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ARCHIVES DIVISION
MARY BETH HERKERT
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800 SUMMER STREET NE
SALEM, OR 97310
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

FILED
02/06/2018 8:01 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Revisions Required to Identify Actions Placed on Any State Issued License

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/17/2018 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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Salem, OR 97301

Filed By:
Sandy Cafourek
Rules Coordinator

HEARING(S)

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

DATE: 03/15/2018

TIME: 10:30 AM - 11:30 AM

OFFICER: Sandy Cafourek

ADDRESS: Human Services Building

500 Summer St. NE, Room 164

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Send written public comments to
hsd.rules@dhsosha.state.or.us by 5 p.m.
on March 17.

NEED FOR THE RULE(S):

The amended rules are needed to provide updated procedural detail regarding information received upon receipt of Adult Foster Home license applications and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The Oregon Performance Plan, <http://www.oregon.gov/oha/HPA/CSI-BHP/Pages/Oregon-Performance-Plan.aspx>.
Administrative Procedures Act, <https://www.oregonlaws.org/ors/chapter/183>.

FISCAL AND ECONOMIC IMPACT:

Fiscal impact of the amendments to chapter 309, division 35 of the Oregon Administrative Rules will be varied from provider to provider depending on the programming of the setting. The Division expects there to be some initial administrative cost associated with the proposed rule changes due to a need to update policies and procedures. The cost of this administrative work will vary from setting to setting.

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) No additional cost is associated with state or local government implementation as regulatory oversight will be rolled into existing regulatory activities. There is no anticipated cost to the public associated with the proposed rule changes.

(2)(a) 144 Adult Foster Homes. (b) The Division expects there to be some initial administrative cost associated with the proposed rules changes due to a need to update policies and procedures. The cost of this administrative work will vary from setting to setting due to many factors that are not predictable by the state. (c) The Division does not expect there to be equipment, supplies, labor, or increased administration required due to the proposed changes. Other administrative costs will vary from setting to setting due to many factors that are not predictable by the state.

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

Small businesses were involved in the development of OAR 309-040 through public comment periods through the Rules Advisory Committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

309-040-0305, 309-040-0315, 309-040-0325, 309-040-0390, 309-040-0405, 309-040-0410, 309-040-0415, 309-040-0420, 309-040-0425, 309-040-0430

AMEND: 309-040-0305

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0305

Definitions ¶¶

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

(1) "Abuse" includes but is not limited to the following:¶¶

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;¶¶

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;¶¶

(c) Willful infliction of physical pain or injury;¶¶

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of an AFH or community program, or provider, or other caregiver and the individual. For all other situations, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the individual;¶¶

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;¶¶

- (f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.¶
- (2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and OAR 943-045-0000, or any other rules established by the Division applicable to allegations of abuse of individuals residing at an AFH licensed by the Division.¶
- (3) "Activities of Daily Living (ADL)" means those individual skills necessary for an individual's continued well-being including eating and nutrition, dressing, personal hygiene, mobility, and toileting.¶
- (4) "Administration of Medication" means administration of medicine or a medical treatment to an individual as prescribed by a Licensed Medical Practitioner.¶
- (5) "Adult Foster Home (AFH)" means any home licensed by the Health Systems Division of the Authority in which residential care is provided to five or fewer individuals who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. If an adult family member of the provider receives care, they shall be included as one of the individuals within the total license capacity of the AFH. An AFH or individual that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults is considered an AFH. For the purpose of these rules, an AFH does not include facilities referenced in ORS 443.715.¶
- (6) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.¶
- (7) "Applicant" means any individual or entity that makes an application for a license that is also the owner of the business.¶
- (8) "Assessment" means an evaluation of an individual and the individual's level of functioning completed by a qualified provider and provides the basis for the development of the individual's residential care plan and person-centered service plan.¶
- (9) "Authority" means the Oregon Health Authority or designee.¶
- (10) "Behavioral Interventions" means interventions that modify the individual's behavior or the individual's environment.¶
- (11) "Bill of Rights" means civil, legal, or human rights afforded to those individuals residing in an AFH that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the AFH Bill of Rights as outlined in OAR 309-040-0410.¶
- (12) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47 and ORS 678.010 to 678.445.¶
- (13) "Care" means the provision of but is not limited to services of room, board, services and assistance with ADLs, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum individual independence and enhance quality of life.¶
- (14) "Caregiver" means the provider, resident managers, or substitute caregivers who provide services to an individual.¶
- (15) "Case Manager" means an individual employed by a local, regional, or state allied agency approved by the Division to provide case management services and assist in the development of the personal care plan. Case manager's evaluate the appropriateness of services in relation to the consumer's assessed need and review the residential care plan every 180 days.¶
- (16) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶
- (17) "Community Mental Health Program (CMHP)" means the organization of all services for individuals with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse problems operated by or contractually affiliated with a local mental health authority, operated in a specific geographic area of the state

under an intergovernmental agreement or direct contract with the Division.¶

(18) "Compensation" means payments made by or on behalf of an individual to a provider in exchange for room and board, care and services, including services described in the individual's residential care plan and person-centered service plan.¶

(19) "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.¶

(20) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, or inaction, that is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.¶

(201) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.¶

(212) "Contested Case Hearing" means a hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or the Division in response to an action, sanction, or notice of finding issued by the Division that ~~would~~ results in the loss of license of the provider or other sanctions that ~~would~~ adversely affects the license of the provider. The hearing group is composed of:¶

(a) The provider and if the provider chooses, the provider's attorney;¶

(b) The Division as represented by the Attorney General's Office; and¶

(c) The Office of Administration Hearings Administrative Law Judge.¶

(223) "Contract" means a written agreement between a provider and the Division to provide room and board, care and services for compensation for individuals of a licensed AFH.¶

(234) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.¶

(245) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check ~~and~~ or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).¶

(256) "Day Care" means care and services in an AFH for an ~~individual person~~ who is not an individual of the AFH. ~~Children under the age of five living in the AFH are included in the licensed capacity of the home.~~¶

(267) "Declaration for Mental Health Treatment" means a document that states the individual's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.¶

(278) "Designated Representative" means:¶

(a) Any adult who is not the individual's paid provider, who:¶

(A) The individual has authorized to serve as his or her representative; or¶

(B) The individual's legal representative is authorized to serve as the individual's representative.¶

(b) The power to act as a designated representative is valid until the individual or the individual's legal representative modifies the authorization and notifies the Division of the modification, the individual or the individual's representative notifies the provider that the designated representative is no longer authorized to act the individual's behalf, or there is a change in the legal authority upon which the designation was based. Notice shall include the individual's or the representative's signature as appropriate;¶

(c) An individual or the individual's legal representative is not required to appoint a designated representative; and¶

