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ARCHIVES DIVISION
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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

MHS 15-2017
CHAPTER 309
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MENTAL HEALTH SERVICES

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Actions Placed on State Issued Certifications for Behavioral Health Services

EFFECTIVE DATE: 12/01/2017 THROUGH 05/29/2018

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NEED FOR THE RULE(S):

The temporary rules need to establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application for certification, and actions placed on an applicant or certification such as denials, conditions, suspensions, nonrenewal and revocations of outpatient mental health, substance use disorders and problem gambling behavioral health services programs.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious health and safety implications to the public interest, the Authority, CCOs, and clients of outpatient mental health, substance use disorders and problem gambling behavioral health services. These rules need to be adopted promptly so that the Authority may take necessary action on an outpatient mental health, substance use disorders and problem gambling behavioral health services certificate of approval to protect individuals.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

RULES:

309-008-0100, 309-008-0200, 309-008-0300, 309-008-0400, 309-008-0500, 309-008-0600, 309-008-0700, 309-008-0800, 309-008-0905, 309-008-1000, 309-008-1100, 309-008-1200, 309-008-1300, 309-008-1500, 309-008-1600

AMEND: 309-008-0100

RULE TITLE: Purpose and Scope

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem

gambling behavioral health services.

RULE TEXT:

(1) These rules establish procedures for the application, initial certification, certification renewal, review, and other actions on a certificate including revocation, denial, suspension, and placement of conditions for the behavioral health treatment services for the types listed in section (2) of this rule.

(2) These rules apply to providers of behavioral health treatment services seeking certification to provide services under the following service delivery rules:

(a) OAR 309-014-0000 to 0040 Community Mental Health Programs;

(b) OAR 309-019-0100 to 0220 Outpatient Addictions and Mental Health Services;

(c) OAR 309-022-0100 to 0190 Intensive Treatment Services for Children and Adolescents;

(d) OAR 309-022-0195 to 0230 Children's Emergency Safety Intervention Specialist;

(e) OAR 309-033-0700 to 0740 Involuntary Commitment Proceedings;

(f) OAR 309-039-0500 to 0580 Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(g) OAR 415-020-0000 to 0090 Standards for Out-Patient Synthetic Opiate Treatment Programs;

(h) OAR 415-054-0020 to 0580 DUII Alcohol/Other Drug Information and DUII Alcohol/Other Drug Rehabilitation Programs;

(i) OAR 415-054-0400 to 0580 Alcohol and Drug Evaluation and Screening Specialist;

(j) OAR 415-055-0000 to 0035 Recommendations for Restricted License for Driving Under the Influence of Intoxicants and Other Related Suspensions and/or Revocations; and

(k) OAR 415-057-0020 to 0150 Standards for Department of Corrections-Based Alcohol and Other Drugs Treatment Programs.

(3) These rules do not establish procedures for other health care services types or licenses not listed in section (2) of this rule and specifically do not establish procedures for:

(a) Licensing a residential facility under ORS 443.410 or 443.725;

(b) Licensing or certifying an individual behavioral health care practitioner otherwise licensed to render behavioral health care services in accordance with applicable statutes by the applicable licensing board; or

(c) Licensing or certifying a behavioral health treatment services provider comprised exclusively of health care practitioners or behavioral health care practitioners otherwise licensed to render behavioral health care services in accordance with applicable statutes by the applicable licensing board.

(4) These rules apply to applications, initial certifications, renewals of certification, reviews, and other actions that were pending or initiated on or after July 1, 2016.

STATUTORY/OTHER AUTHORITY: ORS 179.040, ORS 413.042, ORS 413.032-413.033, ORS 426.072, ORS 426.236, ORS 426.500, ORS 430.021, ORS 430.256, ORS 430.357, ORS 430.560, ORS 430.640, ORS 430.870, ORS 743A.168

STATUTES/OTHER IMPLEMENTED: ORS 413.520, ORS 426.060, ORS 426.140, ORS 430.010, ORS 430.254, ORS 430.335, ORS 430.590, ORS 430.620, ORS 430.637

