

OFFICE OF THE SECRETARY OF STATE
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ARCHIVES DIVISION
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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
02/15/2018 5:39 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establish Standards for the Application, Review, and Registration of Division-Registered Community-Based Structured Housing

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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500 Summer St. NE
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

NEED FOR THE RULE(S):

The rules are needed to establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2015 House Bill 3230 Enrolled https://www.oregonlegislature.gov/bills_laws/archivebills/2005_hb3230.en.pdf;
Oregon Revised Statute: chapter 443.480-443.500 and 443.991 <https://www.oregonlaws.org/ors/443.480>; Oregon
Administrative Rules: chapter 411, division 68 https://www.dhs.state.or.us/policy/spd/rules/411_068.pdf

FISCAL AND ECONOMIC IMPACT:

Fiscal impact of the adoptions to chapter 309, division 50 of the Oregon Administrative Rules is expected pursuant to no prior regulatory oversight of these facilities. However, fiscal impact will vary from provider to provider depending on the programming of the setting. The Division expects there to be administrative cost associated with the proposed rule adoptions due to a need to update policies and procedures and revise the programming to meet rule requirements. For providers requiring registration, there is an annual registration fee of \$20.

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) There are 89 supportive and supported housing type programs identified as potentially meeting the definition of a Community-Based Structure Housing facility and may require registration. Not all of those 89 identified sites will be required to be registered. The number of small businesses and types is subject to phase two of the rule implementation.

(b) The Division expects there to be administrative costs associated with the proposed rule adoptions due to a need to update programming practices, policies, procedures, and forms. The cost of this administrative work will vary from site to site due to many factors and is this not predictable by the state. (c) The Division does not expect there to be increased equipment or supplies required due to the proposed adoptions; however, there may be increased labor or administration required due to the proposed changes. The Division does not expect there to be substantial structural building costs for compliance; however, there may be minor adjustments for ADA compliance, etc., that are not grandfathered in building code or fair housing law. 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 309-050 through public comments periods, such as a Rule Advisory Committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

309-060-0100, 309-060-0105, 309-060-0110, 309-060-0115, 309-060-0120, 309-060-0125, 309-060-0130, 309-060-0135, 309-060-0140, 309-060-0145, 309-060-0150, 309-060-0155, 309-060-0160, 309-060-0165, 309-060-0170

ADOPT: 309-060-0100

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0100

Purpose and Scope

(1) These rules establish standards and procedures for the application, review, initial registration, and ongoing

registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to ORS 443.480 to 443.500. ¶

(2) These rules do not apply or establish regulatory procedures for: ¶

(a) Any facility operated by an institution of higher education; ¶

(b) Any private room and board facility approved by an institution of higher education that has as a resident a student or an employee of the institution; ¶

(c) Any private or nonprofit retirement facility that does not fall under the generally understood definition of a "room and board facility," a "boarding house," or a "boarding hotel" and when a majority of the residents are retirees; ¶

(d) Any privately arranged housing the occupants of which may not be related by blood or marriage; ¶

(e) Residential licensure under ORS 443.410 and 443.315; ¶

(f) Programs defined under ORS 443.400; ¶

(g) CBSH facilities that do not provide housing and meals to two or more individuals who have mental, emotional, behavioral, or substance use disorders, as defined ORS 443.480; or ¶

(h) CBSH facilities that are licensed or registered under any other law of this state or city or county ordinance or regulation.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0105

