

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

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

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BHS 9-2022

CHAPTER 309

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILED

06/16/2022 6:50 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Qualifying criteria For Loan Repayment Specific To The Behavioral Health Workforce Initiative

EFFECTIVE DATE: 06/16/2022 THROUGH 12/12/2022

AGENCY APPROVED DATE: 06/15/2022

CONTACT: Bret Golden

971-388-7766

Bret.Golden@dhsosha.state.or.us

500 Summer St NE

Salem, OR 97301

Filed By:

Hanna Christensen

Rules Coordinator

NEED FOR THE RULE(S):

This rule change is necessary to operationalize the Behavioral Health Loan Repayment Program outlined in House Bill 2949. House Bill 2949 has updated incentive guidance in the most current enrolled version. This new enrolled measure follows a different set of rulesets specific to behavioral health care workers compared to the Health Care Provider Incentive Fund, which follows guidance from House Bill 3261. Definitions, eligibility criteria, and service obligations have been updated to reflect guidance from the most current enrolled version of House Bill 2949.

JUSTIFICATION OF TEMPORARY FILING:

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s). This filing must be done immediately to continue the timely implementation of the Oregon Behavioral Health Loan Repayment Program, outlined in Enrolled House Bill 2949, which declares the behavioral health care shortage an emergency throughout the State. These changes are necessary to help address the behavioral health workforce crisis by recruiting and retaining culturally specific and diverse Behavioral Health Care Workers in the behavioral health care field. This in turn will increase and improve culturally specific and timely behavioral healthcare services to Oregon's communities who are underserved throughout the State.

(2) Who would suffer these consequences. If this rule is not immediately implemented, Oregon's communities who are underserved will continue to suffer, which include but are not limited to; communities of color, Tribal members, LGBTQIA2S+ communities, veterans, persons with disabilities, individuals with intellectual and developmental disabilities, individuals with limited English proficiency, individuals in correctional facilities and rural residents.

(3) Why or how failure to immediately take rulemaking action would cause these consequences;

Failure to implement this rule will stall recruitment and retention of culturally specific and diverse behavioral health care workers into the behavioral health care field and will negatively impact behavioral health care services to Oregon's communities who are underserved.

(4) How the temporary action will avoid or mitigate those consequences.

Temp filing will allow for immediate and specific rule implementation outlined in House Bill 2949. This implementation would also prevent any work stoppage and behavioral health care services necessary to immediately address the behavioral health workforce shortage.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 2949, Oregon's Health Care Workforce Study (February 2021 needs assessment), Behavioral Health Workforce Wage Study Report (February 1, 2022, OHSU's Center for Health Systems Effectiveness Final Report), "Investing In Culturally and Linguistically Responsive Behavioral Health Care In Oregon" (OHA & Coalition of Communities of Color Report)

RULES:

309-081-0010, 309-081-0020, 309-081-0030, 309-081-0040, 309-081-0050, 309-081-0060, 309-081-0070, 309-081-0080, 309-081-0090, 309-081-0100, 309-081-0110

ADOPT: 309-081-0010

RULE SUMMARY: Updates definitions to conform with HB 2949.

CHANGES TO RULE:

309-081-0010

Definitions

The following definitions apply to OAR 309-081-0000 to OAR 309-081-0110:

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

(2) "Behavioral health care worker" means any behavioral health care worker that holds an associates, bachelor's, master's, or doctoral degree or other credentials who assist or provide direct care to patients in a behavioral health care setting.

(3) "Board" means the Oregon Health Policy Board.

(4) "Clinical Psychologist" means an individual licensed to practice psychology pursuant to ORS 675.010 to 675.090.

(5) "Clinical Social Worker" means an individual licensed to practice clinical social work pursuant to ORS 675.510 to 675.600.

(6) "Psychiatrist" means a physician licensed pursuant to ORS 677.010 to 677.228 and 677.410 to 677.450 by the Oregon Medical Board and who has completed an approved residency training program in psychiatry.

