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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

**FILED**

12/29/2023 4:08 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Modification related to placement care of persons in Residential Treatment Facilities and Residential Treatment Homes

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/18/2024 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
JUAN RIVERA  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 01/17/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Juan Rivera

HEARING LOCATION

ADDRESS: All Hearings are Virtual, Salem, OR 97301

SPECIAL INSTRUCTIONS:

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1602886403?pwd=VnBtMUtZODIJLzFIZ1hQbmlleENNUT09>

Meeting ID: 160 288 6403

Passcode: 703234

Dial by your location

• +1 669 254 5252 US (San Jose)

Meeting ID: 160 288 6403

NEED FOR THE RULE(S)

The Oregon Health Authority is updating OAR chapter 309, division 035 to permanently address necessary changes following the United States District Court Orders related to Case No. 3:02-cv-00339-MO and Case No. 3:21-cv-01637-MO.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

United States District Court, District of Oregon, Portland Division – Case No. 3:02-cv-00339-MO and Case No. 3:21-cv-01637-MO – Order – 09/01/22 - <https://www.oregon.gov/oha/OSH/Documents/Mosman%20Order.pdf>

United States District Court, District of Oregon, Portland Division – Case No. 3:02-cv-00339-MO and Case No. 3:21-cv-01637-MO - Amended Order – 05/10/23 - <https://www.oregon.gov/oha/OSH/LEGAL/Documents/Expedited-admissions-policy-civil-and-VBA-Order.pdf>

United States District Court, District of Oregon, Portland Division – Case No. 3:02-cv-00339-MO and Case No. 3:21-cv-01637-MO - Second Amended Order – 07/03/23 - <https://www.oregon.gov/oha/OSH/reports/Mink-Bowman-second-amended-order-2023.07.03.pdf>

United States District Court, District of Oregon, Portland Division – Case No. 3:02-cv-00339-MO and Case No. 3:21-cv-01637-MO – Order Determining Supremacy Clause - <https://www.oregon.gov/oha/OSH/reports/Mosman-Order-RE-Supremacy-Clause.pdf>

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Rule Advisory Committee identified that increasing placements of individuals with supervisory entities will diminish accessibility for individuals from racial/ethnic/marginalized communities that do not have the same access to the support of a supervisory entity.

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#### FISCAL AND ECONOMIC IMPACT:

Potential for minimum costs associated to development of a separate residency agreement for individuals under jurisdiction. Potential for minimum costs associated to time to document in the individual's record. Potential for minimum costs associated to time to provide the RSP to the supervisory entity.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

Those operating Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

- Develop separate residency agreement – 60 minutes = \$17.77
- Time to document the information that was provided to the individual – 10 minutes = \$2.96
- Time to provide a copy of the residential service plan to the supervisory entity – 10 minutes = \$2.96
- Time to document the individual's verbal consent of services – 10 minutes = \$2.96

Costs based on current 1:1 staffing rate of \$17.77 per hour. Development cost (one time) = \$17.77. Documentation and copy costs = \$8.88 per individual under jurisdiction.

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#### DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Rule advisory committee included representative of both large and small businesses that provide licensed residential treatment services under the rules being reviewed. Concerns identified during the RAC meetings, include

- Increased costs associated with individuals under supervisory entity if placed involuntarily in a non-secure setting that cannot maintain the individual in the facility and the individual elopes and they must hold the bed for the individual.
- Increased costs associated with individuals under supervisory entity if placed involuntarily in a secure or non-secure setting when the individual is hospitalized, and the provider may not be able to bill for services during the transfer/discharge process.
- The involuntary placement of residents under a supervisory entity will lead to a need for more staff to maintain the same level of care and services within the facility.

RULES PROPOSED:

309-035-0100, 309-035-0105, 309-035-0110, 309-035-0130, 309-035-0140, 309-035-0163, 309-035-0165, 309-035-0170, 309-035-0175, 309-035-0185, 309-035-0190, 309-035-0195

AMEND: 309-035-0100

RULE SUMMARY: Add specification that some individuals may have their rights limited if they are under jurisdiction in compliance with court order pertaining to the placement of and care of individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0100

Purpose and Scope ¶

(1) These rules prescribe standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community based residential treatment facilities and community based residential treatment homes for adults with mental health disorders. The standards promote optimum health, mental and social well-being, and recovery for adults with mental health disorders through the availability of a wide range of home and community based residential settings and services. They prescribe how services will be provided in safe, secure, and homelike environments that recognize the dignity, individuality, and right to self-determination of each individual.¶

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for Home and Community-Based Services (HCBS) authorized under section 1915(i) of the Social Security Act;¶

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as individuals not receiving HCBS, consistent with the standards set out in OAR chapter 411, division 4.¶

(2) These rules apply to all Residential Treatment Homes (RTH) and Residential Treatment Facilities (RTF) providing services to adults with mental health disorders regardless of whether the program receives public funds. These rules prescribe distinct standards in some areas for Secure Residential Treatment Facilities (SRTF) or are based on the number of individuals receiving services in the program.¶

(3) These rules recognize that some residents may have their rights limited through civil or forensic commitment processes as described in ORS chapters 161 and 426, guardianship proceedings as described in ORS chapter 125, or other legal mechanisms as described in ORS chapter 127.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

RULE SUMMARY: Adds new and modifies some current definitions pertaining to the placement of and care of individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0105

Definitions ¶¶

As used in these rules, the following definitions apply:¶¶

- (1) "Abuse" includes but is not limited to:¶¶
  - (a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;¶¶
  - (b) Any physical injury caused by other than accidental means or that appears to be at variance with the explanation given of the injury;¶¶
  - (c) Willful infliction of physical pain or injury;¶¶
  - (d) Sexual harassment or exploitation including but not limited to any sexual contact between an employee of a community facility or community program or provider or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;¶¶
  - (e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being; or¶¶
  - (f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.¶¶
- (2) "Adult" means an individual 18 years of age or older.¶¶
- (3) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.¶¶
- (4) "Applicant" means the individual or entity, including the Division, who owns, seeks to own or operate, or maintains and operates a program and is applying for a license.¶¶
- (5) "Approved" means authorized or allowed by the Authority or designee.¶¶
- (6) "Authority" means the Oregon Health Authority or designee.¶¶
- (7) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.¶¶
- (8) "Care" means services including but not limited to supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.¶¶
- (9) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶¶
- (10) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for individuals with mental health disorders, operated by or contractually affiliated with a local mental health authority. CMHP's operate in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.¶¶
- (11) "Competitive Integrated Employment" means full-time or part-time work:¶¶
  - (a) At minimum wage or higher, at a rate that is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer, and who have similar training, experience, and skill;¶¶
  - (b) With eligibility for the level of benefits provided to other employees;¶¶
  - (c) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and¶¶
  - (d) As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.¶¶
- (12) "Contract" means a formal written agreement between the CMHP, CCO, Oregon Health Plan contractor, or the Division and a provider.¶¶
- (13) "Controlled" means a provider requires an individual to receive services from the provider or requires the

- individual to receive a particular service as a condition of living or remaining in the HCB setting.¶
- (14) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the CCO's members.¶
- (15) "Criminal Records Check" means the Oregon Criminal Records Check and the processes and procedures required by OAR 943-007-0001 through 943-007-0501.¶
- (16) "Crisis-Respite Services" means providing services to individuals who are RTF residents for up to 30 days.¶
- (17) "Designated Representative" means:¶
- (a) Any adult who is not the individual's paid provider who the individual or the individual's legal representative has authorized to serve as the individual's representative;¶
- (b) The power to act as a designated representative, valid until modified or rescinded. The individual or representative must notify the Division or provider of any change in designation. The notice shall include the individual's or the representative's signature as appropriate; or¶
- (c) An individual or the individual's legal representative is not required to appoint a designated representative.¶
- (18) "Deputy Director" means the deputy director of the Health Systems Division of the Oregon Health Authority or designee.¶
- (19) "Direct Care Staff" means program staff responsible for providing services for an individual.¶
- (20) "Division" means the Health Systems Division of the Oregon Health Authority or designee.¶
- (21) "Division Staff" means individuals employed by the Division or individuals delegated by the Division to conduct licensing activities under these rules.¶
- (22) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-~~V~~5-TR)" published by the American Psychiatric Association.¶
- (23) "Emergency Admission" means an admission to a program made on an urgent basis due to the pressing service needs of the individual.¶
- (24) "Employee" means an individual employed by a provider who receives wages, a salary, or is otherwise paid by the provider for providing the service.¶
- (25) "Evacuation Capability" means the ability of occupants, including individuals and program staff as a group, to evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:¶
- (a) Impractical (SR-2): A group, even with staff assistance, who cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes;¶
- (b) Slow (SR-1): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes; or¶
- (c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. The Division shall determine evacuation capability for programs in accordance with the NFPA 101A 2000 edition. Programs that are determined to be "Prompt" may be used in Group R occupancies classified by the building official in accordance with the building code.¶
- (26) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.¶
- (27) "HCB" means Home and Community-Based.¶
- (28) "HCBS" means Home and Community-Based Services, services provided in the individual's home or community.¶
- (29) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the requirements of OAR 411-004-0020 where an individual receives Home and Community-Based Services.¶
- (30) "Home-Like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individual.¶
- (31) "Individual" means any individual being considered for placement or is currently residing in a licensed program receiving residential services regulated by these rules on a 24-hour basis, except as excluded under ORS 443.400.¶
- (32) "Individual Service Record" means an individual's records maintained by the program pursuant to OAR 309-035-0130(4).¶
- (33) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 309-035-0195 due to health and safety risks. An individually-based limitation is based on a specific assessed need and only implemented

with the individual's or individual's representative's informed consent as described in OAR 309-035-0195.¶