Definitions

- (1) "Abuse" has the meaning given in ORS 124.050, ORS 430.735, or as required by the law applicable to the agency investigating the allegations of abuse.¶
- (2) "Administration of Medication" means the act of dispensing an individual's medication, medical treatment, or naturopathic treatment to them. This includes dispensing a single dose of medication or multiple doses in a cassette or med minder. ¶
- (3) "Adult Foster Home (AFH)" means any home licensed by the 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.¶
- (4) "Applicant" means any current provider and any person or entity seeking a Letter of Registration for a CBSH who completes an application for registration.¶
- (5) "Application for Registration" means an application form designed and distributed by the Division for the purpose of registering a CBSH.¶
- (6) "Approved" means authorized or allowed by the Division.¶
- (7) "Authority" means the Oregon Health Authority.¶
- (8) "Care" means the performance of:¶
 - (a) Residential Care as defined in ORS 443.400 with exception to the provision of room and board;¶
 - (b) Training as defined in ORS 443.400; and¶
 - (c) Treatment as defined in ORS 443.400. ¶
- (9) "Community-Based Structured Housing" (CBSH) means congregate housing, excluding residential care or treatment, where services and support are provided by the owner or operator of the facility to assist residents who have mental, emotional, behavioral, or substance use disorders. ¶
- (10) "Compensation" means payments or services provided by or on behalf of a person in exchange for other services provided by another person. ¶
- (11) "Compliance" means adherence to applicable administrative rules, statutes, contractual requirements, while not meeting one or more of the requirements, does not, in the determination of the Division: ¶
 - (a) Constitute a danger to the health or safety of any individual; ¶
 - (b) Constitute a willful, negligent, or ongoing violation of the rights of individual service recipients as set forth in administrative rules; or ¶
 - (c) Prevent the accomplishment of the Division's purposes in approving or supporting the subject service. ¶
- (12) "Congregate Housing" means housing in which each individual has a private or shared bedroom or living quarters and shares with other individuals a dining room, recreational room, and other common areas.¶
- (13) "Director" means the Director of the Oregon Health Authority or that person's designee.¶
- (14) "Disability" means a physical or mental impairment that for the individual constitutes or results in a functional limitation to one or more major life activities.¶
- (15) "Division" means the Health Systems Division of the Oregon Health Authority or its designee.¶
- (16) "Elderly" mean an individual who is 62 years of age or older.¶
- (17) "Facility Manager" means a person employed by the provider who is responsible for the daily operation and management of the CBSH facility. The facility manager may or may not reside at the CBSH facility.¶
- (18) "Failure to Comply" Means a determined lack of compliance with applicable administrative rules, statutes, contractual requirements, and other applicable regulations.¶

- (19) "Fee" means a nonrefundable payment of money.¶
- (20) "Individual" means an adult with a mental, emotional, behavioral, or substance use disorder resulting in a disability as defined in ORS 443.480 who: ¶
- (a) Is living in a CBSH registered with the Division and operated by a provider unrelated to the person by blood or marriage;¶
- (b) Has a legally enforceable rental agreement with the provider of CBSH; ¶
- (c) Receives living accommodations, meals, and care services in a CBSH; or ¶
- (d) Is seeking or applying to live in a CBSH.¶
- (21) "Letter of Registration" means the document or documents issued by the Division to a provider after successfully completing the application process, which identifies and declares registration of a CBSH pursuant to these rules. ¶
- (22) "Living Accommodations" means residential facilities that include a place to sleep and common living areas. ¶
- (23) "Management of Medication" means the activity on the part of a provider to physically control or otherwise limit an individual's access to personal medications.¶
- (24) "Meals" means the provision of food by the provider or other employee for the consumption of individuals one or more times per day. ¶
- (25) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.¶
- (26) "Medication Support" means the provision on the part of the provider of reminders to self-administer medications, assistance with navigating pharmacies, and assistance navigating insurance related to medications. ¶
- (27) "Mental or Emotional Disorder" means a primary DSM diagnosis, other than mental retardation or a substance use disorder that limits an individual's ability to perform activities of daily living.¶
- (28) "Oregon Health Authority (Authority)" means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules, the agencies under the authority of the Oregon Health Authority are the Public Health Division and the Health Systems Division.¶
- (29) "Owner" includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:¶
- (a) All or part of the legal title to property; or¶
- (b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.¶
- (30) "Program Staff" means an employee or individual by contract with a CBSH who provides a service to an individual.¶
- (31) "Provider" means a person, partnership, corporation, or other organizational entity who owns or operates a CBSH facility. ¶
- (32) "Privately Arranged Housing" means the voluntary sharing of living accommodations and common expenses between two or more individual's in a residence or apartment that does not offer such accommodations to the general public. ¶
- (33) "Rent" means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others and to use the premises. Rent does not include security deposits, fees or utility or service charges as described in ORS 90.315 and 90.532.¶
- (34) "Rental Agreement" means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.262 and 90.510 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. Rental agreement includes a lease. A rental agreement shall be either a week-to-week tenancy, month-to-month tenancy, or fixed term tenancy.¶
- (35) "Residential Care" means services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the provision of room and board.¶
- (36) "Rights" means civil, legal, or human rights guaranteed by federal and state law and afforded to all persons. ¶
- (37) "Self-administration of Medication" means the act of an individual placing a medication in or on the

individual's own body. ¶

(38) "Services" means living accommodations, meals, and non-care related tasks such as housekeeping, laundry, medication supports, transportation, or recreation provided and performed by a provider or employee for the benefit of individuals.¶

