

## Division 118

# GRIEVANCE PROCEDURES FOR USE IN OREGON STATE HOSPITAL INSTITUTIONS

### 309-118-0000

#### **Purpose and Statutory Authority**

~~(1) Purpose. These rules prescribe standards and procedures for establishing grievance procedures, other than non-grievable issues such as contested cases, for use by patients ~~and residents of state institutions operated by the Division at the Oregon State Hospital.~~~~

~~(2) Statutory Authority. These rules are authorized by ORS 430.041 and 179.040 and carry out the provisions of ORS 426.385 and 427.031. These rules were adopted and filed with the Secretary of State on July 9, 1982.~~

~~(3) Effective Date. These rules are effective July 23, 1982.~~

**Statutory/Other Authority:** ORS 179.040 & 413.042

**Statutes/Other Implemented:** ORS 426.385

#### **History:**

MHD 15-1982, f. 7-9-82, ef. 7-23-82

### 309-118-0005

#### **Definitions**

As used in these rules:

~~(1) “Administrator” means the Assistant Director, Human Resources, and Administrator for Mental Health. “Allegation of abuse” means a grievance submitted verbally or in writing alleging abuse of a patient by OSH staff. All allegations of abuse will be appropriately handled per the patient abuse reporting process.~~

~~(2) “Division” means the Addictions and Mental Health Division of the Oregon Health Authority. “Civil Rights Grievance” means a patient or representative state on a grievance form that they believe the patient’s civil rights have been violated as defined by state or federal law.~~

~~(3) “Emergency Grievance” means a grievance that:~~

~~(a) Is likely to cause irreparable harm to a substantial right of a patient or resident before completion of the grievance procedures set forth in OAR 309-118-00205; and~~

~~(b) Appears likely to be resolved in favor of the patient or resident.~~

~~(4) “Employees of OSH” means OSH employees, volunteers, interns, contractors, and state employees assigned to work at OSH.~~

~~(45) “Grievance” means a complaint about:~~

~~(a) The substance or application of any rule or written or unwritten policy of the Division or any of its state institutions OSH affecting a patient ~~or resident~~;~~

~~(b) The lack of a rule or policy concerning a matter affecting a patient ~~or resident~~; or~~

~~(c) Any decision or action directed toward a patient ~~or resident by the Division or any of the Division’s employees or agents.~~ (See also OAR 309-118-0015.) that OSH has the authority to change.~~

~~(56) “Interdisciplinary Team (IDT)” means a group of professional and direct care staff which has primary responsibility for the development of a plan for the care, treatment, and training of an individual patient or resident. “Non-grievable” means:~~

~~(a) Issues that OSH does not have the authority to change, such as but not limited to state or federal laws, court orders and actions or decisions by other agencies;~~

- (b) Issues that have been grieved previously, have resulted in a written response and no reoccurrence has taken place;
- (c) Grieving on behalf of a peer;
- (d) Statements that are not complaints; or
- (e) An issue may not be processed through the grievance procedures set forth in these rules if the issue may be addressed in a contested case hearing or other separate process recognized by statute or administrative rule that affords notice and opportunity to be heard before an impartial decision-maker concerning that issue, such as but not limited to informed consent process, institutional reimbursement orders and judicial certifications of continuing mental illness or cognitive disability.
- (7) “Oregon State Hospital” means any campus of the Oregon State Hospital (OSH) system.
- (68) “Patient” means a person who is receiving care and treatment in a state institution for the mentally ill at OSH.
- (79) “Representative” means a person who acts on behalf of a patient or resident with respect to a grievance, including, but not limited to a relative, friend, employee of the Division OSH, attorney or legal guardian. (See also OAR 309-118-0030.) In no case, may another patient or resident act as the representative of a grieving patient or resident during the grievance process.
- (8) “Resident” means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.
- (9) “State Institution” means Dammasech State Hospital in Wilsonville, Oregon State Hospital in Salem, Fairview Training Center in Salem, and Eastern Oregon Hospital and Training Center in Pendleton.
- (10) “Superintendent” means the executive head of the state institution as listed in section (9) of this rule Oregon State Hospital or designee.

