

Health Systems Division: Behavioral Health Services - Chapter 309

August 12, 2019

Round 2 Redline

Division 60. REGISTRATION OF COMMUNITY-BASED STRUCTURED HOUSING FACILITIES

309-060-0100 Purpose and Scope

(1) These rules establish standards and procedures for the application, review, initial registration, and ongoing registration of Division-registered Community-Based Structured Housing (CBSH) for provision of services to individuals with mental, emotional, behavioral, or substance use disorders who reside in a CBSH facility pursuant to ORS 443.480 to 443.500.

(2) These rules do not apply to, 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 any of the institution's students or employees as ~~a resident, a student, or an employee of the institution;~~

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

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

(e) ~~Any residential facility governed by licensure under~~ ORS 443.400-410 ~~and through~~ 443.465-475 ~~and OAR chapter 309, division 035;~~

~~(f) Programs defined under ORS 443.400;~~

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

~~(gh)~~ 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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0105 Definitions

In addition to the definitions in OAR 309-001-0100, the following definitions apply with respect to OAR chapter 309, division 060.

(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 and OAR chapter 309, division 040.

(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.~~

(79) "Community-Based Structured Housing" (CBSH) means congregate housing, excluding residential care or treatment, where services and support are provided by the owner or operator of the facility to assist residents who have mental, emotional, behavioral, or substance use disorders.

~~(810)~~ "Compensation" means payments or services provided by or on behalf of a person in exchange for other services provided by another person.

~~(911)~~ "Compliance" means adherence to applicable administrative rules, statutes, contractual requirements, Compliance may be achieved notwithstanding a failure to meet one or more requirements if that failure 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.

~~(102)~~ "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.

~~(13) "Director" means the Director of the Oregon Health Authority or that person's designee.~~

(114) "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.

~~(15) "Division" means the Health Systems Division of the Oregon Health Authority or its designee.~~

(126) "Elderly" mean an individual who is 62 years of age or older.

~~(137)~~ "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.

(148) "Failure to Comply" means a determined lack of compliance, as defined above, with applicable administrative rules, statutes, contractual requirements, and other applicable regulations.

~~(19) "Fee" means a nonrefundable payment of money.~~

~~(1520)~~ "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.

~~(1621)~~ "Living Accommodations" means residential facilities that include a place to sleep and common living areas.

~~(1722)~~ "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.

~~(1823)~~ "Meals" means the provision of food by the CBSH for the consumption of residents one or more times per day.

~~(1924)~~ "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.

(205) "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.

(216) "Mental or Emotional Disorder" means a primary DSM diagnosis, other than mental retardation or a substance use disorder, that limits a resident's ability to perform activities of daily living.

~~(27) "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.~~

(228) "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.

(239) "Program Staff" means an employee or individual by contract with a CBSH who provides a service to a resident.

(2430) "Provider" means a person, partnership, corporation, or other organizational entity who owns or operates a CBSH facility.

(2531) "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.

(2632) "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.

(2733) "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.

(2834) "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, meals, and non-care related tasks in a CBSH; or

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

~~(2935) "Residential Care, Treatment, or Training" 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.~~

~~(a) All elements listed in the "residential care" definition in ORS 443.400 except for room and board; and~~

~~(b) All elements listed in the "training" and "treatment" definitions in ORS 443.400.~~

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

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

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

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

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

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0110 Letter of Registration Required

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

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

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

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

~~(3) If a provider operates more than one CBSH, e~~Each CBSH facility shall be registered separately with the Division, ~~even if multiple facilities are operated by the same person or entity. Letters of Registration are not transferrable from one facility to another, nor from one operator to another.~~

~~(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.~~

~~(45) In the event of a change of control, When a CBSH is to be sold or otherwise transferred to another operator, the new operator of the CSBH must shall apply for and obtain a new Letter of Registration prior to the change of control in order to avoid an interruption in servicetransfer or operation of the CBSH.~~

~~(56)~~ A Letter of Registration is valid for one year unless revoked, suspended, or voluntarily relinquished at an earlier date.

