

OFFICE OF THE SECRETARY OF STATE  
BEV CLARNO  
SECRETARY OF STATE  
  
A. RICHARD VIAL  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
STEPHANIE CLARK  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

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

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

**FILED**  
10/31/2019 10:07 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Revisions-BH Rules to align with CCO2.0 contract, improve readability/minimize repetition-88

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2019 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.*

CONTACT: Wanda Davis  
503-945-6579  
wanda.davis@dhsosha.state.or.us

500 Summer St NE  
Salem, OR 97301

Filed By:  
Wanda Davis  
Rules Coordinator

HEARING(S)

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

DATE: 11/19/2019

TIME: 8:30 AM - 12:00 PM

OFFICER: Wanda Davis

ADDRESS: Barbara Roberts Human  
Services Building

500 Summer St NE, Room 137 C-D

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Limited space - capacity of 45 in room.

Call in information: 888-363-4734;

Participant Code: 6567654#

Send written public comments to:  
bhrulemaking@dhsosha.state.or.us

NEED FOR THE RULE(S):

The Oregon Health Authority (OHA) is revising the Oregon Administrative Rules (OARs) that govern coordinated care organizations, to align with the CCO 2.0 contracts effective January 1, 2020, and to improve readability and minimize repetition in the rules. OHA is also repealing rules that did not appear to serve a clear purpose distinct from the other rules. In those situations, OHA is repealing the rule(s) and relocating any necessary material elsewhere.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

FISCAL AND ECONOMIC IMPACT:

None

---

COST OF COMPLIANCE:

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

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). None

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s); Indeterminate

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); HSD does not expect administrative costs associated with these rules.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s). None.

---

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

Small business representatives are invited to engage through the RAC and public comment processes.

---

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

---

RULES PROPOSED:

309-088-0105, 309-088-0115, 309-088-0125, 309-088-0130, 309-088-0135, 309-088-0145

AMEND: 309-088-0105

RULE SUMMARY: Administrative rules are being revised to

1. Update language to bring to current
2. To align with CCO 2.0

CHANGES TO RULE:

309-088-0105

Purpose and Scope

(1) Oregon Revised Statutes (ORS) 161.365 and 161.370 recognize that not all criminal defendants who lack fitness to proceed (commonly known as Aid and Assist defendants) ~~need to be~~ require committed to the Oregon State Hospital or ~~remain in jail/incarceration~~, but instead should all be served in the least restrictive environment that is clinically indicated. ~~The statute requires that "when the court has reason to doubt the~~

defendant's fitness to proceed by reason of incapacity as described in ORS 161.360, the court may call any witness to its assistance in reaching its decision and shall order that a community mental health program director or designee consult with the defendant to determine whether service<sup>¶</sup>

~~(2) These rules establish the standards for community consultations and supervision necessary to safely~~ ces to restore the defendant's fitness to proceed ~~are available in the community."~~ <sup>¶</sup>

~~(2) These rules establish the standards for community consultations to occur and encourages collabor.~~ These rules encourage communication between the Court, the Oregon State Hospital, Community Mental Health Program (CMHP), and parties ~~to~~ of the case to the extent permitted by law.

Statutory/Other Authority: ORS 413.042, ORS 430.640, ORS 161.370

Statutes/Other Implemented: ORS 430.630, ORS 430.640, ORS 161.370, ORS 161.365

AMEND: 309-088-0115

RULE SUMMARY: Administrative rules are being revised to

1. Update language to bring to current
2. To align with CCO 2.0

CHANGES TO RULE:

