and invited guests of residents totaling no less than 15 square feet per ~~individual~~resident.¶
(1~~0~~3) Laundry facilities ~~shall~~must be separate from food preparation and other ~~individual~~resident use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both ~~individual~~resident and staff use. In programs initially licensed on or after June 1, 1998, separate residential laundry facilities ~~shall~~must be provided when the primary laundry facilities are located in another building, are of commercial type, or are otherwise not suitable for ~~individual~~resident use. The following ~~shall~~must be included in the primary laundry facilities:¶

(a) Countertops or spaces for folding tables sufficient to handle laundry needs for the facility;¶
(b) Locked storage for chemicals and equipment to be utilized if necessary for the for the individualized safety of one or more residents;¶
(c) Outlets, venting, and water hook-ups according to state building code requirements.;¶
(d) Washers must have a minimum rinse temperature of 155 degrees Fahrenheit (160 degrees Fahrenheit recommended) unless a chemical disinfectant is used; and¶
(de) Sufficient storage and handling space to ensure that clean laundry is not contaminated by soiled laundry.¶
(114) Kitchen facilities and equipment in a setting may be of residential type except as required by the state building code and fire code or local agencies having jurisdiction. The setting's kitchen shallmust have the following:¶
(a) Dry storage space not subject to freezing in cabinets or a separate pantry for a minimum of one week's supply of staple foods;¶
(b) Sufficient refrigeration space for a minimum of two days' supply of perishable foods. The space shallmust be maintained at 45 degrees Fahrenheit or less and freezer space maintained at 0 degrees Fahrenheit or less;¶
(c) A dishwasher may be approved residential type with a minimum final rinse temperature of 155 degrees Fahrenheit (160 degrees recommended) unless chemical disinfectant is used;¶
(d) A separate food preparation sink and hand washing sink;¶
(e) Smooth, nonabsorbent and cleanable counters for food preparation and serving;¶
(f) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;¶
(g) Stove and oven equipment for cooking and baking needs; and¶
(h) Storage for a mop and other cleaning tools and supplies used for food preparation for dining and adjacent areas. Cleaning tools shallmust be maintained separately from those used to clean other parts of the setting.¶
(125) The setting shallmust have a separate dining room or an area where meals are served for use by individualresidents, employees, and guesinvited guests of residents:¶
(a) In programs licensed prior to June 1, 1998, the setting's dining area shallmust seat at least half of the individualresidents at one time with a minimum area of 15 square feet per individualresident; and¶
(b) In programs or portions of programs initially licensed on or after June 1, 1998, the setting's dining space shallmust seat all residents with a minimum area of 15 square feet per individualresident exclusive of serving facilities and required exit pathways.¶
(136) All details and finishes shallmust meet the finish requirements of applicable sections of the Building Code and the Fire Code as follows:¶
(a) Surfaces of all walls, ceilings, windows, and equipment shallmust be nonabsorbent and readily cleanable;¶
(b) The setting's, flooring, thresholds, and floor junctures shallmust be designed and installed to prevent a tripping hazard and to minimize resistance for passage of wheelchairs and other ambulation aids. In addition, hard surface floors and base shallboards must be free from cracks and breaks, and bathing areas shallmust have non-slip surfaces;¶
(c) In programs or portions of programs initially licensed on or after June 1, 1998, all doors to units, bathrooms, and common use areas shallmust provide a minimum clear opening of 32 inches;¶
(d) In all programs:¶
(A) Lever type door hardware shallmust be provided on all doors used by individualresidents;¶
(B) Locks used on doors to individualresident units must be interactive to release with operation of the inside door handle and comply with the requirements established by OAR 309-035-0140(7)(c)(A), (B)(D)(E and (D);¶
(C) Exit doors mayust not include locks that prevent evacuation except in accordance with building code and fire code requirements and with written approval of the Division; and¶
(D) An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when individualresidents or others enter or exit the setting.¶
(e) Handrails shallmust be provided on all stairways as specified in the Building Code.¶
(147) All areas of the setting shallmust be adequately ventilated, and temperature controlled in accordance with the Mechanical and Building Code requirements:¶
(a) Each setting shallmust have and maintain heating and cooling equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit atnd a point three inches above the floor. During times of extreme summer heat, fans shall be made available when air conditioning is not provided;maximum temperature not exceeding 78 degrees Fahrenheit.¶
(b) All toilet and shower rooms shallmust be adequately ventilated with a mechanical exhaust fan, window mounted exhaust fan, or central exhaust system that discharges to the outside;¶
(c) Where used, the design and installation of fireplaces, furnaces, wood stoves and boilers shallmust meet standards of the Oregon Mechanical Specialty Code and the Boiler Specialty Code, as applicableOregon Boiler and Pressure Vessel Specialty Code, as applicable, in effect at the time of installation. Documentation of annual inspection noting safe and proper operation shallmust be maintained at the setting; and¶

(d) In ~~individual~~resident-use areas, hot water temperatures ~~shall~~must be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures in laundry and kitchen areas ~~shall~~must be at least 155 degrees Fahrenheit.¶
(1~~5~~8) All wiring systems and electrical circuits ~~shall~~must meet the standards of Oregon Electrical Specialty Code in effect on the date of installation~~, and a~~.¶
(19) All electrical devices ~~shall~~must be properly wired and in good repair. The provider ~~shall~~must ensure the following:¶
(a) When not fully grounded, circuits in ~~individual~~resident use areas ~~shall~~must be protected by GFCI type receptacles or circuit breakers as an acceptable alternative;¶
(b) A sufficient supply of electrical outlets ~~shall~~must be provided to meet ~~individual~~resident and staff needs;¶
(c) No more than one power strip may be utilized for each electrical outlet;¶
(d) Connecting power strips to one another or use of other outlet expansion devices is prohibited; and¶
(e) Extension cord use in units and common use rooms is prohibited~~;~~.¶
(~~f~~20) Lighting fixtures ~~shall~~must be provided in each ~~individual~~resident unit and bathroom, switchable near the entry door and in other areas as required to meet task illumination~~; and~~¶
~~(g~~.¶
(21) Lighting fixtures that illuminate evacuation pathways ~~shall~~must be operable within ten seconds during a failure of the normal power supply and provide illumination for a period of at least two hours.¶
(~~16~~22) All plumbing ~~shall~~must meet the Oregon Plumbing Specialty Code in effect on the date of installation~~, and a~~.¶
(23) All plumbing fixtures ~~shall~~must be properly installed and in good repair.¶
(~~17~~24) The program ~~shall~~must provide adequate access to telephones for private use by ~~individual~~residents. The program ~~shall~~must not limit the hours of availability for telephone use. A program may establish guidelines for fair and equal use of a shared telephone. Each ~~individual or individual~~resident or resident's representative is~~hall be~~ responsible for payment of long-distance phone bills where the calls were initiated by the ~~individual~~resident, unless other mutually agreed arrangements have been made.¶
(~~18~~25) Smoking is not allowed within the setting including within buildings or on the grounds.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0145

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes provide updated standards for safety within programs that ensure equipment is properly stored and maintained, and that a broad degree of disasters/emergencies are included in programs' disaster plans.

CHANGES TO RULE:

309-035-0145
Safety ¶

(1) The provider ~~shall~~must train all program staff in safety procedures prior to beginning their first regular shift.¶
(2) Every ~~individual~~resident must be trained in ~~individual~~resident safety procedures as soon as possible within the first 72 hours of residency.¶
(~~2~~3) The program ~~shall~~must develop and implement a written procedure and disaster plan ~~authorized by the State Fire Marshal or authorized representative~~. The plan ~~shall~~must cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, ~~and floods. The program shall post the plan by the phone and~~lockdowns, infectious disease outbreaks, loss of utilities, hazardous air quality, floods, and extreme weather events. The plan must be immediately available at all times to the program administrator and program staff. The plan ~~shall~~must include diagrams of evacuation routes, and these must be posted along evacuation routes. The plan ~~shall~~must specify ~~where staff and individuals will reside~~short-term and long-term shelters where residents will reside and receive services from program staff if the setting becomes uninhabitable. The program ~~shall~~must update the plan an~~d shall~~nually to include:¶
(a) Emergency instructions for employees;¶
(b) The telephone numbers of the local fire department, police department, the poison control center, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and¶
(c) Instructions for the evacuation of ~~individual~~residents and employees.¶
(~~3~~4) Noncombustible and nonhazardous materials ~~shall~~must be used whenever possible. When necessary to the operation of the facility, flammable and combustible liquids and other hazardous materials ~~shall~~must be safely and properly stored in clearly labeled, original containers in areas ~~inaccessible to individuals~~secure to prevent tampering by residents or vandals and in accordance with the Oregon Fire Code. Any quantities of combustible and hazardous materials maintained ~~shall~~must be the minimum necessary.¶
~~(4:¶~~
(a) Oxygen and other gas cylinders in service or in storage must be adequately secured to prevent the cylinders from falling or being knocked over. ¶
(b) No smoking signs must be visibly posted where oxygen is stored or used;¶
(5) Non-toxic cleaning supplies ~~shall~~must be used whenever ~~availa~~possible. Poisonous and other toxic materials ~~shall~~must be properly labeled and stored ~~in locked areas distinct and apart from all~~apart from all personal care supplies, personal hygiene supplies, food and medications.¶
(~~5~~6) Evacuation capability categories are based upon the ability of the ~~individual~~residents and program staff as a group to evacuate the building or relocate from a point of occupancy to a point of safety. Buildings ~~shall~~must be constructed and equipped according to a designated evacuation capability for occupants~~. Categories of evacuation capability include "Impractical" (SR-2) or "Slow" (SR-1). The evacuation capability designated for the facility shall be documented and maintained in accordance with NFPA 101A:¶~~
~~(a) Only individual:¶~~
(a) Only residents assessed to be capable of evacuating in accordance with the designated facility evacuation capability ~~shall~~may be admitted to the program; and¶
(b) ~~Individual~~Residents experiencing difficulty with evacuating in a timely manner ~~shall~~must be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the program ~~shall~~must consider increasing staff levels, changing staff assignments, offering to change the ~~individual~~resident's room assignment, arranging for special equipment, and taking other actions t~~hat may~~o assist the ~~individual~~resident. The program ~~shall~~must assist ~~individual~~residents who still cannot evacuate the building safely in the allowable period of time and ~~shall~~must assist with transferring to another facility with an evacuation capability designation consistent with the ~~individual~~resident's documented evacuation capability.¶
(~~6~~7) The program ~~shall~~must ensure that every ~~individual shall~~resident participates in an unannounced evacuation drill ~~each~~at least once every three months:¶
(a) At least once every t~~hre~~welve months, the program ~~shall~~must conduct a drill during ~~individual~~resident sleeping hours between 10 p.m. and 6 a.m.;¶

(b) Drills ~~shall~~must be scheduled at different times of the day ~~and~~, on different days of the week and with different locations designated as the origin of the fire for drill purposes;¶
(c) Any ~~individual~~resident failing to evacuate within the established time limits ~~shall~~must be provided with ~~special~~ assistance as identified in OAR 309-035-0145(5)(b) above and a notation made in the ~~individual~~resident service record; and¶
(d) ~~W~~Complete written evacuation records ~~shall~~must be maintained for at least three years. ~~They shall~~Records must include documentation made at the time of the drill specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, weather conditions at the time of the drill, the names of all ~~individual~~residents and staff present, the amount of time required ~~to evacuate~~for each individual and staff to evacuate to the point of safety, notes of any difficulties experienced, and the signature of the staff person conducting the drill.¶
(~~7~~8) All stairways, halls, doorways, passageways, and exits from rooms and from the building ~~shall be~~must remain unobstructed at all times.¶
(~~8~~9) The program ~~shall~~must provide and maintain one or more 2~~A10BC~~-A:10-B:C rated fire extinguishers on each floor, including basements, in accordance with the Oregon Fire Code. Fire extinguisher must:¶
(~~9~~a) ~~Approved fire alarms and smoke detectors shall be~~Be inspected and maintained at least annually and in accordance with the requirements of the Oregon State Fire Marshal or local authority having jurisdiction;¶
(b) Be located in conspicuous locations along normal paths of travel where they will have ready access and be immediately available for use;¶
(c) Not be obscured from view. In rooms or areas in which visual obstruction cannot be completely avoided, signage must be provided to indicate the locations of extinguishers;¶
(d) Be installed on the hangers or brackets supplied. Hangers or brackets must be securely anchored to the mounting surface in accordance with the manufacturer's installation instructions;¶
(e) Be installed so that the tops are not more than five (5) feet above the floor;¶
(f) Be installed so that the bottoms are not less than four (4) inches above the floor; and¶
(g) Not be locked.¶
(10) The program must provide and maintain at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor.¶
(11) The program must provide and maintain evacuation route diagrams in each common room and hallway and immediately adjacent to every egress door. Evacuation diagrams must include fire exits, location of fire extinguishers, stairs, and escape routes.¶
(12) Approved fire detection and alarm systems, carbon monoxide alarms, and smoke alarms must be UL approved and installed according to Building Code and Oregon Fire Code requirements. ~~These~~ and the manufacturer's instructions.¶
(13) Fire detection and alarm~~s shall be set off during each evacuation drill.~~ystems, carbon monoxide alarms and smoke alarms must be tested monthly.¶
(14) Programs initially licensed on or after February 1, 2025, must have fire detection and alarm systems, carbon monoxide alarms, and smoke alarms that are interconnected and permanently wired with battery back-up.¶
(15) Carbon monoxide alarms must be installed:¶
(a) In each bedroom or within 15 feet outside of each bedroom door; and¶
(b) On each level of the setting when bedrooms are on separate floor levels.¶
(16) The program ~~shall~~must provide appropriate signal devices for persons with disabilities who do not respond to the standard auditory alarms. All ~~of thes~~assistive devices ~~shall~~must be inspected and maintained in accordance with the requirements of the Oregon State Fire Marshal or local a~~genc~~uthority having jurisdiction.¶
(1~~0~~7) The program ~~shall~~must install and maintain an automatic sprinkler system~~s~~ in compliant~~t~~ce with ~~the~~ Building Code~~s~~ and ~~maintained in accordance with rules adopted by the State Fire Marshal~~Oregon Fire Code. The program ~~shall ma~~must in~~s~~tain~~l~~l an automated sprinkler system as follows:¶
(a) Programs initially licensed prior to July 1, 2016, are not required to install or maintain a sprinkler system if one w~~ere~~as not present at the time of initial licensure;¶
(b) The Division recommends that all programs licensed prior to July 1, 2016, install and maintain sprinkler systems;¶
(c) ~~Any p~~Program initially licensed on or after July 1, 2016, ~~shall have and maintain a sprinkler system~~must have and maintain an automated sprinkler system.¶
(d) The Building Code Authority or designee may determine that a program is not required to install and maintain a sprinkler system. Any determination made by the Building Code Authority or designee must be submitted to the Division in writing.¶
(1~~1~~8) The Division ~~may~~will not issue any variances ~~addressing~~related to automatic sprinkler systems in programs licensed on or after July 1, 2016.¶
(1~~2~~9) First aid supplies ~~shall~~must be readily accessible to staff. All supplies ~~shall~~must be properly labeled.¶

(~~13~~20) Portable heaters are a recognized safety hazard and may not be used except as approved by the Oregon State Fire Marshal, or authorized representative.¶
(214) The provider ~~shall~~must develop and implement a safety p~~rogram~~lan to identify and prevent the occurrence of hazards at the facility. Such hazards may include, but are not limited to, extreme heat, communicable diseases, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other ~~special plug-in~~electrical adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards. The provider must update the plan as needed and it must include procedures for notifying the local public health agency when significant health risks are present, including but not limited to, communicable and noncommunicable diseases and conditions, pest infestations, and other environmental hazards described in OAR 333.¶
(22) Safety equipment must be checked monthly, including but not limited to, fire extinguishers, flashlights, windows, dryer vents, and furnace filters.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0150

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify requirements for the storage of soiled linen as well as requirements for the exterior of the building.