AMEND: 309-008-0200

RULE TITLE: Definitions

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

- (1) "ASAM Criteria" means the most current publication of the American Society of Addiction Medicine criteria; Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, which is a clinical guide used in matching individuals to appropriate levels of care, and incorporated by reference in these rules.
- (2) "Applicant" means any provider with an existing certificate listed in OAR 309-008-0100(2) to provide behavioral health treatment services or any person, organizational provider, tribal organization, or Community Mental Health Program seeking initial certification listed in OAR 309-008-0100(2) by submitting an application to provide behavioral health treatment services.
- (3) "Behavioral Health" means mental health, mental illness, addictive health, and addiction and gambling disorders.
- (4) "Behavioral Health Treatment Services" means mental health treatment, substance use disorder treatment, and problem gambling treatment services.
- (5) "Certificate" means the document issued by the Division that identifies and declares provider certification. A letter accompanying issuance of the certificate shall detail the scope and approved service delivery locations of the certificate.
- (6) "Certification Review" means an assessment of a provider or applicant by the Division or by another state agency or contractor on behalf of the Division for the purpose of assessing compliance with these rules with applicable service delivery rules and other applicable regulations.
- (7) "Community Mental Health Program" (CMHP) means the organization of various services for individuals with a mental health diagnosis or addictive disorders operated by or contractually affiliated with a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000.
- (8) "Condition" means a provision attached to a new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the applicant or provider.
- (9) "Coordinated Care Organization" (CCO) means an entity that has been certified by the Authority to provide coordinated and integrated health services.
- (10) "Director" means the Director of the Oregon Health Authority or designee.
- (11) "Division" means the Health Systems Division of the Oregon Health Authority or designee.
- (12) "Division Staff" means those staff employed by the Division to conduct certification activities under these rules or a contracted entity delegated the authority by the Division to conduct certification activities under these rules.
- (13) "Individual" means the person requesting or receiving behavioral health treatment services from a provider certified by the Division.
- (14) "Individual Services Records" means documentation, written or electronic, regarding an individual including information relating to entry, assessment, orientation, services and supports planning, services and supports provided, and transfer.
- (15) "Initial Certification" means a certificate issued to a new provider.
- (16) "Non-Inpatient Provider" means a provider not contractually affiliated with the Division, a CMHP, or other Division contractor, providing behavioral health treatment services under group health insurance coverage that seeks or maintains Division approval under ORS 743A.168.
- (17) "Oregon Health Authority" (Authority) means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical

assistance program under ORS chapter 414. For purposes of these rules, divisions of the Oregon Health Authority include the Public Health Division and the Health Systems Division.

(18) "Plan of Correction" (POC) means a written plan and attached supporting documentation created by the provider when required by the Division to address findings of noncompliance with these rules or applicable service delivery rules.

(19) "Provider" means an individual, organizational provider as defined in ORS 430.637(1)(b), tribal organization, or CMHP that holds a current certificate listed in OAR 309-008-0100(2) to provide behavioral health treatment services pursuant to these and applicable service delivery rules.

(20) "Program Staff" includes employees of the provider, individuals who provide services by contract with the provider, program administrators, directors, or others who manage the provision of services, and the provider itself when the provider is an individual or group of individuals.

(21) "Program Director" means an individual with appropriate professional qualifications and experience as regulated by the applicable service delivery rules listed on the certificate who is designated to manage the operation of a program.

(22) "Public Funds" means financial support, in part or in full, provided directly or indirectly by a local, state, or federal government.

(23) "Regulatory Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices:

(a) Classification of components;

(b) Specification of materials, performance, or operations; or

(c) Delineation of procedures.

(24) "Service Delivery Rules" means the OARs describing the specific regulatory standards for each of the types of behavioral health treatment services the Division certifies.

(25) "Service Delivery Location" means the office, facility, location, or other physical premises where the applicant or provider intends to provide or currently provides behavioral health treatment services.

(26) "Services" means those activities and treatments intended to assist the individual's transition to recovery from a substance use disorder, gambling disorder, or mental health condition, and to promote resiliency and rehabilitative and functional individual and family outcomes.

(27) "Substantial Compliance" means a level of adherence to applicable administrative rules, statutes, and other applicable regulations that even if one or more requirements is not met in the determination of the Division does not:

(a) Constitute a danger to the health, welfare, or safety of any individual or to the public;

(b) Constitute a willful, negligent, or ongoing violation of the rights of any individuals as set forth in administrative rules; or

(c) Constitute impairment to the accomplishment of the Division's purposes in approving or supporting the applicant or provider.

(28) "Substantial Failure to Comply" means a level of adherence to applicable administrative rules, statutes, contractual requirements, and other applicable regulations that in the determination of the Division:

(a) Constitutes a danger to the health, welfare, or safety of any individual or to the public;

(b) Constitutes a willful, negligent, or ongoing violation of the rights of individuals as set forth in applicable administrative rules; or

(c) Constitutes impairment to the accomplishment of the Division's purposes in approving or supporting the applicant or provider.

(29) "Treatment" means the planned, medically appropriate, individualized program of medical, psychological, and rehabilitative procedures, and experiences and activities designed to remediate symptoms of a DSM diagnosis.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620,
430.637

AMEND: 309-008-0300

RULE TITLE: Terms of Certification

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) Each applicant and provider shall:

(a) Permit Division staff to inspect the service delivery location where the applicant or provider intends to provide or currently provides behavioral health treatment services:

(A) During regular business hours and at any other reasonable hour verify information contained in the application or ensure compliance with all applicable statutes, administrative rules, other applicable regulations, or contractual obligations; and

(B) Allow immediate entry and inspection, extending to any premises the Division has reason to believe a provider provides behavioral health treatment services.