(34) "Informed Consent" means:¶

(a) That options, risks, and benefits of the services outlined in these rules have been explained to an individual or the individual's legal representative in a manner that the individual comprehends; and¶

(b) That the individual or individual's legal representative consents to a person-centered service plan of action including any individually-based limitations to the rules prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.¶

(35) "Legal Representative" means an individual person with the legal authority to act for an individual and only within the scope and limits to the authority designated by the court or other agreement. A legal representative may include:¶

(a) For an individual under the age of 18, the parent, unless a court appoints another individual or agency to act as the guardian; or¶

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative.¶

(36) "Licensed Medical Professional (LMP)" means an individual who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:¶

(a) Holds at least one of the following educational degrees and valid licensures:¶

(A) Physician licensed to practice in the State of Oregon;¶

(B) Nurse Practitioner licensed to practice in the State of Oregon; or¶

(C) Physician's Assistant licensed to practice in the State of Oregon.¶

(b) Whose training, experience, and competence demonstrate the ability to conduct a comprehensive mental health assessment and provide medication management.¶

(37) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties operating a CMHP or MHO or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation that contracts with the Division to operate a CMHP or MHO for that county.¶

(38) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any individual.¶

(39) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder that limits an individual's ability to perform activities of daily living.¶

(40) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of an individual's need for mental health services. It involves collection and assessment of data pertinent to the individual's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services or a written statement that the person is not in need of community mental health services.¶

(41) "Mistreatment" means the following behaviors displayed by program staff when directed toward an individual:¶

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;¶

(b) "Financial Exploitation" means:¶

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;¶

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual reasonably believes that the threat conveyed would be carried out;¶

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual; or¶

(D) Failing to use the individual's income or assets effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.¶

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a program staff or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or her room or a specific area or restriction from access to ordinarily accessible areas of the setting, residence, or program, unless agreed to by the service plan.¶

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;¶

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:¶

- (A) Derogatory statements, inappropriate names, insults, verbal assaults, profanity, or ridicule;¶
- (B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;¶
- (C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the individual's well-being;¶
- (D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of the individual's ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard; or¶
- (E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.¶
- (f) "Wrongful Restraint" means the use of physical or chemical restraint except for:¶
- (A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or¶
- (B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.¶
- (42) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to an individual other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶
- (43) "Person-Centered Service Plan" means written documentation that includes details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.¶
- (44) "Person-Centered Service Plan Coordinator" means the individual who may be a case manager, service coordinator, personal agent, or other individual designated by the Division to provide case management services or person-centered service planning for and with an individual.¶
- (45) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.¶
- (46) "Program" means the Residential Treatment Facility or Residential Treatment Home licensed by the Division and may refer to the setting grounds, caregiver, staff, or services as applicable to the context.¶
- (47) "Program Administrator" means the individual designated by the provider as responsible for the daily operation and maintenance of the RTH or RTF or the program administrator's designee.¶
- (48) "Program Staff" means an employee, volunteer, direct care staff, or individual who, by contract with a program, provides a service to an individual.¶
- (49) "Progress Notes" means the notations in the individual's record documenting significant information concerning the individual and summarizing progress made relevant to the objectives outlined in the residential service plan.¶
- (50) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the individual to prevent self-destructive acts and to safeguard the individual's property and funds when used in the relevant context.¶
- (51) "Provider" means the program administrator, individual, or organizational entity licensed by the Division that operates the program and provides services to individuals.¶
- (52) "Representative" refers to both "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.¶
- (53) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual or the individual's legal representative when the individual receives services. The Residency Agreement identifies the rights and responsibilities of the individual and the provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws, unless otherwise required by administrative rule or statute.¶
- (54) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to an individual in or through the program based upon an individual assessment of needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the program is operated by a mental health service agency that provides other services to the individual.¶
- (55) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-hour basis for six to 16 individuals as described in ORS 443.400(9). An RTF does not include the entities set out in ORS 443.405.¶
- (56) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to provide services on a 24-hour basis for up to five individuals as defined in ORS 443.400(10). A RTH does not include the entities set out in ORS 443.405.¶

(57) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of an individual.¶

(58) "Room and Board" means compensation for the provision of meals, a place to sleep, and tasks such as housekeeping and laundry.¶

(59) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.¶

(60) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, approved by the Division that restricts an individual's exit from the setting through the use of approved locking devices on individual exit doors, gates, or other closures.¶

(61) "Services and Supports" means those services defined as habilitation services and psychosocial rehabilitation services under OAR 410-172-0700(1), (2) and 410-172-0710(1), (2).¶

(62) "Setting" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a program.¶

(63) "Supervision" means a program staff's observation and monitoring of an individual or oversight of a program staff by the program administrator applicable to the context.¶

(64) "Supervisory Entity" means the court or state agency that has the legal authority to place an individual with a provider or to set legal conditions for the individual to follow in order to be placed or remain in the community, as provided in ORS chapters 161 and 426. Supervisory entity includes the state agency's designee, and any individual or entity that is legally responsible for monitoring the individual, coordinating care, and providing status reports to the supervising court or state agency. Supervisory entity does not include guardians appointed under ORS chapter 125.¶

(65) "Termination of Residency" means the time at which the individual ceases to reside in the program and includes the transfer of the individual to another program; but does not include absences from the setting for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.¶

(656) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical, or other symptoms or social, educational, or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability, or alcohol or drug problem.¶

(667) "Unit" means the bedroom and other space of an individual receiving services from a program, as agreed to in the Residency Agreement. Unit includes private single occupancy spaces and shared units with roommates.¶

(678) "Volunteer" means an individual who provides a service or takes part in a service provided to an individual receiving supportive services in a program or other provider and who is not a paid employee of the program or other provider.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991



AMEND: 309-035-0110

RULE SUMMARY: Allows for limitation of resident rights pertaining to the placement of individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0110

Required Home-like Qualities ¶¶

This rule becomes effective July 1, 2016, and enforceable pursuant to OAR 309-035-0115 (17).¶¶

(1) A program, except for a SRTF, must have all of the following qualities:¶¶

(a) The setting is integrated in and supports the individual's same degree of access to the greater community as individuals' not receiving HCBS including opportunities for an individual to:¶¶

(A) Seek employment and work in competitive integrated employment settings:¶¶

(i) For which an individual is compensated at a rate that:¶¶

(I) Is not less than the higher of the rate specified in federal, state, or local minimum wage law;¶¶

(II) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not persons with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or¶¶

(III) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills.¶¶

(ii) For which an individual is eligible for the level of benefits provided to other employees;¶¶

(iii) At a location where the individual interacts with other individuals who are not individuals with disabilities. This does not include supervisory personnel or individuals providing services to the individual to the same extent as individuals without disabilities and who are in comparable positions who interact with others; and¶¶

(iv) That present opportunities for advancement similar to those for other employees who are not individuals with disabilities and who have similar positions.¶¶

(B) Engage in greater community life;¶¶

(C) Control personal resources; and¶¶

(D) Receive services in the greater community.¶¶

(b) The program is selected by an individual or ~~legal or designated~~ the individual's legal representative from among available setting options for which the individual meets medical necessity criteria including non-disability specific settings and an option for a private unit in a residential setting. The setting options shall be:¶¶

(A) Identified and documented in the individuals' person-centered service plan;¶¶

(B) Based on the individual's needs and preference; and¶¶

(C) Based on the individual's available resources for room and board.¶¶

(c) The program ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;¶¶

(d) The program optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact;¶¶

(e) The program facilitates individual choice regarding services and supports and individual choice as to who provides the services and supports.¶¶

(2) The individual or the individual's legal representative shall have the opportunity to select from among available setting options including non-disability specific settings and an option for a private unit in a setting. The setting options shall be:¶¶

(a) Identified and documented in the person-centered service plan for the individual;¶¶

(b) Based on the individual's needs and preferences; and¶¶

(c) Based on the individual's available resources for room and board.¶¶

(3) The provider shall take reasonable steps to ensure that the program maintains the qualities identified in sections (2) and (3) of this rule. Failure to take reasonable steps may include but is not limited to:¶¶

(a) Failure to maintain a copy of the person-centered service plan at the setting;¶¶

(b) Failure to cooperate or provide necessary information to the person-centered planning coordinator; or¶¶

(c) Failure to attend or schedule a person-centered planning meeting where applicable.¶¶

(4) A program shall maintain the following:¶¶

(a) The setting shall be physically accessible to an individual;¶¶

(b) The provider shall provide the individual a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable Residency Agreement;¶¶