CHANGES TO RULE:

309-035-0150
Sanitation ¶

(1) The water supply in the facility ~~shall~~must meet the requirements of the current rules of Oregon Health ~~Services~~Authority Public Health Division governing domestic water supplies and:¶
(a) A municipal water supply ~~shall~~must be utilized if available; and¶
(b) When the facility is not served by an approved municipal water system and the facility qualifies as a public water system according to OAR 333-061-0020(127) ~~Oregon~~Public Health ~~Services~~Division rules for public water systems, then the provider ~~shall~~must comply with the OAR Chapter 333 rules of the ~~Oregon~~Public Health ~~Services~~Division pertaining to public water systems. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly and nitrate at least annually and reported to ~~Oregon Health Services~~the Public Health Division. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards, public notice be given whenever a violation of the water quality standards occurs, and records of water testing be retained according to the ~~Oregon~~Public Health ~~Services~~Division requirements.¶
(2) All floors, walls, ceilings, windows, furniture, and equipment ~~shall~~must be kept in good repair, clean, sanitary, neat, and orderly.¶
(3) Each bathtub, shower, lavatory, and toilet ~~shall~~must be kept clean, in good repair, and regularly sanitized.¶
(4) No kitchen sink, lavatory, bathtub, or shower ~~shall~~may be used for the disposal of cleaning waste ~~water~~.¶
(5) Soiled linens and clothing ~~shall~~must be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.¶
(6) All necessary measures ~~shall~~must be taken to prevent rodents and insects from entering the setting. The provider ~~shall~~must take appropriate action to eliminate rodents or insects immediately.¶
(7) The grounds of the setting ~~shall~~must be kept orderly and reasonably free of litter, unused articles, and refuse:¶
(a) Outdoor walkways must be free of trip hazards;¶
(b) Fencing, if present on the property, must be maintained to be safe and in good condition.¶
(c) Roofing and gutters must be free of debris and moss buildup; and¶
(d) Decks, railings, and siding must have a weather resistant coating and be free of cracks and chips.¶
(8) Garbage and refuse receptacles ~~shall~~must be clean, durable, watertight, insect and rodent proof, and ~~shall~~must be kept covered with tight-fitting lids. All garbage and solid waste ~~shall~~must be disposed of at least weekly and in compliance with the current rules of the Oregon Department of Environmental Quality (DEQ).¶
(9) All sewage and liquid wastes ~~shall~~must be disposed of in a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes ~~shall~~must be collected, treated, and disposed of in compliance with the current rules of the DEQ. Sewage lines ~~and~~, septic tanks or other non-municipal sewage disposal systems ~~shall~~must be maintained in good working order.¶
(10) Biohazardous waste ~~shall be~~must be safely stored and disposed of in compliance with the rules of the ~~DEQ~~Oregon Department of Environmental Quality (DEQ).¶
(11) Precautions ~~shall~~must be taken to prevent the spread of infectious or communicable diseases as defined by the U.S. Centers for Disease Control and Prevention to minimize or eliminate exposure to known health hazards:¶
~~(a);~~ Program staff ~~shall~~must employ universal precautions whereby all human blood and certain body fluids are treated if known to be infectious for HIV, HBV, ~~and~~or other blood borne pathogens.¶
(12) If pets or other household animals reside at the setting, sanitation practices ~~shall~~must be implemented to prevent health hazards:¶
(a) Animals ~~shall~~must be vaccinated in accordance with the recommendations of a licensed veterinarian. Documentation of vaccinations ~~shall~~must be maintained on the premises;¶
(b) Animals not confined in enclosures ~~shall~~must be under control and maintained in a manner that does not adversely impact ~~individual~~residents or others; and¶
(c) No live animal ~~shall~~may be kept or allowed in any portion of the setting where food is stored or prepared, except that aquariums and aviaries ~~shall~~may be allowed if enclosed so as not to create a ~~public health problem~~health hazard.
Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

AMEND: 309-035-0155

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify that programs must provide culturally responsive and essential toiletries to residents.

CHANGES TO RULE:

309-035-0155
Individual Furnishings ¶

(1) The program ~~shall~~must permit a~~n individual~~ resident to use the ~~individual~~resident's own furniture within space limitations of the ~~individual~~resident's unit. Otherwise, furniture ~~shall~~must be provided or arranged for each ~~individual~~resident, maintained in good repair, and must include the following:¶
(a) A bed including a frame ~~and,~~ a clean mattress and pillow;¶
(b) A private dresser or similar storage area for personal belongings that is readily accessible to the ~~individual~~resident; and¶
(c) Locked storage for the ~~individual~~resident's small, personal belongings. ~~For programs initially licensed before June 1, 1998, this~~Additional locked storage may be provided in a place other than the ~~Individual~~resident's unit. The provider ~~shall~~must provide the ~~individual~~resident with a key or other method to gain access to their locked storage space.¶
(2) The program ~~shall~~must provide linens for each ~~individual and shall~~resident and must include the following:¶
(a) Sheets, pillowcase, and other bedding appropriate to the season and the ~~individual~~resident's comfort;¶
(b) Availability of a waterproof mattress or waterproof mattress cover; and¶
(c) Towels and washcloths.¶
(3) The provider ~~shall assist each individual in obtaining~~must provide each resident culturally responsive personal hygiene items in accordance with individual ~~needs. These shall be stored in a clean and sanitary manner and may be purchased with the individual's personal allowance~~ized resident's needs. Personal hygiene items must be stored in a clean and sanitary manner. Personal hygiene items include, but are not limited to, ~~a comb and hairbrush, a~~soap, shampoo, toilet paper, toothbrushes, toothpaste, ~~and~~ menstrual supplies ~~(if needed).¶~~
~~(4) The provider shall provide sufficient supplies of soap, shampoo, and toilet paper for all individual~~, combs, and hairbrushes.¶
(~~5~~4) An adequate supply of furniture for ~~individual~~resident use in living room, dining room, and other common areas ~~shall be~~must be provided and maintained in good condition.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

AMEND: 309-035-0163

REPEAL: Temporary 309-035-0163 from BHS 1-2025

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify requirements for confidential information authorizations and anti-discrimination admissions practices.

CHANGES TO RULE:

309-035-0163
Admission to Program ¶

(1) The provider ~~shall~~must ensure the admission process includes the following:¶
(a) The provider ~~shall~~must specify in its admission policy and procedures the program staff responsible for each component of the admission information-gathering and decision-making process. The program ~~shall~~must allocate responsibilities to promote effective processing of referrals and admissions.¶
(b) The provider ~~shall~~must develop and implement admission policies and procedures that take into consideration; the placement of ~~individual~~prospective residents by a supervisory authority under ORS chapters 161 or 426 or by the informed consent of the ~~individual~~prospective resident's legal representative, the ability of the program to meet the service needs of both the ~~individual~~prospective resident and current residents of the facility, and the prospective ~~individual~~resident's right to select and choose from available service settings when the ~~individual~~ prospective resident has the capacity to engage in the treatment programs offered by the facility. A~~n individual~~ prospective resident under civil commitment has the right to appeal the placement by the OHA designee as outlined in OAR 309-033-0290(5).¶
(c) The provider ~~shall~~must support the ~~individual~~prospective resident's right to select a program by assisting the person-centered service plan coordinator in identifying and documenting program options in the person-centered service plan, including providing information regarding program services and rates. The ~~individual~~prospective resident's right to select a service setting may be limited by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426, or by the informed consent of the ~~individual~~prospective resident's legal representative.¶
(d) The provider may close admissions to the program when accepting an additional prospective ~~individual~~resident may cause the program to exceed its reasonable waitlist. When admissions are closed, the provider is not required to accept referrals, conduct screenings, or evaluate admissions criteria as directed by these rules.¶
(2) Unless limited by contractual agreement with the Division or other Division-approved party, the program may accept referrals from a variety of sources.¶
(3) ~~In accordance with ORS 179.505 and the 42 CFR, Part 2, the program shall obtain an authorization for the release of information for disclosure for any confidential information concerning a prospective individual.¶~~
~~(4) The provider shall consider an individual for admission without regard to~~The provider must consider a prospective resident for admission and not discriminate based on race, color, sex, gender or sexual orientation, except as may be limited by room arrangement, religion, creed, national origin, age, except under 18 years, familial status, marital status, source of income, cultural identity, socioeconomic status, or disability in addition to the mental health ~~disorder~~condition or other protected classes.¶
(~~5~~4) Prior to accepting a~~n individual~~ prospective resident for admission to the program, the program administrator ~~shall~~must determine th~~at the individual~~e prospective resident meets admission criteria including the following:¶
(a) The provider ~~shall~~must offer each ~~individual~~prospective resident referred for placement at the program an opportunity to participate in a screening interview prior to being accepted or denied placement at a program. The screening is intended to provide information about the program and the services available as well as to obtain information from the prospective ~~individual~~resident, a relative, and agencies currently providing services to the ~~individual~~prospective resident sufficient to determine eligibility for admission and service needs; and¶
(b) The provider shall receive screening packets for each ~~individual~~prospective resident referred for placement. At a minimum, screening packets ~~shall~~must include:¶
(A) Written documentation that the prospective ~~individual~~resident has or is suspected of having a mental health ~~disorder~~condition;¶
(B) Background information including a current mental health assessment, description of previous living arrangements, service history, behavioral ~~issue~~support needs, and service needs;¶
(C) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the ~~individual~~prospective resident's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications,

and aids to physical functioning;¶
(D) Copies of ~~documents or other~~ documentation relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions or jurisdiction;¶
(E) A copy of the prospective ~~individual~~resident's most recent mental health treatment plan or in the case of an emergency or crisis-respite admission, a summary of current mental health treatment involvement; and¶
(F) Documentation of the prospective ~~individual~~resident's ability to evacuate ~~the~~a building ~~consistent with the facility's designated evacuation capability and other concerns about potential safety risks~~with or without assistance consistent with OAR 309-035-0145(5)(b) and within three minutes, and other concerns about potential safety risks.¶
(G) Verification of the prospective resident's resources including potential benefit eligibility and coverage as described in OAR 410-120-1280(2).¶
(c) The provider ~~shall~~must ensure that screenings be conducted at the prospective program setting unless:¶
(A) Travel arrangements cannot be made due to inclement weather; or¶
(B) The ~~individual or~~prospective resident or their legal representative requests a phone screening or screening at the ~~individual~~prospective resident's current location.¶
(d) The provider ~~shall~~must contact the referring agency to schedule a screening appointment within 48 hours of receipt of the referral packet;¶
(e) The provider ~~shall~~must coordinate with the referring agency to schedule a screening appointment to occur within 14 calendar days from the date of receipt of the referral packet;¶
(f) The provider ~~shall~~must provide the following to each ~~individual~~prospective resident referred for placement:¶
(A) Materials explaining conditions of residency;¶
(B) Services available to ~~individual~~residents residing in the program; and¶
(C) An opportunity to meet with a prospective roommate if the program uses a shared room model.¶
(g) The screening meeting ~~shall~~must include the program administrator~~,~~ and the prospective ~~individual, and the individual's representative.~~resident and the prospective resident's legal representative, if applicable. With the consent of the prospective ~~individual or the individual~~resident or the prospective resident's legal representative, the meeting may also include family members, ~~other representatives as appropriate,~~ representatives of relevant service-providing agencies, and others with an interest in the ~~individual~~prospective resident's admission.¶
(~~6~~5) If a~~n individual~~ prospective resident is referred for emergency ~~or crisis-respite~~ admission, an amended or abbreviated screening process may be used to more quickly meet the needs of the ~~individual~~prospective resident. Screening and admission information obtained may be less comprehensive than for regular admissions but ~~shall~~must be sufficient to determine that the ~~individual~~prospective resident meets admission criteria and that the setting and program is appropriate considering the ~~individual~~prospective resident's needs. The program ~~shall~~must document the reasons for incomplete information and the plan for obtaining the information after admission.¶
(~~7~~6) Prior to admission, the provider ~~shall~~must evaluate and determine whether a prospective ~~individual~~resident is eligible for admission based on the following criteria. The ~~individual shall~~prospective resident must:¶
(a) Be assessed to have a mental health disorder or a suspected mental health ~~disorder~~condition;¶
(b) Be at least 18 years of age;¶
(c) Not require continuous nursing care unless a reasonable plan to provide the care exists, the need for residential treatment supersedes the need for nursing care, and the Division approves the placement;¶
(d) Have evacuation capability consistent with the setting's ~~SR~~ occupancy classification with or without assistance as described in OAR 309-035-0145(5)(b); and¶
(e) Meet additional criteria required or approved by the Division through contractual agreement or condition of licensing.¶
(~~8~~7) For admission to an SRTF, the provider ~~shall~~must also evaluate and determine whether a prospective ~~individual~~resident is eligible for admission, based on the ~~individual~~prospective resident meeting all criteria in OAR 410-172-0720(7).¶
(~~9~~8) The provider may only deny a~~n individual~~ prospective resident admission to its program for the following reasons:¶
(a) Failure to meet admission criteria established by these rules;¶
(b) Inability to pay for services due to lack of presumed Medicaid eligibility or other funds;¶
(c) Documented instances of behaviors within the last 14 calendar days that would pose a reasonable and significant risk to the health, safety, and well-being of the ~~individual~~prospective resident or another ~~individual, if the individual~~resident, if the prospective resident is admitted;¶
(d) Lack of availab~~ility of~~le necessary medical services required to maintain the health and safety of the ~~individual (no nursing, etc.) or lack of an opening at the setting; or¶~~
~~(e) The individual declines the offer for screening~~prospective resident and those services cannot be reasonably arranged.¶
(e) The prospective resident declines the offer for screening, unless the placement of the prospective resident is