- (d) For the purposes of these rules, the term "individual" shall be considered to include the individual's designated representative.¶
- (289) "Director" means the Director of the Oregon Health Authority or designee.¶
- (2930) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the individual's residential care plan and person-centered service plan, regardless of outcome or attainment of goals described in the individual's individualized personal care plan. In addition, the discharge summary addresses individual's monies, financial assets and monies, medication, and personal belongings at the time of discharge.¶
- (301) "Division" means the Health Systems Division of the Oregon Health Authority or designee.¶
- (312) "Division Staff" means an employee of the Division, the Division's designee, or the designee of the local Community Mental Health Program.¶
- (323) "Employee" means an individual employed by a licensed AFH and who receives wages, a salary, or is otherwise paid by the AFH for providing the service. The term also includes employees of other providers delivering direct services to an individual.¶
- (334) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Division to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.¶
- (345) "Family Member" means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶
- (356) "HCB" means Home and Community Based.¶
- (367) "Home" means the Adult Foster Home (AFH) and as indicated by the context of its use may refer to the one or more buildings and adjacent grounds on contiguous properties used in the operation of the AFH.¶
- (378) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 4. HCBS are services provided in the individual's home or community.¶
- (389) "Home-like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individuals.¶
- (3940) "House Rules" means the written standards governing house activities developed by the provider and approved by the Division. These standards may not conflict with the AFH Bill of Rights or other individual rights set out by these rules.¶
- (401) "Incident Report" means a written description and account of any occurrence including but not limited to any injury, accident, acts of physical aggression, use of physical restraints, medication error, or any unusual incident involving an individual, the home, or provider.¶
- (412) "Individual" means any individual being considered for placement or currently residing in a licensed home receiving residential, HCBS and other services regulated by these rules on a 24-hour basis except as excluded under ORS 443.400.¶
- (423) "Individual Care Services" means services prescribed by a physician or other designated individual in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those AFH individuals who are Medicaid eligible, personal care services are funded under Medicaid.¶
- (434) "Individually-Based Limitation" means a limitation to the qualities outlined in OAR 309-040-0393(1)(a) through (g), due to health and safety risks. An individually-based limitation is based on a specific assessed need and implemented only with the informed consent of the individual or the individual's legal representative as outlined in 309-040-0393.¶
- (445) "Informed Consent" means:¶
- (a) Options, risks, and benefits of the services outlined in these rules have been explained to an individual and; in a manner that the individual comprehends; and¶

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

(466) "Initial Residential Care Plan (IRCP)" means a written document developed for an individual, within 24 hours of admission to the home, that addresses the care and services to be provided for the individual during the first 30 days or less until the residential care plan can be developed.¶

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

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

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

(c) For purposes of these rules, the term individual shall be considered to include the individual's legal representative.¶

(478) "Level One AFH" means an AFH licensed by the Division to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.¶

(489) "License" means a document issued by the Division to applicants who are determined by the Division to be in substantial compliance with these rules.¶

(4950) "Licensed Medical Practitioner (LMP)" means any individual who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:¶

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

(b) Nurse practitioner licensed to practice in the State of Oregon.¶

(501) "Licensee" means the individual or entity to whom a license is issued and whose name is on the license.¶

(512) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation that directly contracts with the Division to operate a CMHP for that county.¶

(523) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any individual with whom the official contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under 40.225 to 40.295.¶

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

(545) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the individual's social, educational, or economic functioning. Medical diagnosis and classification shall be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-V). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."¶

(556) "Mistreatment" means the following behaviors, displayed by an employee, program staff, caregiver, provider, or volunteer of an AFH when directed toward an individual:¶

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

(b) "Financial Exploitation" means:¶

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

- (B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual ~~would~~ reasonably believes that the threat conveyed would be carried out;¶
- (C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;¶
- (D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.¶
- (c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to their room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short-term basis when an individual's presence ~~would~~ poses a risk to health or safety to themselves or others;¶
- (d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;¶
- (e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:¶
- (A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule;¶
- (B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;¶
- (C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual;¶
- (D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;¶
- (E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.¶
- (f) "Wrongful Restraint" means any use of a physical or chemical restraint except for the following:¶
- (A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or¶
- (B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming themselves or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.¶
- (567) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources in accordance with OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).¶
- (578) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.¶
- (589) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.¶
- (5960) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to individuals other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶
- (601) "Nursing Delegation" means that a registered nurse authorizes an unlicensed individual to perform special

tasks for individuals in select situations and indicates that authorization in writing. The delegation process includes nursing assessment of an individual in a specific situation, evaluation of the ability of the unlicensed person, teaching the task, and ensuring supervision.¶

(612) "Person-Centered Service Plan" means written documentation that includes the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.¶

(623) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agent, and other individual designated by the Division to provide person-centered service planning for and with individuals.¶

(634) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching, and supervising care that promotes the person's optimum health and independence.¶

(645) "Program Staff" means an employee or individual who by contract with an AFH provides a service to an individual.¶

(656) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an AFH.¶

(667) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400.¶

(678) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS Chapter 678 and OAR Chapter 851.¶

(689) "Related" means the following relationships: spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶

(6970) "Relative" means any individual identified as a family member.¶

(701) "Representative" means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.¶

(712) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual when the individual receives services from the provider.¶

(723) "Resident Manager" means an employee of the provider who is approved by the Division to live in the AFH and is responsible for the care and services of individuals on a day-to-day basis.¶

(734) "Residential Care" means the provision of room, board, and services that assist the individual in activities of daily living such as assistance with bathing, dressing, grooming, eating, medication management, money management, or recreation. Residential care includes 24-hour supervision; being aware of the individual's general whereabouts; monitoring the activities of the individual while on the premises of the AFH to ensure the individual's health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.¶

(745) "Residential Care Plan (RCP)" means a written plan outlining the care and services to be provided to an individual. The RCP is based upon the review of current assessment, referral, observations, individual preference, and input from members of the residential care plan team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the individual's recovery and independence.¶

(756) "Residential Care Plan Team (RCP Team)" means a group composed of the individual, the case manager or other designated representative, CMHP representative, the provider, resident manager, and others needed including the individual's legal guardian, representatives of all current service providers, advocates, or others determined appropriate by the individual receiving services. If the individual is unable or does not express a preference, other appropriate team membership shall be determined by the RCP team members.¶

(767) "Residents' Bill of Rights" means the AFH residents have the rights set forth in ORS 443.739.¶

(778) "Respite Care" means the provision of room, board, care, and services in an AFH for a period of up to 14 days. Respite care for individuals shall be counted in the total licensed capacity of the home. Respite care is not crisis respite care.¶

(789) "Restraints" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.¶

(7980) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.¶

(801) "Seclusion" means the involuntary confinement of an individual to a room or area where the individual is physically prevented from leaving.¶