309-088-0115

Definitions

- (1) "Acuity of symptoms" means intensity and severity of symptoms.¶
- (2) "Authority" means the Oregon Health Authority.¶
- (23) "Behavioral Health Treatment" means treatment for mental health, ~~and~~ substance use disorder, ~~and problem~~ gambling.¶
- (4) "Capacity" means that the defendant is able to:¶
  - (a) Understand the nature of the proceedings against the defendant.¶
  - (b) Assist and cooperate with the counsel of the defendant; and¶
  - (c) Participate in the defense of the defendant.¶
- (35) "Capacity" means that the defendant is able to:¶
  - (a) Understand the nature of the proceedings against the defendant;¶
  - (b) Assist and cooperate with the counsel of the defendant; and "Coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs including facilitating communication between natural supports, community resources, and involved providers and agencies; organizing, facilitating and participating in client staffing meetings; and providing for continuity of care by creating linkages to and managing transitions between levels of care. Care coordination shall occur with the jurisdictional court or other designated agencies within the criminal justice system, State Hospital, CMHP, the Authority, and parties to the case to the extent permitted by law. Care coordination shall include, but is not limited to:¶
    - (a) Coordination of periodic forensic evaluations, in collaboration with the defendant's attorney, to assess fitness to proceed, which shall include arranging for the defendant to be evaluated by a certified evaluator within 60 calendar days of arriving at a residence ordered by the court and on a recurring basis at least every 180 days after arriving at a residence ordered by the court;¶
    - (b) Communication of court ordered requirements, limitations, and court dates to the defendant;¶
    - (c) Setting any further requirements for community restoration and submitting a copy to the court, parties, and CMHP director in the county of residence;¶
    - (d) Reporting of the defendant's compliance and progress through monthly reports to the court and to the CMHP director in the county of residence (if different from the CMHP responsible for the defendant) regarding the defendant's progress which shall include, but is not limited to, the defendant's adherence to the community restoration release requirements and any information that may impact the defendant's release to community-based restoration; ¶
    - (e) Participate in the defense of the defendant.¶
  - (4) Coordinating or providing transportation to and from the forensic evaluations and court appearances in this case; and ¶
  - (f) Immediately notifying the Court and the CMHP director in the county of residence if the defendant, at any time, can no longer safely remain in community-based restoration, the terms of community restoration in the community restoration order need to be modified, or the defendant gains or regains the capacity to stand trial or will never have the capacity to stand trial. ¶
- (6) "Case Management" means the services provided to assist individuals who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, entitlement, and other applicable services.¶
- (7) "Community Mental Health Program (CMHP)" means the organization of various services for individuals with a mental health diagnosis or substance use disorders operated by or contractually affiliated with a local mental

health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR chapter 309, division 014.¶

~~(58) "CMHP Director" means the director of a CMHP, or designee, who operates or contracts for all services under contract with the Authority~~the director's designee.¶

~~(69) "Consultation" means a meeting between the CMHP and the defendant under the least restrictive conditions appropriate to assist the court in determining whether the services and supervision necessary to safely restore the defendant's fitness to proceed are available in the community. This consultation is not an examination regarding fitness to proceed, and, therefore, does not need to be completed by a Certified Forensic Evaluator pursuant to ORS 161.365 and OAR 309-090.~~¶

~~(7) Chapter 309, Division 090.~~¶

~~(10) "County of Residence" means the county in Oregon in which the defendant was last able to obtain public benefits or services, or the county that the defendant has identified as their residence. OHA will determine the county of residence if there is a disagreement between counties.~~¶

~~(11) "Court" means the court with jurisdiction regarding the defendant's fitness to proceed.~~¶

~~(812) "Fitness to Proceed" means the same as having capacity~~Crisis Services" means services that provide supportive interventions and information for individuals in an urgent or emergent situation.¶

~~(13) "Dangerous" or "Dangerousness" means a significant safety concern to self or others, while the defendant is being restored to trial competency, even with community services or supports. An opinion regarding dangerousness is not an opinion on whether services, supervision, or supports are available in the community.~~¶

~~(14) "Fitness to Proceed" means that the defendant has Capacity, as defined above.~~¶

~~(915) "Incapacitated" means the defendant is unable to:~~¶

~~(a) Understand the nature of the pr~~lacks Capacity, as defined above.¶

~~(16) "Hospital level of care" means inpatient psychiatric assessment or stabilization in a loce~~kedings against the defendant;¶

~~(b) Assist and cooperate with the counsel of the defendant; or~~¶

~~(c) Participate in the defense of the defendant and secured, institution with seven days per week, and a 24-hour, onsite psychiatrist available to address behavioral emergencies and order emergency involuntary psychiatric medication, seclusion, restraint, or other interventions necessary to protect the defendant and others.~~¶

~~(17) "Incidental Supports" means the provision of items that are not the direct provision of services. Incidental supports may include things such as clothing, food, and medication.~~¶