by a supervisory authority under ORS chapters 161 or 426 or by the informed consent of the prospective resident's legal representative.¶
(10) The provider may not deny an individual prospective resident admission to its program as follows:¶
(a) Prior to offering a face-to-face screening or other screening process as allowed by these rules; or unless the program waitlist is currently closed;¶
(b) Due to county of origin, responsibility, or residency.¶
(11) The provider's admission decision shall be made as follows:¶
(a; or¶
(c) Due to supervisory entity.¶
(10) The program's decision shallmust be based on review of screening materials, information gathered during the face-to-face screening meeting, and evaluation of the admission criteria;¶
(b11) The program shallmust inform the prospective individual, and the individualresident, and the prospective resident's legal representative, supervisory entity, and referring entity, as applicable, of the admission decisions within 72 hours of the screening meeting;¶
(c12) When the program denies admission, the program shallmust provide written notification to the individual and the individualprospective resident and the prospective resident's legal representative, supervisory entity and referring entity, as applicable, of the specific basis for the decision and the individualprospective resident's right to appeal the decision;¶
(d13) When the program approves admission, the program shallmust inform the individual and the individualprospective resident and the prospective resident's legal representative, supervisory entity, and referring entity, as applicable, through an acceptance notification that shallmust include:¶
(Aa) When not waitlisted or first on the waitlist, an estimated date of admission; and¶
(Bb) When waitlisted, the number on the waitlist.¶
(124) Management of waitlists includes the following:¶
(a) The program shallmust establish admission waitlists of reasonable length;¶
(b) The program shallmust document actions taken in the management of the waitlist;¶
(c) The program shallmust contact a waitlisted individual, the individualprospective resident, the prospective resident's representative, and the referring entity, as applicable, monthly to determine if the individualprospective resident has been placed elsewhere;¶
(d) The program shallmust prioritize admissions on a waitlist as follows:¶
(A) The program shallmust give first priority consideration to each of those individuals who may bprospective residents who are seeking to transition from the Oregon State Hospital or other hospital level of care into the community and are:¶
(i) Under a current civil commitment or extremely dangerous person commitment pursuant to ORS chapter 426; or¶
(ii) Placed on court-ordered community restoration as an aid and assist defendant pursuant to ORS chapter 161; or¶
(iii) Found guilty except for insanity of a criminal offense and is currently under the jurisdiction of the Psychiatric Security Review Board pursuant to ORS 161.327; or¶
(iv) Found guilty except for insanity of a criminal offense and has been committed to a facility designated by OHA pursuant to ORS 161.328; or¶
(v) Is seeking to transition from the Oregon State Hospital or other hospital level of care into the community.¶
(B) The program shallmust give second priority consideration for admission to those individualprospective residents seeking admission to programs:¶
(i) As an alternative to or to prevent civil commitment or placement at the Oregon State Hospital; or¶
(ii) For the purpose of transitioning from a program or a secure residential treatment facility.¶
(e) The program shallmust determine priority for admission based on the priorities described above and on a first-come first-served basis based on receipt of the referral packet. The program may not consider the individualprospective resident's county of origin, responsibility, or residency; and¶
(f) Within 72 hours of a provider learning of a pending opening, the program shallmust provide written or electronic notification to the referring CMHP, the individualentity, the prospective resident on the waitlist, and their legal representative, or supervisory entity as applicable, of the expected opening. The CMHPreferring entity is responsible to verify the individualprospective resident or their representative or supervisory entity, as applicable, received the notification of the opening and respond to the program within three business days of the provider's notification. If any of the following occurs, the program may offer the opening to the next individualprospective resident on the wait list:¶
(A) The program receives no response from the individual the individualprospective resident the prospective resident's legal representative, supervisory entity or the referring entity, as applicable, within three business days;¶

(B) The ~~individual~~prospective resident will not be ready to transition into the program within one week~~; or~~¶
~~(C) The individual~~, or within thirty days if the prospective resident's placement is pending a court determination; or¶
(C) The prospective resident does not have a legal representative or supervisory entity and no longer desires placement at the program.¶
(1~~3~~5) The program ~~shall~~must obtain informed consent for services from the ~~individual or the individual~~prospective resident or the prospective resident's legal representative prior to admission to the program. Informed consent is not required for ~~individual~~residents placed at a program pursuant to a court, OHA, CMHP or PSRB order issued under ORS chapter 161 or 426.¶
(16) The program must obtain copies of legal orders for residents placed at a program pursuant to a court, OHA, CMHP or PSRB order issued under ORS chapter 161 or 426.¶
(14~~7~~) Upon admission, the program administrator ~~shall~~must provide and document an orientation to each new ~~individual~~resident that includes but is not limited to the following:¶
(a) A complete tour of the setting;¶
(b) Introductions to other ~~individual~~residents and program staff;¶
(c) ~~Discussion of house rules;¶~~
~~(d)~~ Explanation of the laundry and food service schedule and policies;¶
(~~e~~d) Review of the ~~individual~~resident's rights;¶
(~~f~~e) Review of grievance procedures;¶
(~~g~~f) Review of the residency agreement;¶
(~~h~~g) Discussion of the conditions under which residency would be ~~terminat~~involuntarily transferred or discharged;¶
(~~i~~h) General description of available services and activities;¶
(~~j~~i) Review and explanation of advance directives. If the ~~individual~~resident does not already have any advance directives, the program ~~shall~~must provide an opportunity to complete advanced directives;¶
(~~k~~j) Emergency procedures in accordance with OAR 309-035-0145(2).¶
(~~l~~k) Review of the person-centered planning process; and¶
(~~m~~l) Review of the process for imposing individually-based limitations on certain program obligations to the ~~individual~~resident.
Statutory/Other Authority: ORS 413.042, ORS 443.450
Statutes/Other Implemented: ORS 413.032, ORS 443.400 - 443.465, ORS 443.991

AMEND: 309-035-0165

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes remove the effective date for HCBS requirements, when signatures are requirement on residency agreements and what fees are permitted in residency agreements.

CHANGES TO RULE:

309-035-0165
Residency Agreement ¶

~~This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).¶~~
(1) The provider ~~shall~~must enter into a written residency agreement with each ~~individual or the individual~~resident or the resident's legal representative and be admitted to the program consistent with the placement type with the following procedures:¶
(a) The written residency agreement ~~shall~~must be reviewed and signed by the program administrator, the ~~individual, and the individual's legal representative prior to or at the time of admission. If the individual refus~~resident, and the resident's legal representative or supervisory entity, as applicable, prior to or at the time of admission, and at any time the agreement is updated. If the resident declines to sign the agreement after reviewing the agreement with the provider, the agreement is considered valid if signed by the resident's legal representative or supervisory entity, as applicable.¶
(b) The provider ~~shall~~must provide a copy of the signed agreement to the ~~individual or the individual's legal representative, and t~~resident or the resident's legal representative or supervisory entity, as applicable;¶
(c) The provider ~~shall~~must retain the original signed agreement in the ~~individual~~resident's service record;¶
(~~c~~d) The provider ~~shall~~must give written notice to a~~n individual or the individual~~ resident or the resident's legal representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and¶
(~~d~~e) The provider ~~shall~~must update residency agreements ~~a~~:¶
(A) At least annually; and ~~also w~~¶
(B) When social security rates change; or ~~an individual~~¶
(C) a resident's finances change such that the amount paid for room and board changes.¶
(2) The residency agreement ~~shall~~must include, but is not limited to~~,~~:¶
(a) The room and board rate describing the estimated public and private pay portions of the rate ~~and the following:~~:¶
(~~a~~A) When a~~n individual~~ resident's social security or other funding is not active at the time of admission to the program, the program ~~shall~~must prepare the room and board agreement based upon the estimated benefit to be received by the ~~individual~~resident; and¶
(~~b~~B) If, when funding is later activated, actual income of the ~~individual~~resident varies from the estimated income noted on the residency agreement, the agreement ~~shall~~must be updated and resigned by all the applicable parties.¶
(~~c~~b) Services and supports provided in exchange for payment of the room and board rate;¶
(~~d~~c) Conditions under which the program may change the rates~~;~~ and apply charges or fees.¶
(~~e~~d) The provider's refund policy in instances of a~~n individual~~ resident's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the program;¶
(~~f~~e) A statement indicating that the ~~individual~~resident is not liable for damages considered normal wear and tear;¶
(~~g~~f) The program's policies on voluntary moves and whether written notification of a non-Medicaid ~~individual~~resident's intent to not return is required;¶
(~~h~~g) The potential reasons for involuntary t~~ermination~~ransfer or discharge of residency in compliance with this rule and ~~individual~~resident's rights regarding the ~~eviction and appeal process as described in OAR 309-035-0183(3);~~administrative hearing process.¶
(~~i~~h) Any policies the program may have on the presence and use of alcohol, cannabis, and illegal drugs of abuse;¶
(~~j~~i) Policy regarding tobacco smoking in compliance with the Tobacco Freedom Policy established by the Division;¶
(~~k~~j) Policy addressing pet and service animals. The program may not restrict animals that provide assistance or perform tasks for the benefit of a person with a disability. These animals are often referred to as services animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals;¶
(~~l~~k) Policy regarding the presence and use of legal medical and recreational marijuana at the setting;¶
(~~m~~l) ~~The provider may not s~~Schedule of mealtimes with no more than a 14-hour span between the evening meal and the following morning's meal ~~(see, OAR 411-050-0645).~~;¶

(~~n~~m) Policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board payment is refundable;¶
(~~o~~n) Any ~~house rules or~~ social covenants required by the program that may be included in the document or as an addendum that do not conflict with resident rights and freedoms as outlined in OAR 309-035-0110 and 309-035-0175; and¶
(~~p~~o) Statement informing the ~~individual~~resident of the freedoms authorized by 42 CFR 441.710(a)(1) that may not be limited without the informed, written consent of the ~~individual,~~resident, the resident's legal representative, as applicable, or supervising entity when the ~~individual~~resident is placed with the provider by a court, OHA, CMHP, or PSRB order, including:¶
(A) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws;¶
(B) The freedom and support to access food at any time;¶
(C) To have visitors of the ~~individual~~resident's choosing at any time;¶
(D) Have a lockable door in the ~~individual~~resident's unit that may be locked by the ~~individual~~resident;¶
(E) Choose a roommate when sharing a unit;¶
(F) Furnish and decorate the ~~individual~~resident's unit according to the Residency Agreement;¶
(G) The freedom and support to control the ~~individual~~resident's schedule and activities; and¶
(H) Privacy in the ~~individual's uni~~resident's unit.¶
(3) The provider may not charge fees that are not clearly described in the resident agreement.¶
(~~3~~4) The provider may not propose or enter into a residency agreement that:¶
(a) Charges or asks for ~~a~~:¶
(A) Application fees~~, r~~;¶
(B) Refundable deposits~~, or n~~;¶
(C) Non-refundable deposits;¶
(D) Money or property for services other than the amount agreed upon as described in OAR 410-120-1280(1).¶
(b) Includes any illegal or unenforceable provisions or ask or require a~~n individual~~ resident to waive any of the ~~individual~~resident's rights or the provider's liability for negligence; or¶
(c) Conflicts with ~~individual right~~resident rights and freedoms or these rules.¶
(4~~5~~) ~~Individual~~Residents who are placed in programs by a supervisory entity under ORS chapter 161 or 426, ~~shall~~must be given written information corresponding to each of their applicable rights and processes as described in subsection (1) and (2) of this section as part of the residency agreement.¶
(~~5~~6) Providers are not required to obtain signed agreements from ~~individual~~residents placed by a supervisory entity but must document all efforts to engage the ~~individual~~resident in plan development. Providers must document in the ~~individual~~resident's record the information that was provided to the ~~individual~~resident both orally and in writing. ~~A~~ copy of the residency agreement and the order under which the ~~individual~~resident is placed under ORS chapter 161 or 426 must be placed in the ~~individual~~resident's record.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0170

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify language and requirements for residency transfers and discharges.

CHANGES TO RULE:

309-035-0170
Termination of Residency ¶

(1) Each provider's t~~ermination~~ransfer and discharge policy and procedure ~~shall~~must designate the program staff responsible for each step of the process for transfer~~m~~rin~~atg~~ or discharging residency. The provider ~~shall~~must designate responsibilities organized and assigned to promote a fair and efficient t~~ermination~~ransfer and discharge process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the program administrator i~~shall be~~ responsible for initiating and coordinating t~~ermination~~ransfer and discharge proceedings. The provider ~~shall~~must make reasonable efforts to prevent unnecessary t~~ermination~~ransfer and discharges by making reasonable accommodations within the program and setting.¶
(2) A~~n individual or an individual~~ resident or a resident's legal representative as applicable, may terminate residency in a facility upon providing at least 30-days' written notice. Upon mutual agreement between the administrator and the ~~individual or individual~~resident or resident's legal representative as applicable, less than 30 days' notice may be provided. ~~This righ~~agreement may be limited ~~if the individual is placed with the provider under a court, OHA, CMHP, or PSRB order.¶~~
~~(3) If an individual~~under a court, OHA, CMHP, or PSRB order. The provider must immediately document the resident's notification of intent to voluntarily move in the resident records.¶
(3) If a resident's behavior poses a serious and immediate threat to the health or safety of others in or near the program or setting, the program administrator, after providing 24 hours advance written notice to the ~~individual, the individual~~resident, the resident's legal representative~~, and~~ or the supervisory entity, if applicable, the CMHP and Division specifying the cause~~s~~(s), may initiate an involuntary transfer or discharge. The notice ~~shall~~must specify the ~~individual~~resident's right to a~~ppeal the notice of~~n administrative hearing for involuntary transfer or discharge in accordance with ~~OAR 309-035-0183(3)~~these rules. ~~The~~ ~~individual~~resident has the right to remain in the facility until due process is complete or supervisory entity has ordered otherwise.¶
(4) When other circumstances arise providing grounds for issuing a notice of involuntary transfer or discharge under this section, the program administrator ~~shall~~must discuss these grounds with the ~~individual, the individual~~resident, the resident's legal representative~~, and~~ or the supervising entity, if applicable, and with the ~~individual's or the individual~~resident's or the resident's legal representative's permission, other ~~individual~~persons with an interest in the ~~individual~~resident's circumstances. If a decision is made to transfer or discharge the ~~individual~~resident, the program administrator ~~shall~~must provide at least 30 days' written notice specifying the cause~~s to the individual, the individual~~(s) for the notice and the ODHS/OHA form MSC 0443, Administrative Hearing Request, to the resident, the resident's legal representative~~, and the~~ or supervisory entity, if applicable, the CMHP and the Division. This notice ~~shall~~must also specify the ~~individual~~resident's right to a~~ppeal the termination decision in accordance with OAR 309-035-0183(3).~~n administrative hearing.¶
(5) Early transfer or discharge may occur with less than 30 days advance notice with the mutual agreement of the program administrator and the ~~individual who~~resident when the resident does not have a legal representative and is not under the jurisdiction of a supervisory entity, or the ~~individual~~resident's legal representative, if applicable, whe~~re~~n the ~~individual~~resident is not under the jurisdiction of a supervisory entity, or the supervisory entity~~. The program is required to initiate a transfer and discharge service that must include a pre-discharge meeting with the CMHP and the individual's legal representative, advocate, or supervisory entity, as applicable, and shall make reasonable efforts to establish a reasonable transfer or discharge date in consideration of both the program's needs and the individual's need to find alternative living arrangements.~~, if applicable.¶
(6) Grounds for transfer or discharge include the following:¶
(a) The ~~individual~~resident no longer needs or desires services provided by the program and expresses a desire to move to an alternative setting, unless the ~~individual~~resident is placed with the provider by a supervisory entity, or with the ~~individual~~consent of the resident's legal representative~~'s consent;¶~~
~~(b) The individual;¶~~
(b) The resident is assessed by a Licensed Medical Professional or other qualified health professional to require services such as continuous nursing care or extended hospitalization that are not available or cannot be reasonably arranged at the facility;¶
(c) The ~~individual~~resident's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others, and these behavioral concerns cannot be adequately addressed with services available at