(c) The provider shall provide and include in the Residency Agreement that the individual has, at a minimum, the

same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the Residency Agreement shall provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes shall be substantially equivalent to the processes provided under landlord-tenant laws;¶¶

(d) The provider shall provide each individual with privacy in their own unit;¶¶

(e) The provider shall maintain units with entrance doors lockable by the individual. The program shall ensure that only the individual, the individual's roommate, where applicable, and only appropriate staff as described in the individual's person-centered plan have keys to access the unit;¶¶

(f) The provider shall ensure that individuals sharing units have a choice of roommates;¶¶

(g) The provider shall provide and include in the Residency Agreement that individuals have the freedom to decorate and furnish their own unit;¶¶

(h) The provider shall allow each individual to have visitors of their choosing at any time;¶¶

(i) The provider shall ensure each individual has the freedom and support to control their own schedule and activities;¶¶

(j) The provider shall ensure each individual has the freedom and support to have access to food at any time.¶¶

(5) A SRTF is not required to maintain the qualities or meet the obligations identified in section (4)(d)(e)(f)(h)(i) of this rule. The provider is not required to seek an individually-based limitation to comply with these rules.¶¶

(6) A provider is not required to maintain the qualities or meet the obligations identified in section (4) (b) or (c) of this rule when providing crisis-respite services to an individual. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules.¶¶

(7) A provider may modify or limit the rights identified in sections (1), (2), and 4(b) through (i) of this rule when providing services to an individual, who is placed with the provider by a court, OHA, CMHP or PSRB order under ORS chapters 161 or 426, as appropriate for the individual's needs and court ordered requirements, or as limited by the individual's legal representative. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules. The limitations required for safety or treatment reasons, or as required by the supervising entity must be included in the individual's person-centered service plan.¶¶

(8) When a provider is unable to meet a qualities outlined under section (4)(e) through (4)(j) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the consent of the individual or the individual's legal representative. The provider may not apply an individually-based limitation until the limitation is approved, consented and documented as outlined in OAR 309-035-0195.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0130

RULE SUMMARY: Modifies who has access to records of individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0130

Records ¶

(1) Records shall be maintained to document the legal operation of the program, personnel practices, and individual services and supports. All records shall be properly obtained, accurately prepared, safely stored, and readily available or electronically accessible within the setting. All entries in records required by these rules shall be in ink, indelible pencil, or approved electronic equivalent prepared at the time or immediately following the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent. ¶

(2) Records documenting the legal operation of the program shall include but not limited to: ¶

(a) Written approval for occupancy of the setting by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports, or other documentation pertaining to the safe and sanitary operation of the program issued during the development or operation of the program; ¶

(b) Application for license, related correspondence, and site inspection reports; ¶

(c) Program operating budget and related financial records; ¶

(d) Payroll records, program staff schedules and time sheets; ¶

(e) Materials safety and data sheets; ¶

(f) Fire drill documentation; ¶

(g) Fire alarm and sprinkler system maintenance and testing records; ¶

(h) Incident reports; and ¶

(i) Policy and procedure manual. ¶

(3) Personnel records shall document and include: ¶

(a) Job descriptions for all positions; and ¶

(b) Separate program staff records including, but not limited to, written documentation of program staff identifying information and qualifications, criminal record clearance, T.B. test results, documentation that Hepatitis B inoculations have been given or made available, performance appraisals, and documentation of pre-service orientation and other training. ¶

(4) Individual service records shall be maintained for each individual and include: ¶

(a) An easily accessible summary sheet that includes, but is not limited to, the individual's name, previous address, date of admission to the program, gender, biological sex, date of birth, marital status, legal status, religious preference, health provider information, evacuation capability, DSM diagnosis, physical health diagnosis, medication allergies, food allergies, information indicating whether advance mental health and health directives and burial plan have been executed, and the name of individuals to contact in case of emergency; ¶

(b) The names, addresses, and telephone numbers of the individual's legal representative, legal guardian or conservator, parents, next of kin, supervisory entity, or other significant persons; physicians or other medical practitioners; dentist; case manager or therapist; day program, school, or employer; and any governmental or other agency representatives providing services to the individual; ¶

(c) A mental health assessment and background information identifying the individual's residential service needs; ¶

(d) Advance mental health and medical health directives, burial plans, or location of these; ¶

(e) A residential service plan and copy of plans from other service providers; ¶

(f) Effective July 1, 2016, and pursuant to OAR 309-035-0115(17), a person-centered service plan; ¶

(g) Documentation of the individual's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the individual; and ¶

(h) Health-related information and up-to-date information on medications. ¶

(5) The program shall retain all referral packets, screening materials, and screening responses-placement determinations for a minimum of three years from the date of the referral. ¶

(6) For an individual receiving crisis-respite services, the provider shall obtain and maintain records as outlined in these rules. Because it may not be possible to obtain and maintain complete records during a crisis-respite stay, the program shall, at a minimum, maintain records that are deemed reasonable to provide services in the program. ¶

(7) All individual service records shall be stored in a weatherproof and secure location. Access to records shall be limited to the program administrator and direct care staff unless otherwise allowed in these rules.¶

(8) All individual service records shall be kept confidential as required by law. A signed release of information shall be obtained for any disclosure from an individual service record ~~in accordance with all applicable laws and rules,~~ except as otherwise authorized by law. Release of information is not required to provide information to the individual's legal representative or supervisory entity.¶

(9) An individual or the individual's legal representative shall be allowed to review and obtain a copy of the individual service record as required by ORS 179.505(9).¶

(10) Pertinent information from records of an individual being transferred to another facility shall be transferred with the individual. A signed release of information shall first be obtained in accordance with applicable laws and rules.¶

(11) The program shall keep all records, except those transferred with an individual, for a period of three years.¶

(12) If a program changes ownership or program administrator, all individual and personnel records shall remain at the setting. Prior to the dissolution of any program, the program administrator shall notify the Division in writing as to the location and storage of individual service records or those records shall be transferred with the individual.¶

(13) If an individual or the individual's legal representative disagrees with the content of the individual service record, or otherwise desires to provide documentation for the record, the individual or the individual's legal representative may provide material in writing that then shall become part of the individual service record.¶

(14) The program shall establish an individual service record upon the individual's admission. Prior to admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the program shall determine with whom communication needs to occur and make good faith efforts to obtain the needed authorizations for release of information. The record established upon admission shall include the materials reviewed in screening the individual, the summary sheet, and any other available information. The program shall make every effort to complete the individual service record in a timely manner. The assessment and residential service plan shall be completed in accordance with OAR 309-035-0185. Records on prescribed medications and health needs shall be completed as outlined in OAR 309-035-0215.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0140

RULE SUMMARY: Allows for limitation of resident rights pertaining to the placement of individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0140

#### Setting Requirements ¶¶

(1) The provider shall ensure that the setting meets the requirements for approved Group SR or I occupancies in the Building Code and the Fire Code in effect at the time of original licensure. When a change in setting use results in a new building occupancy classification, the program's setting shall meet the requirements for approved Group SR or I occupancies in the Building Code in effect at the time of such change. If occupants are capable of evacuation within three minutes, refer to Group R occupancies.¶

(2) Programs shall be accessible as follows:¶

(a) Those settings or portions of settings that are licensed, constructed, or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations shall meet the physical accessibility requirements in chapter 11 of the Oregon Structural Specialty Codes. These codes specify requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act as amended in 1988;¶

(b) In order to ensure program accessibility under Title II of the Americans with Disabilities Act, the Division may require additional accessibility improvements; and¶

(c) Any accessibility improvements made to accommodate an identified individual shall be in accordance with the specific needs of the individual.¶

(3) An accessible outdoor area is required and shall be made available to all individuals. For programs or portions thereof licensed on or after June 1, 1998, a portion of the accessible outdoor area shall be covered and have an all-weather surface such as a patio or deck.¶

(4) The setting shall have sufficient and safe storage areas that include but not limited to:¶

(a) Storage for a reasonable amount of individual belongings beyond that available in the individual's unit shall be provided appropriate to the size of the setting;¶

(b) All maintenance equipment including yard maintenance tools shall be maintained in adequate storage space. Equipment and tools that pose a danger to individuals shall be kept in locked storage; and¶

(c) Storage areas necessary to ensure a functional, safe, and sanitary environment consistent with OAR 309-035-0140 through 0155 and 309-035-0210 through 0215.¶

(5) For programs initially licensed on or after June 1, 1998, all individual use areas and individual units shall be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches except that a minimum width of 48 inches shall be provided along the route to accessible bedrooms and bathrooms and between common areas and required exits.¶

(6) The setting shall have sufficient space for confidential storage of both individual service records and business records, for program staff use in completing record-keeping tasks, and for a telephone. Other equipment including fire alarm panels and other annunciators shall be installed in an area readily accessible to staff in accordance with the Fire Code.¶

(7) The provider shall provide a unit for each individual, although the program may maintain units to be shared by more than one individual consistent with these rules. The unit shall include sleeping accommodations for the individual and be separated from other areas of the setting by an operable door with an approved latching device. The provider shall maintain units as follows:¶

(a) For programs licensed prior to June 1, 1998, units shall be a minimum of 60 square feet per resident and allow for a minimum of three feet between beds;¶

