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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: 08/31/2026 10:14 PM
ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Updates to clarify language with legislative requirements HB 4016, 4068, 4069 and 4115, enhance protections.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/19/2026 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
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HEARING(S)
Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/16/2026
TIME: 10:00 AM - 11:30 AM
OFFICER: Jessica Malstrom

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 1-646-828-7666
CONFERENCE ID: 1657820161
SPECIAL INSTRUCTIONS:
Zoom: https://www.zoomgov.com/j/1657820161?pwd=cRqcosaM9AXjQFukHz6kA46JOBmorV.1
Meeting ID: 165 782 0161
Passcode: 048814
Dial by your location
• +1 669 254 5252 US (San Jose)

• +1 646 828 7666 US (New York)

Meeting ID: 165 782 0161

DATE: 09/29/2026
TIME: 1:00 PM - 2:30 PM
OFFICER: Jessica Malstrom

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 1-646-828-7666
CONFERENCE ID: 1657908937
SPECIAL INSTRUCTIONS:
Zoom: https://www.zoomgov.com/j/1657908937?pwd=ydWxbTN0UORVSJgG7G4R8YtoOS2eol.1

Meeting ID: 165 790 8937
Passcode: 708071

Dial by your location
• +1 669 254 5252 US (San Jose)
• +1 646 828 7666 US (New York)

Meeting ID: 165 790 8937

NEED FOR THE RULE(S):

Updates reflect needed changes needed in relation to safety, resident protections, furnishings, waitlist management, clearer language for existing requirements, discharge, and transfer. Updates are also needed to align rule language with HB 4016, HB 4068, HB 4069, and HB 4115.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 4016, HB 4068, HB 4069, and HB 4115 were relied upon in this rulemaking action.
https://www.oregonlegislature.gov/Pages/SearchResultsBills.aspx?k=4016

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

These proposed changes are not anticipated to have either a positive or negative effect on racial equity for those living in, working in, or operating these licensed settings.

FISCAL AND ECONOMIC IMPACT:

These proposed changes are not expected to create any significant fiscal or economic impacts for those living in, working in, or operating these licensed settings. There will be a moderate increase in regular compliance activity for the Behavioral Health Division and Oregon Occupational Safety and Health.

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).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).
These proposed changes are not expected to create any substantial fiscal or economic impacts on units of local government, or members of the public. There will be a moderate increase in compliance monitoring activity for the Behavioral Health Division and Oregon Occupational Safety and Health.

(2) Effect on Small Businesses:
These proposed changes may have a small fiscal or economic impact on small businesses relating to tax compliance, safety planning, and capacity reporting administrative activities.

(a) Estimate the number and type of small businesses subject to the rule(s);
There are 202 licensed residential treatment facilities and homes at the time of this rulemaking.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);
There will be a small increase in administrative activities for applicants and licensed facilities and homes relating to tax compliance, safety planning, and capacity reporting.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

These rule changes are expected to require minimal staff time and do not directly mandate monetary costs such as fees, new equipment, or expanded operational expenses.

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

Public comment from small businesses received during previous rulemaking was taken into consideration for this current rulemaking action. There was also a community engagement session that was held to provide an opportunity for small business and the community to participate. In addition a RAC was held to discuss these proposed changes ahead of the public notice for public comment.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:
309-035-0105, 309-035-0115, 309-035-0125, 309-035-0135, 309-035-0140, 309-035-0145, 309-035-0155, 309-035-0156, 309-035-0158, 309-035-0165, 309-035-0170, 309-035-0175, 309-035-0183, 309-035-0217, 309-035-0271, 309-035-0275

AMEND: 309-035-0105

RULE SUMMARY: A definition for weapons is being added. A definition for Young Adults in Transition is being added in alignment with HB 4068. A definition for owner is being added in alignment with HB 4016 and the definition for deputy director is being clarified. A definition for informal conference is being added. The definition of critical incident is being modified to include reasonable cause weapons searches.
Rule text:

CHANGES TO RULE:

309-035-0105
Definitions ¶

As used in these rules, the following definitions apply:¶
(1) "Abuse" means abuse as defined in ORS 430.735.¶
(2) "Activities of Daily Living (ADL)" means those personal and functional activities required by a resident for continued well-being, that are essential for health and safety. ADLs include eating, bathing, dressing, toileting, transferring (including mobility and ambulation) and maintaining continence.¶
(3) "Adult" means an individual 18 years of age or older.¶
(4) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions in the event the resident is no longer able to give directions regarding their wishes, as described in ORS 127.505 to 127.660. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).¶
(5) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.¶
(6) "Applicant" means the individual or entity, including the Division, who owns, seeks to own or operate, or maintains and operates a program and is applying for a license.¶
(7) "Approved" means authorized or allowed by the Authority or designee.¶
(8) "Authority" means the Oregon Health Authority or designee.¶
(9) "Authorized Representative" means any adult with longstanding involvement in assuring the Individual's health and safety, appointed to participate in service planning process, and is:¶
(a) Chosen and appointed by the individual or their legal representative, if applicable¶
(b) Not a paid provider of Home and Community Based Services (HCBS) and supports;¶
(c) Authorized, in writing or other method that clearly indicates consenting choice, by the Individual or legal representative, if applicable, to serve as the Individual's representative in connection with the provision of funded supports; and¶
(d) Responsible to act as the authorized representative until the Individual, or legal representative, if applicable, modifies the authorization or notifies the authority or authority's contractor that the authorized representative is no longer authorized to act on their behalf.¶
(10) "Background Check" means criminal records check and an abuse check.¶
(11) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.¶
(12) "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 provision of room and board.¶
(13) "Class I SRTF" means a facility that is approved under applicable administrative rules to be locked to prevent a person from leaving the physical premises without authorization, to use seclusion and restraint, and to involuntarily administer psychiatric medication, including a hospital, regional acute psychiatric care facility or other nonhospital facility approved under OAR 309-033-0530¶
(14) "Class II SRTF" means a facility that is approved under applicable administrative rules to be locked to prevent a person from leaving the physical premises without authorization. Class II facilities are not authorized to use seclusion or restraint but can use physical interventions to ensure the immediate safety of staff and residents in emergencies where there is an imminent threat of harm to staff or other residents. These facilities are approved under OAR 309-035-0100 through 309-035-0281 to be locked to prevent an individual from leaving the facility. These facilities, in the opinion of the Division, restrict the liberty of a person to substantially in comparison to other facilities in this same class.¶
(15) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶
(16) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for individuals with serious mental illness, 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.¶
(17) "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.¶
(18) "Contract" means a formal written agreement between the CMHP, CCO, Oregon Health Plan contractor, or the Division and a provider.¶
(19) "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.¶
(20) "Crisis-Respite Services" means a short-term crisis and stabilization service provided in a residential setting to stabilize the individual in crisis, prevent further deterioration, and provide immediate treatment and intervention in a location best suited to meet the needs of the individual and in the least restrictive environment available for up to 30 days.¶
(21) "Critical Incident" means any incident that caused harm or created a potential risk of harm to a resident including:¶
(a) Abuse, neglect, or exploitation;¶
(b) Misuse or unauthorized use of restraints or seclusion;¶
(c) Medication error resulting in consultation with a poison control center or medical professional, an emergency department or urgent care visit, hospitalization or death;¶
(d) Suspected overdose;¶
(e) Serious physical harm;¶
(f) Reasonable cause weapons search;¶
(g) Contact with law enforcement or emergency services; and¶
(~~g~~h) Death.¶
(22) "Culturally Responsive" means services that are respectful of and relevant to the beliefs, practices, culture and linguistic needs of diverse consumer/client populations and communities whose members identify as having particular cultural or linguistic affiliations. Cultural responsiveness describes the capacity to respond to the issues of diverse communities. It thus requires knowledge and capacity at different levels of intervention: systemic, organizational, professional, and patient.¶
(23) "Deputy Director" means the deputy director of the Behavioral Health Division of the Oregon Health Authority ~~or designee~~.¶
(24) "Direct Care Staff" means program staff responsible for providing services for a resident.¶
(25) "Division" means the Behavioral Health Division of the Oregon Health Authority or designee.¶
(26) "Division Staff" means individuals employed by the Division or individuals delegated by the Division to conduct licensing activities under these rules.¶
(27) "DSM" means the most currently edition of the "Diagnostic and Statistical Manual of Mental Disorders " published by the American Psychiatric Association.¶
(28) "Emergency Admission" means an admission to a program made on an urgent basis due to the pressing service needs of the individual.¶
(29) "Employee" means a person, not residing at the program, who is employed by a licensee who receives wages, a salary, or is otherwise paid by the licensee for providing the service.¶
(30) "Evacuation Capability" means the ability of occupants, including residents and program staff as a group, to evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code.¶
(31) "Eviction" means a court action that may be initiated after the involuntary transfer or discharge process is complete by a program against a resident to remove the resident from their unit.¶
(32) "Exclusion Lists" mean the following federal lists that exclude listed individuals from receiving federal awards or monies, not limited to Medicaid and Medicare programs:¶
(a) The U.S. Office of Inspector General's Exclusion List at www.exclusions.oig.hhs.gov; and¶
(b) The U.S. General Services Administration's System for Award Management Exclusion List at www.sam.gov.¶
(33) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.¶
(34) "Gender expression" means a person's gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the person was assigned at birth.¶
(35) "Gender identity" means an individual's internal, deeply held knowledge or sense of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth, or name and sex as it appears in medical records or as it is described by any other individual, including a family member, guardian, or legal representative of the individual. An individual's gender identity is the last gender identity expressed by an

individual who lacks the present ability to communicate.¶
(36) "Gender nonconforming" means having a gender expression that does not conform to stereotypical expectations of one's gender.¶
(37) "Gender transition" means a process by which an individual begins to live according to that individual's gender identity rather than the sex the person was assigned at birth. The process may include changing the individual's clothing, appearance, name or identification documents, or undergoing medical treatments.¶
(38) "Home and Community Based Service (HCBS)" means services and supports that assist eligible individuals to remain in their home or community in accordance with the Code of Federal Regulations, approved Medicaid State Plan authorities and Oregon Administrative Rules.¶
(39) "Home and Community-Based Settings" means a physical location meeting the qualities of 42 CFR §441.710(a)(1) and (2), OAR 410-173-035, and OAR 411-004-0020 where a resident receives Home and Community-Based Services.¶
(40) "Home-Like" means an environment that promotes the dignity, security, and comfort of residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the resident.¶
(41) "Imminent Danger" means a situation in which a program's non-compliance with one or more licensing requirements has caused or is likely to cause serious physical harm, harm, impairment, or death to one or more residents in the near future if the program does not take immediate action to correct and protect resident health and safety.¶
(42) "Incident Report" means a written description of any incident involving a resident receiving services including but not limited to injuries, major illness, accidents, acts of aggression, medication errors, or other incidents that present a risk to health and safety.¶
(43) "Independent and Qualified Agent (IQA)" means an entity meeting the provider qualification requirements identified in 42 CFR §441.730 and under contract with the Division who:¶
(a) Determines 1915(i) program eligibility initially, annually, when an individual's circumstances or needs change significantly, or upon individual request;¶
(b) Provides education and technical assistance regarding HCBS and settings;¶
(c) Coordinates and assists the individual in directing the person-centered planning process;¶
(d) Drafts, documents, regularly reviews and updates person-centered service plans;¶
(e) Prior authorizes HCBS Residential Services as described in these rules;¶
(f) Conducts quality assurance and quality improvement activities;¶
(g) Completes the face-to-face needs-based assessment in person; and¶
(h) Performs transition management.¶
(44) "Individually Based Limitation (IBL)" means any limitation to the qualities outlined in OAR 309-035-0195 and OAR 410-173-0040 due to health and safety risks. An IBL is based on specific assessed needs and only implemented with the resident's or resident's representative's informed consent as described in OAR 309-035-0195 and OAR 410-173-0005.¶
(45) "Informal Conference" means the discussion between a provider, the provider's representative and Division staff that is held prior to a hearing to address any matters pertaining to the hearing. An informal conference may result in resolution of the issue. ¶
(46) "Informed Consent" means: That options, risks, and benefits of the services outlined in these rules have been explained to the resident or the resident's legal representative in a manner that they understand; and¶
(4~~6~~7) "Instrumental Activities of Daily Living (IADLs)" means those self-management activities performed by an individual on a day-to-day basis that are essential to basic self-care and independent living.-IADLs include, but are not limited to, housekeeping, including laundry, shopping, transportation, medication management, and meal preparation.¶
(4~~7~~8) "Legal Representative" means a person who has been legally designated by court order to make financial or health care decisions for a resident. The legal representative only has authority to act within the scope and limits to the authority designated by the court or other agreement.¶
(4~~8~~9) "Licensed Independent Practitioner (LIP)" means a physician, nurse practitioner, or naturopathic physician as defined in ORS 426.005.¶
(~~49~~50) "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 Assistant licensed to practice in the State of Oregon; and¶
(b) Whose training, experience, and competence demonstrate the ability to conduct a comprehensive mental health assessment and provide medication management.¶