(7) "Communities of color" means members of the following racial or ethnic communities:

(a) American Indian;

(b) Alaska Native;

(c) Hispanic or Latino;

(d) Asian;

(e) Native Hawaiian;

(f) Pacific Islander;

(g) Black or African American;

(h) Middle Eastern;

(i) North African;

(j) Mixed race; or

(k) Other racial or ethnic minorities.

(8) "Communities who are underserved" include communities of color, Tribal members, LGBTQIA2S+ communities, veterans, persons with disabilities, individual with intellectual and developmental disabilities, individuals with limited English proficiency, adults in custody and rural residents.

(9) "Community Health Worker" or "CHW" means an individual who meets qualification criteria adopted by the authority under ORS 414.665 (Traditional health workers utilized by coordinated care organizations).

(10) "Full-Time" means working at a minimum of 32 hours per week providing behavioral health care services averaged over the month for a minimum of 45 weeks per service year. The Authority shall consider patient charting and clinical supervision a component of behavioral health care services. The Authority may consider telehealth a behavioral health care service when the receiving site (location of the patient) is located in Oregon.

(11) "Licensed Professional Counselor" has the meaning given that term in ORS 675.705.

(12) "Marriage and Family Therapist" or "Professional Counselor" has the meaning given that term in ORS 675.705.¶

(13) "Medicare" means medical coverage provided under Title XVIII of the Social Security Act. ¶

(14) "Mental Health Professional Shortage Area" is a score developed by the National Health Service Corps (NHSC) in determining priorities for assignment of clinicians. The scores range from 0 to 26 where the higher the score, the greater the priority.¶

(15) "Part-Time" means working a minimum of 16 hours per week providing behavioral health care services averaged over the month for a minimum of 45 weeks per service year. The Authority shall consider patient charting and clinical supervision a component of behavioral health care services. The Authority may consider telehealth a behavioral health care service when the receiving site (location of the patient) is located in Oregon.¶

(16) "Program" means the Oregon Behavioral Health Workforce Initiative Program.¶

(17) "Psychiatric/Mental Health Nurse Practitioner" (PMHNP) means a nurse practitioner who independently provides health care to clients with mental and emotional needs and/or disorders. The psychiatric/mental health nurse practitioner scope may be further differentiated by care of populations newborn to young adulthood, adolescent to adult, or across the lifespan.¶

(18) "Qualified Mental Health Associate" (QMHA) means a mental health professional that meets the following minimum qualifications:¶

(a) Bachelor's degree in a behavioral sciences field; or¶

(b) A combination of at least three years relevant work, education, training or experience; and¶

(c) Demonstrates the competency necessary to communicate effectively; understand mental health assessment, treatment and service terminology and apply these concepts; provide psychosocial skills development; implement interventions as assigned on an individual plan of care; and provide behavior management and case management duties.¶

(19) "Qualified Mental Health Professional" (QMHP) is a licensed behavioral health practitioner or any other person who holds any of the following educational degrees and meets the following minimum qualifications under section (g):¶

(a) Graduate degree in psychology;¶

(b) Bachelor's degree in nursing and licensed by the State of Oregon;¶

(c) Graduate degree in social work;¶

(d) Graduate degree in a behavioral science field;¶

(e) Graduate degree in recreational, music, or art therapy;¶

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and¶

(g) Whose education and experience demonstrate the competency to identify precipitating events; gather histories of mental and physical disabilities, substance use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise an individual plan of care; conduct a mental health assessment and provide individual, family or group therapy within the scope of their training.¶

(20) "Qualifying loan" means one or more government or commercial loans received solely to cover the cost of associates, undergraduate, graduate, doctoral and other educational training programs. This does not include loans for education or training programs that are not yet completed, credit card loans, lines of credit, and personal loans.¶

(21) "Substance Use Disorders Treatment and Recovery Services" means outpatient, intensive outpatient, and residential services and supports for individuals with substance use disorders.¶

(22) "Substance Use Disorders Treatment Staff" means program staff certified by a division-approved certification body to render substance use disorders treatment services.¶

(23) "Telehealth" means the provision of health services from a distance using electronic communications. (24)

"Traditional Health Worker (THW)" means a community health worker, peer wellness specialist, personal health navigator, peer support specialist, or birth doula not otherwise regulated or certified by the State of Oregon. Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0020

RULE SUMMARY: Eligibility criteria and program requirements for awarding loan repayment to behavioral health care workers.