(b) Permit Division staff to inspect, audit, assess, and collect data or copies from all records maintained by the applicant or provider in relation to the certificate including but not be limited to:

(A) Financial records;

(B) Individual service records;

(C) Records related to the supply, storage, disbursement, and administration of prescribed and over-the-counter medications;

(D) Records of utilization and quality assurance reviews conducted by the applicant, provider, or other accredited entity;

(E) Employee records including but not limited to:

(i) Academic degrees;

(ii) Professional licenses;

(iii) Supervision notes, disciplinary actions, and logs;

(iv) Criminal background checks;

(v) All documentation required by applicable service delivery rules, statute, other applicable regulations, and administrative rules;

(vi) Additional documentation deemed necessary by the Division to determine compliance with this or any other applicable administrative rules, statutes, or other applicable regulations.

(c) Assure the provider is certified to provide only those services that are specified in the scope of services and conditions listed on the certificate;

(d) Post the certificate or a legible copy and any accompanying letter noting approved service delivery locations or applicable conditions in a public space of each approved service delivery location to be available for inspection at all times;

(e) Ascertain the certificate does not create an express or implied contract in the absence of a fully executed written contract; and

(f) Ensure that the certificate is not transferable to any other individual, provider, or service delivery location without Division approval.

(2) The Division may not discriminate in its review procedures or services on the basis of race, color, national origin, age, or disability. The Division may issue certificates to specialized programs to assure maximum benefit for special populations, in which case the Division may identify that special population in the certificates and impose applicable program criteria under the applicable service delivery rules.

(3) A certificate is void immediately:

- (a) Upon voluntary closure by a provider;
 - (b) Upon change in the provider's majority or controlling ownership; or
 - (c) Upon the listed expiration date of the certificate if the provider fails to timely submit a complete application for certification renewal pursuant to these rules.
- (4) Discontinuation of services:
- (a) A provider discontinuing services voluntarily must:
 - (A) Notify the Division at least 60 days prior to the date of voluntary closure and provide a written plan to comply with record retention standards set out in OAR 309-014-0035(4) and 42 CFR Part 2, "Federal Confidentiality Regulations" as applicable;
 - (B) Make reasonable and timely efforts to obtain alternative treatment placement or other services for individuals currently being served; and
 - (C) Make reasonable and timely efforts to contact individuals on waitlists and refer them to other treatment services; and
 - (b) A provider discontinuing services must provide individuals with a minimum 30-day written notice regarding discontinuation of services. In circumstances where undue delay might jeopardize the health, safety, or welfare of individuals or the public, including where the Division has revoked or immediately suspended the certificate pursuant to OAR 309-008-1100, the provider must notify individuals regarding the discontinuation of services as soon as possible.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-0400

RULE TITLE: The Application Process

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

- (1) An applicant seeking initial certification or certification renewal and an existing provider seeking to expand its certified scope of services, relocate an existing service delivery location, or open new service delivery location must submit a completed application to the Division.
- (2) The Division shall furnish an application with instructions and provide appropriate technical assistance to facilitate completion of the application upon:
 - (a) Request from an applicant seeking initial certification;
 - (b) Request from an existing provider seeking certification renewal congruent with timelines established by these rules;
 - (c) Request from an existing provider seeking to add or relocate service delivery locations; and
 - (d) Request from an existing provider seeking to change the scope of services approved on the current certificate.
- (3) An applicant with multiple service delivery locations must submit documentation with the application sufficient for the Division to evaluate each service delivery location. A separate application for each service delivery location is not required.
- (4) The application must be legible and completed on the forms furnished by the Division in the manner specified by the Division. Each application must include:
 - (a) A detailed plan outlining the implementation of the proposed services congruent with these rules, applicable service delivery rules, other applicable regulations, and OAR and ORS noted herein;
 - (b) Written attestation by the applicant that all applicable rules of the Division for provision of the proposed services shall be met and maintained in substantial compliance with applicable service delivery rules;
 - (c) Other documentation required by applicable OAR, ORS, other applicable regulations, local regulations, contract or by judgment of the Division to assess applicant's compliance; and
 - (d) Complete and current copies of the following documents:
 - (A) A description of the applicant's service delivery locations describing the type and scope of behavioral health treatment services provided or proposed by the applicant at each service delivery location;
 - (B) Applicant's policies regarding credentialing practices of individual practitioners;
 - (C) Applicant's liability insurance coverage listing all covered service delivery locations;
 - (D) Applicant's policies and procedures regarding seclusion and restraint practices; and
 - (E) Applicant's Code of Conduct.
 - (e) Identification of financial interest of any individual including stockholders who have an incident of ownership in the applicant representing an interest of five percent or more. For purposes of these rules, an individual with a five percent or more incident of ownership is presumed to have an effect on the operation of the provider, unless the individual establishes that the individual has no involvement in the operation of the provider.
 - (f) Background information on all licenses, certifications, and letters of approval held or previously held by the applicant or by any owner disclosed under subsection (e) of this rule to provide care or treatment or engage in a profession or trade. The list shall include every license, certification, and letter of approval regardless of whether it was issued by the Authority or another regulatory body:
 - (A) The type of license or certification;
 - (B) The name of the issuing regulatory body;
 - (C) The name of the individual or business to whom it was issued;
 - (D) The start and end date of the period of license or certification;