(5~~0~~1) "Licensee" means the individual or entity who applied for and to whom a license has been issued to operate a residential treatment facility or residential treatment home.¶
(5~~1~~2) "Local Mental Health Authority (LMHA)" means a Local Mental Health Authority as defined in ORS 430.630.¶
(5~~2~~3) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary, or other minority gender identity or sexual orientation. These terms are defined below:¶
(a) "Lesbian" means the sexual orientation of an individual who is female, feminine, or nonbinary and who is physically, romantically, or emotionally attracted to other women. Some lesbians may prefer to identify as gay, a gay woman, queer, or in other ways.¶
(b) "Gay" means the sexual orientation of an individual attracted to people of the same gender. Although often used as an umbrella term, it is used more specifically to describe men attracted to men.¶
(c) "Bisexual" means an individual who has the potential to be physically, romantically, or emotionally attracted to people of more than one gender, not necessarily at the same time, in the same way, or to the same degree.¶
(d) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.¶
(e) "Queer" means individuals who do not identify as exclusively straight or an individual who has non-binary or gender-expansive identities:¶
(A) Queer is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole.¶
(B) This term was previously used as a slur but has been reclaimed by many parts of the LGBTQIA2S+ movement. It can also include transgender people who identify as male or female. The term should only be used to refer to a specific person if that person self-identifies as queer.¶
(f) "Intersex" means someone born with a variety of differences in their sex traits and reproductive anatomy. Intersex traits greatly vary, including differences in, but not limited to, hormone production and reproductive anatomy.¶
(g) "Asexual" or "Ace" means a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little, or conditional sexual attraction. Many people who are asexual still identify with a specific romantic orientation.¶
(h) "2S" or "Two-Spirit" is a term used within some Indigenous communities, encompassing cultural, spiritual, sexual, and gender identity. The term reflects complex indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. The definition and common use of the term two-spirit may vary among Tribes and Tribal communities.¶
(i) The "+" means other identities and expressions of gender, romantic and sexual orientation, including minority gender identities.¶
(5~~3~~4) "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.¶
(5~~4~~5) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than an intellectual or developmental disability or a substance abuse disorder that limits a resident's ability to perform activities of daily living.¶
~~(55)~~ "Mental Health Assessment" means the process of obtaining sufficient and clinically relevant information through face-to-face interview, observation, examination, testing, and review of previous treatment records to determine a diagnosis and to plan individualized services and supports. Mental health assessments must be completed by a provider meeting the qualifications of a Qualified Mental Health Professional (QMHP).¶
(5~~6~~7) "Naloxone" means an FDA-approved short-acting, non-injectable, opioid antagonist medication used for the emergency treatment and temporary rapid reversal of known or suspected opioid overdose.¶
(5~~7~~8) "Nonbinary" means an individual who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer, or gender-fluid.¶
(5~~8~~9) "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.¶
(~~59~~60) "Opioid" means natural, synthetic, or semi-synthetic chemicals normally prescribed to treat pain. This class of drugs includes, but is not limited to, illegal drugs such as heroin, natural drugs such as morphine and codeine, synthetic drugs such as fentanyl and tramadol, and semi-synthetic drugs such as oxycodone, hydrocodone, and hydromorphone.¶
(6~~0~~1) "Opioid Overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of taking

opiates in an amount larger than can be physically tolerated.¶
(6~~1~~2) "Opioid Overdose Kit" means an ultraviolet light-protected hard case containing a minimum of two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication, one pair non-latex gloves, one face mask, one disposable face shield for rescue breathing, and a short-acting, non-injectable, opioid antagonist medication administration instruction card.¶
(6~~2~~3) "Owner" means a:¶
(a) Shareholder of a corporation or of a professional corporation;¶
(b) Member or shareholder of a cooperative;¶
(c) Member of a limited liability company;¶
(d) Partner of a partnership; or ¶
(e) General partner or limited partner of a limited partnership.¶
(64) "Person-Centered Service Plan (PCSP)" means the written document prepared by the IQA or the person-centered service plan coordinator that details the supports, desired outcomes, activities, and resources required for an Individual to achieve and maintain personal goals, health, and safety as described in OAR 410-173-0025. The PCSP must be completed and signed. The PCSP is not satisfied by a document primarily prepared by a provider.¶
(6~~3~~5) "Person-Centered Service Plan Coordinator" means the individual who may be a case manager, service coordinator, personal agent, or other individual designated by the Division to provide case management services or person-centered service planning for and with a resident.¶
(6~~4~~6) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, chiropractor, dentist, ophthalmologist, or other healthcare practitioner with prescribing authority.¶
(6~~5~~7) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.¶
(6~~6~~8) "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.¶
(6~~7~~9) "Program Administrator" means the individual designated by the licensee as responsible for the daily operation and maintenance of the RTH or RTF or the program administrator's designee.¶
(~~68~~70) "Program Staff" means an employee, volunteer, direct care staff, or individual who, by contract with a program, provides a service to a resident.¶
(~~69~~71) "Progress Notes" means the continuous notations in the resident's record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.¶
(7~~0~~2) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the resident to prevent self-destructive acts and to safeguard the resident's property and funds when used in the relevant context.¶
(7~~1~~3) "Provider" means the program administrator, individual, or organizational entity licensed by the Division that operates the program and provides services to residents.¶
(7~~2~~4) "PSRB" means the Oregon Psychiatric Security Review Board.¶
(7~~3~~5) "Qualified Mental Health Professional (QMHP)" means mental health program staff LMP or any other program staff meeting the minimum qualifications as authorized by the LMHA or designee and specified in OAR 309-019-0125.¶
(7~~4~~6) "Representative" refers to both "Authorized Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.¶
(7~~5~~7) "Residency Agreement" means the written, legally enforceable agreement between a provider and a resident or the resident's legal representative when the resident receives services. The Residency Agreement identifies the rights and responsibilities of the resident and the provider. The Residency Agreement provides the resident protection from eviction substantially equivalent to landlord-tenant laws, unless otherwise required by administrative rule or statute.¶
(7~~6~~8) "Resident" means any individual being considered for placement or is currently residing in a licensed program receiving residential services regulated by these rules on a 24-hour basis, except as excluded under ORS 443.400.¶
(7~~7~~9) "Resident Service Record" means a resident's records maintained by the program pursuant to OAR 309-035-0130(4).¶
(~~7~~80) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the program based upon an individual assessment of needs. The residential service plan may be a section or subcomponent of the resident's overall mental health treatment plan when the program is operated by a mental health service agency that provides other services to the resident.¶
(~~79~~81) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services and supports on a 24-hour basis for six to 16 residents as described in ORS 443.400(11). An RTF does not include the entities set out in ORS 443.405.¶
(8~~0~~2) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to

provide services and supports on a 24-hour basis for up to five residents as defined in ORS 443.400(12). A RTH does not include the entities set out in ORS 443.405.¶
(8~~1~~3) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.¶
(8~~2~~4) "Room and Board" means compensation for the provision of meals, a place to sleep, basic utilities, and tasks such as housekeeping and laundry to residents.¶
(8~~3~~5) "Seclusion" means placing a resident in a locked room. A locked room includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.¶
(8~~4~~6) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, approved by the Division that restricts a resident's exit from the setting using approved locking devices on exit doors, gates, or other closures.¶
(8~~5~~7) "Self-Administration of Medication" means the act of a resident placing a medication in or on the resident's own body. The resident identifies the medication and the times and manners of administration and places the medication internally or externally on the resident's own body without assistance.¶
(8~~6~~8) "Serious Mental Illness" means a major mental disorder under the DSM-5-TR including schizophrenic, mood, paranoid, panic or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability.~~-~~Such disorder must be diagnosed by a physician or physician assistant licensed by the Oregon Medical Board, a psychiatrist, licensed by the Oregon Board of Psychology, a nurse practitioner licensed by the Oregon State Board of Nursing, a clinical social worker licensed by the State Board of Licensed Social Workers, a professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists, a naturopathic physician licensed by the Oregon Board of Naturopathic Medicine, a Qualified Mental Health Professional, or a Community Mental Health Program established and operated pursuant to when approved to do so by the Oregon Health Authority pursuant to rule.¶
(8~~7~~9) "Serious Physical Harm" means injury that would warrant medical treatment beyond basic first aid.~~-~~¶
(~~88~~90) "Services and Supports" means those services defined as habilitation services and psychosocial rehabilitation services under OAR 410-172-0705(1)(j) and (v) and provided to residents as outlined in OAR 410-172-0710.¶
(~~8~~91) "Setting" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a program.¶
(9~~0~~2) ("Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.¶
(9~~1~~3) "Stock supply" means any volume of medications that are not dispensed to a specific resident~~,~~ and not labeled with the specific name of the resident.¶
(9~~2~~4) "Substantial compliance" means a level of compliance with state law and with rules of the Oregon Health Authority such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents.¶
(9~~3~~5) "Supervision" means a program staff's observation and monitoring of a resident or oversight of a program staff by the program administrator applicable to the context.¶
(9~~4~~6) "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 to be placed or remain in the community, as provided in ORS chapters 161 and 426. Supervisory entity includes the state agency's designee, and any person or entity that is legally responsible for monitoring the individual, coordinating care, and providing status reports to the supervising court or state agency.¶
(9~~5~~7) "Residency Transfer" means the time at which the resident ceases to reside in the program and includes the transfer of the resident to another program but does not include absences from the program for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.¶
(9~~6~~8) "Transition Planning" means a strategic process designed to prepare residents for a successful move from the program into another living arrangement.¶
(9~~7~~9) "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.¶
(~~98~~100) "Trial Visit" means the placement of a committed individual in a lower level of care under conditions established by the authority.~~-~~¶
(~~99~~101) "Unit" means the bedroom and other space of a resident receiving services from a program, as agreed to in the Residency Agreement. Unit includes private single occupancy and dual occupancy bedrooms shared with a roommate.¶
(10~~0~~2) "Volunteer" means an individual who provides a service or takes part in a service provided to one or more

residents receiving supportive services in a program or other provider and who is not a paid employee of the program or other provider.¶
(103) "Weapon" means:¶
(a) A firearm;¶
(b) Any dirk, dagger, ice pick, slingshot, metal knuckles or similar instrument, or knife, except a kitchen knife, the use of which could inflict injury upon a person or property;¶
(c) Mace, tear gas, pepper mace or any similar deleterious agent as defined in ORS 163.211;¶
(d) An electrical stun gun or any similar instrument;¶
(e) A tear gas weapon as defined in ORS 163.211;¶
(f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchucks, nightstick, truncheon or any similar instrument, the use of which could inflict injury upon a person or property; or¶
(g) A dangerous or deadly weapon as those terms are defined in ORS 161.015.¶
(104) "Young Adults in Transition (YAT) Residential Treatment Homes (RTH)" means specialized programs for young adults, ages 17 to 25 years old, who experience complex behavioral health challenges.
Statutory/Other Authority: ORS 413.042, 443.450, HB 4068 (2026)
Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

AMEND: 309-035-0115

RULE SUMMARY: Policy and procedure requirements for weapons, reasonable cause searches, and comprehensive safety planning are being added as well as a process for submitting variance requests related to waitlist prioritization. Additional licensing requirements being established relating to tax compliance in aligned with HB 4068. A timeline for plan of correction submissions is being added.

CHANGES TO RULE:

309-035-0115
Licensing ¶

(1) The Division shall license a program that meets the definition of an RTF or RTH and demonstrates compliance with these and all applicable laws and rules. No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, maintain, manage, or operate a program, including receiving referrals for potential residents, without a license issued by the Division.¶
(2) An applicant may not be licensed to operate additional programs without first demonstrating a history of substantial compliance for previous and currently licensed programs.¶
(3) An applicant who voluntarily withdraws an application containing willfully incomplete, inaccurate, or untruthful information may not submit an application for a license for three years from the date of the withdrawal. Withdrawal of an application does not limit or prevent the Authority or other state or federal regulators from leveling other penalties or continuing investigations into potential criminal violations or other violations.¶
(4) When a program serves or seeks to serve another category of residents in addition to adults with a serious mental illness, the directors of the Authority and the Department will determine the agency responsible for licensure.¶
(5) An initial application for a license must be accompanied by the required fee and submitted to the Division in the form and manner required by the Division. The following information must be included in the application packet:¶
(a) Full and complete information as to the identity and financial interest of each individual, including stockholders, having a direct or indirect ownership interest of five percent or more in the program and all officers and directors in the case of a program operated or owned by a corporation;¶
(b) Name and resume of the program administrator;¶
(c) Name and resume of psychiatric treatment services provider;¶
(d) Physical address of the setting and mailing address;¶
(e) Maximum number of residents to be served at any one time, their age range and evacuation capability;¶
(f) Proposed annual budget identifying sources of revenue and expenses;¶
(g) Signed current approved background check authorizations for all individuals involved in the operation of the program who has contact with the residents, including but not limited to caregivers, administrators, QMHAs, QMHPs, RNs, and LMPs;¶
(h) Written background information pertaining to any current or previous licensure or certification by a state agency, including those licenses or certificates granted to a business or person affiliated with the business, including:¶
(A) Copies of all current licenses or certificates;¶
(B) Documentation showing the final disposition of any suspension, denial, revocation, or other disciplinary actions initiated on any current or previous license or certificate, including settlement agreements, where applicable; and¶
(C) Documentation of any substantiated allegations of abuse or neglect pertaining to the applicant, or anyone employed by or contracted with the applicant.¶
(i) A complete set of policies and procedures specific to the operation of the proposed facility or home;¶
(j) A signed letter of acknowledgement from the Local Mental Health Authority or designee;¶
(k) A written statement describing the type and frequency of clinical services that will be offered to the program residents, including individual and group counseling, skills training, psychiatric treatment, and the contact information of the LMP that provides consultation and oversight of the services offered to the program residents;¶
(l) A copy of all proposed policies and procedures regarding:¶
(A) Personnel practices;¶
(B) Staffing requirements;¶
(C) Program staff and administrator training;¶
(D) Resident screening, admission, and transfer and discharge;¶
(E) Fire drills and emergency procedures;-¶
(F) Resident and program safety;¶