(b) For programs or portions thereof initially licensed on or after June 1, 1998, units shall be limited to one or two individuals. At least ten percent of units, but no less than one unit, shall be accessible for individuals with mobility disabilities. All units shall include a minimum of 70 square feet per individual exclusive of closets, vestibules, and bathroom facilities and allow a minimum of three feet between beds;¶

(c) The provider shall provide a lockable entrance door to each unit for the individual's privacy, except as otherwise limited under OAR 309-035-0110(7), as follows:¶

(A) The locking device shall release with a single-action lever on the inside of the room and open to a hall or common-use room;¶

(B) The provider shall provide each individual with a personalized key that operates only the door to his or her unit from the corridor side;¶

(~~D~~C) The provider shall maintain a master key to access all of the units that is easily and quickly available to the

provider, program administrator, and appropriate program staff;¶

(E) The provider may not disable or remove a lock to a unit ~~without obtaining~~ unless the provider has written consent from the individual or the individual's legal representative through the individually-based limitations process outlined in, or as permitted under OAR 309-035-0110(5) through (8) and OAR 309-035-0195; and¶

(F) Section (7) of these rules are effective July 1, 2016 and enforceable as described in OAR 309-035-0115(17).¶

(d) A clothes closet with adequate clothes hanging rods shall be accessible within each unit for storage of each individual's clothing and personal belongings. For programs initially licensed on or after June 1, 1998, built-in closet space shall be provided totaling a minimum of 64 cubic feet for each individual. In an accessible unit, the clothes hanging rod height shall be adjustable or no more than 54 inches in height to ensure accessibility for an individual using a wheelchair; and¶

(e) Each unit shall have exterior windows with a combined area at least one-tenth of the floor area of the room. Unit windows shall be equipped with curtains or blinds for privacy and light control. For programs or portions of programs initially licensed on or after June 1, 1998, an escape window shall be provided consistent with building code requirements.¶

(8) Bathing and toilet facilities shall be conveniently located for individual use, provide permanently wired light fixtures that illuminate all parts of the room, provide individual privacy for individuals, provide a securely affixed mirror at eye level, be adequately ventilated, and include sufficient facilities specially equipped for use by individuals with a physical disability in buildings serving such individuals:¶

(a) In programs licensed prior to June 1, 1998, a minimum of one toilet and one lavatory shall be available for each eight individuals, and one bathtub or shower shall be available for each ten individuals; and¶

(b) In programs or portions of programs initially licensed on or after June 1, 1998, a minimum of one toilet and one lavatory shall be available for each six individuals, and a minimum of one bathtub or shower shall be available for each ten individuals, when these fixtures are not available in units. At least one centralized bathroom along an accessible route shall be designed for disabled access in accordance with Chapter 11 of the Oregon Structural Specialty Code.¶

(9) The setting shall include lounge and activity areas for social and recreational use by individuals, program staff and invited guests totaling no less than 15 square feet per individual.¶

(10) Laundry facilities shall be separate from food preparation and other individual use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both individual and staff use. In programs initially licensed on or after June 1, 1998, separate residential laundry facilities shall be provided when the primary laundry facilities are located in another building, are of commercial type, or are otherwise not suitable for individual use. The following shall be included in the primary laundry facilities:¶

(a) Countertops or spaces for folding tables sufficient to handle laundry needs for the facility;¶

(b) Locked storage for chemicals and equipment;¶

(c) Outlets, venting, and water hook-ups according to state building code requirements. Washers must have a minimum rinse temperature of 155 degrees Fahrenheit (160 degrees Fahrenheit recommended) unless a chemical disinfectant is used; and¶

(d) Sufficient storage and handling space to ensure that clean laundry is not contaminated by soiled laundry.¶

(11) Kitchen facilities and equipment in a setting may be of residential type except as required by the state building code and fire code or local agencies having jurisdiction. The setting's kitchen shall have the following:¶

(a) Dry storage space not subject to freezing in cabinets or a separate pantry for a minimum of one week's supply of staple foods;¶

(b) Sufficient refrigeration space for a minimum of two days' supply of perishable foods. The space shall be maintained at 45 degrees Fahrenheit or less and freezer space maintained at 0 degrees Fahrenheit or less;¶

(c) A dishwasher may be approved residential type with a minimum final rinse temperature of 155 degrees Fahrenheit (160 degrees recommended) unless chemical disinfectant is used;¶

(d) A separate food preparation sink and hand washing sink;¶

(e) Smooth, nonabsorbent and cleanable counters for food preparation and serving;¶

(f) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;¶

(g) Stove and oven equipment for cooking and baking needs; and¶

(h) Storage for a mop and other cleaning tools and supplies used for food preparation for dining and adjacent areas. Cleaning tools shall be maintained separately from those used to clean other parts of the setting.¶

(12) The setting shall have a separate dining room or an area where meals are served for use by individuals, employees, and guests:¶

(a) In programs licensed prior to June 1, 1998, the setting's dining area shall seat at least half of the individuals at one time with a minimum area of 15 square feet per individual; and¶

(b) In programs or portions of programs initially licensed on or after June 1, 1998, the setting's dining space shall seat all residents with a minimum area of 15 square feet per individual exclusive of serving facilities and required exit pathways.¶

(13) All details and finishes shall meet the finish requirements of applicable sections of the Building Code and the Fire Code as follows:¶

- (a) Surfaces of all walls, ceilings, windows, and equipment shall be nonabsorbent and readily cleanable;¶
- (b) The setting's, flooring, thresholds, and floor junctures shall be designed and installed to prevent a tripping hazard and to minimize resistance for passage of wheelchairs and other ambulation aids. In addition, hard surface floors and base shall be free from cracks and breaks, and bathing areas shall have non-slip surfaces;¶
- (c) In programs or portions of programs initially licensed on or after June 1, 1998, all doors to units, bathrooms, and common use areas shall provide a minimum clear opening of 32 inches;¶
- (d) In all programs:¶
  - (A) Lever type door hardware shall be provided on all doors used by individuals;¶
  - (B) Locks used on doors to individual units must be interactive to release with operation of the inside door handle and comply with the requirements established by OAR 309-035-0140(7)(c)(A)(B)(D)(E);¶
  - (C) Exit doors may not include locks that prevent evacuation except in accordance with building code and fire code requirements and with written approval of the Division; and¶
  - (D) An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when individuals or others enter or exit the setting.¶
- (e) Handrails shall be provided on all stairways as specified in the Building Code.¶

(14) All areas of the setting shall be adequately ventilated and temperature controlled in accordance with the Mechanical and Building Code requirements:¶

- (a) Each setting shall have and maintain heating equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit at a point three inches above the floor. During times of extreme summer heat, fans shall be made available when air conditioning is not provided;¶
- (b) All toilet and shower rooms shall be adequately ventilated with a mechanical exhaust fan, window mounted exhaust fan, or central exhaust system that discharges to the outside;¶
- (c) Where used, the design and installation of fireplaces, furnaces, wood stoves and boilers shall meet standards of the Oregon Mechanical Specialty Code and the Boiler Specialty Code, as applicable. Documentation of annual inspection noting safe and proper operation shall be maintained at the setting; and¶
- (d) In individual-use areas, hot water temperatures shall be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures in laundry and kitchen areas shall be at least 155 degrees Fahrenheit.¶

(15) All wiring systems and electrical circuits shall meet the standards of Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices shall be properly wired and in good repair. The provider shall ensure the following:¶

- (a) When not fully grounded, circuits in individual use areas shall be protected by GFCI type receptacles or circuit breakers as an acceptable alternative;¶
- (b) A sufficient supply of electrical outlets shall be provided to meet individual and staff needs;¶
- (c) No more than one power strip may be utilized for each electrical outlet;¶
- (d) Connecting power strips to one another or use of other outlet expansion devices is prohibited;¶
- (e) Extension cord use in units and common use rooms is prohibited;¶
- (f) Lighting fixtures shall be provided in each individual unit and bathroom, switchable near the entry door and in other areas as required to meet task illumination; and¶
- (g) Lighting fixtures that illuminate evacuation pathways shall be operable within ten seconds during a failure of the normal power supply and provide illumination for a period of at least two hours.¶

(16) All plumbing shall meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures shall be properly installed and in good repair.¶

(17) The program shall provide adequate access to telephones for private use by individuals. The program shall not limit the hours of availability for phone use. A program may establish guidelines for fair and equal use of a shared telephone. Each individual or individual's representative shall be responsible for payment of long-distance phone bills where the calls were initiated by the individual, unless other mutually agreed arrangements have been made.¶

(18) Smoking is not allowed within the setting including within buildings or on the grounds.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0163

RULE SUMMARY: Allows for limitation of resident rights pertaining to the placement of individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities and those involved in the admission process.