- (E) A list of the dates of any suspensions, revocations, conditions, penalties, denials, nonrenewal, or other adverse actions initiated or taken on a license or certificate, including documentation of the final resolution of those actions;
- (F) Disclosure of whether any of the licenses or certificates had expired or were relinquished while a suspension, revocation, condition, penalty, denial, nonrenewal, or other adverse action was pending or proposed; and
- (G) Copies of all current licenses or certificates.
- (g) Disclosure of any substantiated findings of abuse, neglect, or mistreatment by the applicant, owner, or program staff.
- (5) Where applicable, the Division shall maintain copies of the documents listed in section (4)(d) of this rule within the Division's CCO document bank.
- (6) Timeframe for application submission:
 - (a) An applicant seeking initial certification under these rules must submit a completed application at least six months in advance of the applicant's desired date of certification;
 - (b) An applicant seeking to renew its certificate must:
 - (A) Request an application from the Division; and
 - (B) Submit a complete application at least six months prior to the expiration of the existing certificate.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-0500

RULE TITLE: Response to Application

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) Upon receipt of application materials, the Division shall conduct a comprehensive audit of the application materials:

(a) The Division shall notify the applicant that the application has been accepted as complete;

(b) The Division shall contact the applicant to schedule a certification review; and

(c) For incomplete applications, the Division shall provide written feedback describing any additional information necessary to complete the application.

(2) The Division shall issue a written notice of intent to deny completed applications in accordance with ORS 183.

(3) Completed applications for certification may be denied when:

(a) The applicant's proposed behavioral health treatment services are not subject to the service delivery rules listed in OAR 309-008-0100(2) and, therefore, are not subject to certification under these rules;

(b) The applicant fails to demonstrate substantial compliance with applicable statutes, administrative rules, or other applicable regulations;

(c) The applicant fails to demonstrate readiness, willingness, and ability to meet and sustain compliance with all applicable statutes, rules, and regulations;

(d) The applicant's operation would threaten the health, welfare, or safety of one or more individuals or the public; or

(e) The applicant submits an application within 180 days of a prior application denial or certificate revocation under these rules by the Division.

(4) The Division may issue a notice of intent to deny a completed application when:

(a) The applicant has previously had any certification or license suspended or revoked by the Division, the Authority, the Department of Human Services, or any other similar state agency outside of Oregon;

(b) The applicant employs or contracts with any program staff for whom there is substantiated evidence of abuse, neglect, or mistreatment;

(c) The applicant is listed on any current Medicaid exclusion list under OAR 410-120-1380; or

(d) The applicant submits false or inaccurate information to the Division.

(5) An applicant may withdraw an initial or renewal application at any time prior to the Division acting on the application unless the Division has determined that the applicant submitted false or misleading information in which case the Division may refuse to accept the withdrawal and may issue a notice of proposed denial in accordance with this rule.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-0600

RULE TITLE: Appealing Denial of Application for Certification

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) When the Division has denied an application, the Division shall notify the applicant in writing and provide the applicant the opportunity to request a hearing under ORS Chapter 183.411 to 500. Any request for a contested case hearing must be submitted in writing to the Division by the applicant according to the deadline set out in the notice of denial.

(2) When the Division has issued a notice of intent to deny an application under these rules in addition to or in lieu of a hearing under ORS Chapter 183, an applicant may request in writing an informal conference with the Division as set forth in OAR 309-008-1200.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-0700

RULE TITLE: Types of Reviews

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) The Division may conduct the following types of certification reviews:

(a) After receipt of a complete application, the Division shall complete a comprehensive audit of the required application documentation and the service delivery locations. The Division may not issue an initial certification without a completed Initial Certification Review;

(b) After receipt of a complete application, the Division shall complete a comprehensive audit of the required application documentation and the service delivery locations. For continued certification, Certification Renewal Reviews must occur prior to the expiration of the existing certificate and at least once every three years;

(c) The Division may conduct Discretionary Certification Reviews with reasonable notice to ensure compliance with applicable statute, administrative rules, other applicable regulations, and contractual obligations. Discretionary Certification Reviews may be conducted by the Division with or without notice for the following reasons:

(A) The Division has reasonable concern the provider may act to alter records or make them unavailable for inspections;

(B) The Division received a complaint or information that suggests or alleges conditions or practices that could threaten the health, safety, rights, or welfare of individuals; or

(C) The Division has reason to believe a certification review is necessary to ensure a provider is in substantial compliance with these rules, service delivery rules, other applicable administrative rules, contractual obligations, or with conditions placed upon the certificate.