(G) Abuse reporting;¶
(H) Health and sanitation;¶
(I) Records maintenance and confidentiality;¶
(J) Service planning;¶
(K) Behavior management interventions including the use of seclusion or restraints;¶
(L) Food preparation and distribution;¶
(M) Medication administration and storage;¶
(N) Weapons and reasonable cause searches;¶
(O) Resident belongings, storage and funds;¶
(~~O~~P) Resident rights, freedoms, and protections;¶
(~~P~~Q) Advanced mental health and medical health directives;¶
(~~Q~~R) Complaints and grievances;¶
(~~R~~S) Setting maintenance;¶
(~~S~~T) Evacuation capability determination;¶
(~~T~~U) Fees and money management;¶
(~~U~~V) Cultural competency;¶
(~~V~~W) Limited English Proficiency (LEP) services;¶
(X) Facility closure;¶
(Y) Comprehensive safety planning; and¶
(~~Y~~(Z) Secure settings must have a policy and procedure regarding resident leave authorization.¶
(m) Strategies to recruit, retain, and promote a diverse staff at all levels;¶
(n) A complete floor plan with all specifications for an existing structure without additions or alterations including the location, size and type of rooms, all exits, all secondary emergency egress, smoke and carbon monoxide alarms, fire extinguishers, planned evacuation routes, point of safety, any designated smoking areas outside the program; and¶
(o) Other information the Division may reasonably require.¶
(6) A complete set of plans and specifications must be submitted to the Division at the time of initial application, whenever a new structure or addition to an existing structure is proposed or when significant physical alterations to an existing program are proposed. Plans must meet the following criteria:¶
(a) Plans must be prepared in accordance with the Building Code and as outlined in OAR 309-035-0140;¶
(b) Plans must be to scale and sufficiently complete to allow full review for compliance with these rules; and¶
(c) Plans must bear the stamp of an Oregon licensed architect or engineer when required by the Building Code.¶
(7) Prior to approval of a license for a new or renovated setting, the applicant must submit the following to the Division:¶
(a) One copy of a written approved certificate of occupancy based on the change of use of the setting, issued by the city or county building codes authority having jurisdiction;¶
(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the setting complies with the Fire Code;¶
(c) When the setting is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has tested and certified safe the water supply in accordance with OAR chapter 333, Public Health Division rules to public water systems;¶
(d) When the setting is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.¶
(8) The following fees must be submitted with an initial or renewal application:¶
(a) The RTF license application fee for initial or renewal licensing is $60. No fee is required in the case of a governmentally operated RTF;¶
(b) The RTH license application fee for initial or renewal licensing is $30. No fee is required in the case of a governmentally operated RTH.¶
(9) Incomplete initial applications are void after 60 calendar days from the date the Division receives the application and non-refundable fee, as applicable. The Division will deny the incomplete application if not withdrawn.¶
(10) A license is renewable upon submission of a complete renewal application packet in the form and manner required by the Division and a non-refundable fee as set out in section (6), except that no fee shall be required of a governmentally operated program:¶
(a) Filing of a complete application for renewal 60 days before the date of expiration extends the effective date of the current license until the Division acts upon the renewal application;¶
(b) The Division will deny renewal of a license if the program is not in substantial compliance with these rules or if the State Fire Marshal or authorized representative has given notice of noncompliance; and¶
(c) The Division will deny renewal of a license if the program does not submit a complete renewal application

packet prior to the expiration of the license.¶
(11) Upon receipt of an application and fee, the Division shall conduct an application review. Initial action by the Division on the application must begin within 30 days of receipt of all application materials. The review must:¶
(a) Include a complete review of application materials;¶
(b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:¶
(A) Demonstrates an understanding and acceptance of these rules;¶
(B) Is mentally and physically capable of providing services for residents;¶
(C) Employs or utilizes only persons whose presence does not jeopardize the health, safety, or welfare of residents; and¶
(D) Provides evidence satisfactory to the Division of financial ability to comply with these rules.¶
(c) Determine that the applicant is not excluded from receiving federal awards or monies including:¶
(A) The U.S. Office of Inspector General's Exclusion List at www.exclusions.oig.hhs.gov; and¶
(B) The U.S. General Services Administration's System for Award Management Exclusion List at www.sam.gov.¶
(d) Include a site inspection; and¶
(e) Conclude with a report stating findings and a decision on licensing of the program.¶
(12) The Division may deny an application prior to review when:¶
(a) The applicant has previously had any action taken on a certificate or license; or¶
(b) Action taken on a certificate or license includes denial, suspension, conditions, intent to revoke, or revocation by the Division, the Authority, the Oregon Department of Human Services, or any other state agency.¶
(c) If a license is denied for any reason other than the results of a test or an inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within 60 calendar days from the date the notice was mailed.-If no written request for a hearing is timely received, the Division shall issue a final order by default.-The Division may designate its file as the record for purposes of default.¶
(13) The provider must submit and complete a plan of correction for each finding of noncompliance within 30 days from receipt of the inspection report unless otherwise specified by the Division:¶
(a) If the findings of noncompliance substantially impact the welfare, health, and safety of residents, the provider must submit a plan of correction that must be approved by the Division prior to issuance of a license. In the case of a currently operating program, the findings may result in suspension or revocation of a license;¶
(b) If it is determined that the findings of noncompliance do not threaten the welfare, health, or safety of residents and the program meets other requirements of licensing, the Division may issue or renew a license with the plan of correction submitted and completed as a condition of licensing;¶
(c) The Division must specify required documentation and set the timelines for the submission and completion of plans of correction in accordance with the severity of the findings;¶
(d) The Division must review and evaluate each plan of correction. If the plan of correction does not adequately remedy the findings of noncompliance, the Division must require a revised plan of correction and may apply civil penalties or deny, revoke, or suspend the license;¶
(e) The provider may appeal the finding of noncompliance or the disapproval of a plan of correction within 10 calendar days of receipt of notification by submitting a written request for appeal to the Division. The Division must decide on the appeal within 30 days of receipt of the appeal request. The decision of the Division shall be final.¶
(14) The Division, in its discretion, may grant a variance to these rules based upon a demonstration by the applicant that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, or safety of residents:¶
(a) The provider seeking a variance must submit in writing a request to the Division, with CMHP review, that identifies the section of the rules from which the variance is sought, the reason for the proposed variance, and the proposed alternative method or different approach;¶
(b) The director or designee must review and approve or deny the request for a variance;¶
(c) The Division must notify the provider of the decision in writing within 30 days after receipt of the request. A variance may be implemented only after receipt of written approval from the Division;¶
(d) With the exception of facilities operating within the Oregon State Hospital, the provider may appeal the denial of a variance request within 10 calendar days of receipt of notification by submitting a request for appeal in writing to the Division's Director or designee. The Division Director or their designee must decide within 30 days of receipt of the appeal. The decision of the Division Director or their designee is final; ¶
(e) Facilities operating within the Oregon State Hospital may appeal the denial of a variance request within 10 calendar days of receipt of notification by submitting a request for appeal in writing to the Authority's Director or designee. The Authority's Director or their designee must make a decision within 30 days of receipt of the appeal. The decision of the Authority's Director or their designee is final;¶
(f) A variance is not effective until granted in writing by the Division and are only valid for the length of the current issued license or shorter time as specified by the Division.-The licensee must re-apply for a variance at the time of

license renewal; and¶
(g) In seeking a variance, the burden of proof that the requirements of these rules have been met is upon the applicant or licensee.¶
(15) A provider seeking a variance to the waitlist prioritization rules must submit a written request to the Division that clearly outlines the individual for whom the variance is being requested and meets one of the following criteria under (a), (b), or (c):¶
(a) Is currently in a community hospital, and:¶
(A) No longer requires hospital level of care;¶
(B) Is stable and has had no incidents of crisis in the last 30 days;¶
(C) Has been in the hospital 180 days or more; and¶
(D) Has been on the facility waitlist 120 days or more.¶
(b) Has been issued a notice of involuntary transfer or discharge that: ¶
(A) Clearly demonstrates the specific needs that can only be met in a higher level of care; and¶
(B) Includes a new assessment by the IQA demonstrating SRTF level of care is medically necessary.¶
(c) Has been issued a 30-day notice of involuntary transfer or discharge due to facility closure with a specific facility closure date.¶
(16) Upon finding that the applicant is in substantial compliance with these rules, the Division shall issue a license:¶
(a) The license issued must state the name of the provider, the name of the program administrator, the address of the setting to which the license applies, the maximum number of residents to be served at any one time and their evacuation capability, the type of program, and such other information as the Division deems necessary;¶
(b) A license must be effective for two years from the date issued unless sooner revoked or suspended; and¶
(c) A license is not transferable or applicable to any setting, location, or management other than that indicated on the application and license.¶
(1~~6~~7) The license remains valid only under the following conditions:¶
(a) The provider does not operate or maintain the program in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part.¶
(b) Each program must have sleeping~~,~~ areas for use only by its own residents.¶
(c) Each program must have dining~~,~~ and living areas for use only by its own residents, caregivers, and invited guests; and¶
(~~c~~d) The provider must maintain the license posted in a prominent location accessible to the public within the setting.¶
(1~~7~~8) A license becomes void immediately upon suspension or final order of revocation or non-renewal of the license by the Division or if the operation is discontinued by voluntary action of the licensee or if there is a change of ownership.¶
(1~~8~~9) Division staff must conduct an in-person inspection of every program no less than 90 days and not more than 120 days after initial licensure, and at least once every two years to determine whether it is maintained and operated in accordance with ORS 443.416 and these rules. The provider must allow Division staff entry and access to the setting and residents for the purpose of conducting the inspections:¶
(a) Division staff must review methods of resident care and treatment, records, the condition of the setting and equipment, and other areas of operation;¶
(b) All records, unless specifically excluded by law, must be available to the Division for review; and¶
(c) The State Fire Marshal or authorized representatives shall, upon request, be permitted access to the setting, fire safety equipment within the setting, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of setting occupants.¶
(~~19~~20) Incidents of alleged abuse covered by ORS 430.735 through 430.765 and reported complaints are investigated in accordance with OAR 943-045-0000. The Division may delegate the investigation to a CMHP or other appropriate entity:¶
(a) When abuse is alleged or death of a resident has occurred and a law enforcement agency or the Division, Office of Training, Investigations, and Safety, Oregon Department of Human Services, or their designee has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witnesses, the alleged perpetrators, or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:¶
(A) If there is reasonable cause to believe that abuse has occurred; or¶
(B) If the alleged victim is in danger or in need of immediate protective services; or¶
(C) If there is reason to believe that a crime has been committed; or¶
(D) What, if any, immediate personnel actions must be taken.¶
(b) When the program has been notified of the completion of the abuse investigation, the program may conduct an

internal investigation without Division approval to determine if any other personnel actions are necessary.¶
(20~~9~~1) The provider must report promptly to the Division and the CMHP any significant changes to information supplied in the application or subsequent correspondence. Changes include but are not limited to changes in the setting or program name, provider, program administrator, telephone number, and mailing address. Changes also include but are not limited to changes in the physical nature of the setting, policies and procedures, or staffing pattern when the changes are significant or impact the resident's health, safety, or well-being.¶
(21~~1~~2) In accordance with ORS 443.402, the Division may deny, suspend, revoke or refuse to renew a license of a provider if the Division finds that the provider operates a separate facility that is not currently or has not been in substantial compliance with rules adopted under ORS 443.400 to 443.455 or 443.705 to 443.825.¶
(23) Prior to initial licensure or renewal of licensure, the provider and each owner, as defined in ORS 60.470, that has at least 20 percent ownership interest of a program must:¶
(a) Certify in writing, under penalty of perjury, that to the best of the person's knowledge the provider or owner is not in violation of any tax laws described in ORS 305.380; and ¶
(b) Submit a complete tax compliance certification issued by the Department of Revenue for each owner with 20 percent or more ownership, stating that as of the date of the certificate, the provider or owner is not in violation of any tax laws described in ORS 305.380.
Statutory/Other Authority: ORS 413.042, ORS 443.450, ORS 443.420, HB 4068 (2026)
Statutes/Other Implemented: ORS 413.032, ORS 443.400 - 443.465, ORS 443.991

AMEND: 309-035-0125

RULE SUMMARY: Policy and procedure requirements for weapons, reasonable cause searches, and comprehensive safety planning are being added as well as capacity reporting requirements. Administrator background qualifications are being expanded to include Qualified Mental Health Associates (QMHA).