the setting or with services that can be arranged outside of the program setting;¶
(d) The ~~individual~~resident cannot safely evacuate the setting in accordance with the setting's ~~SR~~ Occupancy Classification after efforts described in OAR 309-035-0145(5)(b) have been taken;¶
(e) Nonpayment of room and board fees in accordance with program's fee policy; and¶
~~(f) The individual continuously and knowingly violates house rules resulting in significant disturbance to others.¶~~
~~(5~~7) Except in the case of emergency transfer or discharge, or crisis-respite services, a pre-t~~ermination~~ransfer and discharge meeting ~~shall~~must be held with the ~~individual, the individual~~resident, the resident's legal representative~~, and~~ or the supervising entity, if applicable, the CMHP, and with the ~~individual's or the individual~~resident's or the resident's legal representative's permission, others interested in the ~~individual~~resident's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the t~~ermination~~ransfer and discharge decision. The meeting ~~shall~~must be scheduled to occur at least two weeks prior to the t~~ermination~~ransfer or discharge date. In the event a pre-t~~ermination~~ransfer and discharge meeting is not held, the reason ~~shall~~must be documented in the ~~individual~~resident service record.¶
(~~6~~8) Documentation of discussions and meetings held concerning t~~ermination~~ransfer and discharge of a residen~~cy~~t and copies of notices ~~shall~~must be maintained in the ~~individual~~resident service record.¶
(~~7~~9) ~~At the time~~Except when a facility has had its license revoked, not renewed, suspended, voluntarily surrendered, o~~f~~r termina~~tion of residency the individual shall be given a statement of account, any balance of funds held by the program, and all property held in tru~~es its Medicaid contract, a resident who received a notice of involuntary transfer and discharge is entitled to an administrative hearing:¶
(a) Provided the resident or the resident's legal representative, if applicable, completes and submits the administrative hearing request (form MSC 0443) to the CMHP and the Division:¶
(A) Within ten (10) business days from the date a 30-day notice of involuntary transfer and discharge was received; or¶
(B) Within five (5) business days from the date a less than 30-day notice of involuntary transfer and discharge was received.¶
(b) The resident may receive assistance in submitting the request for ~~custody by the program as in the following:¶~~
~~(a) In the event of pending charges, the program may withhold the amount of funds anticipated~~an administrative hearing. If requested by the resident, program staff must be available to assist the resident.¶
(c) The program remains responsible for the provision of care and services during the administrative hearing process unless and until the resident has moved including the provision of one-to-one supervision if necessary to ensure the safety of all residents.¶
(d) The Division will review the notice of transfer or discharge to ~~co~~verify the ~~pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the program shall provide the individual with a final financial statement along with any funds due to the individual; and¶~~
~~(b)~~notice meets the regulatory criteria. If the notice does not meet the regulatory criteria, the Division will notify the provider they must withdraw the notice.¶
(10) If the notice of transfer and discharge meets the regulatory criteria, the Division will notify the Office of Administrative Hearings of the request for an administrative hearing and for less than 30-day notices, will request an expedited hearing be held within five (5) business days.¶
(11) At the time of transfer or discharge of a resident, the resident must be provided a written statement of account, any balance of funds held by the program, and all property held in trust or custody by the program. In the case of a~~n individual~~ resident's property being left at the setting for longer than seven days after ~~termination of residency~~resident has moved, the program ~~shall~~must make a reasonable attempt to contact the ~~individual or the individual~~resident or the resident's legal representative, if applicable. The program ~~shall~~must allow the ~~individual or the individual~~resident or the resident's legal representative, if applicable, at least 15 calendar days to make arrangements concerning the property. If the program determines that the ~~individual~~resident has abandoned the property, the program may then dispose of the property. If the property is sold, proceeds of the sale minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the ~~individual shall be forwarded to the individual or the individual's legal representative.¶~~
~~(8) Because crisis-respite services are time-limited, the planned end of services may not be considered a termination of residency and subject to requirements in OAR 309-035-0170(2)(4)(5). Upon admission to crisis-respite services, the individual or the individual's legal representative shall be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the program administrator and the individual or the individual's legal representative. A program providing crisis-respite services shall implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.¶~~
~~(9) Because~~resident must be forwarded to the resident or the resident's legal representative, if applicable.¶
(12) As placement pursuant to a court, OHA, CMHP, or PSRB order is contingent on the continued jurisdiction of a supervisory entity, the end of services or the ~~individual~~resident's revocation ordered by that supervisory entity is

not considered an automatic termination of residency.¶
(10~~3~~) If a~~n individual~~ resident moves out of the setting without providing notice or is absent without notice for more than seven consecutive days, the provider may initiate transfer or discharge process ~~in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the individual's absence~~. The provider ~~shall~~must make an attempt to contact the ~~individual~~resident and must contact the ~~individual~~resident's legal representative or supervisory entity, if applicable, and with the ~~individual's or the individual~~resident's or the resident's legal representative's permission, if applicable, others interested in the ~~individual~~resident's circumstances to confirm the ~~individual's intent to discontinue residency~~resident's intent to discontinue residency.¶
(14) If a resident is incarcerated and the provider is notified by the supervisory entity that the resident will remain incarcerated for longer than 30 days, the provider may initiate the transfer or discharge process. The resident must be permitted to return to the facility if they are released prior to the final date indicated on the notice.¶
(15) When a resident's right to an administrative hearing for involuntary transfer or discharge is initiated, the Division may determine the notice was issued wrongfully, and take action on the facility's license up to and including revocation as outlined in OAR 309-035-0280.¶
(11~~6~~) Upon transfer or discharge from the facility, program staff must offer two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication to the ~~individual. If the individual~~resident. If the resident accepts, program staff must:¶
(a) Provide the ~~individual~~resident with an instruction card on the use of short-acting, non-injectable, opioid antagonist medication; and¶
(b) Document distribution of the short-acting, non-injectable, opioid antagonist medication in the ~~individual~~resident's record.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0175

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: This change removes crisis-respite services as these provisions will be located in a separate section of rule.

CHANGES TO RULE:

309-035-0175
Individual Rights ¶

(1) Each ~~individual shall~~resident must be assured the same civil and human rights accorded to other citizens, except as otherwise limited by a court, OHA, CMHP, or PSRB order. These rights ~~shall~~must be assured unless expressly limited by a court in the case of a~~n individual~~ resident who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to and do not limit all other statutory and constitutional rights that are afforded to citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose of property, enter into contracts, and execute documents.¶
(2) A provider ~~shall~~must actively work to support and ensure each ~~individual~~resident's rights described in this rule are not limited or infringed upon by the provider except where expressly allowed under these rules.¶
(3) The provider ~~shall~~must ensure that ~~individual~~residents receiving mental health services have the rights set forth in ORS 430.210, unless otherwise limited by court order, administrative rule, administrative order, or statute.¶
(4) A~~n individual~~ resident also has a right to the following:¶
(a) Adequate food, shelter, and clothing;¶
(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible;¶
(c) Confidential communication including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls, unless such access is legally restricted;¶
(d) Express sexuality in a socially appropriate and consensual manner;¶
(e) Access to community resources including recreation, religious services, agency services, employment, and day programs unless such access is legally restricted;¶
(f) Be free of discrimination in regard to race, color, national origin, gender, religion, sexual orientation, or disability;¶
(g)Have religious freedom;¶
(h) Be free from seclusion and restraint except as outlined in OAR 309-035-0205.¶
(~~g~~i) To review the program's policies and procedures;~~ and~~¶
(~~h~~j) Not participate in research without informed voluntary written consent.~~;~~ and¶
(~~5~~k) ~~An individual~~Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation as outlined in ORS 430.210.¶
(5) A resident also has the following HCBS rights:¶
(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule;¶
(b) Have visitors of the ~~individual~~resident's choosing at any time and the freedom to visit with guests within the common areas of the setting and the ~~individual~~resident's unit;¶
(c) The freedom and support to control the ~~individual~~resident's own schedule and activities including but not limited to accessing the community without restriction;¶
(d) Have a lockable door in the ~~individual~~resident's unit that may be locked by the ~~individual~~resident, and only appropriate program staff have a key to access the unit;¶
(e) A choice of roommates when sharing a unit;¶
(f) Furnish and decorate the ~~individual~~resident's unit according to the Residency Agreement;¶
(g) The freedom and support to have access to food at any time; and¶
(h) Privacy in the ~~individual~~resident's unit.¶
(6) A~~n~~ SRTF is not required to maintain the qualities or obligations identified in section (5) (b), (c), (d), (e) and (h), but may limit or modify specific rights. The provider is not required to seek an individually-based limitation for any modified right.¶
(7) ~~A provider is not required to comply with section (5) (a) of this rule when providing an individual with crisis-respite services. The provider is required to document crisis respite resident's rights, responsibilities, and~~

~~complaint/grievance processes. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules~~Programs may not take any of the following actions based, in whole or in part, on a resident's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus status:¶
(a) Deny admission, transfer, or discharge, or refuse to transfer or discharge when requested by the resident;¶
(b) Deny a request by a resident to choose the resident's roommate, when a resident is sharing a room;¶
(c) If rooms are assigned by gender, assign, reassign, or refuse to assign a room to a transgender or other LGBTQIA2S+ resident other than in accordance with the resident's gender identity, unless at the request of the resident or if required by federal law;¶
(d) Prohibit a resident from using or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery, or presents as gender nonconforming;¶
(e) Repeatedly and willfully refuse to use a resident's chosen name or pronouns after being reasonably informed of the resident's chosen name or pronouns;¶
(f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics, or to engage in grooming practices, that are permitted to any other resident;¶
(g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection;¶
(h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort;¶
(i) Fail to accept a resident's verbal or written attestation of the resident's gender identity or require a resident to provide proof of the resident's gender identity using any form of identification;¶
(j) Fail to take reasonable actions, within the provider's control, to prevent discrimination or harassment when the provider knows or should have known about the discrimination or harassment; or¶
(k) Refuse or willfully fail to provide any service, care, or reasonable accommodation to a resident or an applicant for services or care.¶
(8) A transgender resident must be provided access to any assessments, therapies, and treatments that are recommended by the resident's health care provider, including but not limited to, transgender-related medical care, hormone therapy, and supportive counseling.¶
(~~8~~9) A provider may modify or limit the rights identified in sections (1), (3), and (5) of this rule when providing services to a~~n individual~~ resident, who is placed with the provider by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426 when the order specifically identifies required limitations. The provider is not required to seek an individually-based limitation for such a~~n individual~~ resident to comply with these rules. The limitations ~~required for safety or treatment reasons, or as required by the supervising entity should~~must be included in the ~~individual~~resident's person-centered service plan.~~¶~~
~~(9~~¶
(10) For the purpose of this section, these terms have the following meanings:¶
(a) "Fresh air" means the inflow of air from outside the facility where the ~~individual~~resident is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors;¶
(b) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area;¶
(c) If a~~n individual~~ resident requests access to fresh air ~~and~~or the outdoors or the ~~individual~~resident's treating health care provider determines that fresh air or the outdoors would be beneficial to the ~~individual~~resident, the program in which the ~~individual~~resident is receiving services ~~shall~~must provide daily access to fresh air and the outdoors unless this access would create a significant risk of harm to the ~~individual~~resident or others;¶
(d) The determination whether a significant risk of harm to the ~~individual~~resident or others exists ~~shall~~must be made by the ~~individual~~resident's treating health care provider. The treating health care provider may find that a significant risk of harm to the ~~individual~~resident or others exists if:¶
(A) The ~~individual~~resident's circumstances and condition indicate an unreasonable risk of harm to the ~~individual~~resident or others that cannot be reasonably accommodated ~~within existing~~by the program~~ming~~ should the ~~individual~~resident be allowed access to fresh air and the outdoors; or¶
(B) The program's existing physical setting ~~or existing staffing~~ prevents the provision of access to fresh air and the outdoors in a manner that maintains the safety of the ~~individual~~resident or others.¶
(e) If a provider determines that its existing physical setting prevents the provision of access to fresh air and the outdoors in a safe manner, the provider ~~shall~~must make a good faith effort at the time of any significant renovation to the physical setting that involves renovation of the unit or relocation of where ~~individual~~residents

are treated to include changes to the physical setting or location that allows access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.¶
(10~~0~~1) The program ~~shall~~must have and implement written policies and procedures that protect ~~individual~~residents' rights and freedoms and encourage and assist ~~individual~~residents to understand and exercise their rights and freedoms. The program ~~shall~~must post a listing of ~~individual right~~resident rights and freedoms under these rules in a place readily accessible to all ~~individual~~ residents and visitors.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0183

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify requirements of the grievance and appeal process primarily by providing a greater description of the steps and responsibilities described in the process. These changes introduce a formal hearing process and specify that a program's license may be subject to action when wrongful discharges occur.