CHANGES TO RULE:

309-035-0163

Admission to Program ¶

(1) The provider shall ensure the admission process includes the following:¶

(a) The provider shall specify in its admission policy and procedures the program staff responsible for each component of the admission information-gathering and decision-making process. The program shall allocate responsibilities to promote effective processing of referrals and admissions;¶

(b) The provider shall develop and implement admission policies and procedures that support a take into consideration; the placement of individuals by a supervisory authority under ORS chapters 161 or 426 or by the informed consent of the individual's legal representative, the ability of the program to meet the service needs of both the individual and current residents of the facility, and the prospective individual's right to select and choose from available service settings when the individual meets medical necessity criteria; has the capacity to engage in the treatment programs offered by the facility. An individual under civil commitment has the right to appeal the placement by the OHA designee as outlined in OAR 309-033-0290(5).¶

(c) The provider shall support the individual's right to select a program by assisting the person-centered service plan coordinator in identifying and documenting program options in the person-centered service plan, including providing information regarding program services and rates; and, The individual's right to select a service setting may be limited by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426, or by the informed consent of the individual's legal representative.¶

(d) The provider may close admissions to the program when accepting an additional prospective individual may cause the program to exceed its reasonable waitlist. When admissions are closed, the provider is not required to accept referrals, conduct screenings, or evaluate admissions criteria as directed by these rules.¶

(2) Unless limited by contractual agreement with the Division or other Division-approved party, the program may accept referrals from a variety of sources.¶

(3) In accordance with ORS 179.505 and the 42 CFR, Part 2, the program shall obtain an authorization for the release of information for disclosure for any confidential information concerning a prospective individual.¶

(4) The provider shall consider an individual for admission without regard to race, color, sex or sexual orientation, except as may be limited by room arrangement, religion, creed, national origin, age, except under 18 years, familial status, marital status, source of income, or disability in addition to the mental health disorder.¶

(5) Prior to accepting an individual for admission to the program, the program administrator shall determine that the individual meets admission criteria including the following:¶

(a) The provider shall offer each individual referred for placement at the program an opportunity to participate in a screening interview prior to being accepted or denied placement at a program. The screening is intended to provide information about the program and the services available as well as to obtain information from the prospective individual, a relative, and agencies currently providing services to the individual sufficient to determine eligibility for admission and service needs; and¶

(b) The provider shall receive screening packets for each individual referred for placement. At a minimum, screening packets shall include:¶

(A) Written documentation that the prospective individual has or is suspected of having a mental health disorder;¶

(B) Background information including a mental health assessment, description of previous living arrangements, service history, behavioral issues, and service needs;¶

(C) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the individual's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;¶

(D) Copies of documents or other documentation relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions;¶

(E) A copy of the prospective individual's most recent mental health treatment plan or in the case of an emergency or crisis-respite admission a summary of current mental health treatment involvement; and¶

(F) Documentation of the prospective individual's ability to evacuate the building consistent with the facility's



designated evacuation capability and other concerns about potential safety risks.¶

(c) The provider shall ensure that screenings be conducted at the prospective program setting unless:¶

(A) Travel arrangements cannot be made due to inclement weather; or¶

(B) The individual or representative requests a phone screening or screening at the individual's current location.¶

(d) The provider shall contact the referring agency to schedule a screening appointment within 48 hours of receipt of the referral packet;¶

(e) The provider shall coordinate with the referring agency to schedule a screening appointment to occur within 14 calendar days from the date of receipt of the referral packet;¶

(f) The provider shall provide the following to each individual referred for placement:¶

(A) Materials explaining conditions of residency;¶

(B) Services available to individuals residing in the program; and¶

(C) An opportunity to meet with a prospective roommate if the program uses a shared room model.¶

(g) The screening meeting shall include the program administrator, the prospective individual, and the individual's representative. With the consent of the prospective individual's consent or the individual's legal representative, the meeting may also include family members, other representatives as appropriate, representatives of relevant service-providing agencies, and others with an interest in the individual's admission.¶

(6) If an individual is referred for emergency or crisis-respite admission, an amended or abbreviated screening process may be used to more quickly meet the needs of the individuals seeking placement. Screening and admission information obtained may be less comprehensive than for regular admissions but shall be sufficient to determine that the individual meets admission criteria and that the setting and program is appropriate considering the individual's needs. The program shall document the reasons for incomplete information.¶

(7) Prior to admission, the provider shall evaluate and determine whether a prospective individual is eligible for admission based on the following criteria. The individual shall:¶

(a) Be assessed to have a mental health disorder or a suspected mental health disorder;¶

(b) Be at least 18 years of age;¶

(c) Not require continuous nursing care unless a reasonable plan to provide the care exists, the need for residential treatment supersedes the need for nursing care, and the Division approves the placement;¶

(d) Have evacuation capability consistent with the setting's SR occupancy classification; and¶

(e) Meet additional criteria required or approved by the Division through contractual agreement or condition of licensing.¶

(8) For admission to an SRTF, the provider shall evaluate and determine whether a prospective individual is eligible for admission, based on the individual meeting all criteria in OAR 410-172-0720(7).¶

(9) The provider may deny an individual admission to its program for the following reasons:¶

(a) Failure to meet admission criteria established by these rules;¶

(b) Inability to pay for services due to lack of presumed Medicaid eligibility or other funds;¶

(c) Documented instances of behaviors within the last 14 calendar days that would pose a reasonable and significant risk to the health, safety, and well-being of the individual or another individual, if the individual is admitted;¶

(d) Lack of availability of necessary services required to maintain the health and safety of the individual (no nursing, etc.) or lack of an opening at the setting; or¶

(e) The individual declines the offer for screening.¶

(10) The provider may not deny an individual admission to its program as follows:¶

(a) Prior to offering a face-to-face screening or other screening process as allowed by these rules; or¶

(b) Due to county of origin, responsibility, or residency.¶

(11) The provider's admission decision shall be made as follows:¶

(a) The program's decision shall be based on review of screening materials, information gathered during the face-to-face screening meeting, and evaluation of the admission criteria;¶

(b) The program shall inform the prospective individual, and the individual's legal representative supervisory entity, and referring entity, as applicable, of the admission decisions within 72 hours of the screening meeting;¶

(c) When the program denies admission, the program shall inform the applicant, provide written notification to the individual and the individual's legal representative, and the supervisory entity and referring entity in writing, as applicable, of the basis for the decision and the individual's right to appeal the decision;¶

(d) When the program approves admission, the program shall inform the applicant, individual and the individual's legal representative, and the supervisory entity, and referring entity, as applicable, through an acceptance notification that shall include:¶

(A) When not waitlisted or first on the waitlist, an estimated date of admission; and¶

(B) When waitlisted, the number on the waitlist.¶

(12) Management of waitlists includes the following:¶

(a) The program shall establish admission waitlists of reasonable length;¶

- (b) The program shall document actions taken in the management of the waitlist;¶
- (c) The program shall contact a waitlisted individual, the individual's representative, and the referring entity monthly to determine if the individual has been placed elsewhere;¶
- (d) The program shall prioritize admissions on a waitlist as follows:¶
  - (A) The program shall give first priority ~~to~~ consideration to each of those individuals ~~who may be:~~¶
    - (i) Under a current civil commitment or under the jurisdiction of the Psychiatric Security Review Board and extremely dangerous person commitment pursuant to ORS chapter 426; ¶
    - (ii) Placed on court-ordered community restoration as an aid and assist defendant pursuant to ORS chapter 161;¶
    - (iii) Found guilty except for insanity of a criminal offense and is currently under the jurisdiction of the Psychiatric Security Review Board pursuant to ORS 161.327;¶
    - (iv) Found guilty except for insanity of a criminal offense and has been committed to a facility designated by OHA pursuant to ORS 161.328; or¶
    - (v) Is seeking to transition from the Oregon State Hospital or other hospital level of care into the community;¶
  - (B) The program shall give second priority consideration for admission to those individuals seeking admission to programs-a:¶
    - (i) As an alternative to or to prevent civil commitment or placement at the Oregon State Hospital; or¶
    - (ii) For the purpose of transitioning from a program or a secure residential treatment facility;¶
- (e) The program shall determine priority for admission based on the priorities described above and on a first-come first-served basis. The program may not consider the individual's county of origin, responsibility, or residency; and¶
- (f) Within 72 hours of a provider learning of a pending opening, the program shall ~~notify the first~~ provide written or electronic notification to the referring CMHP, the individual on the waitlist, the individual's legal representative, and the referring entity of the expected opening. The individual shall respond or supervisory entity as applicable, of the expected opening. The CMHP is responsible to verify the individual or their representative received the notification of the opening and respond to the program within three business days of the provider's notification. If any of the following occurs, the program may offer the opening to the next individual on the wait list:¶
  - (A) The program receives no response from the individual; the individual's legal representative, supervisory entity or the referring entity, as applicable, within three business days;¶
  - (B) The individual will not be ready to transition into the program within one week; or¶
  - (C) The individual no longer desires placement at the program.¶
- (13) The program shall obtain informed consent for services from the individual or the individual's legal representative prior to admission to the program unless the. Informed consent is not required for individual's ability to consent is legally restricted placed at a program pursuant to a court, OHA, CMHP or PSRB order issued under ORS chapter 161 or 426.¶
- (14) Upon admission, the program administrator shall provide and document an orientation to each new individual that includes but is not limited to the following:¶
  - (a) A complete tour of the setting;¶
  - (b) Introductions to other individuals and program staff;¶
  - (c) Discussion of house rules;¶
  - (d) Explanation of the laundry and food service schedule and policies;¶
  - (e) Review of the individual's rights;¶
  - (f) Review of grievance procedures;¶
  - (g) ~~Completion~~ Review of ~~at~~ the residency agreement;¶
  - (h) Discussion of the conditions under which residency would be terminated;¶
  - (i) General description of available services and activities;¶
  - (j) Review and explanation of advance directives. If the individual does not already have any advance directives, the program shall provide an opportunity to complete advanced directives;¶
  - (k) Emergency procedures in accordance with OAR 309-035-0145(2);¶
  - (L) Review of the person-centered planning process; and¶
  - (m) Review of the process for imposing individually-based limitations on certain program obligations to the individual.