(2) If the Division is not permitted access to records or service delivery locations for the purpose of conducting a certification review, the Division may take action on the certificate up to and including the application of conditions, suspension, or revocation.

(3) A provider or applicant must permit state or local fire inspectors and state or local health inspectors to enter and inspect the service delivery locations as required by administrative rule, state fire code, or local regulations.

(4) At the sole discretion of the Division, the Division may complete a certification review partially or fully via a desk review process. A desk review process is when the Division conducts a certification review based on the provider or applicant's submission of required documentation and telephonic interviews when the Division does not physically visit the service delivery locations:

(a) The Division shall furnish a list of documentation necessary to complete the desk review to the applicant or provider;

(b) The applicant or provider must submit all requested documents to the Division in compliance with state and federal privacy and data transmission regulations;

(c) The Division may elect to schedule telephone interviews deemed necessary to fulfill the objectives of a certification review; and

(d) Upon completion of the desk review, the Division shall securely dispose of documentation containing protected health information submitted by the applicant or provider.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-0800

RULE TITLE: Conduct of Certification Reviews

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) The Division shall employ review procedures deemed adequate to determine applicant or provider compliance with applicable administrative rules, statutes, other applicable regulations, and as necessary, contractual obligations. These procedures may include but are not limited to:

(a) Entry and inspection of any service delivery location;

(b) Document review; and

(c) Interviews with or a request for completion of a questionnaire by individuals knowledgeable about the provider or applicant. Individuals interviewed may include program staff, managers, governing or advisory board members, allied agencies, individuals, their family members, and significant others.

(2) Program staff must cooperate with the Division during a certification review.

(3) Within 30 days following the completion of each discretionary review, the Division may at its discretion issue a report and require a Plan of Correction (POC) congruent with section (4) of this rule.

(4) Within 30 days following the completion of each initial or renewal certification review, the Division shall issue a report that includes:

(a) A statement of any deficiency including a description of the review findings related to non-compliance with applicable administrative rules, statutes, other applicable regulations, and any required corrective actions where applicable;

(b) Pursuant to a certification review when the Division determines a provider or applicant is not operating in substantial compliance with all applicable statutes, administrative rules, and other regulations, and the POC process is appropriate, the Division may require the provider or applicant to submit a POC. The Division shall provide written notice of the requirement to submit a POC, and the provider or applicant shall prepare and submit a POC according to the following terms:

(A) The provider or applicant shall submit the POC to the Division within 30 days of receiving the statement of deficiency. The Division may issue up to a 90-day extension to the existing certification to allow the provider or applicant to complete the POC process;

(B) The POC shall address each finding of non-compliance and shall include:

(i) The planned action already taken or to be taken to correct each finding of non-compliance;

(ii) The anticipated or requested timeframe for the completion of each corrective action not yet complete at the time of POC submission to the Division;

(iii) A description of and plan for quality assurance activities intended to ensure ongoing compliance; and

(iv) The name of the individual responsible for ensuring the implementation of each corrective action within the POC.

(c) If the Division finds that clarification or supplementation to the POC is required prior to approval, the Division shall contact the provider or applicant to provide notice of requested clarification or supplementation, and the provider or applicant shall submit an amended POC within 14 calendar days of notification;

(d) The provider shall submit a sufficient POC approved by the Division prior to receiving a certificate. Upon the Division's approval of the POC, the Division shall issue the appropriate certification;

(e) The Division may deny or revoke an applicant or provider's certification if the provider fails to submit an adequate POC within the timeframes established in this rule.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620,
430.637

