

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION
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SALEM, OR 97310
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

FILED

04/29/2019 3:47 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: STATE HOSPITAL ADMISSIONS AND DISCHARGES

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/24/2019 2:30 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Oregon State Hospital

2600 Center St NE B01-242

Salem, OR 97301

Filed By:

Adina Canales

Rules Coordinator

HEARING(S)

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

DATE: 05/17/2019

TIME: 1:00 PM - 2:30 PM

OFFICER: Adina Canales

ADDRESS: Kirkbride Building Small
and Large Hearing rooms

Oregon State Hospital

2600 Center St NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

1. Please sign in before 1pm if you wish to provide a public comment
2. Please check in at the communication center
3. It can take 15-20 minutes sometimes to park and check in, so please make sure you arrive early.
4. You will not be allowed to provide a public comment if you are not signed in before 1pm

NEED FOR THE RULE(S):

This rule is needed to ensure consistency in the application of the criteria for admission to and discharge from OSH

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1053>

FISCAL AND ECONOMIC IMPACT:

This rule language should not result in a fiscal impact for OSH or to community partners. OSH operates within a total bed capacity that is then allocated by commitment type. A minor increase/decrease in population will usually result in an operational adjustment of a unit's commitment type, but will normally not result in the opening of an additional unit. A fiscal impact would only result if the rule substantially increased census enough to require the opening of an additional unit, which is not anticipated. This OAR is intended to ensure active treatment begins in the community, at the Acute Care level, to increase opportunities for individuals to stabilize and return to the community, reserving OSH level of care for individuals that will need OSH level of care to stabilize. There is no fiscal impact to the community as this rule is to provide for individuals that do not require OSH level of care continue to receive care in the community.

COST OF COMPLIANCE:

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

This rule would not impact the operations of Oregon State Hospital.

Costs would primarily be incurred at the community level (acute care hospitals/CCOs/CMHPs). This may be seen as an increase in costs as individuals will need active treatment prior to referral. This will reduce the amount of individuals referred and placed on the waitlist until active treatment is underway.

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

No impact because costs would primarily be incurred at the community level (acute care hospitals/CCOs/CMHPs)

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

309-091-0005, 309-091-0010, 309-091-0015, 309-091-0025, 309-091-0030, 309-091-0035, 309-091-0045, 309-091-0050

AMEND: 309-091-0005

RULE SUMMARY: his rule provides definitions for terminology specific to the rules under Chapter 309 Division 91.

CHANGES TO RULE:

309-091-0005

Definitions ¶

~~(1) "AMH" means the Addictions and Mental Health Division of the Oregon Health Authority.¶~~

~~(2) "Authority" means the Oregon Health Authority.¶~~

~~(3) "Chief Medical Officer" (CMO) means the physician designated by the superintendent of each state institution who is responsible for the administration of medical treatment, or his or her designee.¶~~

~~(3) "Choice Contractor" means a corporation, governmental agency, public corporation, or other legal entity that provides coordination of care services to individuals with SPMI, as directed in contract with the Health Systems Division.¶~~

(4) "Civil Commitment" means the individual has been committed to the Authority for emergency psychiatric care

and treatment pursuant to ORS 426.070, 426.228 to 426.235 or 426.237.

(5) "Clinical Reviewer" means the Division employee designated to the role of determining eligibility for state hospital admissions.

(6) "Division" means the Addictions and Mental Health Community Mental Health Program" (CMHP) means an entity that is responsible for planning and delivery of safety net services for persons with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse, in a specific geographic area of the state, under a contract with the Division or a local mental health authority.

(7) "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 Oregon Health Authority, under ORS 414.625, to be accountable for care management, and to provide integrated and coordinated healthcare, for each of the organization's members.

(8) "Division" means the Health Systems Division of the Oregon Health Authority.

(9) "DSM" means the most recent edition of the Diagnostic and Statistical Manual of Psychiatric Disorders, published by the American Psychiatric Association.

(10) "DOC" means the Oregon Department of Corrections.

