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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
05/06/2021 2:12 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend rule due to statutory changes made by SB-1538 in the 2018 Legislative Session.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2021 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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Filed By:
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NEED FOR THE RULE(S):

Statutory changes were made in the 2018 Legislative Session in Senate Bill 1538.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

SB-1538 available at: <https://olis.oregonlegislature.gov/liz/2018R1/Downloads/MeasureDocument/SB1538/Enrolled>

FISCAL AND ECONOMIC IMPACT:

Nominal

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. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): Nominal

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

There were no small businesses involved because this is a statutory change.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

This is a statutory change.

AMEND: 309-019-0195

RULE SUMMARY: Amending rules related to Hardship Permits issued under ORS 813.500 - SB 1538 (2018 Legislative Session) repealed ORS 813.500 ending the Hardship Permits referenced in OAR 309-019-0195 on January 1, 2019. Those who had already been issued this type of Hardship Permit, however, were able to continue until their requirements ended on December 31, 2020.

CHANGES TO RULE:

309-019-0195

DUII Services Providers ¶¶

(1) Outpatient Substance Use Disorders (SUD) Treatment Programs approved by the Division as DUII Services Providers shall provide DUII Education; ~~and DUII Rehabilitation; and Recommendations for Hardship Permits~~ as outlined in this rule. ¶¶

(2) A DUII Services Provider may not provide Alcohol and Other Drug Screening Specialist (ADSS) services except as allowed in OAR 415-054-0545 through 415-054-0570. ¶¶

(3) DUII Services Providers shall assess, as outlined in OAR 309-019-0135(3), all individuals seeking DUII services. Level of care, diagnosis, frequency of contact, and duration of treatment services shall be consistent with the current DSM diagnostic and ASAM Criteria. ¶¶

(4) DUII Education shall be provided for individuals who: ¶¶

(a) Do not currently meet DSM diagnostic criteria for a SUD; and ¶¶

(b) Meet ASAM Criteria for Level 0.5; and ¶¶

(c) Have never been diagnosed with a SUD; and ¶¶

(d) Have never been enrolled in a DUII or SUD treatment program. ¶¶

(5) DUII Education shall include a minimum of four sessions over a four-week period and include the provision of a minimum of 12 hours of didactic education. The minimum 12 hours does not include diagnostic assessment, service planning, or transfer planning. DUII Education shall include but is not limited to: ¶¶

(a) Completion of a Division approved DUII Education Pre and Post Test; ¶¶

(b) DUII Laws and Consequences in Oregon; ¶¶

(c) Use of alcohol and other drugs, and their effects on driving; ¶¶

(d) Physical and psychological effects of alcohol and other drugs of abuse; ¶¶

(e) SUD signs and symptoms; ¶¶

(f) SUD recovery support services; and ¶¶

(g) Alternatives to intoxicated driving. ¶¶

(6) No more than four of the 12 minimum hours shall be conducted utilizing educational films or pre-recorded audio-visual presentations. ¶¶

(7) DUII Rehabilitation shall be provided for individuals who: ¶¶

(a) Meet DSM diagnostic criteria for a SUD; or ¶¶

(b) Meet ASAM Criteria for Level 1 or higher; or ¶¶

(c) Have been previously diagnosed with a SUD; or ¶¶

(d) Have previously been enrolled in a DUII or SUD treatment program. ¶¶

(8) DUII Rehabilitation shall include: ¶¶

(a) DUII Education as described in section (5) of this rule; and ¶¶

(b) SUD treatment services as outlined in the individual's service plan. ¶¶

(9) DUII Service Providers shall use urinalysis testing for use of substances of abuse following procedures in OAR 309-019. Urinalysis tests shall be conducted as deemed clinically appropriate, but no less than: ¶¶

(a) At the time of assessment; and ¶¶

(b) Twice per calendar month with no more than 14 calendar days between tests; and ¶¶

(c) Within two weeks prior to completion; and ¶¶

(d) Within 72 hours of receipt of laboratory results indicating that a urinalysis sample was identified as out of

range for Creatinine, pH, or Specific Gravity as defined by the urinalysis laboratory results;¶

(10) Urinalysis shall, at a minimum, test for the following substances of abuse:¶

(a) Alcohol;¶

(b) Marijuana;¶

(c) Cocaine;¶

(d) Amphetamines;¶

(e) Opiates; and¶

(f) Benzodiazepines.¶

(11) In addition to the substances of abuse outlined in section (10), an EtG/EtS test for alcohol shall be conducted, at a minimum, at the time of assessment and within two weeks prior to completion.¶

(12) Individuals enrolled in DUII Education are expected to demonstrate abstinence from use of intoxicants as evidenced by negative urinalysis reports, except as allowed in ORS 813.200. Individuals who provide a positive urinalysis test or who self-report use of a substance shall be required to complete DUII Rehabilitation.¶

(13) Individuals enrolled in DUII Rehabilitation are expected to maintain abstinence from use of intoxicants as evidenced by negative urinalysis tests, except as allowed in ORS 813.200, while outside of a controlled environment for no less than the final 90 days of the DUII Rehabilitation program.¶

