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PERMANENT ADMINISTRATIVE ORDER

BHS 43-2023

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

FILED

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FILING CAPTION: Updates for CBSH program based on statute updates: definition changes, process clarification, and fine increases

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RULES:

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

AMEND: 309-060-0100

RULE TITLE: Purpose and Scope

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Updated purpose and scope language to reflect changed made to ORS 443.480 to 443.500. Removed registration exemption for CBSHs that do not provide meals to reflect legislative changes.

RULE TEXT:

- (1) These rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Community-Based Structured Housing (CBSH) for provision of services and supports to individuals with mental, emotional, behavioral, or substance use disorders who reside in a CBSH facility 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 where 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 are licensed or registered under any other law of this state or city or county ordinance or regulation.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0105

RULE TITLE: Definitions

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Changed definition of Community-Based Structured housing to reflect ORS changed definition, added definitions for CMHP and CCO, removed definition of elderly and modified definition of "services" to "services and supports" and matched definition to statutory language. Removed outdated term of "mental retardation" and replaced it with intellectual disability. Clarified language in other definitions.

RULE TEXT:

- (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 a resident'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" means congregate housing where services and supports are provided by the owner or operator of the facility or staff of the facility to assist residents who have mental, emotional, behavioral or substance use disorders.
- (10) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for individuals with mental health disorders, operated by or contractually affiliated with a local mental health authority. CMHP's operate in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.
- (11) "Compensation" means payments or services provided by or on behalf of a person in exchange for other services provided by another person.
- (12) "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 resident;
 - (b) Constitute a willful, negligent, or ongoing violation of the rights of residents as set forth in administrative rules; or
 - (c) Prevent the accomplishment of the Division's purposes in approving or supporting the subject service.
- (13) "Congregate Housing" means housing in which each resident has a private or shared bedroom or living quarters and shares with other residents a dining room, recreational room, and other common areas.
- (14) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the CCO's members.
- (15) "Director" means the Director of the Oregon Health Authority or that person's designee.

- (16) "Disability" means a physical or mental impairment that for the resident constitutes or results in a functional limitation to one or more major life activities.
- (17) "Division" means the Health Systems Division of the Oregon Health Authority or its designee.
- (18) "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.
- (19) "Failure to Comply" means a determined lack of compliance with applicable administrative rules, statutes, contractual requirements, and other applicable regulations.
- (20) "Fee" means a nonrefundable payment of money.
- (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 a resident's access to personal medications.
- (24) "Meals" means the provision of food by the CBSH for the consumption of residents 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 an intellectual disability or a substance use disorder that limits a resident'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 contracted individual with a CBSH who provides services and supports to a resident.
- (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 individuals 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) "Resident" 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 and non-care related tasks in a CBSH; or

(d) Is seeking or applying to live in a CBSH.

(36) "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.

(37) "Rights" means civil, legal, or human rights guaranteed by federal and state law and afforded to all persons.

(38) "Self-administration of Medication" means the act of a resident placing a medication in or on the resident's own body.

(39) "Services and supports" means living accommodations and services, other than treatment, such as housekeeping, laundry, medication support, transportation, or recreational opportunities.

(40) "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, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0110

RULE TITLE: Letter of Registration Required

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Removed provision of meals as criteria for being required to register. Matched registration criteria to statute language. Due to changes in the statutes and rules, extended the due date for current homes to register by July 1, 2024. Added language around fines for non-registration.

RULE TEXT:

- (1) The owner or operator of a CBSH facility offered to the general public must register with the Division if the facility:
- (a) Provides congregate housing, services, and supports 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, 2024, must 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, 2024, must submit a completed application for registration prior to accepting residents. Upon finding the applicant is in substantial compliance with these rules, the Division shall issue a Letter of Registration for the CBSH.
- (3) If a provider operates more than one CBSH, each facility must 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 must 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 and OAR 309-060-0105 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 can 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) If the Division believes any CBSH facility is operating without registration or is in violation of ORS 443.480 to 443.500, the Division may apply to the circuit court for a search warrant. If the Division finds that a CBSH is operating without a registration, the Division shall impose a civil penalty not to exceed \$5,000.
- (10) Any CBSH that fails to comply with these rules must be issued a notice of intent to revoke registration and have hearing rights under ORS chapter 183.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0115

RULE TITLE: Waiver of Registration Requirement

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: changed review period for waivers from once a year to once every five years. Added exemption for reporting requirements that duplicate reporting requirements imposed by federal agencies.