**Statutory/Other Authority:** ORS 179.040 & 413.042

**Statutes/Other Implemented:** ORS 426.385

**History:**

MHD 15-1982, f. 7-9-82, ef. 7-23-82

**309-118-0010**

**Policy Statement**

- (1) It is the policy of the Division OSH that care, training, and treatment of patients and residents in state institutions should be administered in a manner that preserves their human, civil, and legal rights, of patients and residents. It is in the interests of patients, residents, state institutions, and the Division that each state institution should develop and OSH will maintain a system process for patients, residents, and their representatives to identify and resolve within the Division grievances concerning care, treatment, training, and patient and resident rights. It is OSH procedure to train its personnel to alert appropriate staff concerning any patient grievance.
- (2) The Division OSH recognizes the responsibility and authority of other state and federal agencies to receive and review complaints from patients, residents, and patients and their representatives. No patient or resident shall be subjected to reprisal for contacting or seeking review of a grievance outside the Division OSH, or pursuant to the state institution OSH’s grievance procedures.
- (3) When a Ppatients and residents have varying abilities to verbalize is unable to complete a written -grievances form, -and comply with procedures for presenting a OSH staff have a responsibility to assist them with the submission of formal grievances, -therefore:

~~(a) Staff of the state institutions have a responsibility to assist patients, residents, and their representatives to articulate grievances and use the grievance procedures to resolve them;~~  
~~(b) Persons charged with the responsibility for administering the grievance procedures set forth in these rules shall do so with flexibility to the end that a fair resolution of each grievance is accomplished within the Division.;~~  
~~(c) Representatives and OSH -staff of state institutions who assist patients, residents and representatives in using the grievance procedures shall not be disciplined or otherwise subjected to reprisal, provided that such persons act in good faith and for the purpose of protecting the rights of patients and residents.~~

~~(4) The grievance procedures shall be administered in such a manner as to protect any right of a patient or resident to maintain the confidentiality of records and communications.~~

**Statutory/Other Authority:** ORS 179.040 & 413.042

**Statutes/Other Implemented:** ORS 426.385

**History:**

MHD 15-1982, f. 7-9-82, ef. ~~7~~-23-82

### 309-118-0015

#### **Non-Grievable Issues**

Notwithstanding the definition of a grievance in OAR 309-118-0005(45), an issue may not be processed through the grievance procedures set forth in these rules if there is a contested case hearing or other separate process recognized by statute or administrative rule that affords notice and opportunity to be heard before an impartial decision-maker concerning that issue; ~~e.g., such as but not limited to informed consent process,~~ institutional reimbursement orders and judicial certifications of continuing mental illness ~~or mental retardation.~~

**Statutory/Other Authority:** ORS 179.040 & 413.042

**Statutes/Other Implemented:** ORS 426.385

**History:**

Reverted to MHD 15-1982, f. 7-9-82, ef. 7-23-82

MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08

MHD 15-1982, f. 7-9-82, ef. 7-23-82

### 309-118-0020

#### **Grievance Procedures**

(1) Informal ~~Resolution~~ Grievance. Whenever possible, a patient, ~~resident,~~ or representative should attempt to present and resolve grievances informally with the person or persons alleging to be causing or involved in the area of complaint.

(a) Verbal Grievance. Grievances submitted verbally or not on an OSH grievance form will be addressed as an informal grievance.

(b) No written response is required for an informal grievance and they are not subject to appeal.

(2) Grievance Screening.

(a) Grievances will receive an expedited level of review when a patient or representative state an allegation of abuse, an emergency or a civil rights violation prior to resolution.