~~(108) "Judicial Day" means a day when court is open.~~¶

~~(149) "Legal Skills Training" means training on courtroom procedures, roles, language, and potential outcomes of the court process.~~¶

~~(120) "Services" may~~Linkages to Benefits" means assisting an individual obtain benefits for which they are eligible, including but are not limited to:¶

~~(a) Legal skills train~~ Medicaid, Social Security, Aging and People with Disabilities Services, Supplemental Nutrition Assistance Program, and housing; ¶

~~(b21) "Medication management;~~¶

~~(c) Case management;~~¶

~~(d) Behavioral health treatment;~~¶

~~(e) Treatment" means the management and care of a patient to combat disease or disorder.~~¶

~~(22) "Medication Management" means the prescribing and administering and reviewing of medications and their side effects, including both pharmacological management as well as supports and training to the individual.~~¶

~~(23) "Peer services;~~¶

~~(f) Supported employment;~~¶

~~(g) Psychiatric and medical treatment;~~¶

~~(h) Incidental support such as purchase of food, clothing, or transportation; and~~¶

~~(i) Linkages to benefits and community resources such as SNAP, housing or shelter, Medicaid enrollment, and cash assistance.~~¶

~~(13) "State Hospital" means the Oregon State Hospital system, including all campuses. ¶~~

~~(14) "Sup-Delivered Services" means community-based services and supports provided by peers and peer support specialists to individuals with similar lived experience. These services are intended to support individuals in engaging with ongoing treatment and to live successfully in the community. ¶~~

~~(24) "Qualifying Mental Disorder" means: ¶~~

~~(a) A developmental or intellectual disability, traumatic brain injury, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM 5) of the American Psychiatric Association; or ¶~~

~~(b) Any diagnosis of a psychiatric condition which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of a defendant's functioning and is defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM 5) of the American Psychiatric Association. ¶~~

~~(c) "Qualifying Mental Disorder," described in subsections (a) and (b), excluding those conditions described in subsection (d) includes: ¶~~

~~(A) A disorder intended" means the chief execu a state of remission which could with reasonable medical probability occasionally become active; officer of a state hospital, r ¶~~

~~(B) A disorder that could become active as a result of a non-qualifying mental disorder. ¶~~

~~(d) "Non-Qualifying Mental Disor-designee, or an individual authorized by the superintendent to act in the superintendent's capacityr" is defined as a mental disorder in which the condition is: ¶~~

~~(A) A diagnosis solely constituting the ingestion of substances (e.g., chemicals or alcohol), including but not limited to alcohol-induced psychosis; ¶~~

~~(B) An abnormality manifested solely by repeated criminal or otherwise antisocial conduct; or ¶~~

~~(C) An abnormality constituting a personality disorder. ¶~~

~~(125) "Supervision" means monitoring options based upon the defendant's risk factorsRestoration Services" means a collection of services that may assist in restoring an individual's capacity. Restoration services may include, but are not be limited to recognizance release, release to family members or other third parties, substance use testing, appointments with providers, random home visits, court ordered participation with services, reports to the court: ¶~~

~~(a) Behavioral health treatment; ¶~~

~~(b) Medication management; ¶~~

~~(c) Case management; ¶~~

~~(d) Peer-delivered services; ¶~~

~~(e) Crisis services; ¶~~

~~(f) Medical treatment; ¶~~

~~(g) Legal skills training; ¶~~

~~(h) Incidental support; and ¶~~

~~(i) Linkages to benefits. ¶~~

~~(25) "Services" shall include, but are not limited to: ¶~~

~~(a) Restoration services; and ¶~~

~~(b) Care coordination. ¶~~

~~(26) "State Hospital" means the Oregon State Hospital system, including all campuses. ¶~~

~~(27) "Superintendent" means the chief executive officer of a state hospital, or other conditions determined by the court. ¶~~

~~(16) "Unable to Aid and Assist" means superintendent's designee. ¶~~

~~(28) "Supervision" means monitoring options based upon the defendant's risk factors. Supervision may include, but are not limited to: ¶~~

~~(a) Appointments with providers of medical or other same as "incapacitated," as def services; ¶~~

~~(b) Substance use testing; ¶~~

(c) Random home visits;¶

(d) Reports to the court; and¶

(e) Other conditions determined in by these rules court.