RULE TEXT:

- (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 can issue a waiver:
 - (a) All waivers shall be in writing and signed by the Division; and
 - (b) All approved waivers can 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 must be reviewed at least once every five years.
- (6) The Division must waive any reporting requirements or review processes for facilities regulated by federal agencies where The Division's requirements duplicate the reporting requirements or review processes imposed by the federal agency.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0120

RULE TITLE: Terms of Registration

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Removed language regarding removal of residents. Cleaned up language of the rules in general. Added non-discrimination statement to match federal non-discrimination requirements in federal law. Clarified that the rights listed in this section are not the only rights that must be guaranteed by the provider. Clarified that providers should make efforts to refer residents to other services and providers as needed, such as a CCO or a CMHP.

RULE TEXT:

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

- (a) The capacity of the CBSH facility must not exceed the maximum occupancy allowed under applicable building and fire codes;
 - (b) The provider and other employees of a CBSH must not abuse any resident and must exercise reasonable precautions against any other conditions that threaten the health, safety, or welfare of residents;
 - (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) 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 and local fire inspectors and state and local health officers for inspection of CBSH providers regarding fire safety;
 - (f) To permit any resident, resident's representative or guardian, or an employee of the CBSH to file a complaint with the provider, the resident'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 residents, resident's representative or guardian, or employee(s) who file a complaint or any witness or employee of a facility interviewed about a 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 rental agreement.
- (3) Letters of Registration 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) The provider must consider an individual for admission without regard to race, color, sex or sexual orientation, except as may be limited by room arrangement, religion, creed, national origin, age, except under 18 years, familial status, marital status, source of income, or disability in addition to the mental health disorder.
- (6) 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 application for registration renewal pursuant to these rules.
- (7) Residents shall be allowed to exercise all civil and human rights afforded including, but not limited to: voting, privacy, and sending and receiving unopened mail.
- (8) Providers and other employees of a CBSH must make reasonable efforts to refer residents in need of care to appropriate social service agencies to include the appropriate Community Mental Health Program (CMHP) and the Coordinated Care Organization (CCO) if they are enrolled, and to medical facilities as appropriate.
- (9) When the provider is also certified by the Division to provide outpatient behavioral health treatment services under OAR chapter 309, division 008, the provider may provide behavioral health treatment within the scope of the certification to residents 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 residents, the provider shall obtain documentation that the resident was informed of their option to receive behavioral health treatment services from a provider organizationally distinct from the provider of CBSH.
- (10) Providers of CBSH are prohibited from exceeding the level of care allowable by these rules and functionally operating a Residential Treatment Home, Residential Treatment Facility, or an Adult Foster Home as defined under ORS 443.400 and ORS 443.705 and OAR Chapter 309, Division 35 or OAR Chapter 309, Division 40.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0125

RULE TITLE: Application for Initial Registration and Renewal Registration

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Clarified application requirements.

RULE TEXT:

(1) Application for a Letter of Registration, including renewal registration, must 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 must 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) A copy of all policies and procedures the proposed facility will operate under including, but not limited to:
 - (A) Referrals of residents to the CMHP, a CCO, or other agencies as part of the resident's treatment needs.
 - (B) A list of house rules to be followed by residents and program staff.
 - (C) Emergency and Disaster response policies.
 - (D) Abuse and Grievance reporting policies.
 - (E) Eviction policies and procedures.
 - (d) The maximum number of residents who must 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 of the services and supports the provider shall offer to residents;
 - (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 and who have contact with the residents, 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 must 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, ORS 181.200, ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0130

RULE TITLE: Issuance of a Letter of Registration

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: clarified process by which HSD will receive, review and process applications. Clarified what the variance process will look like for CBSHs.

RULE TEXT:

(1) Upon receipt of a completed application the Division must:

(a) Review the application to determine compliance with these rules.

(b) Request any additional information or documentation that may be necessary to determine compliance with these rules.

(c) Conduct a review of the physical setting to determine compliance with OAR 309-060-0155.

(2) Upon completion of the reviews described above, the Division must issue a Letter of Registration to an applicant that is found to be in compliance with the requirements of these rules.

(3) The Letter of Registration must include:

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

(b) The name and address of the CBSH;

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

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

(e) Any variances granted by the Division.

(4) 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.

(5) The Division, in its discretion, may grant a variance to these rules based upon a demonstration by the applicant or provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, or safety of individuals:

(a) The provider seeking a variance must submit in writing an application to the Division that identifies the section of the rules from which the variance is sought, the reason for the proposed variance, and the proposed alternative method or different approach.

(b) The director or designee must review and approve or deny the request for a variance;

(c) The Division must notify the provider of the decision in writing within 30 days after receipt of the request. A variance may be implemented only after receipt of written approval from the Division;

(d) The provider may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Division's Director or designee. The Director or designee must make a decision within 30 days of receipt of the appeal. The decision of the Director shall be final; and

(e) A variance must be reviewed by the Division at least every year and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health, or safety of the individuals.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0135

RULE TITLE: Denial of Applications

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Added that applications may be denied if the provider does not have an approved background check.