(812) "Self-Administration of Medication" means the act of an individual placing a medication in or on the individual's own body. The individual identifies the medication and the times and manners of administration and placed the medication internally or externally on the individual's own body without assistance.¶

(823) "Self-Preservation" means in relation to fire and life safety the ability of individuals to respond to an alarm without additional cues and be able to reach a point of safety without assistance.¶

(834) "Services" means those activities that are intended to help the individual develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure the individual's access to necessary medical care, treatment, or services identified in the individual's personal care plan.¶

(845) "Substitute Caregiver" means any individual meeting the qualifications of a caregiver who provides care and services in an AFH under the Division's jurisdiction in the absence of the provider or resident manager. An individual may not be a substitute caregiver.¶

(856) "Unit" means the bedroom and other space of an individual residing in an AFH as agreed to in the residency agreement. Unit includes the following:¶

(a) Private single occupancy spaces; and¶

(b) Shared units with roommates as allowed by these rules.¶

(867) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of an individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of an individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.¶

(878) "Variance" means an exception from a regulation or provision of these rules granted in writing by the Division upon written application from the provider.¶

(889) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving services in an AFH or other provider, and who is not a paid employee of the AFH or other provider. The services shall be non-clinical unless the person has the required credentials to provide a clinical service.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 413.042; ~~ORS~~ 413.032

Statutes/Other Implemented: ORS 426.072, 443.705 - 443.825

AMEND: 309-040-0315

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0315

License Application and Fees ¶

- (1) A completed, written application shall be submitted by the applicant on forms supplied by the Division. The application is not complete until all information is received by the Division. Incomplete applications are void 60 days after initial receipt by the Division. ¶
- (2) An applicant shall submit a separate application for each location operated as an AFH. ¶
- (3) The application shall include the following: ¶
 - (a) The maximum capacity requested and a written statement describing family members needing care, individuals who receive respite care, individuals who receive day care, or individuals who receive room and board; ¶
 - (b) A written statement from an LMP regarding the mental and physical ability of the applicant to provide care to individuals and to operate the AFH. If the applicant employs a resident manager, the applicant shall provide a written statement from a physician or a LMP regarding the mental and physical ability of the resident manager to operate the AFH and to provide care to individuals; ¶
 - (c) A completed financial information form provided by the Division. The applicant shall demonstrate to the Division the applicant's financial ability and the resources necessary to operate the AFH. Financial ability shall include but is not limited to providing the Division with a list of unsatisfied judgments, pending litigation, and unpaid taxes and notifying the Division regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required, the Division may require the applicant to furnish a financial guarantee as a condition of initial licensure in accordance with ORS 443.735(3)(e); ¶
 - (d) A completed Facility Provider Enrollment Application; ¶
 - (e) A signed letter of support from the Local Mental Health Authority or designee for the applicant to be licensed to operate the AFH; ¶
 - (f) Documentation of a Criminal History Check approval in accordance with OAR 943-007-0001 through 0501 for the provider, the resident manager, caregivers, volunteers, and other occupants over the age of 16, excluding individuals, and other persons as defined in ORS 443.735; ¶
 - (g) 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. ¶
 - (h) A floor plan of the AFH showing the location and size of rooms, exits, secondary emergency egress, smoke detectors and fire extinguishers, and evidence of compliance with facility safety requirements as outlined in OAR 309-040-0370; ¶
 - (h) A completed AFH Self-Inspection Guide; and ¶

- (ii) Each application must be accompanied by a fee of \$20 per bed requested for license. ¶
- (4) The Division shall determine compliance with these rules based on receipt of the completed application material and fees, a review of information submitted, an investigation of information submitted, an inspection of the AFH, and interviews with the provider determined by the Division and other individuals as identified by the Division. ¶
- (5) The applicant may withdraw the application at any time during the application process by notifying the Division in writing. ¶
- (6) The Division may elect to 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) The applicant may appeal the denial of the application by submitting a request for reconsideration in writing to the Division within 14 calendar days from receipt of the denial notice. The Division shall make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Division shall be final. ¶
- (7) An applicant whose license has been revoked or voluntarily surrendered, following a receipt of Notice of Intent to Revoke or Notice of Intent ~~to~~ ~~of~~ ~~Non-~~ ~~Renewal~~ from the Division, or whose application has been denied by the Division for reasons relating to but not limited to criminal convictions, civil proceedings against the applicant, or substantiated allegations of abuse by the applicant, may not be permitted to submit an application for one year from the date that the revocation, surrender, or denial is made final. A longer period may be specified in the order revoking or denying the license. ¶
- (78) Enforcement of Home and Community-Based Required Qualities: ¶
- (a) An AFH licensed on or after July 1, 2016, shall be in full compliance with all requirements under these rules at the time of initial licensure; ¶
- (b) An AFH licensed prior to July 1, 2016, shall come into compliance with applicable rules as follows: ¶
- (A) All AFH's shall be in full compliance with all applicable rules no later than January 1, 2017; ¶
- (B) For those rules designated by the Division to become effective July 1, 2016, the provider must make measurable progress towards compliance with those rules. The Division may not issue sanctions or penalties for failure to meet those rules effective July 1, 2016, or those obligations imposed by OAR chapter 411, division 4, until January 1, 2017, if the provider demonstrates measurable progress towards compliance.
- Statutory/Other Authority: ORS 413.042, ORS 443.420
- Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0325

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0325

Capacity ¶¶

(1) The Division shall determine the number of individuals permitted to reside in an AFH based on the ability of the caregiver to meet the care needs of the individuals, the fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum licensed capacity ~~shall~~ may include consideration of total household composition including children. Sleeping requirements for children are:¶¶

(a) Sleeping arrangements for children in care shall be safe and appropriate, based on the child's age, gender, special needs, behavior, and history of abuse and neglect;¶¶

(b) Each child in care shall have a safe and adequate bed in which to sleep.¶¶

(2) ~~Limiting Capacity.~~ The following limits apply:¶¶

(a) The number of individuals is limited to five;¶¶

(b) ~~Respite care~~ In the determination of the Division, the following individuals ~~are~~ may be included in the licensed capacity of five;¶¶

~~(eA) Day Respite care individuals are included in the licensed capacity of five;¶¶~~

(B) Day care persons;¶¶

~~(dC) Adult family members of the provider or resident manager who need care are included in the licensed capacity of five; and;¶¶~~

(eD) Child family members of the provider or resident manager who need care ~~may be included in the licensed capacity of five.~~¶¶

(3) If the number of individuals who receive care exceeds the ability of the provider to meet the care, health, life, and safety needs of the individuals, the Division may reduce the AFH licensed capacity.¶¶

(4) The Division may place conditions, restrictions, or limitations on the AFH license as necessary to maintain the health, life, and safety of the individual.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0390