Statutory/Other Authority: ORS 413.042, ORS 430.640, ORS 161.370

Statutes/Other Implemented: ORS 430.640, ORS 161.370, ORS 161.365

AMEND: 309-088-0125

RULE SUMMARY: Administrative rules are being revised to

1. Update language to bring to current
2. To align with CCO 2.0

CHANGES TO RULE:

309-088-0125

CMHP Responsibilities Consultations

- ~~(1) When the court has reason to doubt a defendant's fitness to proceed by reason of incapacity, under ORS 161.365, the court shall order a CMHP director to consult with the defendant in order to determine it within two judicial days after receipt of a court's community consultation order, the CMHP director shall send acknowledgement to the court of having received the order for consultation. ¶~~
- ~~(2) Within five judicial days of the court ordering a community consultation under ORS 161.365(1)(a) or ORS 161.370(2)(b) if the defendant is in custody (or within eight judicial days if they are out of custody), the CMHP director shall: ¶~~
- ~~(a) Review available records related to the defendant's medical or service needs; ¶~~
- ~~(b) Consult with the defendant and with any local entity that would be responsible for supervising the defendant if the defendant were to be released in the community, to assess whether services and supervision necessary to safely ~~restore~~ allow the defendant's to gain or regain fitness to proceed are available in the community. ¶~~
- ~~(2c) Submit Within two judicial days after receipt of the court a findings report describing the court's ~~st~~ come of the community consultation order, the CMHP director. The findings report shall send acknowledgement to the court of having received the order for consultation. ¶~~
- ~~(3) Initial consultation shall occur through an in-person meeting, and any follow-up consultations may occur through teleconference or video conference. be completed using the "Consultation Report Template" available at <http://www.oregon.gov/oha/OSH/LEGAL/Pages/information-mental-health-providers.aspx>, as updated on 1/1/2020 ¶~~
- ~~(d) The CMHP findings report must not include an assessment of whether the defendant requires a hospital level of care unless the court has ordered the CMHP director to provide that specific assessment under ORS 161.370(5)(c), and ¶~~
- ~~(4e) Submit Within seven judicial days of receiving the community consultation order if the defendant is in custody or ten Submit copies of the findings report described in OAR 309-088-0125(2)(d), to the Authority and to defendant's county of residence. The report may be submitted to the Authority by emailing it to [CMHP.Consults@dhsosha.state.or.us](mailto:CMHP.Consults@dhsosha.state.or.us). ¶~~
- ~~(3) Within five judicial days ~~if they are out of custody~~ Oregon State Hospital issuing a notice under ORS 161.370(9)(b)(A), the CMHP director shall: ¶~~
- ~~(a) Review available records related to the defendant's medical or service needs; ¶~~
- ~~(b) Consult with the defendant and with any local entity that would be responsible for supervising the defendant if the defendant were to be released in the community, to assess whether services and supervision necessary to safely ~~restore~~ allow the defendant's to gain or regain fitness to proceed are available in the community; ¶~~
- ~~(c) Submit to the court a findings report describing the outcome of the community consultation ~~regarding whether services and supervision necessary to safely restore the defendant's fitness to proceed are available in the community~~. The findings report shall be completed using the "Consultation Report Template" available at <http://www.oregon.gov/oha/OSH/LEGAL/Pages/information-mental-health-providers.aspx>, as updated on 1/1/2020; and ¶~~
- ~~(5d) The CMHP director shall individually assess what services each defendant requires to gain capacity. Incapacitation does not automatically mean that legal skills ~~tra~~ findings report must not include an assessment of whether the defendant requires a hospital level of care unless the court has ordered the CMHP director to provide that specific assessment under ORS 161.370(5)(c), ¶~~
- ~~(e) Submit copies of the finding is necessary to gain capacity. ¶~~



~~(6) The consultation shall occur and the findings report described in OAR 309-088-0125(3)(d), to the Authority and to defendant's county of residence. The report shall may be submitted to the court before the issuance of an order under ORS 161.370. Authority by emailing CMHP.Consults@dhsosha.state.or.us. ¶~~

~~(4) Within five judicial days of the Authority requesting a new community consultation report from the CMHP under OAR 309-088-0135(3), the CMHP director shall: ¶~~