AMEND: 309-008-0905

RULE TITLE: Conditions

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

- (1) The Division may elect at any time and at its discretion to place conditions on a certificate upon a finding that:
- (a) The applicant or provider employs or contracts with any program staff for whom there is substantiated evidence of abuse, neglect, or mistreatment;
 - (b) The applicant or provider employs or contracts with any program staff that fails to meet relevant minimum qualifications described in these rules, service delivery rules, or other applicable law;
 - (c) There is substantiated evidence of abuse, neglect, or mistreatment;
 - (d) The applicant or provider operates such that there is a threat to the health, welfare, or safety of an individual or the public;
 - (e) The applicant or provider has substantially failed to comply with these rules, service delivery rules, or other applicable law;
 - (f) The applicant or provider fails to fully implement a POC or adequately maintain a corrective action;
 - (g) The Division has issued the applicant or provider through two or more consecutive certification reviews substantially similar findings of non-compliance with these rules, service delivery rules, or other applicable administrative rules, statutes, or regulations;
 - (h) There is a need for increased regulatory oversight of the applicant or provider; or
 - (i) The applicant or provider fails to comply with any reporting requirements relating to funding certification.
- (2) The Division shall consider the sum of the circumstances including but not limited to the following criteria when deciding whether to impose conditions as opposed to denying, suspending, refusing to renew, or revoking a certificate:
- (a) The expressed willingness and demonstrated ability of the applicant or provider to gain and maintain compliance with all applicable administrative rules and law;
 - (b) Submission of a POC prescribing reasonable, sustained, and timely resolution to areas of non-compliance;
 - (c) The relative availability of alternative providers to address any service needs that would be unmet if the applicant or provider is not issued a certificate with conditions as an alternative to revocation or refusal to award a certificate; or
 - (d) The applicant or provider's historical compliance with Division rules, previous conditions placed on certificates, and previous POC's.
- (3) Conditions to the certificate may include:
- (a) Requiring corrective actions with associated timeframes for completion necessary for the applicant or provider to correct areas of non-compliance or concerns identified by the Division;
 - (b) Limiting the total number of individuals enrolled in services or on a waitlist for services;
 - (c) Limiting the population such as narrowing the age range of individuals who the applicant or provider may serve;
 - (d) Limiting the scope and type of services that the applicant or provider may provide;
 - (e) Other conditions deemed necessary by the Division to ensure the health and safety of individuals and the public; and
 - (f) Other conditions deemed necessary by the Division for the purpose of ensuring regulatory compliance with this or other applicable administrative rules and law.
- (4) The Division may issue a notice of intent to impose conditions as described in section (15) of this rule or may impose conditions on a certificate With Notice or Without Notice as described in sections (4) to (8). In imposing conditions With Notice or Without Notice, a provider or an applicant may request an informal conference:
- (a) The Division may issue the conditions With Notice by issuing a Notice of Impending Imposition of Certificate Condition (Notice) at least 48 hours prior to issuing an Order Imposing Certificate Condition (Order) to a provider or an

applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered;

(b) The Division may impose the conditions without Notice only if the Division determines that there is an imminent threat to individuals such that the Division determines it is not safe or practical to give an applicant or a provider advance notice. The Division may impose the conditions without notice by issuing an Order to a provider or an applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered.

(5) The Notice may be provided in writing or orally. When the Notice is provided in writing, it shall be sent by certified or registered mail or delivered in person to the applicant or provider. If the Notice is provided orally, it may be provided by telephone or in person to the applicant, provider, or person represented as being in charge of the program. When the Notice is delivered orally, the Division shall subsequently provide written notice to the applicant or provider by registered or certified mail. The Notice shall:

(a) Generally describe the acts or omissions of the applicant or provider and the circumstances that led to the finding that the imposition of a certificate condition is warranted;

(b) Generally describe why the acts or omissions and the circumstances create a situation for which the imposition of a condition is warranted;

(c) Provide a brief statement identifying the impending condition;

(d) Identify a person within the Division whom the applicant or provider may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order;

(e) Specify the date and time the Order is scheduled to take effect; and

(f) Offer that the applicant or provider may request an informal conference prior to the issuance of the Order Imposing Certificate Condition, or if the provider has already requested an informal conference, specify the date and time that an informal conference shall be held.

(6) If an informal conference is requested regarding conditions, the conference shall be held at a location designated by the Division. If determined to be appropriate by the Division, the conference may be held by telephone. Following the informal conference, the Division may modify the conditions. The timing of the informal conference is described as follows:

(a) If a Notice is issued, the applicant or provider may request an informal conference to object to the Division's proposed action before the condition is scheduled to take effect. The request for an informal conference shall be made prior to the date the conditions are intended to be effective. If timely requested, the informal conference shall be held within seven days of the request. The Order Imposing Condition may be issued at any time after the informal conference;

(b) If an Order Imposing Condition is issued without a prior Notice, the applicant or provider may within 48 hours of the issuance of the Order request an informal conference. If timely requested, the informal conference shall be held within two business days of receipt of the request. Following the informal conference, the Division at its discretion may modify the conditions.

(7) When an Order is issued, the Division must serve the Order either personally or by registered or certified mail. The Order must include the following statements:

(a) The authority and jurisdiction under which the condition is being issued;

(b) A reference to the particular sections of the statute and administrative rules involved;

(c) The effective date of the condition;

(d) A short and plain statement of the nature of the matters asserted or charged;

(e) The specific terms of the certificate condition;

(f) Right to request a contested case hearing under ORS Chapter 183.411 to 500;

(g) A statement that if a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider shall have waived the right to a hearing under ORS Chapter 183.411 to 500;

(h) Findings of specific acts or omissions of the applicant or provider that are grounds for the condition and the reasons

the acts or omissions create a situation for which the imposition of a certificate condition is warranted; and,

(i) A statement that the Division may combine the hearing on the Order with any other proceeding affecting the certificate. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the certificate.

