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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 49-2020

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED
09/21/2020 1:33 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Updates BRS Definitions to Align With Permanent Change in OAR 410-170-0080

EFFECTIVE DATE: 09/21/2020 THROUGH 12/27/2020

AGENCY APPROVED DATE: 09/18/2020

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Filed By:

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NEED FOR THE RULE(S):

The Division needs to amend this rule to add a definition to align with permanent rule changes in 410-170-0080.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and recipients of Medicaid benefits. These rules need to be adopted promptly so that the Authority may meet the deadlines associated with the implementation of Qualified Residential Treatment Programs (QRTP) per ORS 419B.356 and update several grammatical issues and technical references.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate Bill 171: <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB171>

HSD Chapter 309, Division 27: <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1024>

AMEND: 410-170-0020

SUSPEND: Temporary 410-170-0020 from DMAP 30-2020

RULE TITLE: Definitions

RULE SUMMARY: The Behavior Rehabilitation Services (BRS) Program is to remediate the BRS client's debilitating psychosocial, emotional, and behavioral disorders by providing such services as behavioral intervention, counseling, and skills-training. These rules are meant to describe the general program requirements for the BRS program, prior authorization process, services and placement-related activities, BRS contractor and BRS provider requirements, reimbursement rates, and compliance and oversight activities. General changes have been made to update references, grammar, and definitions. Specific changes have been made because the Division needs to add a definition to align with permanent rule changes in 410-170-0080.

RULE TEXT:

The following definitions apply to terms used in OAR Chapter 410, Division 170.

(1) "Accreditation" as defined in OAR 413-095-0000(2) means:

(a) An endorsement certifying that the BRS program meets all of the rigorous guidelines for service and quality established by any of the following entities:

(A) The Commission on Accreditation of Rehabilitation Facilities (CARF); or

(B) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or

(C) The Council on Accreditation (COA); or

(D) An independent, not for profit accrediting organization approved by the U.S. Department of Health and Human Services.

(b) A provisional endorsement issued by one of the entities described in section (a)(A)-(D) of this rule and conditionally approved by the Department for a period not to exceed 270 days from the date the provisional endorsement is issued.

(2) "Aftercare and Transition Plan (ATP)" means the written individualized service plan developed by the BRS contractor or BRS provider describing how the BRS client will successfully transition from its program to the community and identifying the aftercare services that must be provided to the BRS client following discharge.

(3) "Aftercare and Transition Plan — Stabilization (ATP-S)" means the aftercare and transition plan developed in a short-term stabilization program.

(4) "Aftercare Planning" means the process of developing a detailed description of the services to be delivered to the BRS client and the BRS client's family through parent training during the aftercare period.

(5) "Age-Appropriate or Developmentally-Appropriate Activities" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral and social capacities that are typical for an age or age group. In the case of a specific child, age-appropriate or developmentally appropriate activities means activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, behavioral and social capacities of the child.

(6) "Agency" means the state agency that has a contract with the BRS contractor to provide services and placement-related activities to the BRS client and provides prior authorization for the BRS client to receive services and activities pursuant to the BRS program general rules and, as applicable, agency-specific BRS program rules. The agency is one of the following state agencies: The Department of Human Services (Department), the Oregon Health Authority (Authority), or the Oregon Youth Authority (OYA).

(7) "Approved Proctor Foster Parent" means an individual who a BRS contractor, a BRS provider, or OYA approved to provide services or placement-related activities to the BRS client in the home of that individual. Approved proctor foster parents who provide services are considered direct care staff and shall meet those qualifications in OAR 410-170-0030. An OYA approved proctor foster parent is certified by OYA and a child-caring agency in accordance with the applicable provisions in OAR Chapter 416, Division 530 and Chapter 416, Division 550 and is employed by or has a contract or agreement with the child-caring agency to provide some services and placement-related activities to the BRS client in the proctor foster parent's home.