CHANGES TO RULE:

309-035-0125
Administrative Management ¶

(1) The licensee must ensure that the program and setting are maintained and operated in compliance with these rules and all other applicable federal, state, and local laws and regulations.¶
(2) The licensee must employ a program administrator who meets the following qualifications and complies with the following standards:¶
(a) Background including specialized training, experience, and other demonstrated ability in providing care and treatment appropriate to residents with serious mental illness served in the program. Such background must include at least one of the following:¶
(A) One (1) year or more of clinical experience working in a setting that provides inpatient or outpatient mental health treatment to individuals who are diagnosed with serious mental illness; ~~or~~¶
(B) Two (2) years or more of residential experience working in a setting that was licensed to provide care and services to individuals who are diagnosed with serious mental illness; or¶
(C) A current Qualified Mental Health Associate (QMHA) or Qualified Mental Health Professional (QMHP) credential as described in OAR 309-019-0125 who has been qualified and practicing for a period of not less than one (1) year.¶
(b) Documented current approved background checks processed in compliance with the procedures required by OAR 943-007-0001 through 0501;~~-~~¶
(c) Ensure the program operates in accordance with the standards outlined in these rules;¶
(d) Oversee the daily operation and maintenance of the program and must be available to perform administrative duties at the setting for at least 20 hours per week;¶
(e) Develop and administer written policies and procedures to direct the operation of the program and the provision of services to residents;¶
(f) Ensure sufficient qualified program staff are available to provide direct services to residents in accordance with the staffing requirements specified in these rules to assure resident safety and resident rights, freedoms, and protections, provision of HCBS services, and that resident's attain or maintain the highest practical physical, mental and psychosocial well-being as determined by the resident assessments and person-centered service plans, and considering the number, acuity and diagnoses of the program's resident population;¶
(g) Supervise or provide for the supervision of program staff and others involved in the operation of the program;¶
(h) Maintain setting, personnel, and resident service records;¶
(i) Report regularly to the licensee on the operation of the program; and¶
(j) Delegate authority and responsibility for the operation and maintenance of the program to a responsible staff person whenever the program administrator is absent from the setting:¶
(A)-This authority and responsibility may not be delegated to a resident.¶
(B) If the program administrator is absent from the setting for a period exceeding 60 days, an interim program administrator, who meets all qualification requirements, must be designated. Upon designating an interim program administrator, a notification must be made to the Division.¶
(3) The licensee, administrator and all caregivers must be literate in the English language and can understand and communicate orally and in writing with residents, medical professionals, care coordinators and others involved in the care of residents.¶
(4) The licensee, administrator, and all caregivers must not be listed on the U.S. Office of Inspector General's or U.S. General Services Administration Exclusion lists:¶
(a) It is the licensee's responsibility to ensure the administrator is not listed on either of the Exclusion Lists;¶
(b) It is the administrator's responsibility to ensure that all caregivers must not be listed on either of the Exclusion Lists; and¶
(c) Verification of these requirements must be clearly documented in the program's personnel records.¶
(5) The licensee must develop and update policies and procedures specific to the licensed setting, maintain a copy in a location easily accessible for staff reference and made available to others upon reasonable request. Policies and procedures must be consistent with requirements of these rules and must address at a minimum the following:¶

(a) Personnel practices;¶
(b) Staffing requirements;¶
(c) Program staff and administrator training;¶
(~~c~~d) Resident screening, admission, and transfer and discharge;¶
(~~d~~e) Fire drills and emergency procedures;-¶
(~~e~~f) Resident and program safety;¶
(~~f~~g) Abuse reporting;¶
(~~g~~h) Health and sanitation;¶
(~~h~~i) Records maintenance and confidentiality;¶
(~~i~~j) Service planning;¶
(~~j~~k) Behavior management interventions including the use of seclusion or restraints;¶
(~~k~~l) Food preparation and distribution;¶
(~~l~~m) Medication administration and storage;¶
(~~m~~n) Weapons and reasonable cause searches;¶
(o) Resident belongings, storage and funds;¶
(~~n~~p) Resident rights, freedoms, and protections;¶
(~~o~~q) Advanced mental health and medical health directives;¶
(~~p~~r) Complaints and grievances;¶
(~~q~~s) Setting maintenance;¶
(~~r~~t) Evacuation capability determination;¶
(~~s~~u) Fees and money management;¶
(~~t~~v) Cultural competency;¶
(~~u~~w) Limited English Proficiency (LEP) services;¶
(~~v~~x) Facility closure; ¶
(y) Comprehensive safety planning; and¶
(~~w~~z) Secure settings must have a policy and procedure regarding resident leave authorization.-¶
(6) Any social covenants required by the program must be outlined in the residency agreement and must be posted in a prominent location in the common area.-Social covenants may not conflict with resident rights and freedoms outlined in these rules.¶
(7) The provider must submit critical incident reports to the Division and the CMHP within 48 hours of the incident occurring.¶
(8) The provider must submit all incident reports to the CMHP within 48 hours of the incident occurring.¶
(9) The provider must report real-time bed capacity data daily using a platform and manner approved by the Division.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.460, 443.991

AMEND: 309-035-0135

RULE SUMMARY: Background checks requirements are being extended from two years to three years in alignment with HB 4115 and orientation reference is being clarified to include existing training requirements. Updated mandatory abuse reporting training title and adding approved LGBTQIA2S+ course.

CHANGES TO RULE:

309-035-0135
Staffing ¶

(1) The provider must maintain a written job description for each staff position that specifies the position's qualifications and job duties:¶
(a) A direct care staff person must be:¶
(A) At least 18 years of age;¶
(B) Be capable of implementing the setting's emergency procedures and disaster plan; and¶
(C) Be capable of performing other duties of the job as described in the job description;¶
(b) All program staff having contact with a resident must have a documented current approved background check in accordance with OAR 943-007-0001 through 943-007-0501 prior to working alone with residents. All program staff must have a preliminary background check prior to working with residents under supervision of qualified staff. The provider must maintain documentation of current approved or preliminary background checks for each applicable staff person.¶
(c) A new background check must be completed:¶
(A) Every t~~wo~~hree years;¶
(B) Prior to any subject individual's change in employment position; and¶
(C) If the Division has reason to believe a new background check is needed.¶
(d) All program staff must meet other qualifications when required by a contract or financing arrangement approved by the Division.¶
(2) Personnel policies must be made available to all program staff and must describe hiring, leave, promotion, and disciplinary practices.¶
(3) The program administrator must provide or arrange a minimum of 16 hours pre-service orientation for each program staff within 60 days of hire and prior to working alone with residents~~;~~. Pre-service orientation training for direct care staff must include, but is not limited to:¶
(a) A comprehensive tour of the setting;¶
(b) A review of emergency procedures developed in accordance with OAR 309-035-0145;¶
(c) A review of setting policies and procedures;¶
(d) Background on ~~mental, emotional, or behavioral disorders and conditions;~~serious mental illness¶
(e) Behavior management including interventions and de-escalation techniques;¶
(f) An overview of resident rights;¶
(g) Medication management procedures;¶
(h) Food service arrangements;¶
(i) Grievances, complaints and an overview of the Oregon Residential Facilities Ombudsperson program;¶
(j) A summary of each resident's assessment and residential service plan;¶
(k) Culturally responsive care;¶
(l) Completion of the approved course Mandatory Abuse Reporting for ~~Individuals Working in Community Mental Health Programs~~CDDP and CMHP;¶
(m) Completion of an approved HCBS training course; and¶
(n) Other information relevant to the job description and scheduled shifts.¶
(4) The program administrator must provide or arrange a minimum of 8 hours annual in-service training for each program staff:~~¶~~
~~(a)~~ Annual in-service training topics for direct care staff must include but are not limited to:¶
(~~A~~a) Culturally responsive care;¶
(~~B~~b) Implementing residential service plans;¶
(~~C~~c) Behavior management including interventions and de-escalation techniques;¶
(~~D~~d) Daily living skills development;¶
(~~E~~e) Nutrition;¶
(~~F~~f) Opioid overdose kits and administration of an FDA-approved short-acting, non-injectable, opioid antagonist medication;¶
(~~G~~g) Understanding mental illness;¶

(~~H~~h) Sanitary food handling;¶
(~~I~~i) Resident rights, freedoms, and protections;¶
(~~J~~j) Identifying health care needs;¶
(~~K~~k) Complaints, grievances, incidents and abuse reporting; and¶
(~~L~~l) Psychotropic medications.¶
(5) The licensee must ensure that all direct care staff have and maintain current Cardiopulmonary Resuscitation (CPR) and First Aid certifications from a Division-approved entity within 60 days of hire and prior to working alone with residents:¶
(a) Accepted CPR and First Aid courses must be provided by or meet the standards of the American Heart Association or the American Red Cross.¶
(b) CPR or First Aid courses conducted online are only accepted by the Division when an in-person skills competency check is conducted by a qualified instructor meeting the standards of the American Heart Association or the American Red Cross.¶
(6) The licensee must ensure that all program staff and entities contracting with the program to provide direct care must complete a general worker safety training within 90 days of hire and at least two years thereafter:¶
(a) This training must focus on providing program staff and contracted entities with skills and knowledge regarding:¶
(A) The potential risks that program staff may face in the work environment of a particular behavioral health setting, including but not limited to behavioral health settings involving mobile crisis intervention teams, as defined in ORS 430.626;¶
(B) Protocols for using safety equipment, emergency communication devices and alert systems in emergency or crisis situations; and¶
(C) The available options for reporting alleged workplace safety violations and allegations of discrimination, retaliation or harassment to the Occupational Safety and Health Division of the Department of Consumer and Business Services, the Bureau of Labor and Industries and other relevant state agencies, including the rights and protections afforded to workers who engage in such reporting.¶
(b) The training must incorporate simulated scenarios and roleplaying to ensure program staff and contracted entities have an opportunity to apply the training principles in real-world scenarios.¶
(c) The program must retain records documenting the completion of the training required under this section. At a minimum, the records must include the date of training, topics covered and the names of the program staff and contracted entities who attended the training. The records shall be made available, upon request, to the Division.¶
(7) All program staff and entities contracting with the program to provide direct care must complete a Division-approved LGBTQIA2S+ ~~training within 60 days of hire and prior to working alone with residents and every two years thereafter. This training must include the following elements:¶~~
~~(a) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency virus;¶~~
~~(b) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression, or human immunodeficiency virus status;¶~~
~~(c) The defined terms commonly associated with LGBTQIA2S+ individuals and human immunodeficiency virus status;¶~~
~~(d) Best practices for communicating with or about LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including the use of an individual's chosen name and pronouns;¶~~
~~(e) A description of the health and social challenges historically experienced by LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including discrimination when seeking or receiving care and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination; and¶~~
~~(f) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including suggested changes to policies and procedures, forms, signage, communication between residents and their families, activities, in-house services, and staff training.¶~~
~~(g) Proof of all training completion must be documented in the program staff member's individual personnel file as outlined in OAR 309-035-0125. Proof of training completion for entities contracting with the program must be maintained in the program files.~~course Providing Inclusive Care: Training for Oregon Long-Term Care Facility Staff within 60 days of hire and prior to working alone with residents and every two years thereafter. ¶
(8) The provider must ensure that an adequate number of trained and qualified program and direct care staff are available at all times to meet the treatment, health, and safety needs of all residents. Program staff must be scheduled to meet the changing needs and ensure safety of residents. Minimum staffing requirements are as follows:¶
(a) There must be at least one direct care staff on duty at all times;¶
(b) In the case of a specialized program, staffing requirements outlined in the contractual agreement for specialized services must be implemented and maintained at all times;¶

(c) Class I and Class II SRTFs must ensure staffing levels meet the requirements set forth in chapter 309, divisions 32 and 33 as applicable; and¶
(d) Program and direct care staff on night duty must be awake, dressed, observant of program operations, and accessible to residents at all times.
Statutory/Other Authority: ORS 413.042, 443.450, HB 4115 (2026)
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0140

RULE SUMMARY: A requirement for secure storage of culinary knives is being added and two errors are being corrected. Address number requirements are being added and window requirements are being clarified.

