

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
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JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

FILED
10/28/2020 3:35 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Oregon State Hospital Patient Grievance Procedures

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/23/2020 11:30 AM

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.

CONTACT: Adina Canales	OSH	Filed By:
503-421-4788	2600 Center St NE B01-242	Adina Canales
OSH.Rules@dhsosha.state.or.us	Salem, OR 97301	Rules Coordinator

HEARING(S)

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

DATE: 11/16/2020
TIME: 11:30 AM - 12:00 PM
OFFICER: Adina Canales
ADDRESS: Conferance Call
Call in number: 1 971-277-2343
Call in participation number: 224 691
35
Salem, OR 97301

NEED FOR THE RULE(S):

This rule prescribes the standards and procedure for the patient grievance process at OSH. Patients at OSH have the right to submit and resolve grievances both informally and in writing. OSH is dedicated to continuous improvement of the patient grievance process. The revisions to this rule have restructured the grievance and appeal process to provide patients with responses that are more timely and effective. The revision to this rule clarifies what is grievable and non-grievable.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

CRF -2017 -title 42 -vol 5- sec 482-13
§ 482.13 Condition of participation: Patient's rights
<https://www.gpo.gov/fdsys/pkg/CFR-2010-title42-vol5/pdf/CFR-2010-title42-vol5-sec482-13.pdf>

CMS RI.01.01.03
Culturally Competent Patient-Centered Care
https://www.jointcommission.org/assets/1/6/2009_CLASRelatedStandardsHAP.pdf

CMS RI.01.07.01

Complaint/grievance resolution

https://www.jointcommission.org/assets/1/6/2009_CLASRelatedStandardsAHC.pdf

FISCAL AND ECONOMIC IMPACT:

OSH finds there will not be any additional financial impact.

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).

OSH finds there will not be any additional cost of compliance.

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

This is an internal OSH rule. There will be no economic impact to any state agency, local government or members of the public. This rule applies to patients who may hold dual citizenship as a member of one of the nine (9) federally recognized tribes in Oregon.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

309-118-0000, 309-118-0005, 309-118-0010, 309-118-0015, 309-118-0020, 309-118-0025, 309-118-0030, 309-118-0035, 309-118-0040, 309-118-0045, 309-118-0050, 309-118-0060

AMEND: 309-118-0000

RULE SUMMARY: Purpose and Statutory Authority: Prescribes that standards and procedures for the OSH patient grievance process.

CHANGES TO RULE:

309-118-0000

Purpose and ~~Statutory Authority~~ cope

~~(1) Purpose. These rules prescribe the minimum standards and procedures for establish processing grievance procedures, other than contested cases, for use by patients and residents of state institutions operated by the Division.¶~~

~~(2) Statutory Authority. These rules submitted by or on behalf of Oregon State Hospital patients 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 regarding complaints about the hospital or its staff.~~

Statutory/Other Authority: ORS 179.040, 413.042, ORS 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, ORS 179.321, 179.360

AMEND: 309-118-0005

RULE SUMMARY: Definitions: Prescribes the definitions used in these rules.

CHANGES TO RULE:

309-118-0005

Definitions ¶

As used in these rules:¶

(1) "Administrator" means the Assistant Director, Human Resources, and Administrator for Mental Health.¶

(2) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.¶

(a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.¶

(b) "Neglect" means the active or passive withholding of services necessary to maintain the health and well-being of an adult, which leads to physical harm of an adult. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.¶

(3c) "Emergency Grievance" means a grievance that: Physical abuse" means:¶

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.¶

(aB) Is likely to cause irreparable harm to a substantial right of a patient or resident be Willful infliction of physical pain or injury.¶

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.¶

(D) Physical abuse does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force completion of the grievance procedures set forth in OAR 309-118-0020; and¶

(b) Appears likely to be resolved in favor of the patient or resident reasonably necessary for protection is used for the least amount of time necessary.¶

(d) "Sexual abuse" including:¶

(A) An act that constitutes a crime under ORS 163.375 (rape in the first degree), 163.405 (sodomy in the first degree), 163.411 (unlawful penetration in the first degree), 164.415 (sexual abuse in the third degree), 163.425 (sexual abuse in the second degree), 163.427 (sexual abuse in the first degree), 163.456 (public indecency) or 163.467 (private indecency).¶

(4B) "Grievance" means a complaint about: Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.¶

(aC) The substance or application of any rule or written or unwritten policy of the Divis Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favors. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations or any of its state insttther than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploituations affecting a patient or resident; means unwelcome physical sexual contact including requests for sexual favors and other physical conduct directed toward an adult.¶

(bD) The lack of a rule or policy concerning a matter affecting a patient or resident; or Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.¶

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion.¶

(eF) Anys 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.) fined in ORS 163.305, "sexual contact" means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.¶