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0390

Standards and Practices for Care and Services ¶¶

- (1) There shall be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH in accordance with ORS 443.725(3). ¶¶
- (2) Medications and Prescriber's Orders: ¶¶
 - (a) There shall be a copy of a medication, treatment, or therapy order signed by a physician, nurse practitioner, or other licensed prescriber in the individual's file for the use of any medications, including over the counter medications, treatments, and other therapies; ¶¶
 - (b) A provider, resident manager, or substitute caregiver shall dispense medications, treatments, and therapies as prescribed by a physician, nurse practitioner, or other licensed prescriber. Changes to orders for the dispensing and administration of medication or treatment may not be made without a written order from a physician, nurse practitioner, or other licensed prescriber. A copy of the medication, treatment, or therapy order shall be maintained in the individual's record. The provider, resident manager, or substitute caregiver shall promptly notify the individual's case manager of any request for a change in the individual's orders for medications, treatments, or therapies; ¶¶
 - (c) Each individual's medications shall be clearly labeled with the pharmacist's label or the manufacturer's originally labeled container and kept in a locked location. The provider or provider's family medication shall be stored in a separate locked location. All medication for pets or other animals shall be stored in a separate locked location. Unused, outdated, or recalled medications may not be kept in the AFH and shall be disposed in a manner to prevent diversion into the possession of people other than for whom it was prescribed. The provider shall document disposal of all unused, outdated, and ~~or~~ recalled medication on individuals' drug disposal forms; ¶¶
 - (d) Medications may not be mixed together in another container prior to administration except as packaged by the pharmacy or by physician order; ¶¶
 - (e) A written medication administration record (MAR) for each individual shall be kept of all medications administered by the program staff to that individual, including over the counter medications. The MAR shall indicate name of medication, dosage and frequency of administration, route or method, dates and times given, and be immediately initialed by the caregiver dispensing using only blue or black indelible ink. Treatments, therapies, and special diets shall be immediately documented on the medication administration record including times given, type of treatment or therapy, and initials of the caregiver giving it using only blue or black indelible ink. The medication administration record shall have a legible signature for each set of initials using only blue or black indelible ink; ¶¶
 - (f) The MAR shall include documentation of any known allergy or adverse reactions to a medication and documentation and an explanation of why a PRN medication was administered and the results of such administration; ¶¶
 - (g) For any individual who is self-administering medication, the individual's record shall include the following documentation: ¶¶
 - (A) That the individual has been trained for self-administering of prescribed medication or treatment or that the prescriber has provided documentation that training for the individual is unnecessary; ¶¶

- (B) That the individual is able to manage his or her own medication regimen, and the provider shall keep medications stored in an area that is inaccessible to others and locked;¶
- (C) Of retraining when there is a change in dosage, medication, and time of delivery;¶
- (D) Of review of self-administration of medication as part of the residential care plan process; and¶
- (E) Of a current prescriber order for self-administration of medication.¶
- (h) Injections may be self-administered by the individual or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or providers who have been trained and are monitored by a physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047. Documentation regarding the training or delegation shall be maintained in the individual's record;¶
- (3) Nursing tasks may be delegated by a registered nurse to providers and other caregivers only in accordance with administrative rules of the Board of Nursing chapter 851, division 47. This includes but is not limited to the following conditions:¶
 - (a) The registered nurse has assessed the individual's condition to determine there is not a significant risk to the individual if the provider or other caregiver performs the task;¶
 - (b) The registered nurse has determined the provider or other caregiver is capable of performing the task;¶
 - (c) The registered nurse has taught the provider or caregiver how to do the task;¶
 - (d) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;¶
 - (e) The registered nurse provides written instructions for the provider or caregiver to use as a reference;¶
 - (f) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other individuals or taught to other care providers;¶
 - (g) The registered nurse has determined the frequency for monitoring the provider or caregiver's delivery of the delegated task; and¶
 - (h) The registered nurse has documented a residential care plan for the individual including delegated procedures, frequency of registered nurse follow-up visits, and signature and license number of the registered nurse doing the delegating.¶
- (4) The initial residential care plan shall be developed within 24 hours of admission to the AFH.¶
- (5) This section and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7):¶
 - (a) During the initial 30 calendar days following the individual's admission to the AFH, the provider shall continue to assess and document the individual's preferences and care needs. The provider shall complete and document the assessment ~~and care plan~~ in an RCP within 30 days after admission, unless the individual is admitted to the AFH for crisis-respite services;¶
 - (b) An RCP is an individualized plan intended to implement and document the provider's delivery of services ~~as well as any individualized limitations contained within the person-centered service plan~~ and identifies the goals to be accomplished through those services. The RCP shall describe the individual's needs, preferences, capabilities, and what assistance the individual requires for various tasks;¶
 - (c) The provider shall develop the RCP based upon the findings of the individual assessment and the person-centered service plan with participation of the individual and through collaboration with the individual's primary mental health treatment provider ~~and the person-centered service plan coordinator~~. With consent of the individual, family members, representatives from involved agencies, and others with an interest in the individual's circumstances may be invited to participate in the development of the RCP. The provider shall have proper, prior authorization from the individual or the individual's representative prior to such contact;¶
 - (d) The RCP shall adequately consider and facilitate the implementation of the individual's person-centered service plan by addressing the following:¶
 - (A) Address the implementation and provision of services by the provider consistent with the obligations imposed by the person-centered service plan;¶
 - (B) Identify the individual's service needs, desired outcomes, and service strategies to advance all areas identified

in the person-centered service plan, the individual's physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation, as well as any other area of concern or the other goals set by the individual;¶

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

(D) The provider shall attach the person-centered service plan to the RCP.¶

(e) The RCP shall be signed by the individual, the provider, or the provider's designee, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan;¶

(f) The provider shall review and update each individual's RCP every six months and when an individual's condition changes. The review shall be documented in the individual's record at the time of the review and include the date of the review and the provider's signature. If an RCP contains many changes and becomes less legible, the provider shall write a new care plan;¶

~~(g) The provider shall attach the RCP to the person-centered service plan.¶~~

(6) A person-centered service plan shall be completed in the following circumstances:¶

(a) A person-centered service plan coordinator under contract with the Division shall complete a person-centered service plan with each individual pursuant to OAR 411-004-0030. The provider shall make a good faith effort to implement and complete all elements the provider is responsible for implementing as identified in the person-centered service plan;¶

(b) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible;¶

(c) The person-centered service plan shall be developed by the individual, and, as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the individual's representative;¶

(d) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant exceptions when it determines that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area;¶

(e) For private pay individuals, a person-centered service plan may be developed by the individual, or, as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers shall assist private pay individuals in developing person-centered service plans when no alternative resources are available. Private pay individuals are not required to have a written person-centered service plan.¶

(7) A person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process includes the following:¶