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

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0110

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0110

Letter of Registration Required

(1) The owner or operator of a CBSH facility offered to the general public shall register with the Division if the facility: ¶

(a) Provides housing and meals to two or more individuals who are elderly or have disabilities, as defined by ORS 443.480, and ¶

(b) Is not licensed or registered under any other law of this state or city or county ordinance or regulation.¶

(2) Any provider operating CBSH prior to July 1, 2018, shall submit a completed application for registration within 30 days following notification by the Division of requirement to become registered. All persons who wish to begin operation of a CBSH on or after July 1, 2018, shall be issued a Letter of Registration for the CBSH by the Division prior to providing services or receiving compensation as defined within this rule.¶

(3) If a provider operates more than one CBSH, each facility shall be registered separately with the Division.¶

(4) No Letter of Registration that has been issued to a provider for the operation of a CBSH for a given location shall be valid for use by any other provider or at any facility other than that for which it was issued.¶

(5) When a CBSH is to be sold or otherwise transferred to another operator, the new operator shall apply for and obtain a new Letter of Registration prior to the transfer or operation of the CBSH. ¶

(6) A Letter of Registration is valid for one year unless revoked, suspended, or voluntarily relinquished at an earlier date. ¶

(7) Any CBSH providing residential care or treatment as defined under ORS 443.400 may be subject to residential licensing under OAR chapter 309, division 35, or OAR chapter 309, division 40.¶

(8) Upon discovery that a CBSH may be operating in a manner such that they may meet the definition of a residential care facility, residential facility, residential training facility, residential training home, residential treatment facility, or residential treatment home defined under ORS 443.400, the Division may notify the provider in writing of the Division's plan to conduct an inspection to determine if licensure is required; ¶

(9) Any CBSH who fails to comply with these rules shall be issued a notice of intent to revoke registration and have hearing rights under ORS chapter 183.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500 , 443.991

ADOPT: 309-060-0115

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0115

Waiver of Registration Requirement

(1) Any CBSH that is required to be registered or licensed under another governmental entity's standards that are substantially similar or superior to those under ORS 443.480 to 443.500 and these rules may request a waiver of the requirements of ORS 443.485. Such a request shall be made in writing to the Division and shall include:¶

(a) A copy of the other governmental entity's standards; and¶

(b) An explanation of why they believe that the standards are substantially similar or superior to the requirements of ORS 443.480 to 443.500 and these rules. ¶

(2) If the Division finds that the requirements of the other governmental entity's standards are substantially similar or superior to ORS 443.480 to 443.500 and these rules, it may issue a waiver. All waivers shall be in writing and signed by the Division. All approved waivers may be reviewed by the Division upon amendment of the local ordinance or regulation or upon amendment of ORS 443.480 to 443.500 or these rules. ¶

(3) If the Division finds that the local requirements are not substantially similar or superior to ORS 443.480 to 443.500 and these rules, the Division may issue a written order to the CBSH denying the request for a waiver.¶

(4) When a CBSH falls within the jurisdiction of both the Division and the Department of Human Services (Department), the Department Director and the Oregon Health Authority Director shall determine the agency responsible for registering the facility.¶

(5) A Division approved waiver is only good for one year from the approval date.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0120

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0120

Terms of Registration

(1) Each applicant agrees as a term of registration:¶

(a) The capacity of the CBSH facility shall not exceed sixteen individuals:¶

(b) The provider and other employees of a CBSH shall not abuse any individual and shall exercise reasonable precautions against any other conditions that threaten the health, safety, or welfare of individuals:¶

(c) To permit the Division immediate entry to inspect the facility where the provider intends to operate or currently operates a CBSH to verify information contained in the application, investigate a complaint of abuse, or to ensure compliance with all applicable rules, statutes, ordinances, or regulations: ¶

(A) If an investigation finds a violation of these rules, the Division shall notify the provider in writing. The notice of violation shall include:¶