CHANGES TO RULE:

309-035-0140
Setting Requirements ¶

(1) The provider must ensure that the setting requirements are met for the occupancy classification designated by the Oregon Building Code and the Oregon Fire Code prior to initial licensure. When a change in setting use results in a new building occupancy classification, the program's setting must meet the requirements of the building occupancy classification. The provider must provide the Division a certificate of occupancy for the setting use upon request.¶
(2) Programs must be accessible as follows:¶
(a) Those settings or portions of settings that are licensed, constructed, or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations must meet the physical accessibility requirements in chapters 10 and 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 resident must be in accordance with the specific needs of the resident.¶
(3) An accessible outdoor area is required and must be made available to all residents. For programs or portions thereof licensed on or after June 1, 1998, a portion of the accessible outdoor area must be covered and have an all-weather surface such as a patio or deck.¶
(4) The setting must have sufficient and safe storage areas that include but not limited to:¶
(a) Storage for a reasonable number of resident belongings beyond that available in the resident's unit must be provided appropriate to the size of the setting;¶
(b) All maintenance equipment including yard maintenance tools must be maintained in adequate storage space. Locked storage for equipment and tools is to be utilized if necessary for the individualized safety of one or more residents; and¶
(c) Storage areas necessary to ensure a functional, safe, and sanitary environment consistent with OAR 309-035-0140 through 0155 and 309-035-0210 through 0215.¶
(5) The provider must provide a unit for each resident, although the program may maintain units to be shared by more than one resident consistent with these rules. The unit must include sleeping accommodations for the resident and be separated from other areas of the setting by an operable door with an approved latching device. The provider must maintain units as follows:¶
(a) For programs licensed prior to June 1, 1998, units must be a minimum of 60 square feet per resident and allow for a minimum of three feet between beds;¶
(b) For programs or portions thereof initially licensed on or after June 1, 1998, units must be limited to one or two residents. At least ten percent of units, but no less than one unit, must be accessible for residents with mobility disabilities. All units must include a minimum of 70 square feet per resident exclusive of closets, vestibules, and bathroom facilities and allow a minimum of three feet between beds;¶
(c) The provider must provide a lockable entrance door to each unit for the resident's privacy, except as otherwise limited under OAR 309-035-0110(5), as follows:¶
(A) The locking device must release with a single-action lever on the inside of the room and open to a hall or common-use room;¶
(B) The provider must provide each resident with a personalized key that operates only the door to their unit from the corridor side;¶
(C) The provider must maintain a master key to access all the units that is easily and quickly available to the provider, program administrator, and appropriate program staff;¶
(D) The provider may not disable or remove a lock to a unit unless the provider has a signed consent to an individually-based limitation from the resident or the resident's legal representative, or as permitted under OAR 309-035-0110(5) through (8) and OAR 309-035-0195; and¶
(d) A clothes closet with adequate clothes hanging rods must be accessible within each unit for each resident residing in the unit, for storage of each resident's clothing and personal belongings. For programs initially licensed

on or after June 1, 1998, built-in closet space must be provided totaling a minimum of 64 cubic feet for each resident. In an accessible unit, the clothes hanging rod height must be adjustable or no more than 54 inches in height to ensure accessibility for a resident using a wheelchair; and¶
(e) Each unit must have at least one exterior window~~s~~ with a minimum net clear opening of 5.7 square feet. The window must readily open from the inside without special tools and must provide a clear, unobstructed opening with ~~the~~ minimum dimensions not less than 24 inches in height and 20 inches in width. The bottom of the opening must not be greater than 44 inches from the floor.¶
(f) Unit windows must be equipped with curtains or blinds for privacy and light control. For programs or portions of programs initially licensed on or after June 1, 1998, an escape window must be provided consistent with building code requirements.¶
(6) For programs initially licensed on or after June 1, 1998, all resident use areas and resident units must:¶
(a) Be accessible through temperature controlled common areas or hallways;¶
(b) Meet the size requirements as established by the State of Oregon Building Codes Division or their designee; and¶
(c) Have accessible routes between accessible bedrooms and bathrooms and between common areas and required exits.¶
(7) The setting must have sufficient space for confidential storage of both resident service records and business records, for program staff use in completing record-keeping tasks, and for a telephone.¶
(8) Equipment, including fire alarm panels and other annunciators, must be installed in an area readily accessible to staff in accordance with the Oregon Fire Code.¶
(9) Bathing and toilet facilities must be conveniently located for resident use and must:¶
(a) Provide permanently wired light fixtures that illuminate all parts of the room;¶
(b) Provide individual privacy for residents;¶
(c) Provide a securely affixed mirror at eye level;¶
(d) Be adequately ventilated; and¶
(e) Include sufficient facilities specially equipped for use by residents with a physical disability in buildings serving such residents.¶
(10) In programs licensed prior to June 1, 1998, a minimum of one toilet and one lavatory must be available for each eight residents, and one bathtub or shower must be available for each ten residents; and¶
(11) In programs or portions of programs initially licensed on or after June 1, 1998, a minimum of one toilet and one lavatory must be available for each six residents, and a minimum of one bathtub or shower must be available for each ten residents, when these fixtures are not available in units. At least one centralized bathroom along an accessible route must be designed for disabled access in accordance with chapters 10 and 11 of the Oregon Structural Specialty Code.¶
(12) The setting must include lounge and activity areas for social and recreational use by residents, program staff and invited guests of residents totaling no less than 15 square feet per resident.¶
(13) Laundry facilities must be separate from food preparation and other resident use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both resident and staff use. In programs initially licensed on or after June 1, 1998, separate residential laundry facilities must be provided when the primary laundry facilities are located in another building, are of commercial type, or are otherwise not suitable for resident use. The following must be included in the primary laundry facilities:¶
(a) Countertops or spaces for folding tables sufficient to handle laundry needs for the program;¶
(b) Locked storage for chemicals and equipment to be utilized if necessary for the for the individualized safety of one or more residents;¶
(c) Outlets, venting, and water hook-ups according to state building code requirements;¶
(d) Washers must have a minimum rinse temperature of 155 degrees Fahrenheit (160 degrees Fahrenheit recommended) unless a chemical disinfectant is used; and¶
(e) Sufficient storage and handling space to ensure that clean laundry is not contaminated by soiled laundry.¶
(14) 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 must 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 must be maintained at 40 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, non-absorbent 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 must be maintained separately from those used to clean other parts of the setting; and¶
(i) Locked storage for all kitchen knives, except flatware.¶
(15) The setting must have a separate dining room or an area where meals are served for use by residents, employees, and invited guests of residents:¶
(a) In programs licensed prior to June 1, 1998, the setting's dining area must seat at least half of the residents at one time with a minimum area of 15 square feet per resident; and¶
(b) In programs or portions of programs initially licensed on or after June 1, 1998, the setting's dining space must seat all residents with a minimum area of 15 square feet per resident exclusive of serving facilities and required exit pathways.¶
(16) All details and finishes must 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 must be nonabsorbent and readily cleanable;¶
(b) The setting's flooring, thresholds and floor junctures must 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 baseboards must be free from cracks and breaks, and bathing areas must 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 must provide a minimum clear opening of 32 inches;¶
(d) In all programs, lever type door hardware must be provided on all doors ~~used by residents~~;¶
(e) Locks used on doors ~~to resident 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~~5)(c)(A), (B), and (D), as applicable;¶
(A) Exit doors must not include locks that prevent evacuation except in accordance with building code and fire code requirements and with written approval of the Division; and¶
(B) An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when residents or others enter or exit the setting.¶
(f) Handrails must be provided on all stairways as specified in the Building Code.¶
(17) All areas of the setting must be adequately ventilated, and temperature controlled in accordance with the Mechanical and Building Code requirements:¶
(a) Each setting must have and maintain heating and cooling equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit and a maximum temperature not exceeding 78 degrees Fahrenheit.¶
(b) All toilet and shower rooms must 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 must meet standards of the Oregon Mechanical Specialty Code and the Oregon Boiler and Pressure Vessel Specialty Code, as applicable, in effect at the time of installation. Documentation of annual inspection noting safe and proper operation must be maintained at the setting; and¶
(d) In resident-use areas, hot water temperatures must be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures in laundry and kitchen areas must be at least 155 degrees Fahrenheit.¶
(18) All wiring systems and electrical circuits must meet the standards of Oregon Electrical Specialty Code in effect on the date of installation.¶
(19) All electrical devices must be properly wired and in good repair. The provider must ensure the following:¶
(a) When not fully grounded, circuits in resident use areas must be protected by GFCI type receptacles or circuit breakers as an acceptable alternative;¶
(b) A sufficient supply of electrical outlets must be provided to meet resident and staff needs;¶
(c) No more than one power strip may be utilized for each electrical outlet;¶
(d) Connecting power strips to one another or use of other outlet expansion devices is prohibited; and¶
(e) Extension cord use in units and common use rooms is prohibited.¶
(20) Lighting fixtures must be provided in each resident unit and bathroom, switchable near the entry door and in other areas as required to meet task illumination.¶
(21) Lighting fixtures that illuminate evacuation pathways must be operable within ten seconds during a failure of the normal power supply and provide illumination for a period of at least two hours.¶
(22) All plumbing must meet the Oregon Plumbing Specialty Code in effect on the date of installation.¶
(23) All plumbing fixtures must be properly installed and in good repair.¶
(24) The program must provide adequate access to telephones for private use by residents. The program must not limit the hours of availability for telephone use. A program may establish guidelines for fair and equal use of a shared telephone. Each resident or resident's representative is responsible for payment of long-distance phone bills where the calls were initiated by the resident, unless other mutually agreed arrangements have been made.¶
(25) Smoking and the use of smokeless tobacco is not allowed within the setting including within buildings or on the

grounds.¶
(26) Secure settings must have the following security protocols in place:¶
(a) Exit doors which remain locked at all times to prevent residents from leaving the facility without authorization;¶
(b) Exterior doors and windows must be alarmed to notify staff of a resident leaving the facility; and¶
(c) A barrier or fence of solid construction around the outdoor area to prevent residents from leaving the property without authorization.¶
(27) The address numbers of the program must be placed on the home or within 10 feet of the driveway to the home in a position that is legible and clearly visible from the street or road fronting the property. Address numbers must be a minimum of 4 inches in height, made of reflective material and contrast with their background.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0145

RULE SUMMARY: Adding safety planning requirements in alignment with HB 4069, and individualized safety planning requirements. Clarifying evacuation drill requirements to align with the settings' evacuation capability.

Rule Text:

CHANGES TO RULE:

309-035-0145
Safety ¶

(1) The provider must train all program staff in safety procedures prior to beginning their first regular shift.¶
(2) Every resident must be trained in resident safety procedures as soon as possible within the first 72 hours of residency.¶
(3) The program must develop and implement a written emergency procedure and disaster plan. The plan must cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, lockdowns, infectious disease outbreaks, loss of utilities, hazardous air quality, floods, and extreme weather events. The plan must be immediately available at all times to the program administrator and program staff. The plan must include diagrams of the program's evacuation egress routes, and these must also be posted along evacuation egress routes. The plan must specify short-range and long-range shelters where residents will reside and receive services from program staff if the setting becomes uninhabitable. This plan must be easily accessible to all program staff. The program must update the plan annually to include:¶
(a) Emergency instructions for employees;¶
(b) The telephone numbers of the local fire department, police department, the poison control center, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and¶
(c) Instructions for the evacuation of residents and employees.¶
(4) Noncombustible and nonhazardous materials must be used whenever possible. When necessary to the operation of the program, flammable and combustible liquids and other hazardous materials must be safely and properly stored in clearly labeled, original containers in areas secure to prevent tampering by residents or vandals and in accordance with the Oregon Fire Code. Any quantities of combustible and hazardous materials maintained must be the minimum necessary:¶
(a) Oxygen and other gas cylinders in service or in storage must be adequately secured to prevent the cylinders from falling or being knocked over.-¶
(b) No smoking signs must be visibly posted where oxygen is stored or used;¶
(c) Liquid propane gas must not be stored in an attached garage or enclosed storage space. Enclosed structures used for the storage of liquid propane gas may not share a wall or direct openings to the program.-¶
(5) Non-toxic cleaning supplies must be used whenever possible. Poisonous and other toxic materials must be properly labeled and stored apart from all personal care supplies, personal hygiene supplies, food and medications.¶
(6) Evacuation capability categories are based upon the ability of the residents and program staff as a group to evacuate the building or relocate from a point of occupancy to a point of safety. Buildings must be constructed and equipped according to a designated evacuation capability for occupants:¶
(a) Only residents assessed to be capable of evacuating in accordance with the designated facility evacuation capability may be admitted to the program; and¶
(b) Residents experiencing difficulty with evacuating in a timely manner must be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the program must consider increasing staff levels, changing staff assignments, offering to change the resident's room assignment, arranging for special equipment, and taking other actions to assist the resident. The program must assist residents who still cannot evacuate the building safely in the allowable period of time and must assist with transferring to another facility with an evacuation capability designation consistent with the resident's documented evacuation capability.¶
(7) The program must ensure that every resident participates in an unannounced evacuation drill at least once every three months:¶
(a) At least once every twelve months, the program must conduct a drill during resident sleeping hours between 10 p.m. and 6 a.m.;¶
(b) Drills must be scheduled at different times of the day, on different days of the week and with different locations designated as the origin of the fire for drill purposes;¶
(c) Any resident failing to evacuate within the established time limits must be provided with assistance as identified in OAR 309-035-0145(6)(b) above and a notation made in the resident service record; and¶