(a) Is driven by the individual;¶

(b) Includes people chosen by the individual;¶

(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;¶

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;¶

(e) Reflects the cultural considerations of the individual;¶

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the individual's representative;¶

(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:¶

(A) Discussing the concerns of the individual and determining acceptable solutions;¶

(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;¶

(C) Utilizing any available greater community conflict resolution resources;¶

- (D) Referring concerns to the Office of the Long-Term Care Ombudsman; or¶
- (E) For Medicaid recipients, following existing, program-specific grievance processes.¶
- (h) Offers choices to the individual regarding the services and supports the individual receives and from whom, and records the alternative HCB settings that were considered by the individual;¶
- (i) Provides a method for the individual to request updates to the person-centered service plan for the individual;¶
- (j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;¶
- (k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;¶
- (L) Includes any services that are self-directed, if applicable;¶
- (m) Includes; but is not limited to; individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;¶
- (n) Includes risk factors and plans to minimize any identified risk factors; and¶
- (o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual, participants in the person-centered service planning process, and all individuals responsible for the implementation of the person-centered service plan, including the provider, as described below in section (8)(a)(O) of this in these rules. The person-centered service plan is distributed to the individual; and other people involved in the person-centered service plan as described below in section (8)(d) of this in these rules.¶
- (8) Required ~~C~~contents of the person-centered service plan:¶
 - (a) When the provider is required to develop the person-centered service plan, the provider shall ensure that the plan includes the following:¶
 - (A) HCBS and setting options based on the needs and preferences of the individual; and for residential settings, the available resources of the individual for room and board;¶
 - (B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater community;¶
 - (C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;¶
 - (D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;¶
 - (E) The strengths and preferences of the individual;¶
 - (F) The service and support needs of the individual;¶
 - (G) The goals and desired outcomes of the individual;¶
 - (H) The providers of services and supports, including unpaid supports provided voluntarily;¶
 - (I) Risk factors and measures in place to minimize risk;¶
 - (J) Individualized backup plans and strategies, when needed;¶
 - (K) People who are important in supporting the individual;¶
 - (L) The person responsible for monitoring the person-centered service plan;¶
 - (M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services;¶
 - (N) The written informed consent of the individual;¶
 - (O) Signatures of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (c) of this section;¶
 - (P) Self-directed supports; and¶
 - (Q) Provisions to prevent unnecessary or inappropriate services and supports.¶
 - (b) When the provider is not required to develop the person-centered service plan but provides services to the individual, the provider shall provide relevant information and provide necessary support for the person-centered

service plan coordinator or other persons developing the plan to fulfill the characteristics described in ~~part (a) of this section~~ these rules;¶

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

(d) The person-centered service plan is distributed to the individual and other people involved in the person-centered service plan as described ~~above in subsection (c) of this section~~ in these rules;¶

(e) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-040-0393 when an individual's rights under OAR 309-040-0410(2)(b) through (i) may not be met due to threats to the health and safety of the individual or others;¶

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

(A) At the request of the individual;¶

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

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

(9) Because it may not be possible to assemble complete records and develop a person-centered service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan under these rules, but shall, at a minimum, develop an initial care plan as required by section (7) of these rules to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in section (11)(b) of this rule.¶

(10) The provider shall develop an individual record for each individual. The provider shall keep the individual record current and available on the premises for each individual admitted to the AFH. The provider shall maintain an individual record consistent with the following requirements:¶

(a) The record shall include:¶

(A) The individual's name, previous address, date of entry into AFH, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid or Medicare numbers where applicable, guardianship status, and;¶

(B) The name, address, and telephone number of:¶

(i) The individual's legal representative, designated representative, family, advocate, or other significant person;¶

(ii) The individual's preferred primary health provider, designated back up health care provider or clinic;¶

(iii) The individual's preferred dentist;¶

(iv) The individual's day program or employer, if any;¶

(v) The individual's case manager; and¶

(vi) Other agency representatives providing services to the individual.¶

(C) Individual records shall be available to the Authority conducting inspections or investigations as well as to the individual or the individual's representative;¶

(D) Original individual records shall be kept for a period of three years after discharge when an individual no longer resides in the AFH;¶

(E) In all other matters pertaining to confidential records and release of information, providers shall comply with ORS 179.505.¶

(b) Medical Information:¶

(A) History of physical, emotional, and medical problems, accidents, illnesses or mental status that may be pertinent to current care;¶

(B) Current orders for medications, treatments, therapies, use of restraints, special diets, and any known food or medication allergies;¶

(C) Completed medication administration records from the license review period;¶

(D) Name and claim number of medical insurance, and any pertinent medical information such as hospitalizations, accidents, immunization records including previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of any individual.¶

(c) Individual Account Record:¶¶

(A) Individual's Income Sources;¶¶

(B) Refer to the individual's residential care plan with supporting documentation from the income sources to be maintained in the individual's individual record;¶¶

(C) The individual or the individual's representative shall agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy shall be given to the individual, the individual's representative, and the original in the individual's individual record;¶¶

(D) Individual's record of discretionary funds.¶¶

(d) If an individual maintains custody and control of his or her discretionary funds, then no accounting record is required;¶¶

(e) If a designee of the AFH maintains custody and control of an individual's discretionary fund, a signed and dated account and balance sheet shall be maintained with supporting documentation for expenditures \$10 and greater. The AFH designee shall have specific written permission to manage an individual's discretionary fund;¶¶

(f) The provider shall maintain a copy of the written house rules with documentation that the provider discussed the house rules with the individual;¶¶

(g) A written incident report of any unusual incidents relating to the AFH including but not limited to individual care. The incident report shall include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the individual. In compliance with HIPAA rules, only the individual's name may be used in the incident report. Separate reports shall be written for each individual involved in an incident. A copy of the incident report shall be submitted to the CMHP within five working days of the incident. The original shall be placed in the individual's individual record;¶¶

(h) Any other information or correspondence pertaining to the individual;¶¶

(i) Progress notes shall be maintained within each individual's record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes as identified in the individual's personal care plan. A progress note shall be entered in the individual's record at least once each month.¶¶

(11) Residents' Bill of Rights:¶¶

(a) The provider shall guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider shall post a copy of the Residents' Bill of Rights in a location that is accessible to individuals, individuals' representatives, parents, guardians, and advocates. The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representative, parent, guardian, and advocate along with a description of how to exercise these rights;¶¶

(b) The provider shall explain and document in the individual's file that a copy of the Residents' Bill of Rights was given to each individual at admission and is posted in a conspicuous place including the name and phone number of the office to call to report complaints.¶¶

(12) Providers, resident managers, or substitute caregivers may not use physical restraints for individuals receiving personal care services authorized or funded through the Division.¶¶

(13) The provider shall:¶¶

(a) Conspicuously post the State license and Abuse and Complaint poster where it can be seen by individuals;¶¶