RULE TEXT:

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

(a) The applicant or facility manager, if applicable, does not have an approved background check, as required in OAR 407-007-0200 through 407-007-0370.

(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 a resident or a threat to the health and safety of a resident 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 residents;

(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 must 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 must 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) Provide a notation of required amendment to application materials and a timeframe for re-submission of the application.

STATUTORY/OTHER AUTHORITY: ORS 181A.195, ORS 181.200, ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0145

RULE TITLE: Rental Agreement

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Clarified the required elements a CBSH must have in their rental agreement. Removed meal provision to match legislative change. Added reference to ORS 443.880 and 443.881 which applies to all residential facilities including CBSHs.

RULE TEXT:

- (1) Prior to accepting compensation from any resident, the provider and the individual seeking residence at the CBSH shall both enter into a rental agreement.
- (2) The rental agreement must include:
 - (a) A list of services and supports to be offered to the resident;
 - (b) If meals are provided by the operator of the CBSH, a description of the frequency and times at which meals are provided and provisions for missed meals;
 - (c) House rules, including any restrictions or limitations on the use of legal substances such as tobacco, alcohol, and cannabis;
 - (d) Provisions for the documentation of all compensation received from a resident and a record of all compensation paid to a resident; and
 - (e) If the resident chooses to have the provider act as representative payee for the payment of the resident's Social Security benefits, the rental agreement shall indicate this choice.
- (3) The rental agreement must comply with ORS chapters 90 "Residential Landlord and Tenant" and 91 "Tenancy".
- (4) Nothing in the rental agreement must conflict with ORS 443.880 and 443.881.
- (5) The provider shall maintain a record of the original signed rental agreement for each resident and provide a copy of the rental agreement to each resident.
- (6) The rental agreement may not contain any promise to provide any services and supports that fall within the definition of care specified in these rules.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0150

RULE TITLE: Program Staff Requirements

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Clarified staffing requirements for CBSHs. Clarified training requirements.

RULE TEXT:

- (1) The provider must maintain one or more program staff for every sixteen residents.
- (a) The provider must take appropriate steps to hire program staff that are culturally and linguistically appropriate for the population served by the CBSH.
- (b) Program staff are not required to live on premises.
- (c) The provider is not required to maintain staffing 24 hours a day.
- (d) The provider must notify residents in writing of the hours and days that program staff will be on-site and/or on duty.
- (2) The applicant, facility manager if applicable, and each program staff must pass criminal records check in accordance with OAR chapter 943, division 007 prior to providing any services and supports to a resident.
- (3) Providers, facility managers if applicable, and program staff may not provide any services and supports to any resident prior to acquiring documented education, experience, or receiving supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety, and welfare of residents with mental health or substance use disorders. Necessary skills or topics must include but may not be limited to:
 - (a) Physical caregiving;
 - (b) Screening for care and service needs;
 - (c) Appropriate behavior towards residents with physical, cognitive, and emotional disabilities;
 - (d) Emergency procedures;
 - (e) Medication support;
 - (f) If the CBSH facility provides meals to residents, meal planning, food preparation and storage;
 - (g) Issues related to architectural accessibility;
 - (h) Mandatory abuse reporting; and
 - (i) In-Person First Aid and CPR Training.
- (4) Facility managers:
 - (a) If a provider employs a facility manager and that person leaves during the period of the registration, the provider must notify the Division immediately and identify a plan for providing services and supports to the residents; 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, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0155

RULE TITLE: Facility Standards

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Removed requirement that the provider provide a bed and linens. Matched fire safety requirements and drill procedures to requirements in fire code. Clarified that common areas must be kept in good repair, clean and free of accumulation of garbage and debris.

RULE TEXT:

Each facility must meet the following standards for the protection of residents:

- (1) Each facility must meet applicable local zoning and building codes and state and local fire, sanitary, and safety regulations.
- (2) Each bedroom must:
 - (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 resident or 120 square feet for two residents.
- (3) A telephone must be available for use by residents 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 must be placed in plain view on or next to the telephone.
- (4) Bathing and toilet areas must be private, clean, in good repair, and must be accessible at all times. There must be adequate supplies of toilet paper and soap for each bathroom.
- (5) Fire Safety:
 - (a) An emergency evacuation procedure must be developed, posted, and rehearsed with occupants. A record must be maintained of evacuation drills. Drills must be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes:
 - (A) Drills must be held at least every six months;
 - (B) All occupants in the home at the time of the evacuation drills must participate in the evacuation drills;
 - (C) The Record of the evacuation drill must include:
 - (i) The identity of the individual conducting the drill;
 - (ii) The date and time of the drill;
 - (iii) Notification method used to alert occupants;
 - (iv) Names of employees on duty and participating;
 - (v) Number of occupants evacuated;
 - (vi) Any special conditions simulated;
 - (vii) A note on any problems encountered during the drill;
 - (viii) A note of the weather conditions during evacuation;
 - (ix) The time required to accomplish a complete evacuation;
 - (b) The provider must provide to the Division, maintain as current, and post a floor plan on each floor containing room sizes, location of each resident's bed, fire exits, facility manager or provider's sleeping room, smoke detectors, fire extinguishers and escape routes. A copy of this drawing must be submitted with the application and updated to reflect any change;
 - (c) The provider must train all program staff in staff safety procedures prior to beginning their first regular shift. All residents must be trained in individual safety procedures as soon as possible during their first 72 hours of residency.
 - (d) There must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including a basement.
 - (e) A written disaster plan must be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, and floods. The plan must be posted by the phone and immediately available to the

