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CHAPTER 309

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILING CAPTION: Updating Aid And Assist Rules To Align With Statutory Changes And Update Rule Content.

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RULES:

309-088-0105, 309-088-0115, 309-088-0125, 309-088-0130, 309-088-0135

AMEND: 309-088-0105

REPEAL: Temporary 309-088-0105 from BHS 18-2021

RULE TITLE: Purpose and Scope

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: These rules provide updates needed to provide standardization and clarification to better support the defendants who fall within the fitness to proceed jurisdiction and to make the current temporary rules permanent to align with the changed ORS 161.365 and .370 from SB 295 2021.

RULE TEXT:

(1) Oregon Revised Statutes (ORS) 161.365 and 161.370 recognize that not all criminal defendants who lack fitness to proceed (commonly known as Aid and Assist defendants) need to be committed to the State Hospital or remain in jail, but instead should be served in the least restrictive environment that is clinically indicated.

(2) These rules establish the standards for community consultations to occur and encourages collaboration between the Court, State Hospital, Community Mental Health Program (CMHP), tribal entities, Coordinated Care Organizations (CCO), and parties to the case to the extent permitted by law.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 430.640, SB 295 (2021)

STATUTES/OTHER IMPLEMENTED: ORS 430.630, ORS 430.640, ORS 161.365, ORS 161.370

AMEND: 309-088-0115

REPEAL: Temporary 309-088-0115 from BHS 18-2021

RULE TITLE: Definitions

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: These rules provide updates needed to provide standardization and clarification to better support the defendants who fall within the fitness to proceed jurisdiction and to make the current temporary rules permanent to align with the changed ORS 161.365 and .370 from SB 295 2021.

RULE TEXT:

- (1) "Acuity of symptoms" means intensity and severity of symptoms.
- (2) "Authority" means the Oregon Health Authority.
- (3) "Behavioral Health Treatment" means treatment for mental health, substance use disorder, and problem gambling.
- (4) "Capacity" means that the defendant is able to:
 - (a) Understand the nature of the proceedings against the defendant;
 - (b) Assist and cooperate with the counsel of the defendant; and
 - (c) Participate in the defense of the defendant.
- (5) "Care Coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs including facilitating communication between natural supports, community resources, and involved providers and agencies; organizing, facilitating and participating in client staffing meetings; and providing for continuity of care by creating linkages to and managing transitions between levels of care. Care coordination shall occur with the jurisdictional court or other designated agencies within the criminal justice system, State Hospital, CMHP, the Authority, tribal entities, CCO, and parties to the case to the extent permitted by law. Care coordination shall include, but is not limited to:
 - (a) Coordination of periodic forensic evaluations, in collaboration with the defendant's attorney, to assess fitness to proceed;
 - (b) Coordinating or providing transportation to and from the forensic evaluations and court appearances in this case; and
 - (c) Communication of court ordered requirements, limitations, and court dates to the defendant as clinically indicated.
- (6) "Case Management" means the services provided to assist individuals who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, entitlement, tribal resources, and other applicable services.
- (7) "Community Mental Health Program (CMHP)" means the organization of various services for individuals with a mental health diagnosis or substance use 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 Oregon Administrative Rule (OAR) chapter 309, division 014.
- (8) "CMHP Director" means the director of a CMHP, or the director's designee.
- (9) "Community Consultation" means a consultation where the CMHP Director consults with the defendant and with any local entity that would be responsible for providing community restoration services to the defendant if the defendant were to be released in the community, which includes tribal entities and the defendant's CCO, to determine whether appropriate community restoration services are present and available in the community. A report generated from that consultation is then provided to the court that ordered the Community Consultation. The community consultation is not an examination regarding fitness to proceed, and, therefore, does not need to be completed by a Certified Forensic Evaluator pursuant to ORS 161.365 and OAR chapter 309 division 090.
- (10) "Community Restoration Services" means services and treatment necessary to safely allow a defendant to gain or regain fitness to proceed in the community, which may include but are not limited to:
 - (a) Behavioral health treatment;
 - (b) Case management;