(b) Cooperate with Division personnel or designee in complaint investigation procedures, abuse investigations, and protective services, planning for individual care, application procedures, and other necessary activities, and allow access of Division personnel to the AFH, its individuals, and all records;¶¶

(c) Give care and services, as appropriate to the age and condition of the individual and as identified on the RCP. The provider shall ensure that physicians' orders and those of other medical professionals are followed and that the individual's physicians and other medical professionals are informed of changes in health status or if the individual refuses care;¶¶

(d) House Rules:¶¶

(A) The provider shall develop reasonable written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on

refunds in case of departure, hospitalization, or death;¶

(B) The provider shall discuss house rules with the individual and families at the time of arrival and be posted in a conspicuous place in the facility. The provider shall maintain written documentation in the individual record that the provider discussed the house rules with the individual along with a copy of the house rules;¶

(C) House rules are subject to review and approval by the Division and may not violate individual's rights as stated in ORS 430.210;¶

(D) House rules may not restrict or limit the individual rights under OAR 309-040-0410(2). This subsection is effective July 1, 2016, and enforceable according to 309-040-0315(7).¶

(e) In the provider's absence, the provider shall have a resident manager or substitute caregiver on the premises to provide care and services to individuals. For absences greater than 72 consecutive hours, the CMHP shall be notified of the name of the substitute caregiver for the provider or resident manager;¶

(f) A provider, resident manager, or substitute caregiver shall be present in the home at all times;¶

(g) Allow and encourage individuals to exercise all civil and human rights accorded to other citizens;¶

(h) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of individuals;¶

(i) Provide care and services as agreed to in the RCP;¶

(j) Keep information related to individuals confidential as required under ORS 179.050;¶

(k) Ensure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the Division or CMHP;¶

(L) Not admit individuals who are clients of Aging and People with Disabilities without the express permission of the Division;¶

(m) Notify the Division prior to a closure and give individuals, the individuals' representative, families, and CMHP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH, an individual may not be shifted from one AFH to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and CMHP;¶

(n) Exercise reasonable precautions against any conditions that could threaten the health, safety, or welfare of individuals;¶

(o) Immediately notify the appropriate RCP Team members (in particular the CMHP representative and family or guardian) if: ¶The individual has a significant change in medical status; the individual has an unexplained or unanticipated absence from the AFH; the provider becomes aware of alleged or actual abuse of the individual; the individual has a major behavioral incident, accident, illness, hospitalization; the individual contacts or is contacted by the police; or the individual dies, and follow-up with an incident report.¶

(14) The provider shall write an incident report for any unusual incident and forward a copy of the incident report to the CMHP within five working days of the incident. Any incident that is the result of or suspected of being abuse shall be reported to the Office of Investigations and Training within 24 hours of occurrence.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0405

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0405

Procedures for Correction of Violations ¶¶

(1) At any time after receipt of a notice of violations or an inspection report, the licensee or the Division may request a conference in writing. The conference shall be scheduled within ten days of a request by either party. The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the rules. The written request by a licensee or the Division for a conference ~~shall~~may not extend any previously established time limit for correction. ¶¶

(2) The licensee shall notify the Division of correction of violations in writing no later than the date specified in the notice of violation. ¶¶

(3) If, after inspection of the AFH, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more of the following actions: ¶¶

(a) Imposition of an administrative sanction that may include revocation, suspension, ~~or refusal to renew a license as deemed appropriate by the Division;~~ ¶¶

(b) Placement of conditions on the license, or non-renewal of a license as deemed appropriate by the Division; or ¶¶

(c) Filing of a criminal complaint. ¶¶

(4) If an individual is in serious and immediate danger, the ~~license may be immediately suspended or revoked and arrangements made to move the individual~~Division may institute one or more of the following actions: ¶¶

(a) If there is reliable evidence of abuse, neglect or exploitation, the license may be immediately suspended or revoked and arrangements made to move the individual pursuant to OAR 309-040-0425. ¶¶

(b) The Division may order the removal of the individual pursuant to OAR 309-040-0425; or ¶¶

(c) Placement of conditions on the license as deemed appropriate by the Division.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0410

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0410

Residents Bill of Rights, Complaints, and Grievances ¶¶

(1) Residents' Bill of Rights: ¶¶

(a) The provider shall guarantee Residents' Bill of Rights as described in ORS 443.739 and help residents exercise them; ¶¶

(b) The provider shall post the Residents' Bill of Rights in a location that is prominent and accessible to individuals, individuals' representatives, parents, guardians, and advocates. The posted rights shall include the telephone number of the office to call to report complaints; ¶¶

(c) The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representatives, parents, guardians, and advocates along with a description of how to exercise these rights; ¶¶

(d) Upon admission to the AFH: ¶¶

(A) The provider shall explain the Residents' Bill of Rights to each individual and to individuals' representatives, parents, guardians, and advocates; and ¶¶

(B) The provider shall document in the individual's file that a copy of the Residents' Bill of Rights is given to each individual and to the individuals' representatives, parents, guardians, and advocates. ¶¶

(e) The Residents' Bill of Rights state that each resident has the right to: ¶¶

(A) Be treated as an adult with respect and dignity; ¶¶

(B) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote and be informed of all house rules; ¶¶

(C) Receive appropriate care and services and prompt medical care as needed. Be informed of the individual's medical condition and the right to consent to or refuse treatment; ¶¶

(D) Adequate personal privacy and privacy to associate and communicate privately with any individual of choice, such as family members, friends, advocates, and legal, social service, and medical professionals; send and receive personal mail unopened; engage in telephone conversations; and have medical and personal information kept confidential; ¶¶

(E) Have access to and participate in activities of social, religious, and community groups; ¶¶

(F) Be able to keep and use a reasonable amount of personal clothing and belongings and to have a reasonable amount of private, secure storage space; ¶¶

(G) Be free of discrimination in regard to race, color, national origin, sex, religion, sexual orientation, or disability; ¶¶

(H) Manage financial affairs unless legally restricted. ~~B and be~~ free from financial exploitation. The provider may not charge or ask for application fees or nonrefundable deposits and may not solicit, accept, or receive money or property from an individual other than the amount agreed to for services; ¶¶

(I) A safe and secure environment; ¶¶

(J) Written notices prior to rate increases and evictions; ¶¶

(K) A written agreement regarding services to be provided and agreed upon rates; ¶¶

(L) Voice suggestions, complaints, or grievances without fear of retaliation; ¶¶

(M) Freedom from training, treatment, chemical or physical restraints except as agreed to in writing in an individual's RCP. ~~B and be~~ free from chemical or physical restraints except as ordered by a physician or other

qualified practitioner; ¶

(N) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to residents in an age appropriate manner; ¶

(O) An opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence; ¶

(P) Freedom from punishment. Behavior intervention programs shall be approved in writing on the individual's RCP; ¶