(8) "Abbreviated AER" means the assessment and evaluation report developed when there is a transfer of the BRS client between BRS programs as described in OAR 410-170-0070(2)(d).

(9) "Assessment and Evaluation Report (AER)" means the written report detailing the findings of the assessment and evaluation of the BRS client conducted by a social service staff member as required in OAR 410-170-0070(2).

(10) "Assessment and Evaluation Report — Stabilization (AER-S)" means the assessment and evaluation report developed in a short-term stabilization program.

(11) "Behavior Rehabilitation Services (BRS) Program" means a program that provides services and placement-related activities to the BRS client to address their debilitating psychosocial, emotional, and behavioral disorders in a community placement utilizing either a residential care model or a proctor care model.

(12) "Billable Care Day" means each calendar day the BRS client is in the direct care of the BRS provider at 11:59 p.m. or meets the requirements in OAR 410-170-0110.

(13) "BRS Client" means the person who has prior authorization from an agency to receive services or placement-

related activities through the BRS program.

(14) "BRS Contractor" means the entity contracted with an agency to be responsible for providing services and placement-related activities to the BRS client. The BRS contractor may also be the BRS provider if it provides direct services and placement-related activities to the BRS client.

(15) "BRS Provider" means a facility, institution, corporate entity, or other organization that provides direct services and placement-related activities to the BRS client.

(16) "BRS Type of Care" means the type of program model, services, placement-related activities, and staffing requirements and qualifications that are necessary to meet the medical and other needs of the BRS client.

(17) "Caseworker" means the individual who coordinates the services and placement-related activities for the BRS client with the BRS contractor and BRS provider.

(18) "Child or Children" means a person or persons under 21 years of age.

(19) "Child-Caring Agency" means a child-caring agency in ORS 418.205.

(20) "Children's Health Insurance Program (CHIP)" means the federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Authority.

(21) "Contract Administrator" means the employee or other individual designated in writing by the agency, by name or position description, to conduct the contract administration of a contract or class of contracts.

(22) "Crisis Intervention" means the BRS contractor or the BRS provider responding, either by phone or in person, to a crisis or urgent need of the BRS client or the BRS client's aftercare resource for the purpose of providing aftercare services to the BRS client.

(23) "Critical Event" means a significant event including incidents described in OAR 413-215-0091(11)(b) occurring in the operation of the BRS contractor's or BRS provider's program that is considered likely to cause complaints, generate concerns, or come to the attention of the media, law enforcement agencies, first responders, Child Protective Services, or other regulatory agency.

(24) "Culture" means the sum of attitudes, customs, values, and beliefs that distinguishes one group of people from another.

(25) "Culturally-Sensitive Approach" means to enhance practices with culturally appropriate strategies through the knowledge and interpersonal skills that allow the BRS provider to understand, appreciate, engage, and work with individuals from their culture's perspective.

(26) "Designated LPHA" means a licensed practitioner of the healing arts who has a contract with, is approved by, or is employed by the agency to make a determination on the medical appropriateness of the BRS program for the BRS client.

(27) "Department of Human Services (Department)" means the agency established in ORS Chapter 409, including such divisions, programs, and offices as may be established therein. For purposes of these rules, it refers to the Child Welfare Programs within the Department.

(28) "Direct Care Staff" means an individual who is employed by or who has a contract or an agreement with the BRS provider and is responsible for assisting social service staff in providing individual and group counseling, skills-training and therapeutic interventions, and monitoring and managing the BRS client's behavior to provide a safe, structured living environment that is conducive to treatment.

(29) "Evidence-Based" as defined in OAR 413-095-0000(4) means an approach to medicine, education, and other disciplines that emphasizes the practical application of the findings of the best available current research.

(30) "Face to Face" means a personal interaction where both words can be heard and facial expressions can be seen in person or through telehealth services where there is a live streaming audio and video to the extent appropriate and in the BRS client's best interest.