(11) "Forensic" means related to the law, and references individuals committed to treatment and supervision by the courts pursuant to Oregon Revised Statutes (ORS) 161.290 - 161.400.

(12) "Health care representative" means:

(a) An attorney-in-fact;

(b) A person who has authority to make health care decisions for a principal under the provisions of ORS 127.635 (2) or (3);

(c) A guardian or other person, appointed by a court to make health care decisions for a principal.

(13) "Legal Guardian" in this rule means an individual appointed by a court of law to act as guardian of an adult having been determined to be legally incapacitated.

(14) "Licensed Residential Facility or Licensed Residential Home" means those residences defined in OAR 309, Chapter 035.

(15) "Local Mental Health Authority" (LMHA) means one of the following entities:

(a) The Board of County Commissioners of one or more counties that establishes or operates a CMHP;

(b) The tribal council of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services or

(c) A regional LMHA comprised of two or more boards of county commissioners.

(16) "Primary Diagnosis" means the diagnosis which identified the condition considered the most severe for which the individual receives treatment.

(17) "Psychiatric Security Review Board" (PSRB) means board appointed by the Governor and authorized in ORS 161.385.

(18) "Ready to Transition" means a patient no longer meets admission criteria for hospitalization.

(19) "Responsible Party" means the LMHA, community mental health program, the Medicaid managed care organization, Choice Model contractor, and when applicable the individual's legal guardian or health care representative, and other parties identified by AMH.

(20) "Severe" means the Oregon Health Authority

(21) "Serious and Persistent Mental Illness" (SPMI) means an individual's symptoms meet the criteria in OAR 309-091-0010 the current DSM diagnostic criteria for at least one of the following conditions, as a primary diagnosis, for an adult age 18 years or older:

(a) Schizophrenia and other psychotic disorders;

(b) Major Depressive Disorder;

(c) Bipolar Disorder;

(d) Anxiety disorders limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);

(e) Schizotypal Personality Disorder; or

(f) Borderline Personality Disorder.

(21) "State Hospital" means any campus of the Oregon State Hospital (OSH) system.

(22) "OYA" means the Blue Mountain Recovery Center (BMRC), Oregon Youth Authority

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 179.321, 426.010, 426.020, 426.072, ORS 125.300 to 125.330, ORS 127.005 to 127.660

AMEND: 309-091-0010

RULE SUMMARY: This rule identifies what the minimum criteria is for admitting non-forensic individuals who are either Civilly Committed, or authorized by a Guardian or Health Care Representative.

CHANGES TO RULE:

309-091-0010

Civilly Committed ~~and~~, Guardian and Health Care Representative Authorized Admission Criteria-

Each non-forensic individual admitted to a state hospital must meet the following criteria:¶

- (1) The individual must be age 18 or older;¶
- (2) The individual must be named in a current civil commitment order, or the individual's legal guardian or health care representative must have signed consent for admission;¶
- (3) There must be recent documentation by a ~~qualified professional that the individual is experiencing an Axis-I diagnosis of a mental disorder with severe psychotic symptoms, such as schizophrenia, delusional disorder, affective dis~~ Psychiatrist, Psychiatric Nurse Practitioner, Psychologist, Licensed Clinical Social Worker, mood disorder or other disorders which manifest psychotic symptoms as defined in the most recent ~~vor~~ Physician's Assistant that the individual is experiencing ~~Sersion of the DSMus and Persistent Mental Illness.;~~ and¶
- (4) The current symptoms must be of such severity that the resulting symptoms require extended placement in a 24-hour medically supervised psychiatric hospital. Severity is established by a determination of:¶
 - (a) The degree of dangerousness to self;¶
 - (b) The degree of dangerousness to others; and¶
 - (c) The degree of the individual's inability to meet his or her basic health and safety needs.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 179.321, 426.010, 426.020, 426.072

AMEND: 309-091-0015

RULE SUMMARY: This rule identifies the services and documentation of services that must be provided prior to admission to the Oregon State Hospital. The documentation of services should show the efforts made to stabilize the individual being referred.