(d) Complete written evacuation records must be maintained for at least three years. Records must include documentation made at the time of the drill specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, weather conditions at the time of the drill, the names of all residents and staff present, the amount of time required for full evacuation and for each individual ~~and staff~~ to evacuate to the point of safety, notes of any difficulties experienced, and the signature of the staff person conducting the drill.¶
(8) All stairways, halls, doorways, passageways, and exits from rooms and from the building must always remain unobstructed.¶
(9) The program must provide and maintain one or more 2-A:10-B:C rated fire extinguishers on each floor, including basements, in accordance with the Oregon Fire Code. Fire extinguisher must:¶
(a) Be inspected and maintained at least annually and in accordance with the requirements of the Oregon State Fire Marshal or local authority having jurisdiction;¶
(b) Be located in conspicuous locations along normal paths of travel where they will have ready access and be immediately available for use;¶
(c) Not be obscured from view. In rooms or areas in which visual obstruction cannot be completely avoided, signage must be provided to indicate the locations of extinguishers;¶
(d) Be installed on the hangers or brackets supplied.~~-~~Hangers or brackets must be securely anchored to the mounting surface in accordance with the manufacturer's installation instructions;¶
(e) Be installed so that the tops are not more than five (5) feet above the floor;¶
(f) Be installed so that the bottoms are not less than four (4) inches above the floor; and¶
(g) Not be locked.¶
(10) The program must provide and maintain at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor.¶
(11) The program must provide and maintain evacuation route diagrams in each common room and hallway and immediately adjacent to every egress door. Evacuation diagrams must include fire exits, location of fire extinguishers, stairs, and escape routes.¶
(12) Approved fire detection and alarm systems, carbon monoxide alarms, and smoke alarms must be UL approved and installed according to Building Code and Oregon Fire Code requirements and the manufacturer's instructions.¶
(13) Fire detection and alarm systems, carbon monoxide alarms and smoke alarms must be tested monthly.¶
(14) Programs initially licensed on or after February 1, 2025, must have fire detection and alarm systems, carbon monoxide alarms, and smoke alarms that are interconnected and permanently wired with battery back-up.¶
(15) Carbon monoxide alarms must be installed:¶
(a) In each bedroom or within 15 feet outside of each bedroom door;~~ and~~¶
(b) On each level of the setting when bedrooms are on separate floor levels~~.~~; and¶
(c) All areas with a fuel-burning appliance or carbon monoxide source, including attached garages. ¶
(16) The program must provide appropriate signal devices for persons with disabilities who do not respond to the standard auditory alarms. All assistive devices must be inspected and maintained in accordance with the requirements of the Oregon State Fire Marshal or local authority having jurisdiction.¶
(17) The program must install and maintain an automatic sprinkler system in compliance with Building Codes and Oregon Fire Code. The program must install an automated sprinkler system as follows:¶
(a) Programs initially licensed prior to July 1, 2016, are not required to install or maintain a sprinkler system if one was not present at the time of initial licensure;¶
(b) The Division recommends that all programs licensed prior to July 1, 2016, install and maintain sprinkler systems;¶
(c) Program initially licensed on or after July 1, 2016, must have and maintain an automated sprinkler system.¶
(d) The Building Code Authority or designee may determine that a program is not required to install and maintain a sprinkler system. Any determination made by the Building Code Authority or designee must be submitted to the Division in writing.¶
(18) The Division will not issue any variances related to automatic sprinkler systems in programs licensed on or after July 1, 2016.¶
(19) First aid supplies must be readily accessible to staff. All supplies must be properly labeled.¶
(20) Portable heaters are a recognized safety hazard and may not be used except as approved by the Oregon State Fire Marshal, or authorized representative.¶
(21) The provider must develop and implement a comprehensive facility safety plan to identify~~ and~~, prevent~~ the occurrence of~~, and respond to hazards ~~at~~within the program. ~~Such h~~Hazards may include, but are not limited to~~,~~ extreme heat, communicable diseases, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other electrical adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, unsafe ashtrays and ash disposal, and other potential fire hazards. The provider must update the plan as needed and it must include~~ procedures for notifying the local public health agency when~~

~~significant health risks are present, including but not limited to, communicable and noncommunicable diseases and conditions, pest infestations, and other environmental hazards.¶~~
~~(22~~:¶
(a) Procedures for maintaining the safety of the built environment including, but not limited to how program staff can report structural security hazards and timelines for the program's response to these identified hazards, methods for maintaining the safety of the built environment, and protocols to ensure the physical safety of lone workers; and¶
(b) Procedures for notifying the local public health agency when significant health risks are present, including but not limited to, communicable and noncommunicable diseases and conditions, pest infestations, and other environmental hazards.¶
(22) The provider must immediately develop and implement an individualized safety plan when a resident's behavior or circumstance present a known threat to the health and safety of the resident or others, ensuring all interventions align with resident rights, freedoms, and protections under OAR 309-035-0170. These plans must fully address identified threats through appropriate program staff actions, including additional staffing, when necessary, as required by OAR 309-035-0135(8). Residential Service Plans must be updated within 30 days to incorporate these interventions, after which the individualized safety plan may be discontinued.¶
(23) Safety equipment must be checked monthly, including but not limited to, fire extinguishers, flashlights, windows, dryer vents, and furnace filters.
Statutory/Other Authority: ORS 413.042, 443.450, HB 4069 (2026)
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0155

RULE SUMMARY: Clarifying dresser requirement for individual unit furnishings and adding a requirement for bedside tables or nightstands and laundry baskets.

CHANGES TO RULE:

309-035-0155
Individual Furnishings ¶

(1) The program must permit a resident to use the resident's own furniture within space limitations of the resident's unit. Otherwise, furniture must be provided or ~~arranged~~made available for each resident, maintained in good repair, and must include the following:¶
(a) A bed including a frame, a clean mattress and pillow;¶
(b) A ~~private dresser or similar storag~~bedside table or nightstand;¶
(c) A laundry basket;¶
(d) A private ~~a~~dre~~a~~sser for personal belongings that is readily accessible to the resident; and¶
(~~c~~e) Locked storage for the resident's small, personal belongings. Additional locked storage may be provided in a place other than the resident's unit. The provider must provide the resident with a key or other method to gain access to their locked storage space.¶
(2) The program must provide linens for each resident and must include the following:¶
(a) Sheets, pillowcase, and other bedding appropriate to the season and the resident's comfort;¶
(b) Availability of a waterproof mattress or waterproof mattress cover; and¶
(c) Towels and washcloths.¶
(3) The provider must provide each resident culturally responsive personal hygiene items in accordance with individualized resident's needs. Personal hygiene items must be stored in a clean and sanitary manner. Personal hygiene items include, but are not limited to, soap, shampoo, toilet paper, toothbrushes, toothpaste, menstrual supplies, combs, and hairbrushes.¶
(4) An adequate supply of furniture for resident use in living room, dining room, and other common areas must be provided and maintained in good condition.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

AMEND: 309-035-0156

RULE SUMMARY: Three corrections are being made related to the mental health advance directives and an updated rule number. Clarifying administrator requirements and aligning timeline for incomplete referrals with the requirement for scheduling the screening appointment.

CHANGES TO RULE:

309-035-0156
Screening
(1) The provider must ensure the screening and referral policies and procedures process include:¶
(a) The program staff responsible for each component of the screening and referral information gathering and decision-making process. The program must allocate responsibilities to promote effective processing of referrals and completion of screenings.¶
(b) Considerations for the placement of prospective residents by a supervisory authority under ORS chapters 161 or 426 or by the informed consent of the prospective resident's legal representative, the ability of the program to meet the service needs of both the prospective resident and current residents of the program, and the prospective resident's right to select and choose from available service settings when the prospective resident has the capacity to engage in the treatment programs offered by the program. A prospective resident under civil commitment has the right to appeal the placement by the OHA designee as outlined in OAR 309-033-0290(5).¶
(2)~~ The provider must support the prospective resident's right to select a program by assisting the person-centered service plan coordinator in identifying and documenting program options in the person-centered service plan, including providing information regarding program services and rates. The prospective resident's right to select a service setting may be limited by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426, or by the informed consent of the prospective resident's legal representative.¶~~
~~(3)~~ Unless limited by contractual agreement with the Division, the program must accept and process referrals from:¶
(a) Oregon Health Authority or its designee;¶
(b) Hospitals;¶
(c) County Mental Health Programs;¶
(d) Licensed Residential Treatment Facilities and Homes; and¶
(e) Licensed Mental Health Adult Foster Homes.¶
(~~4~~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 of any confidential information concerning a prospective individual.¶
(~~5~~4) The provider must consider a prospective resident for admission and not discriminate based on race, color, sex, gender or sexual orientation, except as may be limited by room arrangement, religion, creed, national origin, age, except under 18 years, familial status, marital status, source of income, cultural identity, socioeconomic status, or disability in addition to the serious mental illness or other protected classes.¶
(~~6~~5) Prior to accepting a prospective resident for admission to the program, the pro~~gram administrato~~vider must determine the prospective resident meets admission criteria including the following:¶
(a) The provider must offer each prospective resident referred for placement at the program an opportunity to participate in a screening interview prior to being accepted or denied placement at a program., except as described in OAR 309-035-015~~7~~6(10)(d). The screening is intended to provide information about the program and the services available as well as to obtain information from the prospective resident, a relative, and agencies currently providing services to the prospective resident sufficient to determine eligibility for admission and service needs; and.¶
(b) The provider must receive screening packets for each prospective resident referred for placement. At a minimum, screening packets must include:¶
(A) Written documentation that the prospective resident has or is suspected of having a serious mental illness;¶
(B) Background information including a description of previous living arrangements, service history, behavioral support needs, service needs, historical health conditions, current physical condition, and any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;¶
(C) Copies of documentation relating to guardianship, conservatorship, commitment status, advance directives, declaration ~~o~~for mental health treatment, conditions of placement if on a trial visit or outpatient commitment, or any other legal restrictions or jurisdiction;¶
(D) Documentation demonstrating the individual's ability to pay for room and board and eligibility for Medicaid services as outlined in OAR 410-120-1140, or equivalent funds to pay for services.¶
(c) Providers are not required to screen incomplete referrals. The referring entity must:¶
(A) Be notified of the incomplete status within ~~ten (10) business day~~48 hours of the referral packet's receipt; and¶

(B) The notification must include a description identifying information missing from the referral.¶
(d) The provider must ensure that screenings be conducted at the prospective program setting unless:¶
(A) Travel arrangements cannot be made due to inclement weather; or¶
(B) The prospective resident or their legal representative requests a remote screening or screening at the prospective resident's current location.¶
(e) The provider must contact the referring agency to schedule a screening appointment within 48 hours of receipt of the referral packet;¶
(f) The provider must coordinate with the referring agency to schedule a screening appointment to occur within 14 calendar days from the date of receipt of the referral packet;¶
(g) The provider must provide the following to each prospective referred for placement:¶
(A) Materials explaining conditions of residency;¶
(B) Services available to resident residing in the program; and¶
(C) An opportunity to meet with a prospective roommate if the program uses a shared room model.¶
(h) The screening meeting must include the program administrator or other designated program staff person, the prospective resident, and the prospective resident's legal representative, if applicable. With the consent of the prospective resident or the prospective resident's legal representative, the meeting may also include family members, representatives of relevant service-providing agencies, and others with an interest in the prospective resident's admission.¶
(~~7~~6) If a prospective resident is referred for emergency admission, an amended or abbreviated screening process may be used to more quickly meet the needs of the prospective resident. Screening and admission information obtained may be less comprehensive than for regular admissions but must be sufficient to determine the prospective resident meets admission criteria and that the setting and program is appropriate considering the prospective resident's needs. The program must document the reasons for incomplete information.¶
(~~8~~7) Prior to admission, the provider must evaluate and determine whether a prospective individual is eligible for admission based on the following criteria. The prospective resident must:¶
(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 occupancy classification with or without assistance as described in OAR 309-035-0145(6)(b);¶
(e) Have a verified funding source for the purpose of receiving care and services in a licensed setting including verification of Medicaid eligibility and coverage, as applicable;¶
(f) Meet additional criteria required or approved by the Division through contractual agreement or condition of licensing.¶
(~~9~~8) For admission to an SRTF, the provider must also evaluate and determine whether a prospective resident is eligible for admission, based on the prospective resident meeting all criteria in OAR 410-172-0720(7).¶
(~~10~~9) The provider may only deny a prospective resident admission to its program for the following reasons:¶
(a) Failure to meet admission criteria established by these rules;¶
(b) Inability to pay for services due to lack of presumed Medicaid eligibility or other funds;¶
(c) Lack of availability of necessary medical services required to maintain the health and safety of the prospective resident and those services cannot be reasonably arranged; or¶
(d) The prospective resident declines the offer for screening, unless the placement of the prospective resident is by a supervisory authority under ORS chapters 161 or 426 or by the informed consent of the prospective resident's legal representative.¶
(1~~1~~0) The provider may not deny a prospective resident admission to its program as follows:¶
(a) Prior to offering a face-to-face screening or other screening process as allowed by these rules unless the program waitlist is currently closed as outlined in OAR 309-035-015~~7~~6(10)(d); or¶
(b) Due to county of origin, responsibility, or residency; or¶
(c) Due to supervisory entity.¶
(1~~2~~1) The provider's decision must be based on review of screening materials, information gathered during the face-to-face screening meeting, and evaluation of the admission criteria.¶
(1~~3~~2) The program must inform the prospective resident, and the prospective resident's legal representative, supervisory entity, and referring entity, as applicable, of the admission decisions within 72 hours of the screening meeting.¶
(1~~4~~3) When the program denies admission, the program shall provide written notification to the prospective resident and the prospective resident's legal representative, supervisory entity, and referring entity, as applicable, of the specific basis for the decision and the prospective resident's right to appeal the decision.¶
(1~~5~~4) When the program approves admission, the program must inform the prospective resident's and the

prospective resident's legal representative, supervisory entity, and referring entity, as applicable, through an acceptance notification that must include:¶
(a) When not waitlisted or first on the waitlist, an estimated date of admission; and¶
(b) When waitlisted, the number on the waitlist.
Statutory/Other Authority: ORS 413.042, ORS 443.450
Statutes/Other Implemented: ORS 413.032, ORS 443.400 - 443.465, ORS 443.991

AMEND: 309-035-0158

RULE SUMMARY: Correcting typographical error and incorrect reference. The third priority is being modified to align with federal court orders.