~~(67)~~ Any CBSH providing residential care, ~~or treatment, or training as defined under ORS 443.400~~ may be subject to residential licensing under OAR chapter 309, division 035, or OAR chapter 309, division 040.

~~(78)~~ Upon discovery that a CBSH may be operating in a manner such that they may meet the definition of any type of residential care facility, residential facility, residential training facility, residential training home, residential treatment facility, or residential treatment home defined under ORS 443.400, or an adult foster home as defined under ORS 443.705, the Division may notify the provider in writing of the Division's plan to conduct an inspection to determine if licensure is required.

~~(89)~~ 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.

(~~910~~) Any CBSH that fails to comply with these rules shall be issued a notice of intent to revoke registration, and shall 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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0115 Waiver of Registration Requirement

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

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

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

(2) If the Division finds that the requirements of the other governmental entity's standards are substantially similar or superior to ORS 443.480 to 443.500 and these rules, it may issue a waiver.

(a) All waivers shall be in writing and signed by the Division; ~~and~~.

(b) All approved waivers may be reviewed by the Division upon amendment of [any applicable requirement under the other governmental entity's standards](#), ~~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's Chief Officer-Director~~ shall determine the agency responsible for registering the facility.

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

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

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0120 Terms of Registration; General Provider Standards

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

(a) The capacity of the CBSH facility may not exceed the maximum occupancy allowed under applicable building and fire codes;

(b) The provider and other employees of a CBSH may not abuse any resident and shall exercise reasonable precautions against any ~~other~~ conditions that threaten the health, safety, or welfare of residents;

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

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

(i) A description of each violation; and

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

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

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

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

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

(d) The provider shall ~~To~~ permit the Division to inspect, audit, assess, and collect data or copies from all records maintained by the provider;

(e) The provider shall ~~To~~ permit access ~~to~~ by state or local fire inspectors or state or local health officers for inspection of CBSH providers regarding fire safety;

(f) The provider shall ~~To~~ permit any individual, 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 individual, its residents, its resident's representative or guardian, or its employee who files a complaint or any witness or employee of a facility interviewed about the complaint, including but not limited to retaliation by restriction of a resident's otherwise

lawful access to the facility and, with respect to an employee, retaliation by dismissal or harassment; and

(h) ~~The provider shall post the Letter of Registration in a common area of each approved CBSH, and shall ensure that the Letter is~~ available for inspection at all times.

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

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

~~(34)~~ 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.

~~(45)~~ 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 ~~the designated expiration date, unless the a provider's failure to has~~ timely submitted an annual application for ~~renewal pursuant to OAR 309-060-0125(4) registration pursuant to these rules.~~

(6) Residents shall be allowed to exercise all civil and human rights afforded such as voting, privacy, and sending and receiving unopened mail.

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

(8) When the provider is also certified by the Division to provide outpatient behavioral health treatment services under OAR chapter 309, division ~~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 ~~that is~~ organizationally distinct from the provider of CBSH.

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

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0125 Application for Initial Registration ~~and or~~ Renewal ~~Registration~~

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

- (a) A description of the facility in or upon which the applicant proposes to operate a CBSH;
- (b) Signed attestation by the applicant that all applicable ~~rules-requirements~~ for the provision of a CBSH facility shall be met and maintained in compliance with applicable rules and any variances granted by the Division;
- (c) Other documentation required by applicable OAR, ORS, local regulations, contract, or request of the Division to assess compliance of the applicant's proposed services with administrative rules;
- (d) The maximum number of residents who shall reside at the CBSH;
- (e) The number of bedrooms, apartment units, or single room occupancy units;
- (f) The name, address, telephone number, and email address of:

~~(A) The~~ applicant;

~~(B) The names, addresses, telephone numbers, and email address of a~~Any partner, corporate officer, entity, ~~ies~~, or other persons having an ownership interest in the CBSH, and the percent ownership corresponding to each; ~~and~~

~~(C) The name, address, telephone number, and email address of t~~The facility manager, if applicable;

~~(g) The~~ qualifications and documentation of training requirements for the applicant, ~~the~~ facility manager, ~~if applicable; if not the applicant,~~ and each program staff ~~member~~;

~~(h) A~~ description of each service the provider shall offer to residents;

~~(i) A~~ copy of the applicant's current rental agreement; and

~~(j) Copies of all approved criminal history checks or background checks, as required under OAR chapter 407, division 007, for all persons involved in the operation of the CBSH who will 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. ~~This nonrefundable fee and~~ shall accompany the application.