CHANGES TO RULE:

309-035-0183
Individual Grievances and Appeals ¶

(1) The provider ~~shall~~must develop and implement written policies and procedures concerning the grievance and appeal process. A copy of the grievance and appeal process ~~shall~~must be posted in a place readily accessible to ~~individual~~residents. A copy of the grievance and appeal process ~~shall~~must be provided to each ~~individual~~resident at the time of admission to the program in the resident's primary language.¶
(2) A provider's process for grievances ~~shall~~must, at a minimum, include the following:¶
(a) ~~Individuals shall~~Residents must be encouraged to informally resolve complaints through discussion with program staff~~; and~~¶
~~(b) If the individual~~. Informal complaints and resolutions must be documented by staff and include the name of the resident, date of the complaint, description of the complaint, and how it was resolved; and¶
(b) If the resident is not satisfied with the informal process or does not wish to use it, the ~~individual~~resident may proceed as follows:¶
(A) The ~~individual~~resident may submit a ~~complaint~~formal grievance in writing to the program administrator. The ~~individual~~resident may receive assistance in submitting the ~~complaint~~grievance from any person whom the ~~individual~~resident chooses. If requested by the ~~individual~~resident, program staff ~~shall~~must be available to assist the ~~individual~~resident;¶
(B) The written ~~complaint shall~~grievance must go directly to the program administrator without being read by other program staff unless the ~~individual~~resident requests or permits other program staff to read the ~~complaint~~grievance;¶
(C) The ~~complaint shall~~grievance must include the reasons for the grievance and the proposed resolutions. No ~~complaint~~grievance shall be disregarded because it is incomplete;¶
(D) Within five calendar days of receipt of the ~~complaint~~grievance, the program administrator ~~shall~~must meet with the ~~individual~~resident to discuss the ~~complaint. The individual~~grievance. The resident may have an advocate or other person of their choosing present for this discussion;¶
(E) Within five calendar days of meeting with the ~~individual~~resident, the program administrator ~~shall~~must provide a written decision to the ~~individual~~resident. As part of the written decision, the program administrator ~~shall~~must provide information about the appeal process; and¶
(F) In circumstances where the matter of the ~~complaint~~grievance is likely to cause irreparable harm to a substantial right of the ~~individual~~resident before the grievance procedures outlined in OAR 309-035-0183 are completed, the ~~individual~~resident may request an expedited review. ~~T~~If an expedited review is requested, the program administrator ~~shall~~must review and respond in writing to the grievance within 48 hours. The written decision ~~shall~~must include information about the appeal process.¶
(3) A~~n individual, an individual~~ resident, a resident's legal representative if applicable, the Division or other Division-approved party~~, and an applicant~~ shall have the right to appeal admission~~, termination,~~ and grievance decisions as follows:¶
(a) If the ~~individual~~resident or proposed resident is not satisfied with the decision, the ~~individual~~resident, the resident's legal representative if applicable, the Division or other Division-approved party may file an appeal in writing within ten calendar days of the date of the program administrator's decision to the ~~complaint~~grievance, or notification of admission denial ~~or termination; and~~ ¶
(b) If program services are delivered by a person or entity other than the ~~Division~~Oregon State Hospital or the CMHP, the appeal ~~shall~~must be submitted to the CMHP director or designee in the county where the program is located~~:¶~~
~~(A) The individual~~. The CMHP must hold an appeal conference no later than 10 calendar days after the request is received unless otherwise mutually agreed upon by the program and the resident or the resident's legal representative, if applicable.¶
(A) The resident may receive assistance in submitting the ~~appeal~~request for an appeal conference. If requested by the ~~individual~~resident, program staff ~~shall~~must be available to assist the ~~individual;¶~~
~~(B)~~resident;¶

(B) If a resolution is reached at the appeal conference, the resolution must be documented in writing and the resolution considered final. The CMHP director or designee ~~shall~~must provide ~~a~~the written ~~decis~~resolution within ten ~~days of~~ calendar days of the appeal conference~~iving~~; and¶
(C) If a resolution is not reached at the appeal conference, the CMHP Director or designee must issue a written decision of the appeal~~;~~ and¶
~~(C) If the individual~~ provide a copy to the provider, the resident, and the resident's legal representative, if applicable or the proposed resident as applicable;¶
(D) If the resident is not satisfied with the ~~CMHP director's~~appeal conference decision, the ~~individual may file~~resident may request a second appeal in writing within ten calendar days of the date of the ~~CMHP director's written decision to the deputy director of the Division or designee. The decision of the deputy director of the Div~~appeal conference decision to the Division. Any supporting documentation must be submitted with the request.¶
(E) The Division will review the appeal and all supporting documentation and issue a written decision within 10 calendar days of receipt of the appeal to the resident, the program and the CMHP. The Division's decision shall be final.¶
(c) If program services are delivered by ~~the Division~~a CMHP, the appeal ~~shall~~must be submitted to the ~~deputy assistant director or designee:¶~~
~~(A) The individual~~Division:¶
(A) The resident may receive assistance in submitting the request for appeal. If requested by the ~~individual~~resident, program staff ~~shall~~must be available to assist the ~~individual;¶~~
~~(B) The deputy director or~~resident;¶
(B) The Division's designee ~~shall~~must review ~~and approve or deny the appeal;¶~~
~~(C) The Division shall notify the individual of the decision in writing within ten~~the appeal and all supporting documentation and issue a written decision within 10 calendar days ~~after~~of receipt of the appeal to the resident, the program and the CMHP; and¶
(~~D~~C) If the ~~individual~~resident is not satisfied with the ~~deputy assistant director's or~~Division designee's decision, the ~~individual~~resident, may submit a second appeal in writing within ten calendar days of the date of the written decision to the ~~assistant~~deputy director of the Division.¶
(D) The de~~cision of the assistant director of the Div~~puty director must review the appeal and all supporting documentation and issue a written decision within 10 calendar days of receipt of the appeal to the resident, the program and the CMHP. The deputy director's decision shall be final.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0185

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes remove crisis-respite services so they can be included in an independent section of rule. These changes also specify that a resident assessment and service plan shall be signed by appropriate parties.

CHANGES TO RULE:

309-035-0185
Individual Assessment and Residential Service Plan ¶

(1) The program ~~shall~~must complete an assessment for each ~~individual~~resident within 14 days after admission to the program ~~unless admitted for crisis-respite services~~:¶
(a) The assessment ~~shall~~must be based upon ~~a~~;¶
(A) An interview with the ~~individual~~resident to identify strengths, preferences, and service needs; ~~e~~¶
(B) Observation of the ~~individual~~resident's capabilities within the residential setting; ~~a~~¶
(C) A review of information in the ~~individual~~resident service record; and ~~c~~¶
(D) Contact with representatives of other involved agencies, the supervisory entity~~,~~ or the ~~individual~~resident's legal representative if applicable, family members, and others, as appropriate. All contacts with others ~~shall~~must be made with proper authorization for the release of information or as otherwise permitted by law~~;~~.¶
(b) Assessment findings ~~shall~~must be summarized in writing and included in the ~~individual~~resident service record. Assessment findings ~~shall~~must include but not be limited to ~~d~~:¶
(A) Diagnostic and demographic data; ~~i~~¶
(B) Identification of the ~~individual~~resident's medical, physical, emotional, behavioral, and social strengths, preferences, and needs related to independent living and community functioning; and ~~r~~¶
(C) Recommendations for residential service plan goals; and¶
(c) The provider ~~shall~~must provide assessment findings to the person-centered service plan coordinator to assist in the development of the person-centered service plan.¶
(2) The person-centered service plan coordinator under contract with the Division and assigned to the ~~individual~~resident or program site ~~shall~~must schedule and conduct an assessment of the ~~individual~~resident for the purpose of developing a person-centered service plan. The provider ~~shall~~must support the person-centered service plan coordinator's efforts to develop the plan and provide information as necessary.¶
(3) The provider ~~shall~~must develop and implement an individualized residential service plan for the purpose of implementing and documenting the provision of services and supports as well as any individually-based limitations contained within the person-centered service plan. ~~P~~The provider must also ~~consi~~incluse ~~r~~ the limitations imposed by a court, OHA, CMHP, or PSRB order, or the ~~individual~~resident's legal representative~~. l~~, and identification of the goals to be accomplished through the services provided ~~shall be prepared for each individual within 30 days after admission, unless admitted to the facility for crisis-respite services:¶~~
~~(a) If the person-centered service plan is unavailable for use in developing the residential service plan, providers shall still develop an initial residential service plan based on the information available. Upon~~. The provider must complete and implement an individualized residential service plan for each resident within 30 days of admission.¶
(4) Upon receipt of the person-centered service plan ~~becoming available~~, the providers ~~shall~~must amend the residential service plan as necessary to comply with this rule;¶
(~~b~~5) The residential service plan ~~shall~~must be based upon the findings of the ~~individual~~resident assessment, be developed with participation of the ~~individual~~resident, input from the ~~individual~~resident's legal representative ~~and~~or supervisory entity, as applicable, and be developed through collaboration with the ~~individual~~resident's primary mental health treatment provider. With consent of the ~~individual or individual~~resident, resident's legal representative if applicable, family members, representatives from involved agencies, and others with an interest in the ~~individual~~resident's circumstances ~~shall~~must be invited to participate. All contact~~s~~ with other~~s shall~~ persons must be made with proper, prior authorization from the ~~individual~~resident or as otherwise permitted by law;¶
(~~c~~6) The residential service plan ~~shall~~must include ~~the following~~:¶
(~~A~~a) The necessary steps and actions of the provider for the implementation and provision of services consistent with and as required by the person-centered service plan; ~~and~~¶
(~~B~~b) Identify the ~~individual~~resident's service needs, desired outcomes, and service strategies to address ~~the following:~~ physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability, ~~and~~ community navigation, and all areas identified in the person-centered service plan ~~and any other areas.¶~~
~~(d) The residential service plan shall be signed by the individual or the individual~~¶
(c) Signatures of the resident or the resident's legal representative if applicable, the program administrator or

other designated program staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan ~~and a~~.¶
(7) A copy of the signed plan must be provided to the legal representative or supervisory entity ~~as~~, if applicable~~;~~ ~~and~~.¶
(~~e~~8) The provider ~~shall~~must attach the residential service plan to the person-centered service plan.~~¶~~
~~(4) For an individual admitted to a program for 30 days or less for the purpose of receiving crisis-respite services, an assessment and residential service plan shall be developed within 48 hours of admission that identifies service needs, desired outcomes, and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short-term service arrangement~~ within the resident record.¶
(~~5~~9) The provider ~~shall~~must maintain detailed progress notes within each ~~individual~~resident's service record and document significant information relating to all aspects of the ~~individual~~resident's functioning and progress toward desired outcomes identified in the residential service plan. as described in OAR 410-120-1360, 410-172-0620 and 410-173-0045.¶
(10) The provider ~~shall~~must enter a progress note in the ~~individual~~resident's record at least once each month summarizing progress made relevant to the goals outlined in the residential service plan.¶
(~~6~~11) The provider ~~shall~~must review and update the assessment and residential service plan at least annually and as described in OAR chapter 410, Division 173. On an ongoing basis, the provider ~~shall~~must update the residential service plan as necessary based upon changing circumstances or upon the ~~individual's request for reconsideratio~~resident's request for reconsideration. The new plan must be signed by the resident or the resident's legal representative, if applicable, the program administrator or other designated program staff person, and others, as appropriate, to indicate mutual agreement with the course of service outlined in the plan.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0190

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes remove crisis-respite services so they can be included in an independent section of rule.

CHANGES TO RULE:

309-035-0190
Person-Centered Service Plan ¶

~~This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).¶~~
~~(1) When developed as described in sections (2) and (3), a~~(1) A person-centered service plan ~~shall~~must be developed through a person-centered service planning process. The person-centered service planning process:¶
(a) Is d~~riven~~irected by the ~~individual~~resident;¶
(b) Includes people chosen by the ~~individual~~resident;¶
(c) Provides necessary information and support~~s~~ to ensure the ~~individual~~resident directs the process to the maximum extent possible and is enabled to make informed choices and decisions, except as limited or required by a court order, an administrative order, the supervisory entity or the ~~individual~~resident's legal representative~~;¶~~
~~(d~~, if applicable;¶
(d) Reflects the services and supports, and delivery of those services and supports in a manner that is important to the resident;¶
(e) Is timely, responsive to changing needs, occurs at times and locations convenient to the ~~individual~~resident, and is reviewed ~~at least annually~~by the resident and the resident's legal representative, if applicable, every ninety (90) days or more often as determined by the resident;¶
(~~e~~f) Reflects the cultural considerations ~~of the individual~~and values of the resident;¶
(~~f~~g) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the ~~individual and the individual~~resident and the resident's legal representative as applicable;¶
(~~g~~h) Includes strategies for resolving disagreement within the process including clear conflict of interest guidelines for all planning participants such as:¶
(A) Discussing the concerns of the ~~individual~~planning team members and determining acceptable solutions;¶
(B) Supporting the ~~individual~~resident in arranging and conducting a person-centered service planning meeting;¶
(C) Utilizing any available greater community conflict resolution resources;¶
(D) Referring concerns to the O~~ffice of the Long-Term Care~~regon Residential Facilities Ombuds~~ma~~person; or¶
(E) Fo~~r Medicaid recipients, fo~~llowing existing, program-specific grievance processes.¶
(~~h~~i) Offers choices to the ~~individual~~resident regarding the services and supports the ~~individual~~resident receives and from whom and records the alternative HCBS settings considered by the ~~individual~~resident, except as limited by a court, OHA, CMHP, or PSRB order;¶
(~~i~~j) Provides a method for the ~~individual, or the individual~~resident or the resident's legal representative, if applicable, to request updates to the person-centered service plan;¶
(~~j~~k) Is conducted to reflect what is important to the ~~individual~~resident to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;¶
(~~k~~l) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the ~~individual~~resident;¶
(~~l~~m) Includes any ~~services that are self-directed, if applicable;¶~~
~~(m) Includes but is not limited to individually~~resident identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;¶
(n) Includes risk factors and plans to minimize any identified risk factors, including:¶
(A) Identification of back-up plans as needed; and¶
(B) Identification of procedures to follow when the primary provider is unable to deliver necessary services; and¶
(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the ~~individual or the individual~~resident or the resident's legal representative, ~~, the individual~~if applicable, the resident's ca~~s~~re ~~manage~~coordinator, and all persons responsible for the implementation of the person-centered service plan, and implemented by the provider. The person-centered service plan ~~is~~must be distributed to the ~~individual, the individual~~resident, the resident's legal representative~~,~~ or the supervisory entity if applicable, and other people involved in the person-centered service plan.¶
(2) Person-Centered Service Plans:¶
(a) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for