(i) A description of each violation; and¶

(ii) A specific time frame for correction, not to exceed 30 days after receipt of the notice.¶

(B) For violations that present an imminent danger to the health, safety, or welfare of individuals:¶

(i) The provider shall be notified verbally to immediately cease the abusive act; and¶

(ii) The notice of violation shall order the provider to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation.¶

(C) The Division may conduct an inspection of the facility after the date the Division receives the notice of correction or after the date by which violations shall be corrected as specified in the notice of violation.¶

(d) To permit the Division to inspect, audit, assess, and collect data or copies from all records maintained by the provider:¶

(e) To permit access to state or local fire inspectors or state or local health officers for inspection of CBSH providers regarding fire safety:¶

(f) To permit any individual receiving services, the guardian of the individual receiving services, or an employee to file a complaint with the provider, the individual's managed care plan, or the Division and to maintain a record of all complaints received and any action taken:¶

(g) A CBSH may not retaliate against any individual, guardian, or its employee who files a complaint or any witness or employee of a facility interviewed about the complaint, including but not limited to retaliation by restriction of a resident's otherwise lawful access to the facility and, with respect to an employee, retaliation by dismissal or harassment; and¶

(h) To post the Letter of Registration in a common area of each approved CBSH and be available for inspection at all times. ¶

(2) Letters of Registration pursuant to these rules do not create an express or implied contract in the absence of a fully executed written contract.¶

(3) Letters are not transferable to any other person, provider, or CBSH.¶

(4) The Division may not discriminate in its review procedures or services on the basis of race, color, national origin, sex, sexual orientation, age, or disability.¶

(5) A Letter of Registration is void immediately:¶

(a) Upon voluntary closure of a CBSH; ¶

(b) When the CBSH changes majority or controlling ownership; or¶

(c) Upon a provider's failure to timely submit an annual application for registration pursuant to these rules.¶

(6) Individuals shall be allowed to exercise all civil and human rights afforded such as voting, privacy, and sending

and receiving unopened mail. ¶

(7) Providers and other employees of a CBSH shall make reasonable efforts to refer individuals in need of care to appropriate social service agencies or medical facilities.¶

(8) When the provider is also certified by the Division to provide outpatient behavioral health treatment services under OAR chapter 309, division 8, the provider may provide behavioral health treatment within the scope of the certification to individuals residing in the CBSH:¶

(a) These services shall be organizationally distinct and provided by qualified clinicians not employed by or stationed at the CBSH facility; and¶

(b) Prior to the provision of behavioral health treatment to individuals, the provider shall obtain documentation that the individual was informed of their option to receive behavioral health treatment services from a provider organizationally distinct from the provider of CBSH.¶

(9) Providers of CBSH are prohibited from exceeding the level of care allowable by these rules and functionally operating an RTH, RTF, or AFH as defined under ORS 443.400 and rules promulgated thereunder.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0125

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0125

Application for Initial Registration and Renewal Registration

(1) Application for a Letter of Registration, including renewal registration, shall be submitted by the applicant in writing on the forms furnished by the Division that are legible and complete and in the manner specified by the Division. Applications shall include:¶

(a) A description of the facility in or upon which the applicant proposes to operate a CBSH; ¶

(b) Signed attestation by the applicant that all applicable rules for the provision of a CBSH facility shall be met and maintained in compliance with applicable rules and any variances granted by the Division; ¶

(c) Other documentation required by applicable OAR, ORS, local regulations, contract, or request of the Division to assess compliance of the applicant's proposed services with administrative rules;¶

(d) The maximum number of individuals who shall reside at the CBSH; ¶

(e) The number of bedrooms, apartment units, or single room occupancy units;¶

(f) The name, address, telephone number, and email address of the applicant; ¶

(g) The names, addresses, telephone numbers, and email address of any partner, corporate officer, entities, or other persons having an ownership interest in the CBSH and the percent ownership corresponding to each;¶

(h) The name, address, telephone number, and email address of the facility manager, if applicable;¶

(i) The qualifications and documentation of training requirements for the applicant, facility manager if not the applicant, and each program staff;¶

(j) A description of each service the provider shall offer to individuals;¶

(k) A copy of the applicant's current rental agreement; and¶

(L) Copies of all approved criminal history checks for all persons involved in the operation of the CBSH who will have contact with the individuals, as required in OAR 407-007-0200 through 407-007-0370.¶