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

(4) [Renewal](#).

(a) 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.

(b5) If the Division does not receive a complete application for renewal prior to the expiration listed on the Letter of Registration, the Letter of Registration shall expire on the date listed on the Letter of Registration, and the CBSH shall be considered un-registered.

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

Statutory/Other Authority: ORS 181A.195, 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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0130 Issuance of a Letter of Registration

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

(2) ~~The~~An approved Letter of Registration shall include:

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

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

(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.

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

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

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0135 Denial of Applications

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

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

~~(b) The applicant has previously had any letter of registration, certification, or license denied, suspended, or revoked by the Division or the Department;~~

~~(c)~~ (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; or

~~(d)~~ (e) 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)(~~cb~~) 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 pursuant to this rule, the applicant is entitled to an appeal review with the Division as follows:

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

(b) The Division shall conduct an appeal review meeting within 30 days of receipt of the written request, and shall mail a notice of the appeal review outcome to the applicant;

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

(d4) 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:

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

(Bb) 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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0140 Denial, Suspension, Revocation, or Refusal to Renew Registration

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

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

(b) The CBSH is providing residential care, ~~or treatment, or training, as defined under these rules or otherwise~~ meeting the definition of a ~~residential facility, n Adult Foster Home, Residential Treatment Home, or Residential Treatment Facility~~ as defined in ORS 443.400, or an adult foster home, as defined in ORS 443.705;

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

(d) The provider submits fraudulent or untrue information to the Division, whether in an application or in any other correspondence with the Division;

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

(f) There is a threat to the health, safety, and well-being of a resident in the CBSH, or there are substantiations of abuse of a resident.

(2) The provider may request a review of ~~the a~~ decision made pursuant to section (1) of this rule by submitting a request in writing to the Division within ten days of the notice and order of denial, suspension, revocation, or refusal to renew registration.

~~(a3)~~ Within ten days of receipt of the provider's request for a review, the Division shall review all available materials, including any written documentation submitted by the provider ~~within that time frame~~.

~~(b)~~ The Division shall determine, based on a review of the material, whether to sustain the decision. If the Division overturns the decision to deny, suspend, revoke, or refuse to renew the Letter of Registration, the notice or order shall be rescinded.

~~(34)~~ An order of denial, suspension, revocation, or refusal to renew may be appealed subject to a contested case hearing under ORS ~~chapter 183.310 to 183.550~~ if requested within 90 days of the date the order of suspension was signed or 90 days of the date that the Division sustained its decision after review under ~~this subsection~~ section (2), whichever comes later.

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0145 Rental Agreement

(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 shall include:

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

(c) A description of the frequency and times at which meals are provided, ~~and as well as the~~ provisions for missed meals ~~and~~;

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

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

~~(ef)~~ Provisions for the documentation of all compensation received from a resident and a record of all compensation paid to a resident; and

~~(fg)~~ 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 shall comply with ORS chapters 90 ([Residential Landlord and Tenant](#)) and 91 ([Tenancy](#)) and all other statutes, rules, or ordinances relating to the rights and responsibilities of landlords and tenants.

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

(5) The rental agreement may not contain any promise to provide any service that [constitutes residential care, treatment, or training](#)~~falls 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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0150 Program Staff Requirements

(1) The provider shall maintain a minimum ratio of one ~~or more~~ program staff member for every sixteen residents.

(2) Providers, facility managers ~~if applicable~~, and all program staff shall be able to understand and communicate in oral and written English ~~in accordance with ORS 443.730~~.

(3) The applicant, facility manager ~~if applicable~~, and each program staff member shall pass a criminal records check or background check, as required under ~~in accordance with~~ OAR chapter 943407, division 007 prior to providing any service to a resident.