CHANGES TO RULE:

309-081-0020

Criteria for The Oregon Behavioral Health Loan Repayment Program

(1) Must be a behavioral health care worker, a Qualified Mental Health Associate (QMHA), A Qualified Mental Health Professional (QMHP), a Traditional Health Care Worker, or an individual who provides culturally or linguistically specific behavioral health care services to Oregon's communities who are underserved.¶

(2) An eligible behavioral health care worker may receive a loan repayment subsidy if they are not at the same time receiving loan repayment or forgiveness under a separate, competing service obligation.¶

(3) Recipient must commit to serving Oregon's communities who are underserved for two years from the start of recipient's contract start date as determined by the authority.¶

(4) The Authority may prioritize loan repayment subsidies to include but not limited to:¶

(a) Behavioral health care workers who represent the ethnicity or culture of Oregon's communities who are underserved;¶

(b) Provide behavioral health care services to Oregon's communities who are underserved;¶

(c) Have lived experience with Oregon's communities who are underserved;¶

(d) Speak a second language in a behavioral health care setting for Oregon's communities who are underserved;¶

(e) Provide behavioral health care services in a Mental Health Professional Shortage Area in Oregon determined by the Authority.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0030

RULE SUMMARY: Updates service commitment to reflect guidelines from HB 2949 (2021)

CHANGES TO RULE:

309-081-0030

Participation and Application Requirements

(1) Loan repayment recipients must agree to serve two years of behavioral health care services either Full-Time or Part-Time to Oregon's communities who are underserved as determined by the Authority.¶

(2) To qualify for consideration for loan repayment an eligible behavioral health care worker must submit an application that:¶

(a) Documents the individual having, or having applied for, an unrestricted license or certification (if required) to practice in Oregon within their discipline;¶

(b) Includes a signed and dated statement certifying that the individual is not currently participating in the National Health Services Corps (NHSC), Nursing Corps, or State Loan Repayment Programs or the NHSC Scholarship Program or other current service obligation;¶

(c) Attests to the number of years that the individual is willing to make a service commitment of at least two years' working in the behavioral health care field with communities who are underserved;¶

(d) Provides all other information required by the program to determine the suitability of making an award from program funds.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0040

RULE SUMMARY: Updates application and review process to reflect achievement goals outlined by HB2949.

CHANGES TO RULE:

309-081-0040

Application and Review Process

(1) The Authority will publish an application process online.¶

(2) The Authority shall review those applications that meet all requirements of OAR 309-081-0050:¶

(a) The Authority shall return incomplete applications, and upon resubmittal, they shall be processed as of the new date of receipt when they are determined complete:¶

(b) The Authority shall notify applicants of the status of their completed applications within 90 days of application submission.¶

(3) The Authority may consider the following factors in determining whether to accept an eligible behavioral health care worker for participation in the program, which include but are not limited to:¶

(a) Ability to obtain federally funded incentives; The Authority may prioritize applications from behavioral health care workers who are located in a Mental Health Professional Shortage Area:¶

(b) Behavioral health care workers located in Oregon; In the case of a behavioral health care workers delivering telehealth services as all or part of their services, the Authority may give behavioral health care workers physically located in Oregon priority for an award:¶

(c) Behavioral Health Care Worker types, disciplines, or ethnic or linguistic diversity particularly needed in Oregon's communities who are underserved; The Authority may give providers priority for an recipient who meets specific needs identified under Oregon's communities who are underserved:¶

(d) Practice site client demographic represents Oregon's communities who are underserved; The Authority may give priority for an award if the behavioral health care worker works at a practice site that serves Oregon's underserved communities.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0050

RULE SUMMARY: Adjusts maximum compensation limit for both Full-Time and Part-Time recipients. Eliminates opportunity for enrolling in additional years of service commitment.