- (c) Incidental supports;
 - (d) Legal skills training;
 - (e) Linkages to benefits;
 - (f) Medical treatment related to capacity;
 - (g) Medication management;
 - (h) Peer-delivered services; and
 - (i) Vocational services.
- (11) "Court" means the court with jurisdiction regarding defendant's fitness to proceed.
- (12) "Fitness to Proceed" means the same as having capacity.
- (13) "Incapacitated" means the defendant is unable to:
- (a) Understand the nature of the proceedings against the defendant;
 - (b) Assist and cooperate with the counsel of the defendant; or
 - (c) Participate in the defense of the defendant.
- (14) "Incidental Supports" means the provision of items that are not the direct provision of services. Incidental supports may include things such as clothing, food, and medication.
- (15) "Judicial Day" means a day when court is open.
- (16) "Legal Skills Training" means training on courtroom procedures, roles, language, and potential outcomes of the court process.
- (17) "Linkages to Benefits" means assisting an individual obtain benefits for which they are eligible, including but not limited to:
- (a) Medicaid;
 - (b) Social Security;
 - (c) Aging and People with Disabilities Services;
 - (d) Supplemental Nutrition Assistance Program; and
 - (e) housing.
- (18) "Medical Treatment Related to Capacity" means the management and care of a defendant to combat disease or disorder that is related to their capacity.
- (19) "Medication Management" means the prescribing and administering and reviewing of medications and their side effects, including both pharmacological management as well as supports and training to the individual.
- (20) "Peer-Delivered Services" means community-based services and supports provided by peers, peer support specialists, and family support specialists to individuals with similar lived experience. These services are intended to support individuals in engaging with ongoing treatment and to live successfully in the community.
- (21) "Qualified Mental Health Professional (QMHP)" means an individual who meets the qualification requirements outlined in OAR 309-019-0125.
- (22) "State Hospital" means the Oregon State Hospital system, including all campuses.
- (23) "Superintendent" means the chief executive officer of a state hospital, or designee, or an individual authorized by the superintendent to act in the superintendent's capacity.
- (24) "Vocational Services" means employment support services that leads to competitive integrated employment. The Division encourages the use of fidelity IPS Supported Employment for providing vocational services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 430.640, SB 295 (2021)

STATUTES/OTHER IMPLEMENTED: ORS 430.640, ORS 161.370, ORS 161.365, ORS 430.630

AMEND: 309-088-0125

REPEAL: Temporary 309-088-0125 from BHS 18-2021

RULE TITLE: CMHP Consultations

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: These rules provide updates needed to provide standardization and clarification to better support the defendants who fall within the fitness to proceed jurisdiction and to make the current temporary rules permanent to align with the changed ORS 161.365 and .370 from SB 295 2021.

RULE TEXT:

- (1) When ordered by the court the CMHP director shall consult with the defendant and with any local entity that would be responsible for providing community restoration services to the defendant if the defendant were to be released in the community, which includes tribal entities and the defendant's CCO, to determine whether appropriate community restoration services are present and available in the community.
- (2) If the CMHP director determines that appropriate community restoration services are not present and available in the community the community consultation shall include information concerning the specific services necessary to safely allow the defendant to gain or regain fitness to proceed in the community and must specify the necessary services that are not present and available in the community.
- (3) Community Consultations shall occur through either an in-person meeting or video conference depending on the defendant's individual clinical needs.
- (4) Within five judicial days of a court issuing a community consultation order the CMHP director shall:
 - (a) Review available records related to defendant's medical or service needs;
 - (b) Consult with the defendant to assess whether appropriate community restoration services are present and available in the community;
 - (c) Consult with any local agency that would be responsible for providing Community Restoration Services to the defendant if the defendant were to be released in the community;
 - (d) Submit to the court and parties a findings report describing the outcome of the community consultation regarding whether appropriate community restoration services are present and available in the community. The findings report shall be completed using the "Consultation Report Template" available at <http://www.oregon.gov/oha/OSH/LEGAL/Pages/information-mental-health-providers.aspx>; and
 - (e) Submit copies of the findings report described in OAR 309-088-0125 to the Authority by emailing aidand.assistadmin@dhs.oha.state.or.us.
- (5) The Community Consultation required in OAR 309-088-0125 shall be completed by a Qualified Mental Health Professional.
- (6) The CMHP director shall individually assess what services each defendant requires to gain capacity. Incapacitation does not automatically mean that legal skills training is necessary to gain capacity.
- (7) If the CMHP director determines that the community restoration services that would mitigate any risk posed by the defendant are present and available in the community, the community mental health program director may file notice of the determination with the court. If the CMHP director files such a determination with the court, the CMHP shall utilize the standardized community consultation template available at <http://www.oregon.gov/oha/OSH/LEGAL/Pages/information-mental-health-providers.aspx> and titled "Consultation Report Template".
- (8) Any CMHP that has not met one or more of the requirements in OAR 309-088-0125, OAR 309-088-0130, and OAR 309-088-0145 shall submit a written plan of correction to OHA within 7 judicial days of discovering that it has not met one or more of the requirements. Plans of corrections shall:
 - (a) identify the requirement(s) that was not met and the date, name of the corresponding defendant, county court of jurisdiction, and case number;
 - (b) describe the reason(s) for not meeting the requirement(s);