(4) Providers, facility managers ~~if applicable~~, and program staff members may not provide any service to any resident prior to acquiring documented education, experience, or receive supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety, and welfare of residents with mental health or substance use disorders. Necessary skills or topics shall include ~~but may not be limited to:~~

(a) Physical caregiving;

(b) Screening for care and service needs;

(c) Appropriate behavior towards residents with physical, cognitive, and emotional disabilities;

(d) Emergency procedures;

(e) Medication support;

(f) Meal planning, food preparation and storage;

(g) Issues related to architectural accessibility; and

(h) Mandatory abuse reporting.

(5) Facility managers:

(a) If a provider employs a facility manager and that person leaves during the period of the registration, the provider shall notify the Division immediately and identify a plan for providing services to the residents; and

(b) If a registered provider hires a new 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 or background 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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0155 Facility Standards

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

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

(2) Each bedroom shall:

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

(b) Be separate from bedrooms or workspaces occupied by the operator, members of the operator's family, or other employees;

(c) Have adequate space for a bed and personal belongings, including;

~~(d) Have~~ at least 70 square feet of usable floor space for each resident or 120 square feet for two residents; and

~~(de)~~ Have a bed with adequate clean bedding and linens available.

(3) A telephone shall 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 shall be placed in plain view on or next to the telephone.

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

(5) Fire Safety:

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

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

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

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

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

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0160 Food Services

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

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

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

(2) The provider shall maintain a one-week supply of shelf-stable foods and a two days' supply of perishable foods on site that is sufficient to feed residents in the event of an emergency.

(3) The provider shall maintain an emergency supply of seven gallons of potable water shall be available such that the provider maintains seven gallons of water per resident.

(4) Food preparation areas shall 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 shall have a thermometer in working order and shall be maintained at 45 degrees Fahrenheit or less for refrigeration and at 0-degree Fahrenheit or less for freezer space.

(7) Poisonous or toxic materials:

(a) Shall 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.

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0165 Administration of Medication

- (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~~if 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.

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0170 Criminal and Civil Penalties

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

- (a) Any CBHS operating without registration as required by these rules; or
- (b) Any CBSH in violation of ORS 443.880 or 443.881.

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

- (a) A reference to the particular sections of the statute, rule, ordinance, or regulation imposed;
- (b) A short and plain statement of the matters asserted or charged;
- (c) A statement of the amount of the penalty or penalties imposed; and
- (d) A statement of the right to request a hearing.

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

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

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

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

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

Statutory/Other Authority: ORS 413.032, ORS 413.042, ORS 413.05 & ORS 413.485

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

History:

BHS 9-2018, adopt filed 04/16/2018, effective 04/16/2018

309-060-0175 Variances

(1) The Division, in its discretion, may grant a variance to these rules based upon a demonstration by the applicant or provider that the proposed alternative:

(a) Is consistent with all statutory requirements; and

(b) Would not jeopardize the health, life, or safety of the individuals served, or would otherwise result in services or systems that meet or exceed applicable regulatory standards.

(2) The applicant or provider shall submit in writing an application to the Division that includes:

(a) A description and applicable details of the variance requested, including the section of the rules from which the variance is sought;

(b) The rationale and necessity for the requested variance, such as a lack of resources to meet a regulatory requirement;

(c) The alternative practice proposed, where relevant; and

(d) The proposed duration of the variance.

(2) The Division shall respond in writing to variance requests within 30 days of receipt.

(a) A notice of variance approval shall indicate the duration of the variance, which shall not exceed one year.

(b) Granting a variance for one request does not set a precedent that must be followed by the Division when evaluating subsequent variance requests

(c) If the Division approves a Letter of Registration but denies a requested variance, the applicant may appeal the variance denial by filing a written appeal with the Division within 14 days of the denial. The Chief Officer shall make a decision within 30 days of receipt of the appeal. The Chief Officer's decision on appeal shall be final.

(3) An approved variance must be reapproved with each annual renewal application. Requesting renewal of a variance in advance of current variance expiration is the responsibility of each provider.

(6) The variance may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health, or safety of the individuals.