CHANGES TO RULE:

309-035-0158
Waitlist Management
(1) Management of waitlists includes the following:¶
(a) The program must establish admission waitlists;¶
(b) The program must document actions taken in the management of the waitlist; and¶
(c) The program must ~~contact a~~verify and update their waitlist by contacting the waitlisted prospective resident, the prospective resident's legal representative, and the referring entity, as applicable~~, monthly to determine if the prospective resident has been placed elsewhere;~~ to confirm continued need for placement. All verifications must be documented.¶
(~~d~~2) The program must prioritize admissions on a waitlist as follows:¶
(~~2~~a) The program must give first priority consideration to each of those prospective residents who are seeking to transition from the Oregon State Hospital into the community and are:¶
(~~a~~A) A candidate for court-ordered community restoration as an aid and assist defendant pursuant to ORS chapter 161; or¶
(~~b~~B) 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.¶
(~~3~~b) The program must give second priority consideration to each of those prospective residents who are seeking to transition from the Oregon State Hospital into the community and are under a current civil commitment, voluntary by guardian, or extremely dangerous person commitment pursuant to ORS chapter 426.¶
(~~4~~c) The program must give third priority consideration for admission to those prospective residents seeking admission to programs:¶
(~~a~~A) A candidate for court-ordered community restoration as an aid and assist defendant~~ who is eligible for commitment to Oregon State Hospital pursuant to ORS chapter 161; or~~;¶
(~~b~~B) A candidate for court-ordered conditional release who has been found guilty except for insanity of a criminal offense and will be placed under the jurisdiction of the Psychiatric Security Review Board pursuant to ORS 161.327; or¶
(~~c~~C) A candidate for court-ordered commitment to a facility designated by OHA and who is found guilty except for insanity of a criminal offense pursuant to ORS 161.328.¶
(d) The program must give fourth priority consideration to those prospective residents seeking admissions to programs:¶
(~~e~~A) As an alternative to or to prevent civil commitment or placement at the Oregon State Hospital;~~ or~~¶
(~~f~~B) For the purpose of transitioning from a program or a secure residential treatment facility; or¶
(~~g~~C) For the purpose of transitioning from a community hospital to a community placement.¶
(~~5~~e) The program must give fifth priority consideration to those prospective residents who do not meet the criteria established in subsection (~~1)(d~~2)(~~2~~a), (~~3~~b), (~~4)~~c), or (~~5~~d) of this rule.¶
(~~a~~3) The program must determine priority for admission based on the priorities described ~~above~~in OAR 309-035-0158(2) and based on the earliest date of receipt of the complete referral packet when prospective residents currently share equal priority. The program may not consider the prospective resident's county of origin, responsibility, or residency~~; and~~.¶
(~~b~~4) Within 72 hours of a provider learning of a pending opening, the program must provide written or electronic notification to the current highest priority prospective resident on the established waitlist, as well as their referring entity and their legal representative or supervisory entity, as applicable, of the expected opening. The referring entity is responsible to verify the prospective resident or their representative or supervisory entity, as applicable, received the notification of the opening and respond to the program within three business days of the provider's notification. If any of the following occurs, the program may offer the opening to the next prospective resident on the wait list:¶
(~~A~~a) The program receives no response from the prospective resident, the prospective resident's legal representative, supervisory entity, or the referring entity, as applicable, within three business days;¶
(~~B~~b) The individual will not be ready to transition into the program within one week; or¶
(~~C~~c) The individual no longer desires placement at the program.¶
(~~c~~5) The program may close their waitlist if there are five (5) or more prospective residents on the waitlist. When the waitlist is closed, the provider is not required to accept referrals, conduct screenings, or evaluate additional

persons for admissions who are not already on the waitlist.¶
(~~d~~6) Waitlists must be opened any time there are less than five (5) prospective residents.¶
(~~e~~7) Providers are not required to accept more than five (5) referrals at one time when there is an opening on the waitlist.¶
~~(f) The program must verify and update their waitlist by contacting prospective residents or their legal representative monthly to confirm continued need for placement. All verifications must be documented.~~
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: A policy requirement is being added to the residency agreement for the prohibition of weapons, reasonable cause searches related to weapons, removal of identified weapons, and storage of identified weapons.

CHANGES TO RULE:

309-035-0165
Residency Agreement ¶

(1) The provider must enter into a written residency agreement with each resident or the resident's legal representative and be admitted to the program consistent with the placement type with the following procedures: ¶
(a) The written residency agreement must be reviewed and signed by the program administrator, the resident, and the resident's legal representative or supervisory entity, as applicable, prior to or at the time of admission, and at any time the agreement is updated. If the resident declines to sign the agreement after reviewing the agreement with the provider, the agreement is considered valid if signed by the resident's legal representative or supervisory entity, as applicable. ¶
(b) The provider must provide a copy of the signed agreement to the resident or the resident's legal representative or supervisory entity, as applicable; ¶
(c) The provider must retain the original signed agreement in the resident's service record; ¶
(d) The provider must give written notice to a resident or the resident's legal representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and ¶
(e) The provider must update residency agreements: ¶
(A) At least annually; and ¶
(B) When social security rates change; or ¶
(C) a resident's finances change such that the amount paid for room and board changes. ¶
(2) The residency agreement must include, but is not limited to: ¶
(a) The room and board rate; ¶
(A) When a resident's social security or other funding is not active at the time of admission to the program, the program must prepare the room and board agreement based upon the estimated benefit to be received by the resident; and ¶
(B) If, when funding is later activated, actual income of the resident varies from the estimated income noted on the residency agreement, the agreement must be updated and resigned by all the applicable parties. ¶
(b) Services and supports provided in exchange for payment of the room and board rate; ¶
(c) Conditions under which the program may change the rates and apply charges or fees. ¶
(d) The provider's refund policy in instances of a resident's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the program; ¶
(e) A statement indicating that the resident is not liable for damages considered normal wear and tear; ¶
(f) The program's policies on voluntary moves and whether written notification of a non-Medicaid resident's intent to not return is required; ¶
(g) The potential reasons for involuntary transfer or discharge of residency in compliance with this rule and resident's rights regarding the administrative hearing process; ¶
(h) Any policies the program may have on the presence and use of alcohol, cannabis, and illegal drugs of abuse; ¶
(i) Policy for prohibiting the possession and use of weapons on the program's property by all residents, visitors, and staff; ¶
(j) Policy describing reasonable causes and methods for conducting a safe search for weapons and required procedures to follow when a weapon is discovered. Reasonable cause must include, but is not limited to, direct observations and specific credible reporting. Search procedures must include, but are not limited to, conducting the search, safe removal of any weapons found, placement of weapons discovered in a designated secure area, and notifying the resident and their legal representative or supervisory entity, if applicable; ¶
(k) Policy regarding tobacco smoking in compliance with the Tobacco Freedom Policy established by the Division; ¶
(~~j~~l) 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; ¶
(~~k~~m) Policy regarding the presence and use of legal medical and recreational marijuana at the setting; ¶
(~~l~~n) Schedule of mealtimes with no more than a 14-hour span between the evening meal and the following morning's meal; ¶
(~~m~~o) Policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if

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

AMEND: 309-035-0170

RULE SUMMARY: The requirement for Division approval before involuntary discharge notices are issued is being temporarily removed, and discharge and transfer notice types are being clarified. Less than 30 day notices are being changed to state that they cannot be issued with less than five days' advance notice to account for the residents' right to request an expedited administrative hearing within five days of when the notice is issued. Existing requirements regarding provider responsibilities to support choice in placement are being relocated to this section.

CHANGES TO RULE:

309-035-0170
Standards for Residency Transfers and Discharges ¶

(1) Each provider's transfer and discharge policy and procedure must designate the program staff responsible for each step of the process for transferring or discharging residency. The provider must designate responsibilities organized and assigned to promote a fair and efficient transfer and discharge process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the program administrator is responsible for initiating and coordinating transfer and discharge proceedings. The provider must make reasonable efforts to prevent unnecessary transfer and discharges by making reasonable accommodations within the program and setting.¶
(2) A resident or a resident's legal representative~~ as applicable,~~ may terminate residency in a program upon providing at least 30-days' written notice unless the resident is placed with the provider by a supervisory entity, or with the consent of the resident's legal representative. Upon mutual agreement between the administrator and the resident or resident's legal representative as applicable, less than 30 days' notice may be provided. This agreement may be limited under a court, OHA, CMHP, or PSRB order.~~-~~The provider must immediately document the resident's notification of intent to voluntarily move in the resident records.¶
(3) When circumstances arise providing grounds for issuing a notice of involuntary transfer or discharge under this section, the program administrator must discuss these grounds with the resident, the resident's legal representative or the supervising entity, if applicable, and with the resident's or the resident's legal representative's permission, other persons with an interest in the resident's circumstances. If a decision is made to transfer or discharge the resident, the program administrator must provide at least 30 days' written notice specifying the cause(s) for the notice in the form and manner required by the Division to the resident, the resident's legal representative or supervisory entity, if applicable, the CMHP and the Division. This notice must specify the resident's right to an administrative hearing~~ and cannot be given without prior approval of the Division.~~.¶
(4) When a resident's behavior has directly resulted in serious physical harm to other residents in the program or program staff, the program administrator may ~~initiate a~~provide less than 30 days but no less than ~~24 hour~~five (5) business days advance written notice in the form and manner required by the Division to the resident, the resident's legal representative or the supervisory entity, if applicable, the CMHP, and Division specifying the cause(s) of an involuntary transfer or discharge. This notice must specify the resident's right to an administrative hearing for involuntary transfer or discharge~~ and cannot be given without the prior approval of the Division.~~¶
(5) Early transfer or discharge may occur with less than 30 days advance notice with the mutual agreement of the program administrator and the resident when the resident does not have a legal representative and is not under the jurisdiction of a supervisory entity, or the resident's legal representative, if applicable, when the resident is not under the jurisdiction of a supervisory entity, or the supervisory entity, if applicable.¶
(6) Grounds for involuntary transfer or discharge include the following:¶
(a)~~ The resident no longer needs or desires services provided by the program and expresses a desire to move to an alternative setting, unless the resident is placed with the provider by a supervisory entity, or with the consent of the resident's legal representative;¶~~
~~(b)~~ The resident is assessed by a Licensed Medical Professional or other qualified health professional to require services such as continuous nursing care or extended hospitalization that are not available or cannot be reasonably arranged at the program;¶
(~~c~~b) The resident's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others, and these behavioral concerns cannot be adequately addressed with services available at the setting or with services that can be arranged outside of the program setting;¶
(~~d~~c) The resident cannot safely evacuate the setting in accordance with the setting's occupancy classification after efforts described in OAR 309-035-0145(6)(b) have been taken;¶
(~~e~~d) Nonpayment of room and board fees in accordance with program's fee policy;¶
(~~f~~e) The resident has moved from the setting or has been absent without notice for more than seven consecutive

days and the provider has not been able to confirm the intent to continue or discontinue residency from the resident, the resident's legal representative or the resident's supervisory entity, if applicable. The transfer or discharge process must be voided if the resident returns to the program prior to the final date of residency indicated on the written notice;¶
(~~g~~f) The resident has been incarcerated, and the provider has been notified by the supervisory entity that the resident will remain incarcerated for longer than 30 days. The transfer or discharge process must be voided if the resident returns to the program prior to the final date of residency indicated on the written notice;¶
(~~h~~g) The IQA has determined services and supports from the program are no longer required;¶
(~~i~~h) The resident's revocation has been ordered by the supervisory entity; or¶
(~~j~~i) The program has had its license revoked, not renewed, suspended, voluntarily surrendered, or has terminated its Medicaid contract.¶
(7) Except in the case of emergency transfer or discharge, or crisis-respite services, a pre-transfer and discharge meeting must be held with the resident, the resident's legal representative or the supervising entity, if applicable, the CMHP, and with the resident's or the resident's legal representative's permission, others interested in the resident's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the transfer and discharge decision. The meeting must be scheduled to occur at least two weeks prior to the transfer or discharge date. In the event a pre-transfer and discharge meeting is not held, the reason must be documented in the resident service record.¶
(8) Documentation of discussions and meetings held concerning transfer and discharge of a resident and copies of notices must be maintained in the resident service record.¶
(9) Except when a program has had its license revoked, not renewed, suspended, voluntarily surrendered, or terminates its Medicaid contract, a resident who received a notice of involuntary transfer and discharge is entitled to an administrative hearing:¶
(a) Provided the resident, the resident's legal representative, if applicable, or the authorized representative, if applicable, completes and submits the administrative hearing request in the form and manner required by the Division to the CMHP and the Division:¶
(A) Within ten (10) business days from the date a 30-day notice of involuntary transfer and discharge was received; or¶
(B) Within five (5) business days from the date a less than 30-day notice of involuntary transfer and discharge was received.¶
(b) The resident may receive assistance in submitting the request for an administrative hearing. If requested by the resident, program staff must be available to assist the resident.¶
(c) The program remains responsible for the provision of care and services as identified in the person-centered service plan during the administrative hearing process unless and until the resident has moved. Care and services include the provision of one-to-one supervision if necessary to ensure the safety of all residents.¶
(d) The Division will review the notice of transfer or discharge to verify the notice meets the regulatory criteria. If the notice does not meet the regulatory criteria, the Division will notify the provider they must withdraw the notice.¶
(e) The resident has the right to remain in the program until due process is complete or the supervisory entity has ordered otherwise.¶
(10) If the notice of transfer and discharge meets the regulatory criteria, the Division will notify the Office of Administrative Hearings of the request for an administrative hearing and for less than 30-day notices, will request an expedited hearing be held within five (5) business days.¶
(11) At the time of transfer or discharge of a resident, the resident must be provided a written statement of account, any balance of funds held by the program, and all property held in trust or custody by the program. In the case of a resident's property being left at the setting for longer than seven days after resident has moved, the program must make a reasonable attempt to contact the resident or the resident's legal representative, if applicable. The program must allow the resident or the resident's legal representative, if applicable, at least 15 calendar days to make arrangements concerning the property. If the program determines that the resident has abandoned the property, the program may then dispose of the property. If the property is sold, proceeds of the sale minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the resident must be forwarded to the resident or the resident's legal representative, if applicable.¶
(12) The end of a supervisory entity's jurisdiction is not cause for a program to issue a notice of involuntary transfer or discharge.¶
(13) If a resident moves out of the setting without providing notice or is absent without notice for more than seven consecutive days, the provider may initiate the transfer or discharge process as described in 309-035-0170(3). The provider must make an attempt to contact the resident and must contact the resident's legal representative or supervisory entity, if applicable, and with the resident's or the resident's legal representative's permission, if applicable, others interested in the resident's circumstances to confirm the resident's intent to discontinue

residency. The transfer or discharge process must be discontinued if the resident returns to the program prior to the final date of residency indicated on the written notice.-¶
(14) When a resident's right to an administrative hearing for involuntary transfer or discharge is initiated, the Division may determine the notice was issued wrongfully and take action on the program's license up to and including revocation as outlined in OAR 309-035-0280.¶
(15) Upon transfer or discharge from the program, program staff must offer two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication to the resident. If the resident accepts, program staff must:¶
(a) Provide the resident with an instruction card on the use of short-acting, non-injectable, opioid antagonist medication; and¶
(b) Document distribution of the short-acting, non-injectable, opioid antagonist medication in the resident's record.¶
(16) In preparation for discharge and transfer, the provider must support the resident's right to select placement by assisting the resident with identifying options and documenting these options within the residential service plan as described in OAR 309-035-0185(6)(b). The resident's right to select a service setting may be limited by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426, or by the informed consent of the prospective resident's legal representative.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0175

RULE SUMMARY: Adding additional protections related to resident privacy when receiving services. Clarifying that fresh air access requirements are specific to secure settings.