(2) The registration fee shall be \$20 per year, per CBSH, paid via check or money order to Health Systems Division and shall accompany the application. ¶

(3) The application is not complete until all required forms, information, and application fees are received by the Division. ¶

(4) If the Division receives a complete application for renewal 90 calendar days prior to the expiration date listed on the Letter of Registration, the Letter of Registration may not be deemed to have expired until the Division completes its review of the renewal application and either issues a new Letter of Registration or denies the application.¶

(5) If the Division does not receive a complete application for renewal prior to the expiration listed on the Letter of Registration, the Letter of Registration shall expire on the date listed on the Letter of Registration, and the CBSH shall be considered un-registered.¶

(6) Applicants who fail to submit a complete application shall be notified by the Division. The notification shall identify the components required to complete the application. The Division's notification may also identify the due date by which a completed application shall be received by the Division.

Statutory/Other Authority: ORS 181A.195, 181.200, 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0130

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0130

Issuance of a Letter of Registration

(1) Upon receipt of a completed application, the Division shall review the application to determine compliance with these rules. The applicant shall provide any additional information or documentation that the Division may request in reviewing the application. ¶

(2) The Letter of Registration shall include:¶

(a) The name and address of the provider of the CBSH;¶

(b) The name and address of the facility;¶

(c) The maximum number of individuals who can reside at the CBSH;¶

(d) The effective date and expiration date of the registration; and¶

(e) Any variances granted by the Division.¶

(3) If a CBSH is not registered with the Division, the provider may not advertise, represent, or imply that the CBSH is registered with the Division.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0135

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0135

Denial of Applications

(1) Upon receipt of a completed application, the Division may deny the application if: ¶

(a) The applicant or facility manager, if applicable, has been convicted of one or more crimes described in OAR 125-007-0260;¶

(b) The applicant is associated with any persons whose registration or license for a CBSH, a foster home, residential care facility, residential treatment facility, or residential treatment home licensed by any state entity was denied, suspended, revoked, or not renewed due to abuse of an individual or a threat to the health and safety of an individual within three years preceding the application, 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; ¶

(c) The applicant fails to demonstrate compliance with these rules; or¶

(d) The applicant has previously had any letter of registration, certification, or license denied, suspended, or revoked by the Division or the Department.¶

(2) An applicant is "associated with" a person as described in subsection (1)(b) of this rule if the applicant: ¶

(a) Resides with the person; ¶

(b) Employs the person in the CBSH; ¶

(c) Receives financial backing from the person for the benefit of the facility; ¶

(d) Receives managerial assistance from the person for the benefit of the facility; or ¶

(e) Knowingly allows the person to have access to the facility. ¶

(3) When an application for a Letter of Registration is denied, the applicant is entitled to an appeal review with the Division as follows: ¶

(a) The applicant shall submit a written request for the appeal review to the Division within seven calendar days of the receipt of the notice of denial; ¶

(b) The Division shall conduct an appeal review meeting within 30 days of receipt of the written request;¶

(c) If no written request for a hearing is received within seven calendar days of receipt of the notice of denial or the Division upholds the denial, the notice of denial shall become final, the application closed, and a notice of the appeal review outcome mailed to the applicant.¶

(4) If the Division overturns the denial, the Division shall issue a notice to the applicant within seven calendar days. The notice shall inform the applicant of the outcome of their appeal hearing and either: ¶

(a) Include an approved Letter of Registration per these rules; or¶

(b) Notation of required amendment to application materials and a timeframe for re-submission of the application.

Statutory/Other Authority: ORS 181A.195, 181.200, 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0140

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0140

Denial, Suspension, Revocation, or Refusal to Renew Registration

(1) The Division may deny, suspend, revoke, or refuse to renew a registration when it finds: ¶

(a) There has been failure to comply with these rules or with local codes and ordinances; ¶

(b) The CBSH is providing residential care or treatment as defined under these rules or meeting the definition of an Adult Foster Home, Residential Treatment Home, or Residential Treatment Facility as defined in ORS 443.400;¶

(c) A provider or an employee or agent of the provider fails to allow access or inspection by an authorized representative of the Division;¶