~~(7a) If after receipt of Review available records related to the findings reports, the court orders the defendant to participate in services and supervision in the community, and the defendant's mental health later incr defendant's medical or service needs; ¶~~

~~(b) Consult with the defendant and with any local entity that would be responsible for supervising the defendant if the defendant were to be released in acuity, or there are concerns about whether the defendant may continue to be safely restored the community, to assess whether services and supervision necessary to safely allow the defendant to gain or regain fitness to proceed are available in the community; ¶~~

~~(ac) The court may authorize the CMHP to conduct additional consultations and submit a new findings report to the court; and Submit to the court a findings report describing the outcome of the community consultation. The findings report shall be completed using the "Consultation Report Template" available at <http://www.oregon.gov/oha/OSH/LEGAL/Pages/information-mental-health-providers.aspx>, as updated on 1/1/2020; ¶~~

~~(bd) The court may order later that the defendant be committed to the State Hospital for treatment. CMHP findings report must not include an assessment of whether the defendant requires a hospital level of care unless the court has ordered the CMHP director to provide that specific assessment under ORS 161.370(5)(c); and ¶~~

~~(8e) If after receipt Submit copies of the findings report, the court commits the defendant to the custody of the superintendent of the State Hospital; ¶~~

~~(a) The court may authorize the CMHP to conduct additional consultations and submit a new findings report to the court; and described in OAR 309-088-0125(2)(d), to the Authority and to defendant's county of residence. The report may be submitted to the Authority by emailing it to CMHP.Consults@dhsosha.state.or.us. ¶~~

~~(5) Consultations shall occur through a face-to-face meeting, either in-person or via telehealth, as clinically appropriate. ¶~~

~~(b6) The court may order later that the defendant participate in services and supervision in the community mmunity consultation shall be completed by a Qualified Mental Health Professional (QMHP), as defined in OAR 309-019-0125. ¶~~

~~(97) Each The CMHP director shall provide the Authority with a quarterly report, available under "Other Reporting Requirements" at <http://www.oregon.gov/OHA/HSD/AMH/Pages/Reporting-Requirements.aspx>, outlining the following information for each consultation: ¶~~

~~(a) Defendant's name; ¶~~

~~(b) Gender; ¶~~

~~(c) Date of birth; ¶~~

~~(d) Electronic health record identifi individually assess the services each defendant requires to gain or regain capacity. Incapacitation does not automatically mean that legal skills training is necessary to gain or regain capacity. ¶~~

~~(8) Any CMHP that has not met one or more of the requirements in OAR 309-088-0125(1) through (4) and OAR 309-088-0130(1) through (5) shall submit a written plan of correction to OHA within 7 judicial days of discovering that it has not met one or more of the requirements. Plans of corrections shall: ¶~~

~~(a) Identify the requirement(s) that was not met and the date, name of the corresponding defendant, county court of jurisdiction, and case number; ¶~~

~~(eb) SID number; ¶~~

~~(f) Consultation referral date; ¶~~

~~(g) Consultation face-to-face date; ¶~~

~~(h) Date the findings Describe the reason(s) for not meeting the requirement(s); ¶~~

~~(c) Describe the step(s) that the CMHP has taken to prevent recurrence, or describe the timeline and person respo~~

it was provided to the court;¶

(i) Recommendation from the findings report providnsible to complete future step(s) to prevent recurrence: ¶

(d) Be signed and dated tōby the courtCMHP Director or designee; and¶

(j) The court's determination on defendant's placementBe submitted to the Authority by emailing it to CMHP.Consults@dhsosha.state.or.us.