(31) "Fictive Kin" as defined in OAR 413-095-0000(5) has the same meaning as kith and means an individual who is not related to the BRS client by blood, adoption or marriage but has an emotionally significant relationship with the BRS client that has the characteristics of a family relationship.

(32) "Gender-Responsive Approach" means integrating those things that intentionally allow gender identity and

development to affect and guide services and service delivery in order to create an environment (physical, social, emotional) that is responsive to the issues and needs of the BRS client being served.

(33) "Home Visit" means planned in-person contact between the BRS client and the BRS client's immediate family, extended family, prior foster family, or other natural support persons.

(34) "Initial Service Plan (ISP)" means the initial written individualized services plan developed by the BRS contractor or BRS provider identifying the services that must be provided to the BRS client during the first 45 days in its BRS program or until the master service plan is written.

(35) "Licensed Practitioner of the Healing Arts (LPHA)" means a physician or other practitioner licensed in the State of Oregon who is authorized within the scope of the LPHA's practice, as defined under state law, to diagnose and treat individuals with physical or mental disabilities or psychosocial, emotional, and behavioral disorders.

(36) "Master Service Plan (MSP)" means the written individualized services plan developed by the BRS contractor or BRS provider identifying the services that must be provided to the BRS client in its BRS program.

(37) "Master Service Plan — Stabilization (MSP–S)" means the master service plan developed in a short-term stabilization program.

(38) "Master Service Plan — Transition (MSP–T)" means the master service plan developed in an independent living program.

(39) "Medicaid" means the federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act as amended and administered in Oregon by the Authority.

(40) "Monitoring" means in-person, phone or electronic contact by the BRS provider with the BRS client and those defined in 410-170-0070(1)(a)(B) to check on progress for the purpose of aftercare services, based on the needs identified in the BRS client's Aftercare and Transition Plan.

(41) "Non-Qualified Residential Treatment Program" means BRS Contractors and BRS providers that provide services in a residential care model and that do not meet the requirements of a Qualified Residential Treatment Program.

(42) "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.

(43) "Oregon Youth Authority (OYA)" means the state department charged with the management and administration of youth correction facilities, state parole and probation services, and other functions related to state programs for youth offenders.

(44) "Physical Restraint" as defined in OAR 413-215-0076 means the act of restricting the BRS client's voluntary movement as an emergency measure to manage and protect the client or others from injury when no alternate actions are sufficient to manage the client's behavior. Physical restraint does not include temporarily holding a client to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(45) "Placement-Related Activities" means the BRS contractor's and BRS provider's activities related to the operation of the program and the care of the BRS client as set forth in the BRS program general rules, applicable agency-specific BRS program rules, the contract or agreement with the agency or the contractor, and applicable federal and state licensing and regulatory requirements. Placement-related activities may include but are not limited to providing the client with food, clothing, shelter, daily supervision; access to educational, cultural, and recreational activities; and case management. Room and board is not funded by Medicaid or CHIP.

(46) "Postvention" means the activities implemented by the BRS contractor and the BRS provider after a BRS client's suspected suicide, including support for the bereaved family, friends, professionals, peers and those with geographic, social or social media ties to the deceased. In order to meet the needs of those bereaved by a suicide and to reduce the risk of contagion. Postvention includes the immediate postvention response implemented in the immediate days and weeks after a BRS client's suspected suicide.

(47) "Proctor Care Model" means services and placement-related activities provided to the BRS client who resides in the home of an approved proctor foster parent.

(48) "Program Coordinator or Program Director" means an individual employed by or contracted with the BRS provider

and responsible for supervising staff, providing overall direction to the BRS provider, planning and coordinating program activities and delivery of services and placement-related activities, and ensuring the safety and protection of the BRS client and the BRS provider's staff.

(49) "Public Child-Caring Agency" means, for purposes of this rule, a program or institution operated by a governmental agency or unit other than the Department, OYA, or the Authority that provides care to the BRS client in a residential community setting.