CHANGES TO RULE:

309-091-0015

Determining Need for State Hospital Care ¶

(1) State hospital level of care is determined appropriate when:¶

(a) the individual's condition or symptoms have not improved in an acute care setting despite having received a comprehensive psychiatric and medical assessment, and treatment and/or community services ty, with medication for at least 7 days at an adequate dose: and. ¶

(b) the individual continues to require hospital for a psychiatric illness or psychiatric emergency-level of care services, as evidenced by failure to meet the state hospital's criteria for readiness to transition. ¶

(2) Prior to referral for admission to a state hospital, the individual should have received:¶

(a) A comprehensive medical assessment to identify conditions that may be causing, contributing to, or exacerbating the mental illness;¶

(b) Services from an appropriate medical professional for the treatment and stabilization of any medical or surgical conditions that may be contributing to or exacerbating the mental illness and¶

~~(c) Treatment in an acute setting within the parameters of the most recent version of the American Psychiatric Association Practice Guidelines for the Treatment of Psychiatric Disorders.¶~~

~~(d) In addition there must be evidence of additional treatment and services having been attempted, including:¶~~

~~(A) Use of evidence-based or promising psychosocial interventions which were delivered in relevant culturally-competent, strength-based, person-centered and trauma-informed manners and which adequately treated the assessed and/or expressed needs of the individual. When requested by the individual, ¶ treatments should include members of the individual's family, support network and /or peers; Peer Delivered Services, unless the individual doesn't consent. ¶~~

~~(B) Documentation of ongoing review and discussion, by hospital staff and responsible party, of options for discharge to non-hospital levels of care; and¶~~

~~(C) Documentation of services and supports attempted by the responsible party to divert an individual from acute admission and establish treatment and recovery in a non-hospital setting.¶~~

(3) To make a referral for admission to a state hospital, the responsible party shall ensure the following documentation is provided:¶

(a) Request for OSH and PAITS Services form; and¶

(b) Community Questionnaire form, to include the OSH discharge plan, developed by the responsible party; and ¶

(c) Patient demographic information; and ¶

(d) Civil Commitment documents, to include, Commitment Judgment or Order, and pre-commitment investigations; or¶

(e) Guardianship orders, or health care representative forms; and¶

(f) History and Physical; and ¶

(g) Psychosocial assessment, if available; and¶

(h) Progress notes, from admission; and¶

(i) Medication Administration Record; and ¶

(j) Labs and other diagnostic testing; and¶

(k) Involuntary Administration of Significant Procedures documentation, if applicable.¶

(4) If the referral is approved, a written notice will be provided to acute care, and responsible party.¶

(5) If the referral is denied, a letter of denial will be provided, to include a rationale for denial, within 72 hours:¶

(a) The individual, provider of acute care services, or responsible party, can appeal the denial, by submitting a

written request, to the OHA director, or designee; and

(b) The OHA director, or designee, will provide a written response to the appeal

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 179.321, 426.010, 426.020, 426.072

AMEND: 309-091-0025

RULE SUMMARY: This rule outlines exclusionary criteria and exceptions for admission to Oregon State Hospital.

CHANGES TO RULE:

309-091-0025

Exclusion Criteria and Exceptions ¶¶

(1) State hospitals are intended to provide recovery-oriented intervention for individuals experiencing symptoms related to ~~a severe, persistent and disabling mental illness~~ SPMI. ¶¶

(2) Admissions must not be based upon a primary diagnosis of the following related conditions: ¶¶

(a) An acute or existing medical or surgical condition which requires primary placement in a medical setting and which cannot be safely or adequately treated within a state hospital facility; ¶¶

(b) Delirium; ¶¶

(c) ~~Pervasive Developmental~~ Neurodevelopmental Disorders; ¶¶

(d) ~~Intellectual Developmental~~ Neurocognitive Disorders; ¶¶

(e) Substance Use or Substance Abuse Disorders; or ¶¶

(f) Personality Disorders, except Borderline and Schizotypal Personality Disorders, with psychotic symptoms. ¶¶