Statutory/Other Authority: ORS 413.042, ORS 443.450

Statutes/Other Implemented: ORS 413.032, ORS 443.400 - 443.465, ORS 443.991

AMEND: 309-035-0165

RULE SUMMARY: Modifies the requirement for signature of residency agreement when the individual is under jurisdiction and the jurisdiction is making the placement in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0165

Residency Agreement ¶

This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).¶

(1) The provider shall enter into a written residency agreement with each individual or the individual's legal representative and be admitted to the program consistent with the placement type with the following procedures:¶

(a) The written residency agreement shall be reviewed and signed by the program administrator, the individual, and the individual's legal representative prior to or at the time of admission; If the individual refuses to sign the agreement after reviewing the agreement with the provider, the agreement is considered valid if signed by the supervisory entity.¶

(b) The provider shall provide a copy of the signed agreement to the individual or the individual's legal representative, and the provider shall retain the original signed agreement in the individual's service record;¶

(c) The provider shall give written notice to an individual or the individual's legal representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and¶

(d) The provider shall update residency agreements at least annually and also when social security rates change or an individual's finances change such that the amount paid for room and board changes.¶

(2) The residency agreement shall include, but is not limited to, the following:¶

~~(a)~~ The room and board rate describing the estimated public and private pay portions of the rate and the following:¶

~~(Aa)~~ When an individual's social security or other funding is not active at the time of admission to the program, the program shall prepare the room and board agreement based upon the estimated benefit to be received by the individual; and¶

~~(Bb)~~ If, when funding is later activated, actual income of the individual varies from the estimated income noted on the residency agreement, the agreement shall be updated and resigned by all the applicable parties.¶

~~(bc)~~ Services and supports provided in exchange for payment of the room and board rate;¶

~~(ed)~~ Conditions under which the program may change the rates;¶

~~(de)~~ The provider's refund policy in instances of an individual's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the program;¶

~~(ef)~~ A statement indicating that the individual is not liable for damages considered normal wear and tear;¶

~~(fg)~~ The program's policies on voluntary moves and whether written notification of a non-Medicaid individual's intent to not return is required;¶

~~(gh)~~ The potential reasons for involuntary termination of residency in compliance with this rule and individual's rights regarding the eviction and appeal process as described in OAR 309-035-0183(3);¶

~~(hi)~~ Any policies the program may have on the presence and use of alcohol, cannabis, and illegal drugs of abuse;¶

~~(ij)~~ Policy regarding tobacco smoking in compliance with the Tobacco Freedom Policy established by the Division;¶

~~(jk)~~ Policy addressing pet and service animals. The program may not restrict animals that provide assistance or perform tasks for the benefit of a person with a disability. These animals are often referred to as services animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals;¶

~~(kl)~~ Policy regarding the presence and use of legal medical and recreational marijuana at the setting;¶

~~(lm)~~ The provider may not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal (see, OAR 411-050-0645);¶

~~(mn)~~ Policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board payment is refundable;¶

~~(no)~~ Any house rules or social covenants required by the program that may be included in the document or as an addendum; and¶

~~(op)~~ Statement informing the individual of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi) (F710(a)(1)) that may not be limited without the informed, written consent of the individual or the legal representative and include the right to the follow, or supervising entity when the individual is placed with the provider by a court, OHA, CMHP, or PSRB order, including:¶

- (A) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws;¶
- (B) The freedom and support to access food at any time;¶
- (C) To have visitors of the individual's choosing at any time;¶
- (D) Have a lockable door in the individual's unit that may be locked by the individual;¶
- (E) Choose a roommate when sharing a unit;¶
- (F) Furnish and decorate the individual's unit according to the Residency Agreement;¶
- (G) The freedom and support to control the individual's schedule and activities; and¶
- (H) Privacy in the individual's unit.¶

(3) The provider may not propose or enter into a residency agreement that:¶

(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits;¶

(b) Includes any illegal or unenforceable provisions or ask or require an individual to waive any of the individual's rights or the provider's liability for negligence; or¶

(c) Conflicts with individual rights or these rules.¶

(4) Individuals who are placed in programs by a supervisory entity under ORS chapter 161 or 426, shall be given written information corresponding to each of their applicable rights and processes as described in subsection (1) and (2) of this section as part of the residency agreement.¶

(5) Providers are not required to obtain signed agreements from individuals placed by a supervisory entity but must document all efforts to engage the individual in plan development. Providers must document in the individual's record the information that was provided to the individual both orally and in writing. A copy of the residency agreement and the order under which the individual is placed under ORS chapter 161 or 426 must be placed in the individual's record.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

RULE SUMMARY: Allows for limitation of resident rights pertaining to the termination of residency by individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0170

Termination of Residency ¶¶

(1) Each provider's termination policy and procedure shall designate the program staff responsible for each step of the process for terminating residency. The provider shall designate responsibilities organized and assigned to promote a fair and efficient termination process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the program administrator shall be responsible for initiating and coordinating termination proceedings. The provider shall make reasonable efforts to prevent unnecessary terminations by making reasonable accommodations within the program and setting. ¶¶

(2) ~~A resident or guardian individual or an individual's legal representative may terminate residency in a facility upon providing at least 30-days' notice. Upon mutual agreement between the administrator and the resident or guardian, less than 30 days' notice may be provided.~~ individual or individual's legal representative, less than 30 days' notice may be provided. This right may be limited if the individual is placed with the provider under a court, OHA, CMHP, or PSRB order. ¶¶

(3) If an individual's behavior poses a serious and immediate threat to the health or safety of others in or near the program or setting, the program administrator, after providing 24 hours advanced written notice to the individual ~~or representative, the individual's legal representative, and the supervisory entity, if applicable,~~ specifying the causes, may ~~immediately terminate the residency~~ initiate an involuntary transfer or discharge. The notice shall specify the individual's right to appeal the ~~emergency termination decision in accordance with OAR 309-035-0183(3).~~ notice of involuntary transfer or discharge in accordance with OAR 309-035-0183(3). If the individual is not placed or held in custody by a physician or peace officer, the individual has the right to remain in the facility until due process is complete or supervisory entity has ordered otherwise. The program is responsible to increase staff and services as is necessary to ensure the continued safety of all residents and staff in the program while the individual remains in the placement. ¶¶

(4) When other circumstances arise providing grounds for ~~termination of residency~~ issuing a notice of involuntary transfer or discharge under this section, the program administrator shall discuss these grounds with the individual, ~~or representative, and with the individual,~~ the individual's legal representative, and the supervising entity, if applicable, and with the individual's or the individual's legal representative's permission, other individuals with an interest in the individual's circumstances. If a decision is made to ~~terminate residency~~ transfer or discharge the individual, the program administrator shall provide at least 30 days' written notice specifying the causes to the ~~individual or representative, the individual's legal representative, and the supervisory entity, if applicable.~~ This notice shall also specify the individual's right to appeal the termination decision in accordance with OAR 309-035-0183(3). ~~Upon~~ Early transfer or discharge may occur with less than 30 days advance notice with the mutual agreement between of the program administrator and the individual's ~~representative, termination may occur with less than 30 days' notice. The program who does not have a legal representative and is not under the jurisdiction of a supervisory entity, or the individual's legal representative where the individual is not under the jurisdiction of a supervisory entity, or the supervisory entity. The program is required to initiate a transfer and discharge service that must include a pre-discharge meeting with the CMHP and the individual's legal representative, advocate, or supervisory entity, as applicable, and shall make reasonable efforts to establish a reasonable ~~termination~~ transfer or discharge date in consideration of both the program's needs and the individual's need to find alternative living arrangements. Grounds for ~~termination~~ transfer or discharge include the following: ¶¶~~

(a) The individual no longer needs or desires services provided by the program and expresses a desire to move to an alternative setting, unless the individual is placed with the provider by a supervisory entity, or with the individual's legal representative's consent; ¶¶

(b) The individual is assessed by a Licensed Medical Professional or other qualified health professional to require services such as continuous nursing care or extended hospitalization that are not available or cannot be reasonably arranged at the facility; ¶¶

(c) The individual's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others, and these behavioral concerns cannot be adequately addressed with services available at the setting or services that can be arranged outside of the program setting; ¶¶

(d) The individual cannot safely evacuate the setting in accordance with the setting's SR Occupancy Classification

after efforts described in OAR 309-035-0145(5)(b) have been taken;¶

(e) Nonpayment of fees in accordance with program's fee policy; and¶

(f) The individual continuously and knowingly violates house rules resulting in significant disturbance to others.¶