- (2) "Allegation of Abuse" means a grievance submitted by a patient or their representative alleging that the patient has been abused or neglected by staff. ¶
- (3) "Allegation of Civil Rights Violation" means a grievance submitted by a patient or their representative alleging that the patient's civil rights, as protected by state or federal law and not inconsistent with their current legal status, have been violated by the hospital or staff. ¶
- (54) "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. ¶
- "Business Days" means days excluding weekends, holidays, and furloughed days. ¶
- (5) "Condition of Public Health Importance" means a disease, syndrome, symptom, injury or other threat to public health that is identifiable on an individual or community level. ¶
- (6) "Communicable Disease" means a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in illness, death or severe disability. ¶
- (7) "Designated Staff Member" means the OSH staff member designated by the Superintendent to accept and process a patient's formal grievance. ¶
- (8) "Director" or "OHA Director" means the individual appointed by the governor to act as executive head of OHA or their designee. ¶
- (69) "Patient" means a person who is receiving care and treatment in a state institution. ¶
- "Disease Outbreak" means a significant or notable increase in the number of cases of a disease or other condition of public health importance. ¶
- (10) "Emergency Grievance" means a patient or their representative alleges that the patient may suffer immediate or irreparable harm to their physical safety or civil rights before the patient is mentally ill. ¶
- (7) "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, 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. ¶
- "completion of the grievance process set forth in OAR 309-118-0020, and appears likely to be resolved in favor of the patient; ¶
- (11) "Epidemic" means the occurrence in a community or region of a group of similar conditions of public health importance that are in excess of normal expectancy and derived from a common or propagated source. ¶
- (12) "Grievance" means a patient's complaint regarding: ¶
- (a) The substance or application of any rule or policy of OSH that adversely affects the patient; ¶
- (b) The lack of a rule or policy concerning a matter that adversely affects the patient; or ¶
- (c) Any decision or action by staff that adversely affects the patient. ¶
- (13) "Isolation" means the physical separation and confinement of a person or group of persons who are infected or reasonably believed to be infected with a communicable disease or possible communicable disease from non-isolated persons to prevent or limit the transmission of the disease to non-isolated persons. ¶
- (14) "Oregon Health Authority" or "OHA" means the state agency that is responsible for operating, controlling, managing and supervising OSH. ¶
- (15) "Oregon State Hospital" or "OSH" or "hospital" means any campus of the Oregon State Hospital system. ¶
- (16) "Ombuds" means the OSH staff person designated by the Superintendent to act as a neutral intermediary that conducts investigation of patient grievances on behalf of OSH and OHA for purposes of this rule. ¶
- (817) "Resident" means a person who is receiving care, and/or treatment, and training in a state institution for the mentally retarded. ¶
- "OSH, whether the program where the person is receiving care and/or treatment is licensed as hospital level of care or other licensed level of care. ¶
- (18) "Public Health Emergency" means when a public health emergency has been declared pursuant to ORS 433.441 and as defined in ORS 433.442. ¶
- (19) "State Institution" means Dammasch State Hospital in Wilsonville, Oregon State Hospital in Salem, Fairview Training Center in Salem, and Eastern Oregon Hospital and Training Center in Pendleton. ¶
- "Quarantine" means the physical separation and confinement of a person or group of persons who have been or may have been exposed to

a communicable disease or a possible communicable disease and who do not show signs or symptoms of a communicable disease, from persons who have not been exposed to a communicable disease or possible communicable disease and who do not show signs or symptoms of a communicable disease, to prevent or limit the transmission of the disease to other persons.¶

(20) "Representative" means a person who has the legal authority or agreement of the patient to act on behalf of the patient with respect to the grievance, including, but not limited to a relative, friend, staff member, attorney or legal guardian. A patient shall not act as a "representative" for another patient in the grievance process.¶

(21) "Superintendent staff or Staff Member" means any individual who is employed or contracted by OSH, an OSH approved volunteer, or a student, trainees or fellow being trained at OSH. "Staff" does not include a patient.¶

(22) "State of Emergency" means ~~the~~ executive head of the state institution as listed in ~~sn~~ a state of emergency has been declared pursuant to ORS 401.165, or a public health emergency has been declared pursuant to ORS 433.441 in the county, region, or state in which the Oregon State Hospital facility is located.¶

(23) "Superintendent" means the ~~execution~~ (9)ve head of OSH ofr this ruleir designee.

Statutory/Other Authority: ORS 179.040, 413.042, ORS 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, ORS 179.321, 179.360

AMEND: 309-118-0010

RULE SUMMARY: Policy Statement: It is the policy of OSH to preserve the civil and legal rights of its patients.