(d) The provider submits fraudulent or untrue information to the Division; ¶

(e) The provider fails to comply with a variance granted by the Division; or ¶

(f) There is a threat to the health, safety, and wellbeing of an individual in the CBSH or there are substantiations of abuse of an individual.¶

(2) The provider may request a review of the decision by submitting a request in writing to the Division within ten days of the notice and order of denial, suspension, revocation, or refusal to renew registration. ¶

(3) Within ten days of receipt of the provider's request for a review, the Division shall review all available materials, including any written documentation submitted by the provider within that time frame. The Division shall determine, based on a review of the material, whether to sustain the decision. If the Division overturns the decision to deny, suspend, revoke, or refuse to renew the Letter of Registration, the notice or order shall be rescinded. ¶

(4) An order of denial, suspension, revocation, or refusal to renew may be appealed subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days of the date the order of suspension was signed or 90 days of the date that the Division sustained its decision after review under this subsection, whichever comes later.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0145

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0145

Rental Agreement

(1) Prior to accepting compensation from any individual, the provider and the individual seeking residence at the CBSH shall both enter into a rental agreement.

(2) The rental agreement shall include:

(a) A list of services to be offered to the individual;

(c) A description of the frequency and times at which meals will be provided and provisions for missed meals;

(d) Provisions for meals eaten away from the CBSH (e.g. restaurants, senior meal sites);

(e) House rules, including any restrictions or limitations on the use of legal substances such as tobacco, alcohol, and cannabis;

(f) Provisions for the documentation of all compensation received from an individual and a record of all compensation paid to an individual; and

(g) If the individual chooses to have the provider act as representative payee for the payment of the Individual's Social Security benefits, the rental agreement shall indicate this choice.

(3) The rental agreement shall comply with ORS chapters 90 and 91 and all other statutes, rules, or ordinances relating to the rights and responsibilities of landlords and tenants.

(4) The provider shall maintain a record of the original signed rental agreement for each individual and provide a copy of the rental agreement to each individual.

(5) The rental agreement may not contain any promise to provide any service that falls within the definition of care specified in these rules.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0150

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0150

Program Staff Requirements

- (1) The provider shall maintain one or more program staff for every sixteen individuals.¶
 - (2) Providers, facility manager if applicable, and program staff shall be able to understand and communicate in oral and written English in accordance with ORS 443.730.¶
 - (3) The applicant, facility manager if applicable, and each program staff shall pass a criminal records check in accordance with OAR chapter 943, division 007 prior to providing any service to an individual.¶
 - (4) Providers, facility managers if applicable, and program staff may not provide any service to any individual prior to acquiring documented education, experience, or receive supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety, and welfare of individuals with mental health or substance use disorders. Necessary skills or topics shall include but may not be limited to:¶
 - (a) Physical caregiving;¶
 - (b) Screening for care and service needs;¶
 - (c) Appropriate behavior towards individuals with physical, cognitive, and emotional disabilities;¶
 - (d) Emergency procedures;¶
 - (e) Medication support;¶
 - (f) Meal planning, food preparation and storage;¶
 - (g) Issues related to architectural accessibility; and¶
 - (h) Mandatory abuse reporting.¶
 - (5) Facility managers:¶
 - (a) If a provider employs a facility manager and that person leaves during the period of the registration, the provider shall notify the Division immediately and identify a plan for providing services to the individuals; and ¶
 - (b) If a facility manager starts employment during the time period of registration, the provider shall submit to the Division the new facility manager's name, address, telephone number, email address, and approved criminal records check within 14 calendar days of the hire date.
- Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485
- Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0155

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0155

Facility Standards

Each facility shall meet the following standards for the protection of individuals: ¶

(1) Each facility shall meet applicable local zoning and building codes, and state and local fire, sanitary, and safety regulations. ¶

(2) Each bedroom shall: ¶

(a) Be adequately ventilated, heated, and lighted and have an outside window; ¶

(b) Be separate from the operator, members of the operator's family, or other employees; ¶

(c) Have adequate space for bed and personal belongings; ¶

(d) Have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals; and ¶

(e) Have a bed with adequate clean bedding and linens available. ¶

(3) A telephone shall be available for use by individuals for the purpose of making and receiving phone calls. A listing of emergency telephone numbers, including the numbers of the local police, fire department, ambulance, and the Division shall be placed in plain view on or next to the telephone. ¶