(50) "Qualified residential treatment program (QRTP)" means a program that:

(a) Provides residential care and treatment to a BRS client who require specialized, evidence-based supports and services related to the effects of trauma or mental, emotional or behavioral health needs.

(b) Uses a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of the BRS client.

(c) Ensures that the staff at the facility includes licensed or registered nurses licensed under ORS chapter 678 and other licensed clinical staff who:

(A) Provide care within their licensed scope of practice;

(B) Are on site according to the treatment model identified in subsection (b) of this section; and

(C) Are available 24 hours per day and seven days per week.

(d) Facilitates the involvement of the BRS client's family, as defined in ORS 418.575, in the BRS client's treatment program, to the extent appropriate and in the BRS client's best interests.

(e) Facilitates outreach to the BRS client's family, as defined in ORS 418.575, documents how outreach is made and maintains contact information for any known biological relatives or fictive kin, as defined by the Department.

(f) Documents how the program integrates family into the BRS client's treatment process, including after discharge, and how sibling connections are maintained.

(g) Provides discharge planning and family-based after-care support for at least six months following the BRS client's discharge from the program.

(h) Is accredited as outlined in OAR 413-095-0000(2).

(51) "Residential Care Model" means that services and placement-related activities are provided to the BRS client in a residential community setting and not in the home of an approved proctor foster parent.

(52) "Respite Care" means a formally planned arrangement to relieve an approved, proctor foster parent's responsibilities by an individual temporarily assuming responsibility for the care and supervision of the BRS client in the home of the respite provider or approved proctor foster parent. Respite care shall be 14 or fewer consecutive days.

(53) "Runaway Status" means the period of time when a BRS client has left or failed to return to their BRS placement without prior approval or authorization and has not been discharged from the BRS contractor's program. This definition is for the purpose of 410-170-0110(3)(c).

(54) "Seclusion" means the involuntary confinement of a BRS client to an area or room from which the BRS client is physically prevented from leaving.

(55) "Service Coordination" means coordination activities identified in the BRS client's Aftercare and Transition Plan, including: meeting with BRS client and BRS client's family to develop and review goals; maintain or facilitate contact with service providers; and assist BRS client and BRS client's family in obtaining services for the purpose of aftercare services.

(56) "Services" means the treatment provided to the BRS client in a BRS provider's program, including but not limited to treatment planning, milieu therapy, individual and group counseling, skills-training, and parent training.

(57) "Social Service Staff" means an individual employed by or contracted with the BRS provider and is responsible for case management and the development of the service plans for the BRS client; individual, group, and family counseling; individual and group skills-training; assisting the direct care staff in providing appropriate treatment to the BRS client; coordinating services with other agencies; and documenting the BRS client's treatment progress.

(58) "Suspected Suicide" means a death of a BRS client reported by a medical examiner or designee that is believed to have been caused by self-directed injurious behavior with an intent to die as a result of the behavior.

(59) "Total Daily Rate" means the total amount of the service payment and placement-related activities payment for a billable care day.

(60) "Transition Facilitator" means a social service staff employed by or contracted with the BRS provider and responsible for overseeing and monitoring the BRS client in the BRS contractor's independent living program, either operated by itself or by its BRS provider, which includes but is not limited to assisting with developing the BRS client's service plans and identifying support resources.

(61) "Transition Planning" means the process of preparing for a BRS client to successfully discharge from the BRS program into the community and is described in the ATP.

(62) "Transitional Visit" means an overnight visit by the BRS client to another paid placement for the purpose of facilitating the BRS client's transition during the last 90 days of placement.

(63) "Trauma-Informed Approach" means an approach that recognizes and responds to the impact of traumatic stress on BRS clients and any other significant persons involved with the BRS client.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.065

STATUTES/OTHER IMPLEMENTED: ORS 414.065