Statutory/Other Authority: ORS 413.04230.640, ORS 161.370, ORS 430.64013.042

Statutes/Other Implemented: ORS 430.640, ORS 430.630, ORS 161.370, ORS 161.365

ADOPT: 309-088-0130

RULE SUMMARY: Administrative rules are being revised to

1. Update language to bring to current
2. To align with CCO 2.0

CHANGES TO RULE:

309-088-0130

CMHP Responsibilities during Commitment

(1) Within 7 days of receiving notice from the Oregon State Hospital that a defendant has been admitted to the Oregon State Hospital under ORS 161.370, the CMHP director shall notify OSH of the name and contact information of the person designated to work with the State Hospital on behalf of the CMHP director regarding the individual. ¶

(2) The person designated as required in OAR 309-088-0130(1) shall be the CMHP point of contact for the State Hospital until the State Hospital is informed by the CMHP of a newly designated person. ¶

(3) The CMHP Director is responsible for completing any required referrals, assessments, or other relevant discharge related Behavioral Health Treatment paperwork. ¶

(4) If the court orders the defendant to the State Hospital to participate in restoration services and supervision the CMHP director of the county in which the defendant is charged, shall: ¶

(a) Attend, at a minimum, defendant's monthly Patient Treatment Care Plan Review Meeting, either in person or by telephone, regarding the restoration of the defendant; and ¶

(b) Conduct ongoing discharge planning, in collaboration with the Superintendent, community partners, or any other relevant resources, in preparation for efficient transition to community-based restoration when ordered. ¶

(5) If the court orders the defendant to a facility designated by the Authority to participate in restoration services and supervision, the CMHP director of the county in which the defendant is charged, shall: ¶

(a) Attend, at a minimum of monthly, any meeting scheduled to review defendant's restoration, discharge planning, and coordination between the facility, court, and CMHP, either in person or by telephone; and ¶

(b) Conduct ongoing discharge planning, in collaboration with the director of the facility, in preparation for efficient transition to community-based restoration when ordered.

Statutory/Other Authority: ORS 413.042, ORS 430.640, 161.370

Statutes/Other Implemented: ORS 430.640, 161.370, 430.630, 161.365

AMEND: 309-088-0135

RULE SUMMARY: Administrative rules are being revised to

1. Update language to bring to current
2. To align with CCO 2.0

CHANGES TO RULE:

309-088-0135

Discharge from ~~the State Hospital for~~ Commitment to Participate in Community Restoration

(1) This rule applies when a defendant ~~has been~~ is committed to the custody of the superintendent of the State Hospital or director of a facility designated by the Oregon Health Authority.¶

(2) The superintendent or director shall file notice with the court if it is determined that a defendant committed under ORS 161.370 is no longer a dangerous to self or others as a result of mental illness or defect a qualifying mental disorder, that a hospital level of care is not necessary due to the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder, or that the services and supervision necessary to ~~restore~~ allow the defendant's to gain or regain fitness to proceed ~~becom~~ are available in the community. The superintendent or director shall:¶

(a) Consider the safety of the defendant and the public; and¶

(b) To the extent permitted or required by law or by court order, discuss with the CMHP the availability of services, supports, and supervision in the community.¶

(3) ~~The court may authorize the CMHP to conduct additional consultations and submit a new findings report to the court.~~¶

(4) ~~The committing court may vacate the order of commitment and use the process described in ORS 161.370(6)(b) and ORS 161.370(3) to order that the defendant be released on supervision to the community for further restoration subject to conditions that the court determines are appropriate~~ Authority or director may request the CMHP to conduct additional community consultations.

Statutory/Other Authority: ORS 413.042, ORS 430.630, ORS 430.640

Statutes/Other Implemented: ORS 430.640, ORS 161.365, ORS 161.370

ADOPT: 309-088-0145

RULE SUMMARY: Administrative rules are being revised to

1. Update language to bring to current
2. To align with CCO 2.0

CHANGES TO RULE:

309-088-0145

Restoration

(1) When the court has ordered that a defendant participate in community restoration, the CMHP responsible for restoring a defendant's fitness to proceed shall make an individualized assessment to determine what services are necessary to allow the defendant to gain or regain fitness. The CMHP shall provide the identified services, or coordinate the provision of the identified services, which shall include but are not limited to:¶

(a) Restoration services;¶

(b) Care coordination; and¶

(c) Supervision.¶

(2) A defendant found to lack capacity does not automatically require legal skills training to gain or regain capacity. The individualized assessment required in OAR 309-088-0145 (1) should be utilized to decide whether the defendant requires legal skills training as part of their restoration services.

Statutory/Other Authority: ORS 413.042, ORS 430.630, ORS 430.640

Statutes/Other Implemented: ORS 430.630, ORS 430.640, ORS 161.365, ORS 161.370