(c) describe the step(s) that the CMHP has taken to prevent recurrence, or describe the timeline and person responsible to complete future step(s) to prevent recurrence;

(d) be signed and dated by the CMHP Director or designee; and

(e) be submitted to the Authority by emailing it to aidand.assistadmin@dhsosha.state.or.us.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 430.640, SB 295 (2021)

STATUTES/OTHER IMPLEMENTED: ORS 430.640, ORS 430.630, ORS 161.365, ORS 161.370

ADOPT: 309-088-0130

RULE TITLE: CMHP Responsibilities During Commitment

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: These rules provide updates needed to provide standardization and clarification to better support the defendants who fall within the fitness to proceed jurisdiction and to make the current temporary rules permanent to align with the changed ORS 161.365 and .370 from SB 295 2021.

RULE TEXT:

- (1) Within 7 judicial days of receiving notice from the Oregon State Hospital that a defendant has been admitted to the Oregon State Hospital under ORS 161.370, the CMHP director shall notify OSH of the name and contact information of the person designated to work with the State Hospital on behalf of the CMHP director regarding the individual.
- (2) The person designated as required in OAR 309-088-0130 shall be the CMHP point of contact for the State Hospital until the State Hospital is informed by the CMHP of a newly designated person.
- (3) The CMHP Director is responsible for care coordination and completion of any referrals related to Community Restoration Services while an individual is in commitment until the defendant is returned to their county of responsibility or county of residence and the relevant commitment order is dismissed by the judge.
- (4) Throughout any period of commitment of the defendant, in order to facilitate an efficient transition to treatment in the community when ordered, the CMHP director shall at least every 30 days:
 - (a) Review the available community restoration services to identify if community restoration services have become present and available as outlined in OAR 309-088-0125. If community restoration services that the defendant requires have become available refer to OAR 309-088-0125 on how to proceed.
 - (b) Communicate with the superintendent of the state mental hospital or director of the facility by:
 - (A) Attending a treatment team meeting; or
 - (B) Speaking with the Qualified Mental Health Professional assigned to the defendant.
 - (c) Communicate with the defendant about transition planning.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 430.640, SB 295 (2021)

STATUTES/OTHER IMPLEMENTED: 430.640, ORS 430.630, ORS 161.365, 161.370

REPEAL: 309-088-0135

RULE TITLE: Discharge from the State Hospital for Community Restoration

NOTICE FILED DATE: 11/29/2021

RULE SUMMARY: This rule is being repealed because it uses old statutory language that has changed and it this rule section covers CMHP, so references to what the court may do are being removed.

RULE TEXT:

- (1) This rule applies when a defendant has been committed to the custody of the superintendent of the State Hospital.
- (2) The superintendent shall file notice with the court if it is determined that a defendant committed under ORS 161.370 is no longer a danger to self or others as a result of mental illness or defect, or that the services and supervision necessary to restore the defendant's fitness to proceed become available in the community. The superintendent shall:
 - (a) Consider the safety of the defendant and the public; and
 - (b) To the extent permitted or required by law or by court order, discuss with the CMHP the availability of services, supports, and supervision in the community.
- (3) The court may authorize the CMHP to conduct additional consultations and submit a new findings report to the court.
- (4) The committing court may vacate the order of commitment and use the process described in ORS 161.370(6)(b) and ORS 161.370(3) to order that the defendant be released on supervision to the community for further restoration subject to conditions that the court determines are appropriate.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 430.630, ORS 430.640

STATUTES/OTHER IMPLEMENTED: ORS 430.640