(3) Administrative transfers from the Oregon Department of Corrections of individuals for the purpose of treatment may occur in accordance with OAR 291-047-0021. Individuals civilly committed upon discharge from the Oregon Department of Correction must meet the admission criteria and the process defined in this rule. ¶¶

(4) Administrative transfers from the Oregon Youth Authority of individuals over the age of 18 for the purpose of stabilization and evaluation not exceeding 30 days may occur in accordance with OAR 416-425-020. ¶¶

(a) Individuals transferred for the purpose of stabilization and evaluation for a period of time exceeding 30 days may occur in accordance with OAR 416-425-020. ¶¶

(b) Individuals over the age of 18 who are civilly committed upon discharge from the Oregon Youth Authority must meet the admission criteria and the process defined in this rule. ¶¶

(5) Individuals ending jurisdiction of Department of Corrections, Oregon Youth Authority (if over 18 years of age), Psychiatric Security Review Board, and those committed to OSH under ORS 161.315, 161.365, or 161.370, may only be admitted according to the criteria and process outlined in this rule. On rare occasions, individuals who are housed at OSH, may continue to stay at OSH, when civilly committed, without first being admitted to acute care. ¶¶

(6) Individuals, and guardians on behalf of a protected person, may make a request for admission, directly to the Superintendent of the Oregon State Hospital. ¶¶

(a) an individual, or guardian, will submit a written request, including any additional documentation supporting the request, to the Superintendent, or designee. ¶¶

(b) The Superintendent, or designee, will review the request. If the Superintendent, or designee, determines that the individual is in need of immediate care for mental illness, the individual may be admitted, independent of admission criteria and process defined in this rule.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 179.321, 426.010, 426.020, 426.072

AMEND: 309-091-0030

RULE SUMMARY: This rule provides the discharge planning expectations for the responsible parties of individuals discharging from the Oregon State Hospital.

CHANGES TO RULE:

309-091-0030

Discharge Planning ¶

(1) The responsible parties shall participate in discharge planning, throughout the patient's hospitalization.¶

(2) The state hospital will notify the responsible parties of each admission, unit or campus transfer, and each hospital treatment team determination related to assessing discharge readiness.¶

(23) The state hospital will make clinical recommendations for services needed to support the continuity of care to maintain the individual's stability in the community.¶

(4) The responsible party must arrange housing, treatment and other services assessed as needed to support the continuity of care necessary to maintain the individual's stability in the community.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 179.321, 426.010, 426.020, 426.072

AMEND: 309-091-0035

RULE SUMMARY: This rule identifies the responsible party and procedure for determining the need for state hospital level of care, and in making recommendations for supports and services when state hospital level of care is no longer needed

CHANGES TO RULE:

309-091-0035

Discharge Criteria and Procedures for Civil Commitment, Guardian, or Health Care Representative

(1) The state hospital, or designee, will periodically assess the individual's continued need for state hospital level of care, and readiness to transition, based upon the admission criteria established in these rules.¶

(2) The state hospital retains the authority to solely determine when someone no longer needs state hospital level of care based on standardized criteria adopted by the hospital. ~~Whenever possible, the decision should be made in collaboration with the responsible party and legal guardian, when applicable.~~¶

(3) An individual determined ready ~~for discharge~~ to transition may later be determined not ready ~~for discharge~~ to transition, and removed from the ~~discharge ready list~~.¶

~~(4) Individuals with an active discharge and community placement plan who no longer meet the state hospital criteria as defined in these rules shall not remain in an Oregon state hospital ready to transition list.~~¶

(5) Prior to an individual no longer needing state hospital level of care, the hospital will collaborate with the responsible party and with the patient's legal guardian if assigned by the courts, to identify appropriate services and supports for the patient.¶

~~(6) When an individual no longer needs state hospital level of care, and an appropriate community transition plan and additional necessary supports are in place, the patient will be discharged, to recommend services and supports for the patient.~~