(23) Level 1—Formal Grievance. Resolution by the interdisciplinary team. If a patient, ~~resident,~~ or representative cannot resolve a grievance through informal means, ~~such the~~ person may submit a formal written -grievance ~~statement to the patient's or resident's interdisciplinary team, as follows:~~

- (a) A formal grievance must be in writing and ~~may be on an OSH grievance form provided by the Division MHD-ADMS-0307. A formal grievance statement shall include at least the nature of the grievance and the proposed resolution;~~
- (b) ~~Copies of the grievance statement shall be forwarded to the superintendent of the state institution and to the grievance committee (described in OAR 309-118-0045) by the interdisciplinary team. In the event that the patient, resident, or representative fails or is unable to do so, the interdisciplinary team shall forward copies of the grievance statement to the superintendent and the grievance committee;~~
- (e) Within 20 calendar days after OSH receivings the grievance statement, unless a Program Director grants an extension for just cause, the staff responsible the interdisciplinary team shall:
- (A) Discuss the matter personally with the person who filed the grievance, and if the grievance was filed by a representative, with the patient or resident; and may contact other persons alleged or appearing to be involved in the grievance patient;
- (B) Consider any information furnished by the patient, ~~resident,~~ or representative and such other information as may be relevant and material to the grievance;
- (C) Prepare a written response to the grievance ~~containing at least findings of fact and the interdisciplinary team's resolution of the grievance; and~~
- (D) Provide a copy of the ~~report~~ written response to the patient ~~or resident,~~ and representative, if any, ~~and to the superintendent and the grievance committee.~~
- (34) Level 2 Appeal Process.— ~~Grievance committee hearing. The patient, resident, or representative may request the grievance committee to review the grievance for any of the following reasons: failure of the treatment team to dispose of the grievance within 20 days after submission of the grievance; dissatisfaction with the interdisciplinary team's decision; or dissatisfaction with implementation of the decision. The procedure shall be as follows:~~
- (a) ~~A request for review must be in writing and may be on a form provided by the Division MHD-ADMS-0308. A request for review shall state the person's reason for seeking review, and should have attached to it a copy of the original grievance statement and, if available, the IDT report;~~
- (b) ~~Copies of the request will be given to the interdisciplinary team and superintendent. In the event that the patient, resident, or representative fails or is unable to do so, the interdisciplinary team shall forward copies as required in this paragraph;~~
- (c) ~~As a general rule, a request for review shall be filed within 14 days after the interdisciplinary team files its report. However, a patient, resident, or representative shall be permitted to file a formal grievance beyond the 14 days for good cause;~~
- (d) ~~The grievance committee shall send a written acknowledgement to the patient, resident, or representative that the request for review has been received. The grievance committee shall hold a hearing within 21 days after receipt of a request for review;~~
- (e) ~~With respect to the grievance committee hearing, the patient or resident has the right:~~
- (A) ~~To three days' written notice of the date, time, and place of the hearing;~~
- (B) ~~To be represented by the person of the patient's or resident's choice, including legal counsel, at the expense of the patient or resident;~~
- (C) ~~To call witnesses and question witnesses called by the grievance committee or state institution; and~~
- (D) ~~To offer written information as evidence.~~
- (f) ~~Grievance committee hearings shall be conducted as informally as possible consistent with the need for an orderly and complete presentation of the grievance. The rules of evidence for~~

judicial proceedings are not applicable to grievance committee hearings. However, in resolving a grievance, the grievance committee shall consider only information of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;

(g) The grievance committee shall have 21 days after completion of the hearing to decide the matter and make the decision known to the patient, resident, or representative. A written report containing at least findings of fact and the committee's resolution of the grievance shall be prepared and signed by the presiding member of the grievance committee within 21 days after completion of the hearing;

(h) The written report of the grievance committee's decision shall be given to the patient, resident, or representative, if any, and the superintendent.

If the patient is not satisfied with the grievance resolution or did not receive a written response within the required time frame, the patient or representative may move forward in the appeal process as outlined on the patient grievance form.