(Q) Freedom from abuse and neglect; ¶

(R) The opportunity to contribute to the maintenance and normal activities of the household; ¶

(S) Access and opportunity to interact with persons with or without disabilities; ¶

(T) The right not to be transferred or moved out of the AFH without 30 days' advance written notice and an opportunity for a hearing as described in ORS 443.738 and OAR 411-088-0080. A provider may transfer or discharge an individual only for medical reasons including a medical emergency described in ORS 443.738, or for the welfare of the individual or other residents, or for nonpayment; and ¶

(U) Utilize advance directives. Advance directives shall be explained to each individual upon admission. If the individual does not already have any advance directive or directives, he or she shall be given an opportunity to complete them. If any advance directives are completed by the individual, the provider shall document these directives in the individual's record; ~~i.~~ If the individual declines to file any advance directives, this declination shall be documented in the individual's record; ¶

(V) As used in this section, the term "advance directive" has the meaning given under ORS 127.505; and includes the "Declaration for Mental Health Treatment" under ORS 127.700 through 127.737. ¶

(2) Additional Rights for Individuals: ¶

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

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

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

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

(e) Have a lockable door in the individual's bedroom that may be locked by the individual; ¶

(f) Choose a roommate when sharing a bedroom; ¶

(g) Furnish and decorate the individual's bedroom according to the residency agreement; ¶

(h) The freedom and support to control the individual's schedule and activities; ¶

(i) Privacy in the individual's bedroom; ¶

(j) Section (2) of these rules and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7). ¶

(3) The qualities and obligations described in section 3(b)(c)(d)(e)(h) of this rule do not apply to an individual receiving crisis-respite services, and a provider need not seek an individually-based limitation for such an individual to comply with these rules. ¶

~~(4)~~ The provider shall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider or an AFH caregiver, except where expressly allowed under these rules. ¶

(5) Any person who believes these rules have been violated may file a complaint with the Division or CMHP. The Division or CMHP may investigate any complaint or grievance regarding the AFH. ¶

(6) The Division or CMHP shall furnish each AFH with a Complaint and Grievance Notice that the provider shall post in a conspicuous place stating the telephone number of the Division and the CMHP and the procedure for making complaints or grievances. ¶

(7) A copy of all AFH complaints or grievances shall be maintained by the Division. All complaints or grievances

and actions taken on the complaint or grievance, indexed by the name of the provider, shall: ¶

(a) Be placed into the public file at the Division. Information regarding the investigation of the complaint or grievance may not be filed in the public file until the investigation has been completed; ¶

(b) Protect the privacy of the complainant or grievant and the individual; and ¶

(c) Treat the names of the witnesses as confidential information. ¶

(8) ~~¶ The Division may suspend, revoke, and refuse to renew or impose conditions against the license of a providers who acquires substantiated complaints or grievances pertaining to the health, safety, or welfare of individuals may have their licenses suspended, revoked, or not renewed or may have conditions placed on the license. ¶~~

(9) The AFH provider, resident manager, or caregiver may not retaliate in any way against any individual after a complaint or grievance has been filed with the Division. Retaliation may include, but is not limited to the following:

¶

(a) Increasing charges or threatening to increase charges; ¶

(b) Decreasing or threatening to decrease services, rights, or privileges; ¶

(c) Threatening to increase charges or decrease services, rights, or privileges; ¶

(d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH; or ¶

(e) Abusing, harassing, or threatening to abuse or harass an individual in any manner. ¶

(10) A complainant, grievant, witness, or caregiver of an AFH may not be subject to retaliation by a provider or resident manager or substitute caregiver for making a report or being interviewed about a complaint or being a witness. Retaliation may include, but is not limited to, caregiver dismissal or harassment or restriction of access to either the AFH or an individual. ¶

(11) The complainant has immunity from any civil or criminal liability with respect to the making or content of a complaint or grievance made in good faith. ¶

(12) Any individual may inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Division upon written request subject to the Division's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests.

Statutory/Other Authority: ORS 443.735

Statutes/Other Implemented: ORS 127.700 - 127.737, ORS 443.705 - 443.825

AMEND: 309-040-0415

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0415

~~Administrative Sanctions and Conditions~~

~~(1) An administrative sanction may be imposed for non-compliance with these rules. The Division may attach conditions to a license in addition to or instead of imposing an administrative sanction. Conditions are described in OAR 309-040-0430.~~

~~(2) An administrative sanction includes one or more of the following actions:~~

~~(a) Attachment of conditions to a license;~~

~~(b) Civil penalties;~~

~~(c) Refusal to renew, denial, suspension, or revocation; or non-renewal of license; f a license as set forth in OAR 309-040-0420.~~

~~(23) If the Division imposes an administrative sanction, it shall serve a Notice of Intent of the administrative sanction upon the licensee personally or by certified mail.~~

~~(34) The notice of administrative sanction shall state the following:~~

~~(a) Each sanction imposed;~~

~~(b) A short and plain statement of each condition or act that constitutes a violation; circumstance, act, or omission that constitutes substantial non-compliance with the applicable rules;~~

~~(c) Each statute or rule allegedly violated;~~

~~(d) A statement of the licensee's right to a contested case hearing;~~

~~(e) A statement of the authority and jurisdiction under which the hearing is to be held;~~

~~(f) A statement that the Division files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and~~

~~(g) A statement that the notice becomes a final order upon default if the licensee fails to request a hearing within the specified time.~~

~~(45) If an administrative sanction is imposed for reason other than abuse, neglect, or exploitation, a contested case hearing shall precede its imposition if the licensee requests the hearing in writing within 60 days after receipt of the notice of service of the notice of intent to impose the administrative sanction pursuant to ORS Chapter 183.~~

~~(56) If a licensee fails to request in writing a hearing within 60 days of service of the notice, the Notice of Administrative Sanction shall become a Final Order of the Division by default.~~

~~(67) The Division may immediately suspend, revoke, or refuse to renew a license for a substantiated finding of abuse, neglect, or exploitation of an individual. The licensee may submit a request in writing written request for a contested case hearing within 60 days of the notice of intent of immediate suspension, revocation, or non-refusal to renew.~~

~~(78) When a license is denied, suspended, revoked, or not renewed, the Division shall work with the CMHP to arrange for individuals to move for their protection.~~

~~(8) Conditions may be attached to a license upon a finding that:~~

~~(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals, pending further action by the Division;~~

~~(b) There exists a threat to the health, safety, and welfare of an individual, pending further action by the Division~~

or Division designee;¶

(c) There is reliable evidence of abuse of an adult, pending further action by the Division;¶

(d) The AFH is not being operated in compliance with these rules, pending further action by the Division; or¶

(e) The provider is licensed to care for a specific individual only, and further placements may not be made to the AFH.¶