~~individual~~residents receiving Medicaid services. The Division may grant an exception when it has determined that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan;¶
(b) When the provider is responsible for developing the person-centered service plan, the provider ~~shall~~must ensure that the plan includes the following:¶
(A) HCBS and setting options based on the ~~individual~~resident's needs and preferences, and for residential settings, the ~~individual~~resident's available resources for room and board;¶
(B) The HCBS and settings are chosen by the ~~individual~~resident and are integrated in, and support full access to the greater community;¶
(C) Opportunities to seek employment and work in competitive integrated employment settings for those ~~individual~~residents who desire to work. If the ~~individual~~resident wishes to pursue employment, a non-disability specific setting option ~~shall~~must be presented and documented in the person-centered service plan;¶
(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;¶
(E) The strengths and preferences of the ~~individual~~resident;¶
(F) The service and support needs of the ~~individual~~resident;¶
(G) The goals and desired outcomes of the ~~individual~~resident;¶
(H) The providers of services and supports including unpaid natural supports provided voluntarily and other alternative resources;¶
(I) Risk factors and measures in place to minimize each identified risk;¶
(J) Individually based limitations that limit or restrict HCBS settings to keep the resident and others safe from harm;¶
(K) Individualized backup plans and strategies, when needed;¶
(~~K~~L) People who are important in supporting the ~~individual~~resident;¶
(~~L~~M) The person responsible for monitoring the person-centered service plan;¶
(~~M~~N) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the ~~individual~~resident receiving services and the ~~individual~~resident's legal representative, if applicable;¶
(~~N~~O) The written informed consent of the ~~individual or the individual's legal representative, unless the individual is placed with the provider by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426~~resident or the resident's legal representative or supervisory entity, if applicable, indicating agreement with the information, services and supports identified;¶
(~~O~~P) Signatures of the ~~individual or the individual's legal representativ~~resident or the resident's legal representative or supervisory entity, if applicable, or documentation of the ~~individual~~resident's verbal consent of services, participants in the person-centered service planning process, and all p~~ersons and entitie~~roviders responsible for the implementation of the person-centered service plan ~~unless the individual is placed with the provider by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426;¶~~
~~(P) Self-directed supports~~; and¶
(Q) Provisions to prevent unnecessary or inappropriate services and supports.¶
(c) When the provider is not responsible for developing the person-centered service plan but provides or shall provide services to the ~~individual~~resident, the provider ~~shall~~must provide relevant information and provide necessary support for the person-centered service plan coordinator or other ~~individual~~persons developing the plan to fulfill the characteristics described in subsection (b) of this section;¶
(d) The ~~individual or the individual~~resident or the resident's legal representative if applicable, decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers ~~shall~~must have access to the portion of the person-centered service plan that the provider is responsible for implementing;¶
(e) The person-centered service plan ~~shall~~must be distributed to the ~~individual and the individual~~resident and the resident's legal representative and supervisory entity, as applicable, and others involved in the person-centered service plan;¶
(f) The person-centered service plan ~~shall~~must justify and document any individually-based limitation(s) to be applied as ~~outlin~~described in OAR ~~309-035-0195~~410-173-0040 when the ~~qualities under 309-035-0195(1) create a~~conditions described in OAR 410-173-0035(1)(d) and (2)(d-j) may not be met due to threats to the health and safety of the ~~individual~~resident or others; and¶
(g) The person-centered service plan ~~shall~~must be reviewed with and revised~~:~~¶
~~(A) At the request of the individual or the individual's legal representative;¶~~
~~(B) When the circumstances or needs of the individual change; and¶~~
~~(C) Upon reassessment of functional needs as required every 12 months.¶~~
~~(3) Because it may not be possible to assemble complete records and develop a comprehensive person-centered~~

~~service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan. At a minimum, the provider must develop an assessment and residential service plan as deemed appropriate to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in this rule~~ as directed by the resident or the resident's legal representative, if applicable, every ninety (90) days or more often as determined by the resident as described in OAR 410-173-0025 (1).¶
(h) The person-centered service plan must be reviewed and revised:¶
(A) At the request of the resident or the resident's legal representative;¶
(B) When the circumstances or needs of the resident change; and¶
(C) At least annually and upon reassessment of functional needs as described in OAR 410-173-0025 (3).
Statutory/Other Authority: ORS 413.042, 443.450(
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0195

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes remove effective date for HCBS implementation and provisions specific to crisis-respite services so they can be included in an independent section of rule.

CHANGES TO RULE:

309-035-0195
Individually-Based Limitations ¶

~~This rule becomes effective on July 1, 2016, and enforceable as described in OAR 309-035-0115(17).¶~~
(1) When the program qualities described below create a threat to the health and safety of a~~n individual~~ resident or others, a provider may seek to apply an individually-based limitation through the process described in this rule. The program qualities subject to a potential individually-based limitation include the ~~individual~~resident's right to:¶
(a) The freedom and support to access food at any time;¶
(b) Have visitors of the ~~individual~~resident's choosing at any time;¶
(c) Have a unit entrance door that is lockable by the ~~individual~~resident with only appropriate staff having access;¶
(d) Choose a roommate when sharing a unit;¶
(e) Furnish and decorate the ~~individual~~resident's unit as agreed to in the Residency Agreement;¶
(f) The freedom and support to control the ~~individual~~resident's schedule and activities; and¶
(g) Privacy in the ~~individual~~resident's unit.¶
(2) A provider may apply an individually-based limitation only if:¶
(a) The program quality threatens the health or safety of the ~~individual~~resident or others;¶
(b) The individually-based limitation is supported by a specific assessed need;¶
(c) The ~~individual or the individual~~resident or the resident's legal representative consents, or the limitation is mandated by the ~~individual~~resident's supervisory entity;¶
(d) The limitation is directly proportionate to the specific assessed need; and¶
(e) The individually-based limitation will not cause harm to the ~~individual~~resident.¶
(3) The provider ~~shall~~must demonstrate and document that the individually-based limitation meets the requirements of section (2) of this rule and the measures described below in the person-centered service plan. The provider ~~shall~~must sign and submit a~~nd sign a program-creat~~ Division-approved form that includes the following:¶
(a) The specific and individualized assessed need justifying the individually-based limitation;¶
(b) The positive interventions and supports used prior to consideration of any individually-based limitation;¶
(c) ~~Documentation tha~~Records that document the provider or other entities have tried other less intrusive methods, but those methods did not work;¶
(d) A clear description of the limitation that is directly proportionate to the specific assessed need;¶
(e) Regular collection and review of documentation and data to measure the ongoing effectiveness of the individually-based limitation;¶
(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;¶
(g) The informed consent of the ~~individual or the individual~~resident or the resident's legal representative, or the authorization of the ~~individual~~resident's supervisory entity, including any discrepancy between the wishes of the ~~individual~~resident and the consent of the ~~individual~~resident's legal representative~~, and~~ or the supervisory entity, if applicable; and¶
(h) An assurance that the interventions and support do not cause harm to the ~~individual~~resident.¶
(4) The provider ~~shall:~~must:¶
(a) Not implement an incomplete individually-based limitation.¶
(~~a~~b) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in section (4) of this rule. The form ~~shall~~must be signed by the ~~individual, the individual~~resident, the resident's legal representative, or supervisory entity;¶
(~~b~~c) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and¶
(~~c~~d) Request review of the individually-based limitation by the person-centered service plan coordinator when a new individually-based limitation is indicated, or ~~change or removal of an~~an existing individually-based limitation is ~~needed but no less than annually.¶~~
~~(5) The qualities described in section (1)(b)-(e) also apply to individual receiving services at a SRTF but may be limited or modified. A provider must seek an individually-based limitation to comply with these rules~~changed. The

review of an individually-based limitation is as needed but not less than annually.¶
(~~6~~5) The qualities described in section~~s (2)(d~~ (1) (b), (c), (d), (f) and (g) do not apply to ~~an individual receiving crisis-respite~~residents receiving services~~, and~~t a SRTF. A SRTF provider does not need to seek an individually-based limitation to comply with these rules.¶
(~~7~~6) The qualities described in section (1) of this rule also apply to a~~n individual~~ residents receiving services under a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426~~, but~~ in an RTF or RTH, which may be modified or restricted by a supervisory entity. A provider ~~must~~is not required to seek an individually-based limitation for rights modified or restricted by the supervisory entity, which may be implemented without the authorization of the ~~individual~~resident. When applicable, these modifications or restrictions must be documented in the person-centered service plan.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0200

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes alter language from “individual” to “resident” as described in ORS 443.400.

CHANGES TO RULE:

309-035-0200
Individual Services and Activities ¶

(1) The provider ~~shall~~must make services and activities available at the program including care and treatment consistent with ORS 443.400 and those services individually specified for the ~~individual~~resident in the residential service plan developed as outlined in OAR 309-035-0185. The provider ~~shall~~must encourage ~~individual~~residents to care for their own needs to the extent possible. The provider ~~shall~~must ensure all services and activities be provided in a manner that respects ~~individual~~residents' rights, promotes recovery, and protects personal dignity.¶
(2) Services and activities to be available ~~shall~~ include, but are not limited to:¶
(a) Provision of adequate shelter;¶
(b) Provision of at least three meals per day, seven days per week, provided pursuant to OAR 309-035-0210;¶
(c) Assistance and support, as necessary, to enable ~~individual~~residents to meet personal hygiene and clothing needs;¶
(d) Laundry services that may include access to washers and dryers so ~~individual~~residents can do their own personal laundry;¶
(e) Housekeeping essential to the health and comfort of ~~individual~~residents;¶
(f) Activities and opportunities for socialization and recreation both within the setting and in the larger community;¶
(g) Health-related services provided in accordance with OAR 309-035-0215;¶
(h) Assistance with community navigation and transportation arrangements;¶
(i) Assistance with money management when requested by a~~n individual~~ resident to include accurate documentation of all funds deposited and withdrawn when funds are held in trust for the ~~individual~~resident;¶
(j) Assistance with acquiring skills to live as independently as possible;¶
(k) Assistance with accessing other additional services, as needed; and¶
(~~L~~l) Any additional services required under contract ~~to~~with the Division.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0205

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes alter language from “individual” to “resident” as described in ORS 443.400.

CHANGES TO RULE:

309-035-0205
Use of Seclusion or Restraints ¶

(1) The use of seclusion or restraints is prohibited except in SRTFs with the Division's approval.¶
(2) A SRTF provider or applicant may submit an application to the Division for approval to use seclusion or restraints pursuant to OAR 309-033-0700 through 309-033-0740. Approval by the Division is~~shall be~~ based upon the following:¶
(a) A determination that the ~~individual~~residents served or proposed to be served have a history of behavioral concerns involving threats to the safety and well-being of themselves or others;¶
(b) The applicant demonstrates that the availability of seclusion or restraints is necessary to safely accommodate ~~individual~~residents who would otherwise be unable to experience a community residential program; and¶
(c) The applicant demonstrates an ability to comply with OAR 309-033-0700 through 0740 and OAR 309-033-0500 through 0560. These rules include special requirements for staffing, training, reporting, policies and procedures, and the setting's physical environment.¶
(3) Seclusion or restraints may only be used in an approved SRTF when an emergency occurs in accordance with OAR 309-033-0~~7~~500 through 0~~74~~560 and 309-033-0~~5~~700 through 0~~56~~740. In such emergency situations, seclusion and restraint ~~shall~~may only be used as a last resort behavior management option after less restrictive behavior management interventions have failed, or in the case of an unanticipated behavioral outburst, to ensure safety within the program. An approved SRTF ~~shall~~must implement policies and procedures approved by the Division outlining the circumstances under which seclusion or restraints may be used and the preventive measures to be taken before such use. All incidents involving the use of seclusion or restraints ~~shall~~must be reported to the Division. To use seclusion or restraints with a~~n individual~~ resident who is not in state custody under civil commitment proceedings, the ~~individual shall~~resident must be placed on a hold as outlined in OAR chapter 309, division 033.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0210

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify that meals must be culturally responsive and served at times consistent with residents who live in the community. These changes also provide clarification regarding residents' right to the freedom and support to access food.

CHANGES TO RULE:

309-035-0210
Food Services ¶

(1) The provider ~~shall plan~~must plan, prepare, and serve three meals ~~in accordance with the recommended dietary allowances found in~~daily at times consistent with those in the community. The meals must be culturally responsive to the residents and provided in accordance with the guidelines provided by the United States Department of Agriculture ~~Food Guide Pyramid~~.¶
(2) The provider ~~shall~~must obtain an order from an LMP for each ~~individual~~resident who, for health reasons, is on a modified or special diet. The provider ~~shall~~must plan such diets in consultation with the ~~individual~~resident.¶
(3) The provider ~~shall~~must support the ~~individual's right to~~resident's right to access food at any time and must not restrict access to food. This includes accessing food ~~at any time~~outside of mealtimes and the ability to have food and beverages in the resident's unit. The provider may only apply an individually-based limitation when the resident agrees, and the circumstances meet, and the provider complies with the standards and requirements of OAR 309-035-0195. ~~This section is effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).¶~~
~~(4) If an individual~~¶
(4) If a resident misses a meal at a scheduled time, ~~the provider shall make an alternative meal~~an alternative nutritionally equivalent meal must be made available.¶
(5) The provider ~~shall~~must prepare ~~menus at least one week~~and post menus for residents at least seven days in advance and ~~shall~~must provide a sufficient variety of foods served in adequate amounts for each ~~individual~~resident at each meal and adjusted for seasonal changes. ~~T~~Effective February 1, 2025, the provider ~~shall~~must file and maintain records of menus of food as served in the facility for at least ~~30 days. The provider shall consider individual~~two years:¶
(a) The provider must maintain reasonable access to common foods requested by the residents for personal use; and¶
(b) The provider must consider resident preferences and requests in menu planning. The provider ~~shall~~must reasonably accommodate culturally responsive, religious, and ~~ve~~other dietar~~i~~any preferences.¶
(6) The provider ~~shall~~must maintain adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days at the setting. ~~An emergency supply of potable water shall be available such that t~~¶
(7) The provider must maintain~~s~~ at least seven gallons of potable water per ~~individual~~resident and for emergency supply.¶
(~~7~~8) The provider ~~shall~~must store, prepare, and serve food in accordance with ~~Health Services Food Sanitation Rules~~the Oregon Health Authority Food Sanitation Rules:¶
(a) all refrigerators and freezers in use must have a thermometer present and in working order; and¶
(b) Food storage areas and equipment must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.¶
(9) The provider must not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0215

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes clarify that a physician may decide whether a resident requires communicable illness testing prior to admission. These changes also remove crisis-respite requirements so they may be migrated into an independent section of rule for clarity. These changes also provide more specific information regarding the required components of a medication order. These changes include provisions for designated medical professionals to provide clarification and temporary changes for medication orders that are not clear to staff and potentially unsafe for residents. These changes also include provisions specific to naloxone storage and use.