(4) Level 3 — Review by the superintendent:

(a) The patient, resident, or representative may request the superintendent to review the grievance for: Failure of the grievance committee to make a decision within 21 days after completion of the hearing; dissatisfaction with the grievance committee's decision; or dissatisfaction with implementation of the decision. The following procedures shall be observed:

(A) A request for review must be in writing and must indicate the reasons for requesting review by the superintendent;

(B) The superintendent shall send a written acknowledgment to the patient, resident, or representative that the request for review has been received;

(C) The superintendent shall review the report of the grievance committee and may take such other action to investigate the matter as the superintendent deems appropriate;

(D) The superintendent shall prepare a written report affirming or modifying the grievance committee's decision concerning the grievance, and shall give copies of the report to the patient, resident or the representative, if any, and to the grievance committee.

(b) The superintendent, as executive head of the state institution, has the right, with good cause, to veto the implementation of any proposed resolution of a grievance. Good cause includes, but is not limited to, where the resolution proposed exceeds the authority of the institution to implement.

(5) Level 4 — Review by the Administrator. If the patient, resident, or representative is dissatisfied with the superintendent's disposition of the grievance, the person may request the Administrator of the Division to review the matter. The following procedures shall be observed:

(a) A request for review must be in writing and must indicate the reasons for the person's dissatisfaction with the superintendent's action;

(b) The Administrator shall send a written acknowledgment to the patient, resident, or representative that the request for review has been received;

(c) The Administrator shall review the superintendent's report and may take such other action to investigate the matter as the Administrator deems appropriate; and

(d) The Administrator shall prepare a written report of the decision in response to the request for review of the grievance, and shall give copies of the report to the patient, resident, or representative, if any, and to the superintendent and grievance committee;

(e) Review by the Administrator is final. The Administrator's decision is not subject to appeal. Grievance and appeal form shall be accessible and available to patients and their representatives.

**Statutory/Other Authority:** ORS 179.040 & 413.042

**Statutes/Other Implemented:** ORS 426.385

**History:**

MHD 15-1982, f. 7-9-82, ef. 7-23-82

**309-118-0025**

**Emergency Grievances**

~~(1) If a patient, resident, or representative believes that the grievance is an emergency grievance, the patient, resident or representative may submit the formal grievance statement directly to the grievance committee.~~

~~(2) The grievance committee shall make a preliminary assessment of whether the grievance appears to be an emergency grievance and shall:~~

~~(a) Hear or investigate the matter and make a decision;~~

~~(b) If it appears that the grievance is not an emergency grievance, send the matter to the interdisciplinary team for attempted resolution; or~~

~~(c) Devise such other means to respond to the grievance as may be acceptable to the aggrieved party and the state institution.~~

~~(3) If the grievance is alleged patient or resident abuse as defined in administrative rules on patient or resident abuse, then the patient, resident, representative, interdisciplinary team, or grievance committee shall submit the matter to the superintendent of the institution. If a patient, resident, or representative is dissatisfied with the superintendent's response to an allegation of patient or resident abuse, the patient or resident may appeal to the Administrator of the Division.~~

**Statutory/Other Authority:** ORS 179.040 & 413.042

**Statutes/Other Implemented:** ORS 426.385

**History:**

MHD 15-1982, f. 7-9-82, ef. 7-23-82

**309-118-0030**

**Representatives**

~~(1) A patient or resident shall have the right not to be represented at all or to select the person who will act as the person's representative. The selected representative shall be respected at all levels of the grievance procedures.~~

~~(2) Staff members and other interested persons are encouraged to speak up on behalf of patients and residents who are limited in their ability to speak or act for themselves. However, the Division recognizes that a person claiming to be a representative may be acting without authority from, or against the wishes of, such patients and residents.~~

~~(3) At any level of the grievance procedures, the issue can be raised whether the claimed representative has the authority to act on behalf of the patient or resident involved. There may be an inquiry into whether the patient or resident understands that the claimed representative is acting on their behalf with respect to the subject matter of the grievance and whether the patient or resident objects to the representative:~~