CHANGES TO RULE:

309-081-0050

Maximum Award Amounts

The Oregon Behavioral Health Loan Repayment recipients are eligible for a maximum loan repayment award in the following manner:¶

(1) Full-Time Service:¶

(a) Seventy percent of the balance owed on qualifying loans upon program entry for two years of service:¶

(b) A recipient may receive no more than \$50,000 in a single year for Full-Time service.¶

(2) Part-Time Service:¶

(a) Thirty five percent of the balance owed on qualifying loans upon program entry for two years of service:¶

(b) A recipient may receive no more than \$25,000 in a single year for Part-Time service.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0060

RULE SUMMARY: Updated to reflect new definitions.

CHANGES TO RULE:

309-081-0060

Transfer of Behavioral Health Care Worker Service Obligation to Another Site

(1) In the event of a practice failure or other extenuating circumstance, a participating behavioral health care worker with Authority approval may transfer the service obligation to another practice site. This is intended to be a rare instance and may not be granted without prior approval. A transfer without prior approval is considered a violation of the service agreement. A participating behavioral health care worker must submit a written transfer request to the Authority documenting the:

(a) Circumstances surrounding the need to transfer;

(b) Proposed new practice site; and

(c) Name of the director or administrator at the proposed new practice site.

(2) The participating behavioral health care worker must also submit:

(a) A letter from the original practice site releasing the eligible behavioral health care worker from any employment contract (if applicable) and provide an explanation for the termination of employment. The Authority may waive this requirement if the original practice site is in non-compliance with federal requirements, federal or state law, or these rules.

(b) An employment contract with the new practice site, a letter of intent from the new practice site to employ the behavioral health care worker, or documentation of the behavioral health care worker having established a sole proprietorship, Limited Liability Corporation, Limited Liability Partnership, or Professional Corporation.

(3) The new practice site, in collaboration with the behavioral health care worker, must provide confirmation that the site will cooperate with the behavioral health care worker to comply with the monitoring and follow-up requirements set forth in these rules.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0070

RULE SUMMARY: Updated to reflect new definitions.

CHANGES TO RULE:

309-081-0070

Suspension or Waiver of Minimum Service Obligation

(1) The Authority may agree to suspend the participating behavioral health care worker service obligation for a specified time under circumstances it deems appropriate, including, but not limited to parental leave, medical leave, military service leave, or other factors beyond the behavioral health care worker's control. During the time of suspension, awards shall be suspended.¶

(2) A recipient requesting a suspension of minimum service obligation shall make a written request to the Authority, citing the reasons and providing documentation of the circumstances.¶

(3) The Authority may waive all or part of the minimum service obligation under the following circumstances:¶

(a) Upon receipt of written documentation acceptable to the Authority of the death of the recipient;¶

(b) Upon receipt of written documentation acceptable to the Authority of the total and permanent disability of the participant; or¶

(c) Upon receipt of written documentation of other significant changes in life circumstances that are out of the control of the recipient and that the Authority determines warrant a waiver of service commitment.¶

(4) If all or part of the minimum service obligation is waived, the Authority may not impose any penalty for failure to meet the obligation.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0080

RULE SUMMARY: Updated to reflect new definitions.

CHANGES TO RULE:

309-081-0080

Monitoring and Follow-up Requirements

- (1) To maintain participation in the program, the behavioral health care worker must:
Promptly submit semi-annual reports signed by the Behavioral Health Care Worker and the administrator of the practice site verifying the behavioral health care worker's employment, or licensed business, and providing any additional information as requested by the Authority, including but not limited to:
(a) Site's and behavioral health care worker's caseload (panel size or equivalent);
(b) Site's and behavioral health care worker's Medicaid caseload and Medicare caseload;
(c) Behavioral health care worker's Full-Time equivalent (FTE) status; and
(d) Number and percentages of practice site's patients whose health care is covered by Medicaid and by Medicare, and the number of patients at the practice site who are uninsured.
(2) The first report is due six months after employment begins, and every six months thereafter, until the term of the contract is complete.
(3) A Behavioral health care worker participating in the program must notify the Authority immediately of any change in employment or practice status.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

RULE SUMMARY: Updated to reflect new definitions. Removed loan forgiveness and scholarships ruleset

CHANGES TO RULE:

309-081-0090

Failure to Comply; Penalties and Appeals

(1) A recipient of a loan repayment award who fails to complete their two year service obligation providing behavioral health services to Oregon's communities who are underserved and does not receive a waiver shall be considered to have breached the terms of the program. The Authority shall impose a penalty on any such behavioral health care worker in an amount up to the sum of:

(a) The total paid from the Oregon Behavioral Health Loan Repayment Program to the recipient or on behalf of the recipient for any periods of obligated service not served;

(b) up to \$500 for each month of the minimum service period not completed according to the terms of the obligation; and

(c) Interest on the above amounts at the maximum prevailing rate, as determined by the Oregon Department of Revenue, calculated from the date of breach until full repayment has been made.

(d) The recipient may appeal decisions made by the Authority under the provisions of ORS Chapter 183.

(2) A recipient of loan repayment found to be in breach of their agreement under this program is subject to penalties. Administrative review, for purposes of these rules, shall be the process for any appeals made to the Authority. A carrier or practitioner may request administrative review. The Authority must receive the request in writing no later than 30 calendar days after the date of the Authority's notice. If the request for administrative review is timely, the practitioner or the carrier must provide the Authority with a copy of all relevant records and other materials relevant to the appeal, no later than 10 days before the review is scheduled.

(a) If the Authority decides that a preliminary meeting between the practitioner or carrier and Authority staff may assist the review, the Authority shall notify the individual requesting the review of the date, time, and place the meeting is scheduled.

(b) The Authority shall conduct the administrative review meeting as follows:

(c) No minutes or transcript of the review shall be made;

(d) The carrier or practitioner requesting review does not have to be represented by counsel during an administrative review meeting and shall be given the opportunity to present relevant information;

(e) Authority staff may not be available for cross-examination, but may attend and participate in the review meeting;

(f) Failure to appear without good cause constitutes acceptance of the Authority's determination;

(g) The Authority may combine similar administrative review proceedings and meetings involving the same parties or similar facts, if the Authority determines that joint proceedings may facilitate the review;

(h) The Authority may request the appealing practitioner or carrier to submit, in writing, new information that has been presented orally. The Authority shall establish the deadline for submission of the information.

(i) The Authority shall send the results of the administrative review to the recipient involved in the review, within 30 calendar days of the conclusion of the administrative review meeting, or such time as may be agreed to by the recipient or designated by the Authority.

(j) The Authority's final decision on administrative review is the final decision on appeal and binding on the parties. Under ORS 183.484, this decision is an order in other than a contested case. ORS 183.484 and the procedures in OAR 137-004-0080 to 137-004-0092 apply to the Authority's final decision on administrative review.

(k) Academic institutions providing admission-based scholarships may set penalties for default against the terms of their program.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0100

RULE SUMMARY: Unchanged from 409-036 ruleset

CHANGES TO RULE:

309-081-0100

Program Integrity

(1) The Authority shall analyze and monitor the operation of the program and audit and verify the accuracy and appropriateness of all payments made under the terms of this program. To promote the integrity of the program, the Authority may require participants and any other parties to develop and maintain adequate financial and other documentation as determined by the Board to be necessary. ¶

(2) The Authority may communicate with and coordinate any program integrity actions with the federal and state oversight authorities. ¶

(3) Any overpayment made to an individual or carrier is subject to recovery. The Authority shall take appropriate action and may redress payment errors or false claims for payment under the program.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825

ADOPT: 309-081-0110

RULE SUMMARY: Outlining How Data Unchanged from 409-036 ruleset

CHANGES TO RULE:

309-081-0110

Data Sharing

(1) The Authority may not share data about program participants, other than for purposes of planning, program evaluation or analysis.¶

(2) Data may only be shared with:¶

(a) Agencies, offices, or contractors of the Authority;¶

(b) The Oregon Employment Department; and¶

(c) Non-governmental not noted above only with written approval from the Director of the Authority.

Statutory/Other Authority: HB 2949 (2021)

Statutes/Other Implemented: ORS 675.375, ORS 675.705, ORS 675.720, ORS 675.745, ORS 675.785, ORS 675.825