CHANGES TO RULE:

309-035-0215
Health Services ¶

(1) The program administrator ~~shall~~must ensure ~~that all individual~~all residents are offered medical attention when needed. The provider ~~shall~~must arrange for health services with the informed consent of the ~~individual or the individual~~resident or the resident's representative. The program ~~shall~~must arrange for physicians to be available in the event the ~~individual~~resident's regular physician is unavailable. The provider ~~shall~~must identify a hospital emergency room that may be used in case of emergency.¶
(2) The provider ~~shall~~must ensure that each ~~individual~~resident admitted to the program is~~hall be~~ screened by an LMP or ~~other qualified health care professional~~a Registered Nurse to identify health problems and to screen for communicable disease. The provider ~~shall~~must maintain documentation of the initial health screening in the ~~individual~~resident service record:¶
(a) The health screening ~~shall~~must include a brief history of health conditions, current physical condition, and a written record of current or recommended medications, treatments, dietary specifications, ~~and~~ aids to physical functioning, and a statement of whether the resident must undergo testing for communicable illness prior to admission;¶
(b) For regular admissions, the health screening ~~shall~~must be obtained no more than 90 days prior to the individual's admission ~~and include the results of testing for tuberculosis;¶~~
~~(c) For emergency admissions including crisis-respite;¶~~
(c) For emergency admissions, the health screening ~~shall~~must be obtained as follows:¶
(A) For individuals experiencing psychiatric or medical distress, a health screening ~~shall~~must be completed by an LMP prior to the individual's admission or within 24 hours of the emergency placement. The health screening ~~shall~~must confirm that the individual does not have health conditions requiring continuous nursing care, ~~a~~ hospital level of care, or immediate medical assistance.¶
(B) For ~~each crisis-respite individual who continues in the program for more than seven consecutive days, a complete health examination shall be arranged if any symptoms of a health concern exist;¶~~
~~(B) For other individual~~residents who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening ~~shall~~must be obtained within 72 hours after the ~~individual~~resident's admission;¶
(~~C~~3) The ~~health screening criteria may be waived for individuals admitted for crisis-respite services who are under the active care of an LMP if it is the opinion of the attending health care professional that the crisis-respite placement presents no health risk to the individual or other individuals in the program. Such a waiver shall be provided in writing and be signed and dated by the attending health care professional within 24 hours of the individual's admission.¶~~
~~(3) Except for crisis-respite individuals, the program shall ensure that each individual~~program must ensure that each resident has a primary physician who is responsible for monitoring their health care. Regular health examinations ~~shall~~must be done in accordance with the recommendations of this primary health care professional but not less than once every three years. Newly admitted ~~individuals shall have a health examination completed within one year prior to admission or~~residents must be provided assistance with coordinating a health examination within three months after admission. Documentation of findings from each examination ~~shall~~must be placed in the ~~individual's service record~~resident's service record.¶
(4) A transgender resident must be provided access to any assessments, therapies, and treatments that are recommended by the resident's health care provider, including but not limited to transgender-related medical care, hormone therapy, and supportive counseling.¶
(~~4~~5) A written order signed by a p~~hysician~~rescribing practitioner is required for any medical treatment, special diet for health reasons, aid to physical functioning, ~~or~~and any limitation of physical activity.¶
(~~5~~6) A written order signed by a p~~hysician~~rescribing practitioner is required for all medications administered or

supervised by program staff. This written order is required before any medication is provided to an individual. including over-the-counter medications and prescribed supplements. This written order is required before any medication is administered to a resident. Signatures by a prescriber must be either ink, indelible pencil, or approved electronic equivalent:¶
(a) A written order must, at minimum, it includes the following information:¶
(A) The name of the medication to be provided;¶
(B) The form of the medication to be provided;¶
(C) The dosage of the medication to be provided;¶
(D) The frequency that the medication is to be provided;¶
(E) The route or method of administration for the medication to be provided; and¶
(F) Medication orders prescribed as P.R.N. must include the reason for administration of the medication.¶
(b) Medications for all residents must be labeled.¶
(c) Medications may not be used for the convenience of staff or as a substitute for programming.supervision, care and treatment. Medications may not be withheld or used as reinforcement or punishment or in quantities that are excessive in relation to the amount needed to attain the clirésident's best possible functioning:¶
(ad) Medications shallmay be self-administered by the individual if the individualresident if the resident demonstrates the ability to self-administer medications in a safe and reliable manner. In, the case of self-administration, both thefacility has received written orders ofrom the prescriber and the residential service plan shall documents that medications shawill be self-administered. The self-administration of medications may be supervised by program staff who may prompt the individualresident to administer the medication and observe the fact of administration and dosage taken. When supervision occurs, program staff shall must documenter information in the individualresident's record consistent with section (5)-(h) below;¶
(be) Program staff who assist with administration of medication shallmust be trained by a Licensed Medical Professional, Registered Nurse or Licensed Pharmacist on the use and effects of commonly used medications;¶
(cf) Medications prescribed for one individualresident may not be administered to or self-administered by another individualresident;¶
(dg) The program may not maintain stock supplies of prescription medications. The facility may maintain a stock supply of non-prescription medications including FDA-approved short-acting, non-injectable, opioid antagonist medications;¶
(eh) The program shallmust develop and implement a policy and procedure that ensures all orders for prescription drugs are reviewed by an LMP, as specified by a physician, prescribing practitioner at least every six months. When this review identifies a contra-indication or other concern, the individualresident's primary physician or LMP shallmust be immediately notified. Each individualresident receiving psychotropic medications shallmust be evaluated at least every three months by the LMP prescribing the medication, who shallmust note for the individualresident's record the results of the evaluation and any changes in the typeform and dosage of medication, the condition for which it is prescribed, when and how the medication is to be administered, common side effects, including any signs of tardive dyskinesia, contraindications or possible allergic reactions, and what to do in case of a missed dose or other dosing error;¶
(fi) The provider shallmust dispose of all unused, discontinued, outdated, or recalled medications and any medication containers with worn, illegible or missing labels. The provider shallmust dispose of medications in a safe method consistent with any applicable federal statutestate and federal requirements and designed to prevent diversion of these substances to persons for whom they were not prescribed.¶
(j) The provider shallmust maintain a written record of all disposals specifying the date of disposal, a description of the medication, its dosage potency, amount disposed, the name of the individualresident for whom the medication was prescribed, the reason for disposal, the method of disposal, and the signature of the program staff disposing of the medication. For any medication classified as a controlled substance in schedules 1 through 5 of the Federal Controlled Substance Act, the disposal shallmust be witnessed by a second staff person who documents their observation by signing the disposal record;¶
(gk) The provider shallmust properly and securely store all medications in a locked space for medications only in accordance with the instructions provided by the prescriber or pharmacy except as otherwise permitted in OAR 309-035-0215-(9). Medications for all individuals shall be labeled.¶
(l) Medications requiring refrigeration shallmust be stored in an enclosed, locked container within the refrigerator. The provider shallmust ensure that individualresidents have access to a locked, secure storage space for their self-administered medications. The program shallmust note in its written policy and procedures which persons have access to this locked storage and under what conditions;¶
(hm) For all individuals taking prescribed medication, the provider shall record in the medical record each type, date, time, and dose of medication provided.residents taking prescribed medication, the provider must dispense and record medications as described in the prescriber's signed written order.¶
(n) The medication administration record must:¶

(A) Identify all medication and prescribed dietary supplements including the name, date, time, dosage and route;¶
(B) Identify any treatments and therapies provided including the type of treatment or therapy and the time the procedure must be performed;¶
(C) Be immediately signed or initialed or entered into the electronic health record system by the caregiver administering the medication, treatment, or therapy as it is completed. Each resident's MAR must contain a legible signature that identifies each set of initials or electronic equivalent;¶
(D) Document changed and discontinued orders immediately showing the date of the change or discontinued order. A changed order must be written on a new line with a line drawn to the start date and time or entered into the electronic health record system; and¶
(E) Document missed or refused medications, treatments or therapies by circling the initials of the caregiver administering the medication, treatment or therapy and documenting a brief explanation on the back of the MAR or entered into the electronic health record system.¶
(o) All effects, adverse reactions, and medication errors ~~shall~~must be documented in the ~~individual~~resident's service record. All errors, adverse reactions, or refusals of medication ~~shall~~must be reported to the prescribing LMP within 48 hours;¶
(~~i~~p) P~~.R.N.~~RN medications ~~and treatments shall only be administered in accordance with administrative rules of th~~, treatments and therapies must be documented on the resident's MAR with the time, dose (as applicable), the reason the medication treatment or therapy was given and the outcome.¶
(q) Prescription medication, treatment or therapies ordered to be given "as needed" or "PRN" must have specific parameters indicating what the medication, treatment or therapy is for and specifically when, how much, and how often the medication, treatment or therapy may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.¶
(r) A Registered Nurse may write parameters to clarify to an existing physician or nurse practitioner order in accordance with Oregon State Board of Nursing~~,~~ in OAR chapter 851, division 4~~7~~5.¶
(~~6~~s) In the event a prescribed medication or therapy needs to be modified due to urgent concerns for the resident's safety or for administration of medication outside of prescribed medication window, and the prescribing physician is not available, program staff may follow the written advice of a practicing Pharmacist currently licensed by the State of Oregon to temporarily administer, modify, or hold a medication, medical treatment, or special diet. The prescribing physician must be notified in writing within 48 hours. Notification must be documented in the resident's record.¶
(7) Nursing tasks may be trained or delegated by a registered nurse to direct care staff within the limitations of their classification and only in accordance with the administrative rules of the Oregon State Board of Nursing, chapter 851, division 4~~7 immediately respond based on the medical emergency procedures of the facility~~5 and division 47.¶
(~~7~~8) The program must ensure at least one unexpired opioid overdose kit for emergency response to a suspected overdose is available in the facility at all times. Opioid overdose kits do not require a prescription and are not specific to a~~n individual~~ resident (see ORS 689.684).¶
(~~8~~9) All opioid overdose kits must include an ultraviolet light-protected hard case and must contain, but not be limited to:¶
(a) Two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication;¶
(b) One pair non-latex gloves;¶
(c) One face mask;¶
(d) One disposable face shield for rescue breathing; and¶
(e) One short-acting, non-injectable, opioid antagonist medication administration instruction card.¶
(9) Opioid overdose kits must be:¶
(a) Installed in an easily accessible, highly visible, and unlocked location;¶
(b) At a height of no more than 48 inches from the floor;¶
(c) In a location without direct sunlight;¶
(d) In an area where temperatures are maintained between 59F and 77F; and¶
(e) Have a sign clearly indicating the location and content of the kit.¶
(10) Short-acting, non-injectable, opioid antagonist medication not within installed opioid overdose kits must be stored in a locked cabinet with other resident medications.¶
(11) Opioid overdose kits must be:¶
(a) Checked daily to ensure the required components have not been removed or damaged~~;~~, with documentation of daily checks maintained for three years;¶
(b) Checked monthly to ensure the short-acting, non-injectable, opioid antagonist medication has not expired~~; and~~, with documentation of monthly checks maintained for three years; and¶
(c) Restocked immediately after use.¶
(12) Upon recognizing a person is likely experiencing an overdose, program staff must immediately respond based

on the medical emergency procedures of the facility.¶
(13) A person who has reasonable cause to believe a~~n individual~~ resident is experiencing an overdose, and in good faith administers short-acting, non-injectable, opioid antagonist medication to the ~~individual~~resident, is protected against civil liability or criminal prosecution unless the person, while rendering care, acts with gross negligence, willful misconduct, or intentional wrongdoing as described in Oregon Revised Statute (ORS) 689.681.¶
(14) Program staff must fully cooperate with emergency medical service (EMS) personnel. Program staff must not interfere with or impede the administration of emergency medical services.¶
(15) Administration of short-acting, non-injectable, opioid antagonist medication must be documented ~~by the caregiver~~in a critical incident report by the program staff who administered the medication. Documentation must be submitted to the Authority within 48 hours of the incident and must include:¶
(a) Name of the ~~individual~~resident;¶
(b) Description of the incident including date, time, and location;¶
(c) Time 9-1-1 contacted;¶
(d) Time of administration(s) of short-acting, non-injectable, opioid antagonist medication;¶
(e) ~~Individual~~Resident's response;¶
(f) Transfer of care to EMS; and¶
(g) Signature of ~~caregiver~~program staff.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0217

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: These changes provide clarification specific to residents receiving Crisis Respite Services.

CHANGES TO RULE:

309-035-0217
Crisis Respite Services
(1) A program providing crisis respite services must be in compliance with all prescribed standards of these rules except for the following exceptions:¶
(a) A program is not required to enter into a legally enforceable residency agreement with a resident receiving crisis respite services;¶
(b) A program may not seek an individually-based limitation for a resident receiving crisis respite services;¶
(c) A program may accept a resident for admission without the most recent mental health assessment except for a summary of current mental health treatment;¶
(d) The program must establish a resident service record within 24 hours of a crisis respite services admission;¶
(e) An amended or abbreviated screening process may be used to more quickly meet the needs of the prospective resident to receive crisis respite services. Screening and admission information obtained may be less comprehensive than for regular admissions but must be sufficient to determine that the prospective resident meets admission criteria and that the setting and program is appropriate considering the prospective resident's needs. The program must document the reasons for incomplete information on an individual basis;¶
(f) The program is not required to hold a pre-transfer meeting with a resident receiving crisis respite services;¶
(g) The planned end of crisis respite services may not be considered a transfer or discharge of residency and subject to requirements in OAR 309-035-0170(2)(4)(5). Upon admission to crisis respite services, the resident or the resident's legal representative, if applicable, must be informed of the planned date for discontinuation of services. This date may be extended through a Division-approved variance and a mutual agreement between the program administrator and the resident or the resident's legal representative;¶
(h) For a resident admitted to a program for 30 days or less for the purpose of receiving crisis respite services, an assessment and residential service plan must be developed within 48 hours of admission that identifies service needs, desired outcomes, and the service strategies to be implemented to resolve the crisis or address other needs of the resident that resulted in the short-term service arrangement;¶
(i) The program is not required to develop a person-centered service plan for a resident receiving crisis respite services. At a minimum, the provider must develop an assessment and residential service plan as deemed appropriate to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the resident's other needs that caused the need for crisis respite services. The provider must provide relevant information and provide necessary support for the person-centered service plan coordinator;¶
(j) For emergency admissions including crisis respite admissions, the health screening must be obtained as follows:¶
(A) For residents experiencing psychiatric or medical distress, a health screening must be completed by an LMP prior to the resident's admission or within 24 hours of the emergency placement. The health screening must confirm that the resident does not have health conditions requiring continuous nursing care, hospital level of care, or immediate medical assistance. For each crisis respite services resident who continues in the program for more than seven consecutive days, a complete health examination must be arranged if any symptoms of a health concern exist;¶
(B) For other residents who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening must be obtained within 72 hours after the resident's admission;¶
(C) For residents admitted for crisis respite services who are under the active care of an LMP, a health screening must confirm that the resident does not have health conditions requiring continuous nursing care, hospital level of care, or immediate medical assistance. For each crisis respite resident who continues in the program for more than seven consecutive days, a complete health examination must be arranged if any symptoms of a health concern exist.¶
(k) Programs are not required to ensure that a resident receiving crisis respite services are under the care of a primary physician.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0220