(5) Except in the case of emergency ~~terminations~~transfer or discharge, or crisis-respite services, a pre-termination meeting shall be held with the individual, the individual's legal representative, and ~~with the individual~~the supervising entity, if applicable, and with the individual's or the individual's legal representative's permission, others interested in the individual's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting shall be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason shall be documented in the individual service record.¶

(6) Documentation of discussions and meetings held concerning termination of residency and copies of notices shall be maintained in the individual service record.¶

(7) At the time of termination of residency, the individual shall be given a statement of account, any balance of funds held by the program, and all property held in trust or custody by the program as in the following:¶

(a) In the event of pending charges, the program may withhold the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the program shall provide the individual with a final financial statement along with any funds due to the individual; and¶

(b) In the case of an individual's property being left at the setting for longer than seven days after termination of residency, the program shall make a reasonable attempt to contact the individual or the individual's legal representative. The program shall allow the individual or the individual's legal representative at least 15 days to make arrangements concerning the property. If the program determines that the individual has abandoned the property, the program may then dispose of the property. If the property is sold, proceeds of the sale minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the individual shall be forwarded to the individual or the individual's legal representative.¶

(8) Because crisis-respite services are time-limited, the planned end of services may not be considered a termination of residency and subject to requirements in OAR 309-035-0170(2)(4)(5). Upon admission to crisis-respite services, the individual or the individual's legal representative shall be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the program administrator and the individual or the individual's legal representative. A program providing crisis-respite services shall implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.¶

(9) Because placement pursuant to a court, OHA, CMHP, or PSRB order is contingent on the continued jurisdiction of a supervisory entity, the end of services or the individual's revocation ordered by that supervisory entity is not considered an automatic termination of residency. ¶

(10) If an individual moves out of the setting without providing notice or is absent without notice for more than seven consecutive days, the provider may ~~terminate residency~~initiate transfer or discharge process in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the individual's absence. The provider shall make an attempt to contact the individual ~~or representative~~and must contact the individual's legal representative or supervisory entity if applicable, and with the individual's or the individual's legal representative's permission, others interested in the individual's circumstances to confirm the individual's intent to discontinue residency.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

RULE SUMMARY: Allows for limitation of resident rights pertaining to individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0175

Individual Rights ¶¶

(1) Each individual shall be assured the same civil and human rights accorded to other citizens, except as otherwise limited by a court, OHA, CMHP, or PSRB order. These rights shall be assured unless expressly limited by a court in the case of an individual who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to and do not limit all other statutory and constitutional rights that are afforded to all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose property, enter into contracts, and execute documents. ¶¶

(2) A provider shall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider except where expressly allowed under these rules. ¶¶

(3) The provider shall ensure that individuals receiving mental health services have the rights set forth in ORS 430.210; unless otherwise limited by court order, administrative rule, administrative order, or statute. ¶¶

(4) An individual also has a right to the following: ¶¶

(a) Adequate food, shelter, and clothing; ¶¶

(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible; ¶¶

(c) Confidential communication including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls, unless such access is legally restricted; ¶¶

(d) Express sexuality in a socially appropriate and consensual manner; ¶¶

(e) Access to community resources including recreation, religious services, agency services, employment, and day programs unless such access is legally restricted; ¶¶

(f) Be free from seclusion and restraint except as outlined in OAR 309-035-0205. ¶¶

(g) To review the program's policies and procedures; and ¶¶

(h) Not participate in research without informed voluntary written consent. ¶¶

(5) An individual also has the following HCBS rights: ¶¶

(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule; ¶¶

(b) Have visitors of the individual's choosing at any time and the freedom to visit with guests within the common areas of the setting and the individual's unit; ¶¶

(c) The freedom and support to control the individual's own schedule and activities including but not limited to accessing the community without restriction; ¶¶

(d) Have a lockable door in the individual's unit that may be locked by the individual, and only appropriate program staff have a key to access the unit; ¶¶

(e) A choice of roommates when sharing a unit; ¶¶

(f) Furnish and decorate the individual's unit according to the Residency Agreement; ¶¶

(g) The freedom and support to have access to food at any time; and ¶¶

(h) Privacy in the individual's unit; and ¶¶

~~(i) Section (5) of this rule are effective July 1, 2016, and OAR 309-035-0115(17).~~ ¶¶

(6) An SRTF is ~~not~~ required to maintain the qualities or obligations identified in section (5) (b), (c), (d), (e) and (h), but may limit or modify specific rights. The provider is ~~not~~ required to seek an individually-based limitation ~~to comply with these rules for any modified right.~~ ¶¶

(7) A provider is not required to comply with section (5) (a) of this rule when providing an individual with crisis-respite services. The provider is ~~not required to seek an individually-based limitation for such an individual to comply with these rules.~~ ¶¶

~~(8) required to document crisis respite resident's rights, responsibilities, and complaint/grievance processes. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules.~~ ¶¶

(8) A provider may modify or limit the rights identified in sections (1), (3), and (5) of this rule when providing services to an individual, who is placed with the provider by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426. The provider is required to seek an individually-based limitation for such an individual to comply with these rules. The limitations required for safety or treatment reasons, or as required by the supervising entity must be included in the individual's person-centered service plan. ¶¶

(9) For the purpose of this section, these terms have the following meanings:¶

(a) "Fresh air" means the inflow of air from outside the facility where the individual is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors;¶

(b) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area;¶

(c) If an individual requests access to fresh air and the outdoors or the individual's treating health care provider determines that fresh air or the outdoors would be beneficial to the individual, the program in which the individual is receiving services shall provide daily access to fresh air and the outdoors unless this access would create a significant risk of harm to the individual or others;¶

(d) The determination whether a significant risk of harm to the individual or others exists shall be made by the individual's treating health care provider. The treating health care provider may find that a significant risk of harm to the individual or others exists if:¶

(A) The individual's circumstances and condition indicate an unreasonable risk of harm to the individual or others that cannot be reasonably accommodated within existing programming should the individual be allowed access to fresh air and the outdoors; or¶

(B) The program's existing physical setting or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the individual or others.¶

(e) If a provider determines that its existing physical setting prevents the provision of access to fresh air and the outdoors in a safe manner, the provider shall make a good faith effort at the time of any significant renovation to the physical setting that involves renovation of the unit or relocation of where individuals are treated to include changes to the physical setting or location that allows access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.¶

(910) The program shall have and implement written policies and procedures that protect individuals' rights and encourage and assist individuals to understand and exercise their rights. The program shall post a listing of individual rights under these rules in a place readily accessible to all individual s and visitors.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991



AMEND: 309-035-0185

RULE SUMMARY: Modifies who is included in the development of the service plan related to individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0185

Individual Assessment and Residential Service Plan ¶¶

(1) The program shall complete an assessment for each individual within 14 days after admission to the program unless admitted for crisis-respite services:¶¶

(a) The assessment shall be based upon an interview with the individual to identify strengths, preferences, and service needs; observation of the individual's capabilities within the residential setting; a review of information in the individual service record; and contact with representatives of other involved agencies, the supervisory entity, the individual's legal representative, family members, and others, as appropriate. All contacts with others shall be made with proper authorization for the release of information or as otherwise permitted by law;¶¶

(b) Assessment findings shall be summarized in writing and included in the individual service record. Assessment findings shall include but not be limited to diagnostic and demographic data; identification of the individual's medical, physical, emotional, behavioral, and social strengths, preferences, and needs related to independent living and community functioning; and recommendations for residential service plan goals; and¶¶

(c) The provider shall provide assessment findings to the person-centered service plan coordinator to assist in the development of the person-centered service plan.¶¶

(2) The person-centered service plan coordinator under contract with the Division and assigned to the individual or program site shall schedule and conduct an assessment of the individual for the purpose of developing a person-centered service plan. The provider shall support the person-centered service plan coordinator's efforts to develop the plan and provide information as necessary.¶¶

(3) The provider shall develop and implement an individualized residential service plan for the purpose of implementing and documenting the provision of services and supports as well as any individually-based limitations contained within the person-centered service plan. Provider must also consider the limitations imposed by a court, OHA, CMHP, or PSRB order, or the individual's legal representative. Identification of the goals to be accomplished through the services provided shall be prepared for each individual within 30 days after admission, unless admitted to the facility for crisis-respite services:¶¶

(a) If the person-centered service plan is unavailable for use in developing the residential service plan, providers shall still develop an initial residential service plan based on the information available. Upon the person-centered service plan becoming available, the providers shall amend the residential service plan as necessary to comply with this rule;¶¶

(b) The residential service plan shall be based upon the findings of the individual assessment, be developed with participation of the individual ~~and representative,~~ input from the individual's legal representative and supervisory entity, as applicable, and be developed through collaboration with the individual's primary mental health treatment provider. With consent of the individual or individual's legal representative, family members, representatives from involved agencies, and others with an interest in the individual's circumstances shall be invited to participate. All contacts with others shall be made with proper, prior authorization from the individual or as otherwise permitted by law;¶¶