(8) Hearing:

(a) If the Division serves an Order Imposing Condition, the applicant or provider is entitled to a contested case hearing.;

(b) The Division must receive the request for a hearing within 21 days of the date of Order. If a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider shall have waived the right to a hearing;

(c) The applicant or provider may request a contested case hearing, regarding the imposition of the conditions in addition to or in lieu of an informal conference. Requesting a contested case hearing may not delay the effective date of the conditions.

(9) When a restriction of enrollment or intake is in effect pursuant to an Order, the Division in its sole discretion may authorize the provider to admit or serve new individuals for whom the Division determines that alternate placement or provider is not feasible.

(10) Conditions may be imposed for the duration of the certificate or limited to some other shorter period of time. If the condition corresponds to the certificate period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on the certificate.

(11) When the applicant or provider determines that the circumstances leading to imposition of the condition no longer exist and that effective systems are in place to ensure that similar deficiencies do not recur, the applicant or provider may make written request to the Division for re-inspection.

(12) Re-inspection:

(a) If the Division finds that the situation for which the condition was imposed has been corrected and finds that systems are in place to ensure that similar deficiencies do not recur, the condition shall be withdrawn, and the Division must revise the certificate accordingly. Following re-inspection, the Division shall notify the facility by telephone of the decision to withdraw the condition. Telephone notification shall be followed by written notification;

(b) If the Division determines after a re-inspection that the situation for which the condition was imposed continues to exist or that there are not sufficient systems in place to prevent similar deficiencies, the certificate condition may not be withdrawn, and the Division is not obligated to re-inspect again for at least 45 days. A decision not to withdraw the Order shall be given to the applicant or provider in writing, and the applicant or provider shall be informed of the right to a contested case hearing. Nothing in this rule is intended to limit the Division's authority to conduct a certification review at any time.

(13) The Division may deny and refuse to renew or revoke the certificate when the provider or applicant fails to comply timely with the condition.

(14) When the Division orders a condition be placed on a certificate With Notice or Without Notice under the provisions of this rule, the applicant or provider is entitled to request a contested case hearing.

(15) In addition to or instead of imposing conditions With Notice or Without Notice as described in sections (4) to (8) and (14), the Division may issue a notice of intent to impose a condition with the opportunity for a contested case hearing prior to imposing the condition. Notices of intent to impose a condition shall be issued consistent with sections (1)-(3) and (9)-(13).

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-1000

RULE TITLE: Modification to Certification

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) A provider with a current certificate seeking to open new service delivery locations, relocate current service delivery locations, or provide additional types of treatment services under different service delivery rules must submit a written request for Division approval prior to any such changes:

(a) The Division must receive the written request for such changes at least 60 days prior to the desired effective date for any such changes;

(b) The Division shall make reasonable efforts to make final determination for approval or disapproval of changes to the certificate within 45 days of receiving the written request.

(2) A provider with a current certificate seeking to designate a new program director must submit a written request for Division approval prior to making such a designation:

(a) The provider must include copies of relevant qualifications with its written request when designating a new program director;

(b) The Division shall make every reasonable effort to review documents and make a final determination regarding whether the proposed program director meets applicable service delivery rule requirements and qualifications within 30 days of receipt of the provider's written request. The Division shall provide written notice of its determination;

(c) When an emergency requires a provider to designate a new program director prior to Division approval:

(A) The provider must make every reasonable effort to expediently designate a new program director and must submit a request for the designation to the Division within 15 calendar days of the new designation and include copies of relevant qualifications of the new program director; and

(B) The Division shall make every reasonable effort to expediently review the provider's request for the designation and make a final determination whether the proposed program director meets applicable service delivery rule requirements. The Division shall provide written notice of its determination.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-1100

RULE TITLE: Nonrenewal, Suspension, and Revocation of Certification

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) Immediate suspension of a certificate may occur if there is a serious danger to the public health and safety as the Division sets forth specific reasons for its finding. The provider may request a contested case hearing to contest the immediate suspension order. Requests for a hearing must be received by the Division within 90 days from the date the immediate suspension order was served on the provider personally or was mailed by certified or registered mail. If the provider requests a hearing, the hearing shall be held as soon as practicable:

(a) The Division finds there is substantial failure to comply with applicable statutes, administrative rules, service delivery rules, or other applicable regulations;

(b) There is a threat to health or safety of individuals.