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: renumbered to 309-035-0261

CHANGES TO RULE:

309-035-0220
Civil Penalties ¶

(1) For purposes of imposing civil penalties, programs licensed under ORS 443.400 to 443.455 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.¶
(2) Violations of any requirement within any part of the following sections of the rule may result in a civil penalty:¶
(a) 309-035-0115;¶
(b) 309-035-0120;¶
(c) 309-035-0125;¶
(d) 309-035-0130;¶
(e) 309-035-0135;¶
(f) 309-035-0140;¶
(g) 309-035-0145;¶
(h) 309-035-0150;¶
(i) 309-035-0155;¶
(j) 309-035-0163;¶
(k) 309-035-0170;¶
(l) 309-035-0175;¶
(m) 309-035-0183;¶
(n) 309-035-0185;¶
(o) 309-035-0200;¶
(p) 309-035-0205;¶
(q) 309-035-0210; and¶
(r) 309-035-0215.¶
(3) Civil penalties shall be assessed in accordance with the following guidelines:¶
(a) Civil penalties not to exceed $250 per violation to a maximum of $1,000 may be assessed for general violations of these rules. Such penalties shall be assessed after the procedures outlined in OAR 309-035-0110(8) have been implemented;¶
(b) A mandatory penalty up to $500 shall be assessed for falsifying individual service records or program records or causing another to do so;¶
(c) A mandatory penalty of $250 per occurrence shall be imposed for failure to have direct care staff on duty 24 hours per day;¶
(d) Civil penalties up to $1,000 per occurrence may be assessed for substantiated abuse;¶
(e) In addition to any other liability or penalty provided by the law, the Division may impose a penalty for any of the following:¶
(A) Operating the program without a license;¶
(B) Operating with more individuals than the licensed capacity; and¶
(C) Retaliating or discriminating against an individual, family member, employee, or other person for making a complaint against the program.¶
(f) In imposing a civil penalty, the following factors shall be taken into consideration:¶
(A) The past history of the provider incurring the penalty in taking all feasible steps or procedures to correct the violation;¶
(B) Any prior violations of statutes, rules, or orders pertaining to the program;¶
(C) The economic and financial conditions of the provider incurring the penalty;¶
(D) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents; and¶
(E) The degree of harm caused to individuals.¶
(4) Any civil penalty imposed under this section shall become due and payable ten days after notice is received unless a request for a hearing is filed. The notice shall be delivered in person or sent by registered or certified mail and shall include a reference to the particular section of the statute or rule involved, a brief summary of the violation, the amount of the penalty or penalties imposed, and a statement of the right to request a hearing.¶
(5) The person to whom the notice is addressed shall have 20 days from the date of receipt of the notice to request

a hearing. This request shall be in writing and submitted to the Division. If the written request for a hearing is not received, the Division shall issue a final order.¶
(6) All hearings shall be conducted pursuant to the applicable provisions of ORS Chapter 183.¶
(7) Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk that becomes a lien upon the title to any interest in real property owned by the person. The Division may also take action to revoke the license upon failure to comply with a final order.¶
(8) Civil penalties are subject to judicial review under ORS 183.480.¶
(9) All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0225

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: repeal this rule has been renumbered 309-035-0285

CHANGES TO RULE:

309-035-0225
Criminal Penalties ¶

(1) Violation of any provision of ORS 443.400 through 443.455 is a Class B misdemeanor.¶
(2) In addition, the Division may commence an action to enjoin operation of a program:¶
(a) When a program is operated without a valid license; or¶
(b) When a program continues to operate after notice of revocation has been received and a reasonable time has been allowed for placement of ~~individual~~residents in other programs.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0251

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: New rule changes for 309-035-0251

CHANGES TO RULE:

309-035-0251
Procedures for Correction of Violations
(1) At any time after receipt of a statement of deficiency or an inspection report, the provider or the Division may request a conference in writing. The conference must be scheduled within ten days of a request by either party. The purpose of the conference is to discuss the deficiencies cited and to provide information to the provider to assist the provider in complying with the requirements of the rules. The written request by the provider or the Division for a conference may not extend any previously established time limit for correction.¶
(2) The provider must notify the Division of correction of deficiencies in writing no later than the date specified in the statement of deficiency.¶
(3) If, after inspection of the program, if the Division determines that the deficiencies have not been corrected by the date specified in the statement of deficiency or if the Division has not received a report of substantial compliance, the Division may institute one or more of the following actions:¶
(a) Imposition of an administrative sanction that may include revocation, suspension, or refusal to renew a license as deemed appropriate by the Division;¶
(b) Placement of conditions on the license as deemed appropriate by the Division; or¶
(c) Filing of a criminal complaint.¶
(4) If a resident is in serious and imminent danger, the Division may institute one or more of the following actions:¶
(a) If there is reliable evidence of abuse, neglect or exploitation, the license may be immediately suspended or revoked, and arrangements made to move the residents.¶
(b) The Division may order the removal of the resident; or¶
(c) Placement of conditions on the license as deemed appropriate by the Division.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0255

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Specifies what are administrative sanctions.

CHANGES TO RULE:

309-035-0255
Administrative Sanctions
(1) An administrative sanction may be imposed for non-compliance with these rules. ¶
(2) An administrative sanction includes one or more of the following actions: ¶
(a) Civil penalties;¶
(b) Attachment of conditions to a license; and¶
(c) Denial, suspension, non-renewal, or revocation of a license. as set forth in OAR 309-040-0420.¶
(3) If the Division imposes an administrative sanction, the Division must serve a notice of administrative sanction upon the provider personally or by certified mail.¶
(4) The notice of administrative sanction must state the following:¶
(a) Each sanction imposed;¶
(b) A short and plain statement of each circumstance, act, or omission that constitutes non-compliance with the applicable rules;¶
(c) Each statute or rule allegedly violated;¶
(d) A statement of the provider right to a contested case hearing;¶
(e) A statement of the authority and jurisdiction under which the hearing is to be held;¶
(f) A statement that the Division files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and¶
(g) A statement that the notice becomes a final order upon default if the provider fails to request a hearing within the specified time.¶
(5) All hearings are conducted in accordance with ORS 183.¶
(6) The provider must comply with any final order of the Division.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0265

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Defines condition process, new rule.

CHANGES TO RULE:

309-035-0265
Conditions
(1) Conditions may be attached to a license by order issued by the OHA director, and such order takes effect immediately upon issuance of the order. Conditions may be attached upon a finding that:¶
(a) Information on the application or initial inspection requires a condition to protect the health, well-being, and safety of residents;¶
(b) There exists a threat to the health, safety, and well-being of a resident;¶
(c) There is reliable evidence of abuse or neglect of a resident;¶
(d) The provider is substantially non-compliant with these rules; or¶
(e) The provider or caregivers demonstrate the inability to evacuate the program timely. ¶
(2) Conditions that may be imposed on a provider include, but are not limited to:¶
(a) Restricting the maximum capacity of the setting;¶
(b) Restricting the number and impairment level of residents allowed based upon the ability of the provider and caregivers to meet the health and safety needs of all residents in the setting;¶
(c) Requiring additional caregivers or caregiver qualifications;¶
(d) Requiring additional training of the provider and caregivers;¶
(e) Restricting admissions when there is a threat to the health and safety of the current resident in the program; or¶
(f) Restricting a provider from allowing persons on the premises who may be a threat to resident health, safety or well-being.¶
(3) The provider must be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a contested case hearing under ORS chapter 183.¶
(4) The provider may request a contested case hearing in writing within 21 calendar days after the date the notice was personally served or mailed. Conditions take effect immediately and are a final order of the Division unless later rescinded through the hearings process.¶
(5) In addition to, or in lieu of a contested case hearing, a provider may request an informal conference with the Division to discuss the conditions imposed. The informal conference does not diminish the provider's right to a hearing or delay, extend, or otherwise affect the timeframe to request a hearing.¶
(6) Conditions remain in effect for the extent of the license period or until the Division has sufficient cause to believe the situation that warranted the condition has been remedied, whichever is sooner.¶
(7) If the provider believes the situation that warranted the condition has been remedied, the provider may request in writing the condition be removed.¶
(8) Reasons for the conditions must be considered at the time of renewal to determine if the conditions are still appropriate.¶
(9) Conditions must be posted with the license in a prominent place in the home and be available for inspection at all times.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0271

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Defines process and reasoning behind denials, revocations, and non-renewals.

CHANGES TO RULE:

309-035-0271
Denial, Revocation, or Non-Renewal of License
(1) The Division must deny, revoke, or refuse to renew a license where it finds any of the following:¶
(a) There has been substantial non-compliance with these rules;¶
(b) There is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of residents; or¶
(c) A background check conducted by ODHS determined the applicant or provider is not approved;¶
(d) The provider allows a caregiver or any other person, excluding residents, who has been convicted of potentially disqualifying crimes and has been denied, or refused to cooperate with the Division, to reside or work in the program; ¶
(e) The applicant or provider falsely represents they have not been convicted of a crime; or¶
(f) The Division has received notice from the Department of Revenue in accordance with ORS 305.385.¶
(g) The applicant or provider has had a certificate or license to operate a foster home, or residential facility denied, suspended, revoked, or refused to be renewed in this or any other state within three years preceding the present action if the denial, suspension, revocation, or refusal to renew was due in any part to: ¶
(A) Abuse or neglect, creating a threat to the health, safety, or well-being of residents; or ¶
(B) Failure of the applicant or provider to possess the physical health, mental health, or good judgement deemed necessary by the Division;¶
(h) The applicant or provider has had a certificate or license to operate a foster home, residential home or residential facility denied, suspended, revoked, or refusal to be renewed in this or any other state more than three years from the present action, the applicant or provider is required to demonstrate to the Division by clear and convincing evidence, the applicant or provider:¶
(A) Does not pose a threat to resident; and¶
(B) Posses the ability and fitness to operate a program in substantial compliance.¶
(i) The applicant or provider is associated with a person whose license for a foster home, residential home or facility denied, suspended, revoked, or refused to be renewed due to:¶
(A) Abuse or neglect, creating a threat to the health, safety, or well-being of residents; or¶
(B) Failure to possess physical health, mental health, or good judgement within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents;¶
(j) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:¶
(A) Resides with the person;¶
(B) Employs the person in the program;¶
(C) Receives financial backing from the person for the benefit of the program;¶
(D) Receives managerial assistance from the person for the benefit of the program; or¶
(E) Allows the person to have access to the setting; or¶
(F) Rents or leases the setting from the person.¶
(k) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.¶
(2) The Division may deny, suspend, revoke, or refuse to renew a license if the applicant or provider:¶
(a) Submits fraudulent or untrue information to the Division;¶
(b) Has a history of or demonstrates financial insolvency, such as bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bills;¶
(c) Has threatened the health, safety, or well-being of any resident;¶
(d) Has abused, neglected, or financially exploited a resident;¶
(e) Has a medical or psychiatric problem, which interferes with the ability to provide care;¶
(f) Refuses to allow access and inspection;¶
(g) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed;¶
(h) Fails to comply with a final order of the Division imposing an administrative sanction;¶
(i) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider,

administrator, substitute caregiver, or volunteer of the program.¶
(j) Interferes with a person who has made a good faith disclosure of information concerning the abuse or neglect of a resident receiving care and services in a licensed or certified facility;¶
(k) Has previously been cited for the operation of an unlicensed program;¶
(l) Has previously surrendered a license or certificate while under investigation or administrative sanction during the last three years; or¶
(m) Fails to operate the program or any other facility in substantial compliance.¶
(3) The provider may request a hearing in writing within 21 calendar days after the date the notice was personally served or mailed. If the provider fails to request a hearing in writing, or the request is not timely, the notice will become a final order of the Division by default.¶
(4) In addition to, or in-lieu of, a contested case hearing, a provider may request an informal conference with the Division to discuss the administrative action. The informal conference does not diminish the provider's right to a hearing. A request for informal conference does not delay, extend, or otherwise affect the 21 calendar days allowed to request a hearing.¶
(5) A license subject to revocation or non-renewal remains valid during the administrative hearing process even if the hearing and final order are not issued after the expiration date of the license. If the provider desires to continue operating the program, should they prevail at hearing, a complete renewal application and fee, as applicable, must be submitted to the Division prior to the expiration of the current license.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0275

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Defines suspension process.

CHANGES TO RULE:

309-035-0275
Suspension of License
(1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if: ¶
(a) The Division finds that the abuse, neglect, or exploitation causes an immediate threat to a resident; or ¶
(b) The provider fails to operate the program in substantial compliance with ORS 443.400 to 443.465 causing an immediate threat to the health, safety or well-being of a resident. ¶
(2) The Division must suspend a license upon written notice from the Oregon Department of Revenue in accordance with ORS 305.385, and after notice to the provider and a hearing if requested. ¶
(3) If a license is suspended, the Division may arrange for resident to move for their protection.¶
(4) The provider may request a hearing in writing within 90 calendar days after the date the notice was personally served or mailed. If the provider fails to request a hearing in writing, or the request is not timely, the notice will become a final order of the Division by default. ¶
(5) In addition to, or in-lieu of, a contested case hearing, a provider may request an informal conference with the Division to discuss the administrative action. The informal conference does not diminish the provider's right to a hearing. A request for informal conference does not delay, extend, or otherwise affect the 90 calendar days allowed to request a hearing.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

ADOPT: 309-035-0281

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Adds specification/reasoning for ordering the removal of residents from a program (suspension of license; final order of revocation or non-renewal).

CHANGES TO RULE:

309-035-0281
Removal of Residents
(1) The Division may order the removal of residents from a program to an alternative placement on the following grounds:¶
(a) When a violation of these rules is not corrected after time limit specified in notice;¶
(b) There is a violation of a resident's rights;¶
(c) The number of residents currently in the program exceeds the maximum licensed capacity of the program;¶
(d) The program is operating without a license; ¶
(e) There is evidence of abuse of a resident that presents a serious and immediate danger to residents.¶
(f) A final order of revocation or non-renewal has been issued to the provider; or¶
(g) The provider's license to operate the program has been suspended.¶
(2) The CMHP must provide the resident assistance in locating and visiting alternative placements, if needed, and explain the resident's right to contest the move.
Statutory/Other Authority: ORS 413.042
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991