(c) The residential service plan shall include the following:¶¶

(A) The necessary steps and actions of the provider for the implementation and provision of services consistent and as required by the person-centered service plan; and¶¶

(B) Identify the individual's service needs, desired outcomes, and service strategies to address the following: physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability, and community navigation, all areas identified in the person-centered service plan and any other areas.¶¶

(d) The residential service plan shall be signed by the individual; or the individual's legal representative, the program administrator or other designated program staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan and a copy of the signed plan provided to the supervisory entity as applicable; and¶¶

(e) The provider shall attach the residential service plan to the person-centered service plan.¶¶

(4) For an individual admitted to a program for 30 days or less for the purpose of receiving crisis-respite services, an assessment and residential service plan shall be developed within 48 hours of admission that identifies service

needs, desired outcomes, and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short-term service arrangement.¶

(5) The provider shall maintain progress notes within each individual's service record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes identified in the residential service plan. The provider shall enter a progress note in the individual's record at least once each month.¶

(6) The provider shall review and update the assessment and residential service plan at least annually. On an ongoing basis, the provider shall update the residential service plan as necessary based upon changing circumstances or upon the individual's request for reconsideration.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0190

RULE SUMMARY: Ensures any limitations are included in the PCSP and modifies the requirement for signature of the PCSP when the individual is under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0190

### Person-Centered Service Plan ¶

This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).¶

(1) When developed as described in sections (2) and (3), a person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process:¶

- (a) Is driven by the individual;¶
  - (b) Includes people chosen by the individual;¶
  - (c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions, except as limited or required by a court order, an administrative order, the supervisory entity or the individual's legal representative;¶
  - (d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;¶
  - (e) Reflects the cultural considerations of the individual;¶
  - (f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and the individual's legal representative;¶
  - (g) Includes strategies for resolving disagreement within the process including clear conflict of interest guidelines for all planning participants such as:¶
    - (A) Discussing the concerns of the individual and determining acceptable solutions;¶
    - (B) Supporting the individual in arranging and conducting a person-centered service planning meeting;¶
    - (C) Utilizing any available greater community conflict resolution resources;¶
    - (D) Referring concerns to the Office of the Long-Term Care Ombudsman; or¶
    - (E) For Medicaid recipients, following existing, program-specific grievance processes.¶
  - (h) Offers choices to the individual regarding the services and supports the individual receives and from whom and records the alternative HCB settings considered by the individual, except as limited by a court, OHA, CMHP, or PSRB order;¶
  - (i) Provides a method for the individual, or the individual's legal representative to request updates to the person-centered service plan;¶
  - (j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;¶
  - (k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;¶
  - (l) Includes any services that are self-directed, if applicable;¶
  - (m) Includes but is not limited to individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;¶
  - (n) Includes risk factors and plans to minimize any identified risk factors; and¶
  - (o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual or the individual's legal representative, ~~participants in the person-centered service planning process, the individual's case manager,~~ and all persons responsible for the implementation of the person-centered service plan. The person-centered service plan is distributed to the individual ~~and,~~ the individual's legal representative, the supervisory entity if applicable, and other people involved in the person-centered service plan.¶
- (2) Person-Centered Service Plans:¶
- (a) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant an exception when it has determined that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan;¶
  - (b) When the provider is responsible for developing the person-centered service plan, the provider shall ensure that the plan includes the following:¶
    - (A) HCBS and setting options based on the individual's needs and preferences, and for residential settings, the individual's available resources for room and board;¶
    - (B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater

community;¶

(C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;¶

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;¶

(E) The strengths and preferences of the individual;¶

(F) The service and support needs of the individual;¶

(G) The goals and desired outcomes of the individual;¶

(H) The providers of services and supports including unpaid supports provided voluntarily;¶

(I) Risk factors and measures in place to minimize risk;¶

(J) Individualized backup plans and strategies, when needed;¶

(K) People who are important in supporting the individual;¶

(L) The person responsible for monitoring the person-centered service plan;¶

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and the individual's legal representative;¶

(N) The written informed consent of the individual or the individual's legal representative, unless the individual is placed with the provider by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426;¶

(O) Signatures of the individual or the individual's legal representative, or documentation of the individual's verbal consent of services, participants in the person-centered service planning process, and all persons and entities responsible for the implementation of the person-centered service plan unless the individual is placed with the provider by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426;¶

(P) Self-directed supports; and¶

(Q) Provisions to prevent unnecessary or inappropriate services and supports.¶

(c) When the provider is not responsible for developing the person-centered service plan but provides or shall provide services to the individual, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator or other individuals developing the plan to fulfill the characteristics described in subsection (b) of this section;¶

(d) The individual or the individual's legal representative decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers shall have access to the portion of the person-centered service plan that the provider is responsible for implementing;¶

(e) The person-centered service plan shall be distributed to the individual, and the individual's legal representatives and supervisory entity, as applicable, and others involved in the person-centered service plan;¶

(f) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-035-0195 when the qualities under 309-035-0195(1) create a threat to the health and safety of the individual or others; and¶

(g) The person-centered service plan shall be reviewed and revised:¶

(A) At the request of the individual or the individual's legal representative;¶

(B) When the circumstances or needs of the individual change; ~~or~~ and¶

(C) Upon reassessment of functional needs as required every 12 months.¶

(3) Because it may not be possible to assemble complete records and develop a comprehensive person-centered service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan ~~under these rules, but shall, at a minimum,~~ At a minimum, the provider must develop an assessment and residential service plan as deemed appropriate to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in this rule.

Statutory/Other Authority: ORS 413.042, 443.450(

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

RULE SUMMARY: Clarifies IBLs are not necessary for limitations when the limitation is requiring by the jurisdiction related to individuals under jurisdiction in Residential Treatment Homes, Residential Treatment Facilities and Secure Residential Treatment Facilities.

CHANGES TO RULE:

309-035-0195

### Individually-Based Limitations ¶¶

This rule becomes effective on July 1, 2016, and enforceable as described in OAR 309-035-0115(17).¶¶

(1) When the program qualities described below create a threat to the health and safety of an individual or others, a provider may seek to apply an individually-based limitation through the process described in this rule. The program qualities subject to a potential individually-based limitation include the individual's right to:¶¶

- (a) The freedom and support to access food at any time;¶¶
- (b) Have visitors of the individual's choosing at any time;¶¶
- (c) Have a unit entrance door that is lockable by the individual with only appropriate staff having access;¶¶
- (d) Choose a roommate when sharing a unit;¶¶
- (e) Furnish and decorate the individual's unit as agreed to in the Residency Agreement;¶¶
- (f) The freedom and support to control the individual's schedule and activities; and¶¶
- (g) Privacy in the individual's unit.¶¶

(2) A provider may apply an individually-based limitation only if:¶¶

- (a) The program quality threatens the health or safety of the individual or others;¶¶
- (b) The individually-based limitation is supported by a specific assessed need;¶¶
- (c) The individual or representative consents, the individual's legal representative consents, or the limitation is mandated by the individuals supervisory entity;¶¶

(d) The limitation is directly proportionate to the specific assessed need; and¶¶

(e) The individually-based limitation will not cause harm to the individual.¶¶

(3) The provider shall demonstrate and document that the individually-based limitation meets the requirements of section (2) of this rule and the measures described below in the person-centered service plan. The provider shall submit and sign a program-created form that includes the following:¶¶

- (a) The specific and individualized assessed need justifying the individually-based limitation;¶¶
- (b) The positive interventions and supports used prior to consideration of any individually-based limitation;¶¶
- (c) Documentation that the provider or other entities have tried other less intrusive methods, but those methods did not work;¶¶
- (d) A clear description of the limitation that is directly proportionate to the specific assessed need;¶¶
- (e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;¶¶
- (f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;¶¶
- (g) The informed consent of the individual or representative, the individual's legal representative, or the authorization of the individual's supervisory entity, including any discrepancy between the wishes of the individual and the consent of the individual's legal representative, and the supervisory entity; and¶¶
- (h) An assurance that the interventions and support do not cause harm to the individual.¶¶

(4) The provider shall:¶¶

(a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in section (4) of this rule. The form shall be signed by the individual ~~or representative,~~ the individual's legal representative, or supervisory entity;¶¶

(b) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and¶¶

(c) Request review of the individually-based limitation by the person-centered service plan coordinator when a new individually-based limitation is indicated or change or removal of an individually-based limitation is needed but no less than annually.¶¶

(5) ~~The qualities described in section (2)(b)-(g) do not also apply to an individual receiving services at a SRTF, including but not limited to, but may be limited or modified. A provider must seek an individually-based limitation to comply with these rules.~~¶¶

(6) The qualities described in sections (2)(d) and (g) do not apply to an individual receiving crisis-respite services in a secure residential setting. A, and a provider does not need to seek an individually-based limitation to comply

with these rules.¶

~~(67)~~ The qualities described in sections ~~(2)(d) and (g) do not~~1 of this rule also apply to an individual receiving crisis-respite services, and a provider does not need to seek an individually-based limitation to comply services under a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426, but may be modified or restricted by a supervisory entity. A provider must seek an individually-based limitation for rights modified or restricted by the supervisory entity, which may be implemented with these rules out the authorization of the individual.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991