(14) Notwithstanding sections (9)-(11), DUII Services Providers may issue a DUII Treatment Completion Certificate for individuals convicted of DUII or proof of completion for individuals under a diversion agreement, if the individual has fulfilled all other requirements of this rule except for submission of urinalysis testing as required due to a state of emergency declared by the state or county in which the individual or DUII Services Provider is located. The individual's service record must clearly document the reason the state of emergency prevented submission of urinalysis as required in sections (9)-(11).¶

(15) Division approved DUII Services Providers shall issue a DUII Treatment Completion Certificate (DTCC) for individuals convicted of a DUII using Division approved forms and procedures after:¶

(a) Receipt of referral from an ADSS; and¶

(b) Completion of DUII Education or DUII Rehabilitation, including applicable abstinence requirements, as outlined in these rules; and¶

(c) Compliance with the terms of the fee agreement between the provider and the individual.¶

(16) The Division shall issue a DTCC for individuals completing an out-of-state intoxicated driving program after:¶

(a) Documentation of the individual's residency in a state other than Oregon; and¶

(b) Receipt of a copy of the individual's referral from an ADSS; and¶

(c) Documentation of completion of an intoxicated driving program as allowed for the equivalent conviction in the individual's state of residence. Residents of states that do not require DUII treatment shall complete a program that is substantially equivalent to Oregon's standards.¶

(17) Division approved DUII Services Providers must report:¶

(a) To the Division using the mandated state data system; and¶

(b) To the referring ADSS as allowed by HIPPA and 42 CFR Part 2:¶

(A) No later than 30 calendar days from the date of referral;¶

(B) Every 30 calendar days while enrolled in DUII Rehabilitation;¶

(C) No later than 14 calendar days from the date of discharge;¶

(D) No later than seven calendar days from the written request of the ADSS.¶

(18) The individual's Service Record must include all information necessary to document the individual's successful or unsuccessful completion of DUII Services.¶

~~(19) Division approved DUII Services Providers are designated by the Authority to determine whether an individual has a problem condition involving alcohol, inhalants, or controlled substances as defined in ORS 813.040 and to provide recommendations for issuance of a hardship permit as allowed in ORS 813.500. Issuance of a hardship permit is at the sole discretion of DMV.¶~~

~~(20) When a DUII Services Provider determines that an individual does not have a problem condition involving alcohol, inhalants, or controlled substances as described in ORS 813.040, a recommendation for a hardship permit~~

may be provided using the forms and procedures required by DMV if:

(a) The recommendation does not create a health or safety risk to the individual or the public; and

(b) The individual:

(A) Is enrolled in or has completed a Division approved DUII Education Program; and

(B) Maintains abstinence as defined in this rule; and

(C) Agrees to ongoing contact and abstinence monitoring after successful completion of the DUII Education Program as often as deemed clinically appropriate, but no less than once per calendar month while the individual is issued a hardship permit.

(21) The ongoing contact and abstinence monitoring shall be documented in the service plan and included in the individual's service record.

(22) When a DUII Services Provider determines that an individual has a problem condition involving alcohol, inhalants, or controlled substances as described in ORS 813.040, a recommendation for a hardship permit may be provided using the forms and procedures required by DMV if:

(a) The recommendation does not create a health or safety risk to the individual or the public; and

(b) The recommendation is deemed clinically appropriate; and

(c) The individual is:

(A) Enrolled in or has completed a Division approved DUII Rehabilitation Program; and

(B) Maintaining abstinence as defined in this rule; and

(C) Agrees to ongoing contact and abstinence monitoring after successful completion of the DUII Rehabilitation Program as often as deemed clinically appropriate, but no less than once per calendar month while the individual is issued a hardship permit.

(23) The ongoing contact and abstinence monitoring shall be documented in the service plan and included in the individual's service record.

(24) The recommendation for issuance of a hardship permit shall be completed using forms and procedures required by DMV and shall state specifically the times, places, routes, and days of the week minimally necessary for the individual to:

(a) Seek or retain employment;

(b) Attend any alcohol or drug treatment or rehabilitation program;

(c) Obtain necessary medical treatment for the individual or a member of the individual's immediate family; or

(d) Get to and from a gambling addiction treatment program.

(25) The recommendation for issuance of a hardship permit shall be withdrawn if:

(a) A health or safety risk to the individual or public exists; or

(b) The individual:

(A) Tests positive, except as allowed in ORS 813.200; or

(B) Discontinues contact with the DUII Services Provider; or

(C) Does not successfully complete a Division approved DUII Education or Rehabilitation Program.

(26) The Individual Record must include all information necessary to document the DUII Services Provider's decision to issue, not issue, or withdraw a recommendation for hardship permit to DMV.

(27) Division approved DUII Services Providers shall establish a procedure for individuals to appeal in the event that a recommendation for issuance of a hardship permit is denied or withdrawn. The appeal process shall include but not be limited to:

(a) Information on how to file a complaint with the Division directly; and

(b) Recourse to the staff supervisor, program director, and CMHP Director. Complaints that are unresolved at the provider level may be referred to the Division for review.

Statutory/Other Authority: ORS 413.042, ORS 430.640, ORS 430.254, ORS 430.256, ORS 430.357

Statutes/Other Implemented: ORS 430.010, ORS 743A.168, ORS 430.030, ORS 430.254-430.640