(4) Bathing and toilet areas shall be private, clean, in good repair, and shall be accessible at all times. There shall be adequate supplies of toilet paper and soap for each bathroom. ¶

(5) Fire Safety: ¶

(a) All individuals shall be shown how to utilize all exits from the facility; ¶

(b) Facilities shall be equipped with appropriate fire extinguishers in functional condition and carbon monoxide alarms as applicable, and each bedroom shall be equipped with appropriate smoke detectors; ¶

(c) Units shall be on ground level for individuals who are non-ambulatory or have impaired mobility and in accordance with building code and fair housing law; and ¶

(d) Facilities shall follow recommendations of the local fire department or State Fire Marshal. The Division may request an inspection for fire safety upon receipt of a complaint regarding a facility.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0160

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0160

Food Services

(1) Meals shall be served at the frequency and times described in the rental agreement and be planned and served in accordance with the recommended dietary guidelines found in the United States Department of Agriculture, Center for Nutrition Policy and Promotion.¶

(a) The provider shall consider individual preferences and requests in menu planning and reasonably accommodate dietary or religious restrictions; and¶

(b) The provider shall support individuals who for health reasons are on modified or special diets. These diets shall be planned in consultation with the individual.¶

(2) The provider shall maintain a one-week supply of shelf-stable foods and a two days' supply of perishable foods on site that is sufficient to feed residents in the event of an emergency. An emergency supply of potable water shall be available such that the provider maintains seven gallons of water per individual.¶

(3) Food preparation areas shall be clean, free of obnoxious odors, and in good repair.¶

(4) Food storage areas and equipment shall be such that food is protected from dirt and contamination.¶

(5) All refrigerators and freezers shall have a thermometer in working order and shall be maintained at 45 degrees Fahrenheit or less for refrigeration and at 0 degree Fahrenheit or less for freezer space.¶

(6) Poisonous or toxic materials shall be stored separately from food, equipment, or utensils and prominently and distinctly labelled for easy identification of contents, and may not be used in a way that contaminates food equipment, or utensils, nor in a way that constitutes a hazard to employees or individuals.¶

(7) Equipment shall be maintained in a safe and sanitary manner. Utensils, dishes, and glassware shall be maintained in a sufficient number to accommodate the registered capacity of the CBSH. Utensils, dishes, and glassware shall be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanitation cycle is recommended.¶

(8) Employees or individuals engaged in food handling shall observe sanitary methods, including hand washing as appropriate. Employees or individuals with diseases that can be transmitted by foods shall not be assigned to food handling duties.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0165

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0165

Administration of Medication

(1) Medication may not be dispensed or administered by CBSH staff. Medication may be self-administered by the individual prescribed the medication.¶

(2) CBSH staff may provide Medication Support to an individual in the self-administration of medication provided that the individual requests such assistance.¶

(3) Medications prescribed for one individual may not be administered to or self-administered by another individual or CBSH staff.¶

(4) No prescription drugs shall be stored in common areas of the CBSH facility.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991

ADOPT: 309-060-0170

RULE SUMMARY: The rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders pursuant to the 2015 House Bill 3230 amending ORS 443.480 to 443.500.

CHANGES TO RULE:

309-060-0170

Criminal and Civil Penalties

(1) The Division may impose civil penalties, not to exceed \$200 for each occurrence for:

(a) Any CBHS operating without registration as required by these rules; or

(b) Any CBSH in violation of ORS 443.880 or 443.881.

(2) The notice shall be sent by certified mail and include:

(a) A reference to the particular sections of the statute, rule, ordinance, or regulation imposed;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(3) The person to whom the notice is addressed shall have ten calendar days from receipt of the notice in which to make written request for a hearing.

(4) All hearings shall be conducted according to the applicable provisions of ORS 183.

(5) Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgement and may be recorded by the County Clerk that becomes a lien upon the title to any interest in real property owned by the person.

(6) Civil penalties are subject to judicial review under ORS 183.480.

(7) All penalties recovered under ORS 443.480 to 443.500 shall be paid into the State Treasury and credited to the General Fund.

Statutory/Other Authority: ORS 413.032, 413.042, 413.085, 443.485

Statutes/Other Implemented: ORS 443.480 -- 443.500, 443.991