(9) Conditions that may be imposed on a licensee include but are not limited to the following:¶

(a) Restricting the maximum capacity of the AFH;¶

(b) Restricting the number and impairment level of individuals allowed based upon the capacity of the caregivers to meet the health and safety needs of all residents;¶

(c) Requiring an additional caregiver or caregiver qualifications;¶

(d) Requiring additional training of caregivers;¶

(e) Requiring additional documentation as deemed necessary by the Division;¶

(f) Restricting a provider from opening an additional AFH; or¶

(g) Suspending admissions to the AFH.¶

(10) The provider shall be notified in writing of any conditions imposed, the reason for the condition, if refused to renew, the Division and the CMHP shall work together to arrange for individuals to move for their protections, and be given an opportunity to request a hearing under ORS Chapter 183.¶

(11) In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing.¶

(12) Conditions may be imposed for the extent of the license period (one year), extended to the next license period, or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.¶

(13s permitted by Residents' Rights. ¶

(9) Hearing rights are in accordance with ORS 183.411 to 183.550.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0420

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0420

Denial, Suspension, Revocation, or ~~Non-renewal of License~~ Refusal to Renew ¶

(1) ~~Causative Action.~~ The Division may deny, suspend, revoke, or refuse to renew a license where it finds: any of the following: ¶

(a) There has been substantial failure ~~to comply~~ of non-compliance with these rules ~~or when t:~~ ¶

(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 individuals in an AFH; or ¶

~~(b)~~ (c) The applicant or provider has been convicted of one or more crimes described in the Criminal Record Check: ¶

(A) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked, or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation, or refusal to renew was due in any part to abuse of an adult, creating a threat to the individuals, or failure to possess physical health, mental health, or good personal character; ¶

(B) If the denial, suspension, revocation, or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Division by clear and convincing evidence ~~of~~ the ability and fitness to operate an AFH. If the applicant or provider does not meet this burden, then the Division may deny, suspend, revoke, or refuse to renew the license; ¶

(C) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked, or refused to be renewed due to abuse of an adult or failure to possess physical health, mental health, or good personal character 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 individuals; ¶

(D) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider: ¶

(i) Resides with the person; ¶

(ii) Employs the person in the AFH; ¶

(iii) Receives financial backing from the person for the benefit of the AFH; ¶

(iv) Receives managerial assistance from the person for the benefit of the AFH; or ¶

(v) Allows the person to have access to the AFH. ¶

(E) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew. ¶

(2) The Division may deny, suspend, revoke, or refuse to renew an AFH license if the applicant or provider: ¶

(a) Submits fraudulent or untrue information to the Division; ¶

(b) Has a history of or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bills; ¶

(c) Has a prior denial, suspension, revocation, or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state or county; ¶

- (d) Has threatened the health, safety, or welfare of any individual; ¶
- (e) Has a substantiated finding of abuse of an adult; ¶
- (f) Has a medical or psychiatric problem, which interferes with the ability to provide care; ¶
- (g) Refuses to allow access and inspection; ¶
- (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; or ¶
- (i) Fails to comply with a final order of the Division imposing an administrative sanction; ¶
- (j) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider, resident manager, substitute caregiver, or volunteer of the AFH.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0425

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0425

Removal of Residents ¶¶

(1) The Division may order the removal of individuals from an AFH to an alternative placement on the following grounds: ¶¶

(a) When a violation of these rules is not corrected after time limit specified in notice; ¶¶

(b) There is a violation of an individual's rights; ¶¶

(c) The number of individuals currently in the AFH exceeds the maximum licensed capacity of the AFH; ¶¶

(d) The AFH is operating without a license; or ¶¶

(e) There is evidence of abuse of an adult that presents a serious and immediate danger to individuals. ¶¶

(2) The CMHP shall provide the individual assistance in locating and visiting alternative placements, if needed, and ~~has the~~explain the individual's right to contest the move as provided in ORS 443.738(11)(b) and OAR 411-088-0080.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0430

RULE SUMMARY: The rules provide updated procedural detail regarding information received upon receipt of an Adult Foster Home license application and clarify procedural detail regarding service delivery requirements and standards for the prevention, intervention, and treatment services for mental health residential facilities. The Authority finds that failure to act will result in serious health and safety implications to the public interest, the Authority, CCO's, and clients of Adult Foster Homes. These rules need to be amended so that the Authority may take necessary action on an Adult Foster Home license to protect individuals.

CHANGES TO RULE:

309-040-0430

Conditions ¶¶

~~(1) Attachment to License. Conditions may be attached to a license upon a finding that: ¶¶~~

~~(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals; ¶¶~~

~~(b) There exists a threat to the health, safety, and welfare of an individual; ¶¶~~

~~(c) There is reliable evidence of abuse of an adult; ¶¶~~

~~(d) The AFH is not being operated in compliance with these rules; or neglect of an individual; ¶¶~~

~~(d) The AFH is substantially non-compliant with these rules; or ¶¶~~

~~(e) The provider is licensed to care for a specific individual only and further placements may not be made to the AFH. ¶¶~~

~~(2) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a contested case hearing under ORS chapter 183. ¶¶~~

~~(3) Conditions may be attached to a license upon a finding that: ¶¶~~

~~(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals, pending further action by the Division; ¶¶~~

~~(b) There exists a threat to the health, safety, and welfare of an individual, pending further action by the Division or Division designee; ¶¶~~

~~(c) There is reliable evidence of abuse or neglect of an adult, pending further action by the Division; ¶¶~~

~~(ed) The provider is licensed to care for a specific individual only and further placements may not be made AFH is substantially non-compliant with these rules, pending further action by the Division. ¶¶~~

~~(4) Conditions that may be imposed on a licensee include but are not limited to the following: ¶¶~~

~~(a) Restricting the maximum capacity of the AFH; ¶¶~~

~~(b) Restricting the number and impairment level of individuals allowed based upon the capacity of the caregivers to meet the health and safety needs of all residents; ¶¶~~

~~(c) Requiring an additional caregiver or caregiver qualifications; ¶¶~~

~~(d) Requiring additional training of caregivers; ¶¶~~

~~(e) Requiring additional documentation as deemed necessary by the Division; ¶¶~~

~~(f) Restricting a provider from opening an additional AFH; or ¶¶~~

~~(g) Suspending admissions to the AFH. ¶¶~~

~~(25) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a contested case hearing under ORS chapter 183. ¶¶~~

~~(36) In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing. ¶¶~~

~~(47) Conditions may be imposed for the extent of the license period (one year), extended to the next license period, or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions may be considered at the time of renewal to determine if the~~

conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.¶

(8) Conditions attached to a license shall be effective upon order of the director of the licensing agency.¶

(9) Hearing rights are in accordance with ORS 183.411 to 183.550.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825