CHANGES TO RULE:

309-035-0175
Rights, Freedoms, and Protections ¶

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

LGBTQIA2S+ resident other than in accordance with the resident's gender identity, unless at the request of the resident or if required by federal law;¶
(d) Prohibit a resident from using or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery, or presents as gender nonconforming;¶
(e) Repeatedly and willfully refuse to use a resident's chosen name or pronouns after being reasonably informed of the resident's chosen name or pronouns;¶
(f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics, or to engage in grooming practices, that are permitted to any other resident;¶
(g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection;¶
(h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort;¶
(i) Fail to accept a resident's verbal or written attestation of the resident's gender identity or require a resident to provide proof of the resident's gender identity using any form of identification;¶
(j) Fail to take reasonable actions, within the provider's control, to prevent discrimination or harassment when the provider knows or should have known about the discrimination or harassment; or¶
(k) Refuse or willfully fail to provide any service, care, or reasonable accommodation to a resident or a proposed resident for services or care.¶
(8) A transgender resident must be provided access to any assessments, therapies, and treatments that are recommended by the resident's health care provider, including but not limited to, transgender-related medical care, hormone therapy, and supportive counseling.¶
(9) A provider may modify or limit the rights identified in sections (1), (3), and (5) of this rule when providing services to a resident, who is placed with the provider by a court, OHA, CMHP, or PSRB order under ORS chapters 161 or 426 when the order specifically identifies required limitations. The provider is not required to seek an individually-based limitation for such a resident to comply with these rules. The limitations must be included in the resident's person-centered service plan, if applicable, and the residential service plan.¶
(10) For the purpose of this section, these terms have the following meanings for secure settings:¶
(a) "Fresh air" means the inflow of air from outside the program where the resident is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors;¶
(b) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area;¶
(c) If a resident requests access to fresh air or the outdoors or the resident's treating health care provider determines that fresh air or the outdoors would be beneficial to the resident, the program in which the resident is receiving services must provide daily access to fresh air and the outdoors unless this access would create a significant risk of harm to the resident or others;¶
(d) The determination whether a significant risk of harm to the resident or others exists must be made by the resident's treating health care provider. The treating health care provider may find that a significant risk of harm to the resident or others exists if:¶
(A) The resident's circumstances and condition indicate an unreasonable risk of harm to the resident or others that cannot be reasonably accommodated by the program should the resident be allowed access to fresh air and the outdoors; or¶
(B) The program's existing physical setting prevents the provision of access to fresh air and the outdoors in a manner that maintains the safety of the resident or others.¶
(e) If a provider determines that its existing physical setting prevents the provision of access to fresh air and the outdoors in a safe manner, the provider must make a good faith effort at the time of any significant renovation to the physical setting that involves renovation of the unit or relocation of where residents are treated to include changes to the physical setting or location that allows access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.¶
(11) The program must have and implement written policies and procedures that protect residents' rights and freedoms and encourage and assist residents to understand and exercise their rights and freedoms. The program must post a listing of resident rights and freedoms under these rules in a place readily accessible to all residents and visitors.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0183

RULE SUMMARY: Clarifying process language for submitting appeals.

CHANGES TO RULE:

309-035-0183
Individual Grievances and Appeals ¶

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

writing within ten calendar days of the date of the appeal conference decision to the Division. Any supporting documentation must be submitted with the request.¶
(E) The Division will review the appeal and all supporting documentation and issue a written decision within 10 calendar days of receipt of the appeal to the resident, the program and the CMHP.-The Division's decision shall be final.¶
(c) If program services are delivered by a CMHP or the Oregon State Hospital, the appeal must be submitted to the Division:¶
(A) The resident may receive assistance in submitting the request for appeal. If requested by the resident, program staff must be available to assist the resident;¶
(B) The Division's designee must review the appeal and all supporting documentation and issue a written decision within 10 calendar days of receipt of the appeal to the resident or individual, the program ~~and the CMHP~~; and¶
(C) If the resident or individual is not satisfied with the Division designee's decision, the resident, may submit a second appeal in writing within ten calendar days of the date of the written decision to the deputy director of the Division.¶
(D) The deputy director must review the appeal and all supporting documentation and issue a written decision within 10 calendar days of receipt of the appeal to the resident, the program and the CMHP.-The deputy director's decision shall be final.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0217

RULE SUMMARY: Clarifying that residential assessments to inform the residential service plan are not needed when providing crisis respite services due to the shorter timeline for a complete residential service plan.

CHANGES TO RULE:

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

AMEND: 309-035-0271

RULE SUMMARY: Modifying rule language to align with HB 4016 and merging this section to include key requirements of OAR 309-035-0275.

CHANGES TO RULE:

309-035-0271
Denial, Revocation, or Non-Renewal of License
(1) The Division must deny, revoke, or refuse to renew a license where it finds any of the following:¶
(a) There has been substantial non-compliance with these rules;¶
(b) There is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of residents; or¶
(c) A background check conducted by ODHS determined the applicant or provider is not approved;¶
(d) The provider allows a caregiver or any other person, excluding residents, who has been convicted of potentially disqualifying crimes and has been denied, or refused to cooperate with the Division, to reside or work in the program;¶
(e) The applicant or provider falsely represents they have not been convicted of a crime; or¶
(f) The Division has received notice from the Department of Revenue in accordance with ORS 305.385.¶
(g) The applicant or provider has had a certificate or license to operate a foster home, or residential facility denied, suspended, revoked, or refused to be renewed in this or any other state within three years preceding the present action if the denial, suspension, revocation, or refusal to renew was due in any part to:¶
(A) Abuse or neglect, creating a threat to the health, safety, or well-being of residents; or¶
(B) Failure of the applicant or provider to possess the physical health, mental health, or good judgement deemed necessary by the Division;¶
(h) The applicant or provider has had a certificate or license to operate a foster home, residential home or residential facility denied, suspended, revoked, or refusal to be renewed in this or any other state more than three years from the present action, the applicant or provider is required to demonstrate to the Division by clear and convincing evidence, the applicant or provider:¶
(A) Does not pose a threat to resident; and¶
(B) Posses the ability and fitness to operate a program in substantial compliance.¶
(i) The applicant or provider is associated with a person whose license for a foster home, residential home or facility denied, suspended, revoked, or refused to be renewed due to:¶
(A) Abuse or neglect, creating a threat to the health, safety, or well-being of residents; or¶
(B) Failure to possess physical health, mental health, or good judgement within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents;¶
(j) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:¶
(A) Resides with the person;¶
(B) Employs the person in the program;¶
(C) Receives financial backing from the person for the benefit of the program;¶
(D) Receives managerial assistance from the person for the benefit of the program; or¶
(E) Allows the person to have access to the setting; or¶
(F) Rents or leases the setting from the person.¶
(k) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.¶
(2) When a license is denied, revoked, or not renewed, the provider may request a hearing in writing within 21 calendar days after the date the notice was personally served or mailed. If the provider fails to request a hearing in writing, or the request is not timely, the notice will become a final order of the Division by default:¶
(a) In addition to, or in-lieu of, a contested case hearing, a provider may request an informal conference with the Division to discuss the administrative action;¶
(b) The informal conference does not diminish the provider's right to a hearing. A request for informal conference does not delay, extend, or otherwise affect the 21 calendar days allowed to request a hearing.¶
(3) A license subject to revocation or non-renewal remains valid during the administrative hearing process even if the hearing and final order are not issued after the expiration date of the license. If the provider desires to continue operating the program, should they prevail at hearing, a complete renewal application and fee, as applicable, must be submitted to the Division prior to the expiration of the current license.¶
(4) An applicant who voluntarily withdraws an application during a denial process may not submit an application for

a license for one year from the date of the withdrawal.¶
(5) An applicant whose license has been revoked, non-renewed, or voluntarily surrendered during a revocation or non-renewal process may not submit an application for a license for one year from the date the action was final, or for a longer period if specified in the final order. ¶
(6) The Division may deny, suspend, revoke, or refuse to renew a license if the applicant or provider:¶
(a) Submits fraudulent, misleading or false information to the Division;¶
(b) Has a history of or demonstrates financial insolvency, such as bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bills;¶
(c) The Division has received written notice from the Oregon Department of Revenue in accordance with ORS 305.385;¶
(d) Has threatened the health, safety, or well-being of any resident;¶
(~~d~~e) Has abused, neglected, or financially exploited a resident;¶
(~~e~~f) Has a medical or psychiatric problem, which interferes with the ability to provide care;¶
(~~f~~g) Refuses to allow access and inspection;¶
(~~g~~h) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed;¶
(~~h~~i) Fails to comply with a final order of the Division imposing an administrative sanction;¶
(~~i~~j) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider, administrator, ~~substitute caregiver~~direct care staff, or volunteer of the program~~.~~;¶
(~~j~~k) Interferes with a person who has made a good faith disclosure of information concerning the abuse or neglect of a resident receiving care and services in a licensed or certified facility;¶
(~~k~~l) Has previously been cited for the operation of an unlicensed program;¶
(~~l~~m) Has previously surrendered a license or certificate while under investigation or administrative sanction during the last three years; or¶
(~~m~~n) Fails to operate the program or any other facility in substantial compliance.¶
(~~3~~7) The ~~provider may request a hearing in writing within 21 calendar days after the date the notice was personally served or mailed. If t~~Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if:¶
(a) The Division finds that the abuse, neglect, or exploitation causes an immediate threat to a resident; or¶
(b) The provider fails to ~~request a hearing in~~operate the program in substantial compliance w~~rit~~~~ing, or the request is not timely, the notice~~h ORS 443.400 to 443.465 causing an immediate threat to the health, safety or w~~i~~ell-~~-~~be~~come a final order of the Division by default.¶~~
~~(4) In addition to, or in-lieu of, a contested case hearing, a provider may request an informal conference with~~ing of a resident.¶
(8) The Division must suspend a license upon written notice from the Oregon Department of Revenue in accordance with ORS 305.385, and after notice to the provider and a hearing if requested. Prior to reinstating a license suspended in this manner, the Division ~~to disc~~mus~~s~~t t~~he administrative action. The informal conference does not diminish the provider's right to a hearing. A request for informal confer~~ake into consideration the provider's good standing with the Department of Revenue and the residents' continuity of care.¶
(9) If a licen~~c~~se ~~does not delay, extend, or otherwise affect the 21 calendar days allowed to request a hearing.¶~~
~~(5) A license subject to revocation or non-renewal remains valid during the administrative hearing process even if the hearing and final order are not issued after the expiration~~is suspended, the Division may arrange for resident to move for their protection.¶
(10) If a license is suspended, the provider may request a hearing in writing within 90 calendar days after the date ~~of~~ the ~~license. If the provider desires to continue operating the program, should they prevail at hearing, a complete renewal application and fee, as applicable, must be submitted to the Division prior to the expiration of the current license.~~notice was personally served or mailed:¶
(a) If the provider fails to request a hearing in writing, or the request is not timely, the notice will become a final order of the Division by default; and¶
(~~6~~b) ~~A~~In a~~pplicant who voluntarily withdraws an application du~~ddition to, or in-lieu of, a contested case hea~~denial process may not submit an application for a license for one year from the date of the withdrawal. ¶~~
~~(7) An applicant whose license has been revoked, non-renewed, or voluntarily surrendered during a revocation or non-renewal process may not submit an application for a lic~~ring, a provider may request an informal conference with the Division to discuss administrative action. The informal conference does not diminish the provider's right to a hearing. A request for informal conferen~~s~~ce ~~for one year from the date the action was final, or for a longer period if specified in the final order~~does not delay, extend, or otherwise affect the 90 calendar days allowed to request a hearing.
Statutory/Other Authority: ORS 413.042, 443.450
Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

REPEAL: 309-035-0275

RULE SUMMARY: Merging key requirements of this section with OAR 309-035-0275.

CHANGES TO RULE:

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