(2) The Division may revoke or refuse to renew a certificate of one or more service delivery locations listed on the certificate when the Division determines that there is substantiated evidence of abuse, neglect, or mistreatment or determines that a provider:

(a) Demonstrates substantial failure to comply with these administrative rules or with applicable state or federal law;

(b) There is a threat to the health or safety of individuals;

(c) Fails to maintain any State of Oregon license that is a prerequisite for providing services that were approved;

(d) Has a direct contract with the Division, and the Division terminates its agreement or contract with the provider;

(e) Fails to comply with the requirements of one or more conditions on the certificate;

(f) Fails to submit and or implement a POC sufficient to come into substantial compliance with these and other applicable rules or regulations;

(g) Submits falsified or incorrect information to the Division;

(h) Refuses to allow access to information for the purpose of verifying compliance with applicable statutes, administrative rules, or other applicable regulations within a specified date or fails to submit such information following the date specified for such a submission in the written notification;

(i) Fails to maintain sufficient staffing or fails to comply with staff qualification requirements;

(j) The provider fails to demonstrate readiness, willingness, and ability to meet and sustain compliance with all applicable statutes, rules, and regulations;

(3) When the Division determines the need to revoke or deny renewal of a certificate issued under these rules, a notice of intent to take action on the certificate shall be issued to the provider.

STATUTORY/OTHER AUTHORITY: 430.870, 743A.168, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-1200

RULE TITLE: Informal Conference

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) When the Division issues an Order of Suspension, a notice of intent to revoke, notice of intent to deny an application, or notice of intent to nonrenew (refusal to renew the certificate to an applicant or provider pursuant to these rules, the Division shall offer the applicant or provider an opportunity for an informal conference. The applicant or provider shall make its request for an informal conference in writing within seven days of the issuance of the notice of intent and within 14 days of an Order of Suspension. Upon receipt of a timely written request, the Division shall select a location and time for such a conference.

(2) Following the conference, the Division may:

- (a) Withdraw or amend the notice of intent or suspension order; or
- (b) Choose not to withdraw the notice of intent or suspension order.

(3) The Division shall provide written notice of its decision under section (2) of this rule within 14 calendar days of the informal conference.

(4) Informal conferences regarding conditions are not described in this rule and instead are described in OAR 309-008-0905.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-1300

RULE TITLE: Hearings

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

(1) An applicant or provider who issued a notice of intent to revoke, impose conditions, or refuse to renew its certificate under these rules shall be entitled to request a hearing in accordance with ORS Chapter 183.

(2) When the Division orders the imposition of a condition or orders immediate suspension of a certificate under the provisions of this rule, the provider shall be entitled to request a hearing in accordance with ORS Chapter 183.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

STATUTES/OTHER IMPLEMENTED: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-1500

RULE TITLE: Complaints

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

- (1) Any individual may file a complaint with the Division concerning a provider holding a certificate under these rules. The Division may require the complainant to exhaust grievance procedures available through the provider and, if applicable, the Medicaid payer, prior to initiating an investigation.
- (2) The Division shall only investigate a complaint concerning a provider falling within the Division's scope and regulatory authority:
 - (a) The Division shall investigate and respond to a complaint pursuant to Division policies and procedures;
 - (b) The Division shall refer the complainant to the appropriate entity if the complaint pertains to a provider falling outside the Division's scope or regulatory authority or otherwise regulated by another state or local entity.
- (3) Consequences of a substantiated complaint related to the health, safety, or welfare of an individual or the public may result in the suspension, revocation, denial, or nonrenewal an applicant or provider's application or certificate.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637

AMEND: 309-008-1600

RULE TITLE: Variance

RULE SUMMARY: The rules establish procedural detail regarding certification requirements and standards for the prevention, intervention, treatment services, application, and actions placed on an applicant or certificate such as denials, conditions, suspensions, nonrenewal and revocations of mental health, substance use disorders and problem gambling behavioral health services.

RULE TEXT:

- (1) An applicant or provider may requests a variance to these rules, applicable service delivery rules, or other applicable regulations.
- (2) The applicant or provider must submit the variance request directly to the Division along with the application documents submitted to the Division. The variance request must include:
 - (a) A description and applicable details of the variance requested, including the applicable section of the rule for which the variance is sought;
 - (b) The rationale and necessity for the requested variance;
 - (c) The alternative practice proposed, where relevant; and
 - (d) The proposed duration of the variance, including a plan and timetable for compliance with the rule exempted or adjusted by the variance.
- (3) The Director, whose decision is final, shall approve or deny the variance request and include an expiration date for the variance not to exceed the length of the provider's current certificate.
- (4) A variance granted by the Division becomes part of the certificate. Continuance of the variance will not be automatic and will be reconsidered at the expiration of the variance or when the certification is being considered for renewal, whichever comes first.
- (5) Requesting renewal of a variance in advance of current variance expiration is the responsibility of each provider.
- (6) Failure by the provider to implement approved alternative practices or otherwise demonstrate noncompliance with an approved variance may result in the Division withdrawing approval for a variance.
- (7) Failure by the provider to implement approved alternative practices or otherwise demonstrate noncompliance with an approved variance such that the health or safety of individuals is jeopardized to the degree that cessation of services by the provider is considered necessary to prevent harm to the individual may result in the Division taking action on the certificate pursuant to OAR 309-008-1100.

STATUTORY/OTHER AUTHORITY: 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556

STATUTES/OTHER IMPLEMENTED: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637