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 179.321, 426.010, 426.020, 426.072

AMEND: 309-091-0045

RULE SUMMARY: This rule identifies the forensic discharge criteria and procedures specific to individuals under the jurisdiction of the Psychiatric Security Review Board

CHANGES TO RULE:

309-091-0045

Forensic Discharge Criteria and Procedures.[¶]

(1) Individuals admitted by court order after a finding of guilty except for insanity of a felony will be discharged when approved by the PSRB ~~and in accordance with the state hospital policies and .~~[¶]

(2) Individual admitted by court order after a finding of guilty except for insanity of a misdemeanor will be discharged when approved by the Superintendent of the state hospital.[¶]

~~(23)~~ Individuals whose jurisdiction under the PSRB has ended as identified by the state hospital Legal Department shall be allowed to discharge ~~on midnight~~ of the final day of PSRB jurisdiction unless the hospital determines the need for civil commitment or some other legal hold.[¶]

~~(34)~~ The responsible party will assess individuals ending jurisdiction and when determined appropriate, arrange housing, treatment and other services assessed as needed to support the continuity of care necessary to maintain the individual's stability in the community.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 179.321, 426.010, 426.020, 426.072

AMEND: 309-091-0050

RULE SUMMARY: This rule identifies criteria and procedures for maximum period of commitment and for discharging individuals under ORS 161.365 and 161.370.

CHANGES TO RULE:

309-091-0050

Other Forensic Discharges ¶

(1) For the purposes of this rule, discharge occurs when the state hospital moves the individual from the state hospital's psychiatric care to either a community setting or other institutional setting, including but not limited to discharge to a jail. ¶

(2) Individuals committed to the state hospital pursuant to ORS 161.370 shall be discharged from the state hospital upon any of the following: ¶

(a) The court orders that the individual be discharged from the state hospital or that the underlying criminal charges be dismissed; ¶

(b) ~~The state hospital both:~~ ¶

~~(A) Sends notice to the court pursuant to ORS 161.370 subsection (5)(a), (5)(b)(A), (5)(b)(B), or subsection (8); and~~ ¶

~~(B) Transports the individual to a jail~~ n -the ORS 161.370 or 161.365 evaluation report identifies the patient as either "never able" or "able" to aid in the patient's own defense, or when the patient has reached the maximum commitment time under ORS 161.370 or 161.365. ¶

(3) The state hospital shall send notice of the evaluation finding to the court pursuant to ORS 161.370 or 161.365. ¶

~~(4)~~ Individuals who are committed under ORS 161.370 shall be discharged within a period of time that is reasonable for making a determination concerning whether or not and when the defendant may gain or regain capacity. However, regardless of the number of charges with which the defendant is accused, in no event shall the defendant be committed for longer than whichever of the following, measured from the defendant's initial custody date, is shorter: ¶

~~(A)~~ Three years; or ¶

~~(B)~~ A period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted of charges. ¶

~~(5)~~ For purposes of calculating the maximum period of commitment described in subsection ~~(4)~~: ¶

~~(A)~~ The initial custody date is the date on which the defendant is first committed under this section on any charge alleged in the accusatory instrument; and ¶

~~(B)~~ The defendant shall be given credit against each charge alleged in the accusatory instrument: ¶

~~(i)~~ For each day the defendant is committed under this section, whether the days are consecutive or are interrupted by a period of time during which the defendant has gained or regained fitness to proceed; and ¶

~~(ii)~~ Unless the defendant is charged with aggravated murder or a crime listed in ORS 137.700(2), for each day the defendant is held in jail, whether the days are consecutive or are interrupted by a period of time during which the defendant lacks fitness to proceed.

Statutory/Other Authority: ORS 161.370, ORS 413.042

Statutes/Other Implemented: ORS 161.370, HB 2308 (2017), ORS 179.321, ORS 426.010, ORS 426.020, ORS 179.360, SB432 (2011)