employees.

(f) All stairways, halls, doorways, passageways, and exits from rooms and from the home must be unobstructed.

(g) At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements, and shall be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose;

(h) Approved smoke detector systems or smoke alarms must be installed according to Oregon Residential Specialty Code and Oregon Fire Code requirements. These alarms shall be tested during each evacuation drill. The provider must provide approved signal devices for residents with disabilities who do not respond to the standard auditory alarms. All of these devices must be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction. Ceiling placement of smoke alarms or detectors is recommended. Alarms shall be equipped with a device that warns of low battery when battery operated. All smoke detectors and alarms must be maintained in functional condition;

(i) First aid supplies must be readily accessible to residents and staff. All supplies shall be properly labeled.

(j) Facilities must be equipped with carbon monoxide alarms within 15 feet of all bedrooms. All carbon monoxide alarms shall be in working order.

(6) Units must be on ground level for residents who are non-ambulatory or have impaired mobility and in accordance with building code and fair housing law.

(7) Facilities must follow recommendations of the local fire department and State Fire Marshal. The Division can request an inspection for fire safety upon receipt of a complaint regarding a facility.

(8) The building and furnishings in common areas must be clean and in good repair and grounds must be maintained. There must be no accumulation of garbage, debris, rubbish, or offensive odors.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0160

RULE TITLE: Food Services

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Clarified which rules apply based on whether or not the CBSH is providing meals to residents or not. Clarified that residents sick with a foodborne illness may not prepare meals for others but may still prepare their own meals.

RULE TEXT:

(1) If meals are provided by the operator of the CBSH, meals must 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 must consider resident preferences and requests in menu planning and reasonably accommodate dietary or religious restrictions; and

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

(c) The operator of the CBSH is not required to comply with section 1 of this rule if they are not providing meals to the residents of the CBSH.

(2) The provider must 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.

(3) An emergency supply of potable water must be available such that the provider maintains seven gallons of water per resident.

(4) Food preparation areas must be clean, free of obnoxious odors, and in good repair.

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

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

(7) Poisonous or toxic materials:

(a) Must be stored separately from food, equipment, or utensils and prominently and distinctly labelled for easy identification of contents; and

(b) May not be used in a way that contaminates food equipment or utensils, nor used in a way that constitutes a hazard to employees or residents.

(8) Equipment shall be maintained in a safe and sanitary manner:

(a) Utensils, dishes, and glassware shall be maintained in a sufficient number to accommodate the registered capacity of the CBSH; and

(b) Utensils, dishes, and glassware shall be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanitation cycle is recommended.

(9) Employees or residents engaged in food handling shall observe sanitary methods, including hand washing as appropriate.

(10) Employees or residents with diseases that can be transmitted by foods may not be assigned to food handling duties, but may still prepare their own meals.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0165

RULE TITLE: Administration of Medication

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Clarified that resident medications must be stored securely in the residents' room.

RULE TEXT:

- (1) Medication may not be dispensed or administered by CBSH staff. Medication may only be self-administered by the resident prescribed the medication.
- (2) CBSH staff may provide medication support to a resident in the self-administration of medication provided that the resident requests such assistance.
- (3) Medications prescribed for one resident may not be administered to or self-administered by another resident or CBSH program staff.
- (4) No prescription drugs shall be stored in common areas of the CBSH facility.
- (5) Self-Administered medications must be stored securely in the residents room to whom the medication is prescribed.

STATUTORY/OTHER AUTHORITY: ORS 413.032, ORS 413.042, ORS 413.085, ORS 443.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991

AMEND: 309-060-0170

RULE TITLE: Criminal and Civil Penalties

NOTICE FILED DATE: 09/26/2023

RULE SUMMARY: Updated the fee from \$200 to up to \$5,000 to match the legislative changes.

RULE TEXT:

- (1) The Division may impose civil penalties, not to exceed \$5,000 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 must 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 must 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, ORS 413.042, ORS 413.05, ORS 413.485

STATUTES/OTHER IMPLEMENTED: ORS 443.480 - 443.500, ORS 443.991