~~(a) If it is found that the patient or resident understands the situation and does not object, the representative shall be deemed to be acting on the person's behalf;~~

~~(b) If it is found that the patient or resident understands the situation and objects to the representative, the claimed representative shall be deemed not to have the authority to act on behalf of the person;~~

~~(c) If it is found that the patient or resident does not understand the situation or is unable to indicate objection or lack of objection, the interdisciplinary team, grievance committee, superintendent or designee, or Administrator or designee shall:~~

~~(A) Make a judgment whether the claimed representative is acting in the best interest of the patient or resident and either allow or disallow the claimed representative to proceed on behalf of the patient or resident involved; and~~

~~(B) If the claimed representative is not allowed to proceed, assist the patient or resident in obtaining a representative or appoint a representative.~~

~~Statutory/Other Authority: ORS 179.040 & 413.042~~

~~Statutes/Other Implemented: ORS 426.385~~

~~History:~~

~~MHD 15-1982, f. 7-9-82, ef. 7-23-82~~

### 309-118-0035

#### Staff Role of Superintendent in Grievance Procedures

~~(1) The superintendent shall ensure all grievances are collected, reviewed and maintained as per Oregon State archive retention schedule. ~~That there is at least one staff person on each ward or cottage who has the responsibility for assisting, on an "as requested basis," the patient, resident, or representative to move through the grievance procedures. At the conclusion of each level of the grievance procedures, the designated staff person should make the patient, resident or representative aware of the next level in the procedures.~~~~

~~(2) The superintendent and other employees of the Division at a state institution shall cooperate with the grievance committee  
~~the resolution of grievances.~~~~

~~Statutory/Other Authority: ORS 179.040 & 413.042~~

~~Statutes/Other Implemented: ORS 426.385~~

~~History:~~

~~MHD 15-1982, f. 7-9-82, ef. 7-23-82~~

### 309-118-0040

#### Review by Courts

~~Nothing in these rules is intended to affect the right of a patient or resident to seek independent redress of grievances by access to state or federal courts.~~ These rules do not create a contested case subject to judicial review.

~~Statutory/Other Authority: ORS 179.040 & 413.042~~

~~Statutes/Other Implemented: ORS 426.385~~

~~History:~~

~~MHD 15-1982, f. 7-9-82, ef. 7-23-82~~

### 309-118-0045

#### Grievance Committee

~~(1) Each state institution shall have a grievance committee appointed by the superintendent.~~

~~(2) Each grievance committee shall have a minimum of five members, each with one or more alternates, designated by the superintendent, three of whom shall not be employees of the Division.~~

- ~~(3) Each grievance committee shall have the following duties:~~
- ~~(a) Serve as the second level in the state institution's grievance procedures;~~
  - ~~(b) Receive and dispose of all emergency grievances submitted to the committee; and~~
  - ~~(c) Review all formal grievances and resolutions, for the purpose of advising the superintendent regarding poorly resolved grievances and patterns of grievances.~~

~~**Statutory/Other Authority:** ORS 179.040 & 413.042~~

~~**Statutes/Other Implemented:** ORS 426.385~~

~~**History:**~~

~~MHD 15-1982, f. 7-9-82, ef. 7-23-82~~

### 309-118-0050

#### Posting of Notification of Grievance Procedures

Upon admission, ~~consistent with state and federal regulations, OSH state institutions~~ shall inform patients ~~and residents~~, orally and in writing, of the rights, policies, and procedures set forth in these rules.

~~A clear and simple statement of the grievance procedures shall be prominently posted in areas frequented by patients and residents, including each ward and cottage of the state institutions. Copies of the Grievance Statement and Request of a Grievance forms shall be accessible and available to patients and residents and their representatives.~~

~~**Statutory/Other Authority:** ORS 179.040 & 413.042~~

~~**Statutes/Other Implemented:** ORS 426.385~~

~~**History:**~~

~~MHD 15-1982, f. 7-9-82, ef. 7-23-82~~