CHANGES TO RULE:

309-118-0010

Policy Statement ¶

(1) ~~It is the policy of the Division OSH that the care, training, and treatment of patients and residents in state institutions should be administered in a manner that preserves the human, civil, and legal rights of patients and residents. It is in the interest of OSH to maintain a process for patients, residents, state institutions, and the Division that each state institution should develop and maintain a system for patients, residents, and their representatives to identify and resolve within the Division grievances concerning care, treatment, training and their representatives to resolve grievances concerning the patient's care, treatment and rights. It is OSH's policy to encourage all personnel to alert appropriate staff concerning any patient and resident rights.~~ ¶

~~(2) The Division grievance.~~ ¶

(2) OSH recognizes the responsibility and authority of other state and federal agencies to receive and review complaints from patients, residents, and their representatives. No patient or resident representative shall be subjected to reprisal by OSH or OSH staff for contacting or seeking review of a grievance outside the Division, or pursuant to the state institution's grievance procedures. ¶

~~(3) Patients and residents rule or outside of OSH.~~ ¶

(3) Patients have varying abilities to verbalize grievances and comply with the procedures for presenting a formal grievance; therefore: ¶

(a) Staff of the state institutions have a responsibility to assist patients, residents, and their representatives to articulate grievances with initiating and using the grievance procedures to resolve them; ¶

~~(b) Persons charged with these;~~ ¶

(b) Staff responsible for administering the grievance procedures set forth in these rules shall do so with flexibility to the end that a fair resolution of the intent of each grievance is accomplished within the Division, giving a fair resolution; ¶

(c) Representatives and staff of state institutions who assist patients, residents and representative Staff who assist patients in using the grievance procedures shall not be disciplined or otherwise subjected to reprisal for those actions, provided that such persons act in good faith and for the purpose of protecting the rights of the 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 a report of an allegation of abuse, an emergency, or a civil rights violation are processed differently from other grievances, and are first screened by the Ombuds, and communications set out section 309-118-0025 of these rules.

Statutory/Other Authority: ORS 179.040, 413.042, 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0015

RULE SUMMARY: Describes issues that are not covered by the OSH grievance process.

CHANGES TO RULE:

309-118-0015

Non-Grievable Issues - Issues Ineligible for Grievance Process ¶

Notwithstanding the definition of a grievance in OAR 309-118-0005(4), ~~an issue may, a patient's grievance shall~~ not be processed through the grievance procedures set forth in these rules if ~~it~~ ¶

(1) 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., including but not limited to institutional reimbursement orders and judicial certifications of continuing mental illness or mental retardation, OSH informed consent decisions, and judicial determinations of continued mental illness or cognitive disability; ¶

(2) The issue is something that OSH does not have the authority to change, including but not limited to state or federal laws, court orders and actions or decisions by other agencies, including but not limited to commitment and discharge; ¶

(3) The issue has been grieved previously, has resulted in a written response or resolution, and no event has occurred that alters the prior written response or resolution; ¶

(4) Grieving an issue on behalf of another patient; or ¶

(5) Statements that do not allege a grievance.

Statutory/Other Authority: ORS 179.040, 413.042, 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, 179.321, 179.360, 426.385

AMEND: 309-118-0020

RULE SUMMARY: Specifies the OSH grievance procedure from informal grievance through the appeal process.

CHANGES TO RULE:

309-118-0020

Grievance Procedures ~~ss~~ ¶¶

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

~~(2a) Level 1 – Resolution by the interdisciplinary team. If a patient, resident,~~An informal grievance may be made verbally or in writing, provided that the writing is not on an OSH formal grievance form. ¶¶

~~(b) No written response is required for an informal grievance.~~ ¶¶

~~(c) Informal grievances are not subject to review or appeal.~~ ¶¶

~~(2) Formal Grievance: When a patient, or their representative cannot resolve a grievance through informal means, such person~~they may submit a formal 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 a form provided by the Division MHD-ADMS-0307. A~~on an OSH grievance form for formal grievance statements and 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~~The patient or representative must place the original copy of the formal grievance in the designated box for the patient's unit; ¶¶

~~(c) The designated staff person shall forward copies of the grievance statement to the superintendent and the grievance committee~~to the Ombuds; ¶¶

~~(c) Within 20 business days after the designated staff person receives the grievance statement, the interdisciplinary team~~form, the designated staff person shall: ¶¶

~~(A) Discuss the matter personally with the person who filed the grievance, and if the grievance was filed by a, either in person or through simultaneous telephonic or video means, with the patient and, if applicable, the representative, with~~unless the patient or resident; and may contact other persons alleged or appearing to be involved in the grievance;declines to meet with the designated staff person. ¶¶

~~(B) Consider any information furnished by the patient, resident, or their 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;~~ ¶¶

~~(D) Provide a copy of the report to the patient or resident, and representative, if any, and to the superintendent and the grievance committee.~~ ¶¶

~~(3) Level 2 – Grievance committee hearing. The patient, resident, or representative may request~~written response to the patient and their representative, if any, and to the Ombuds. ¶¶

~~(3) OSH Grievance Review Process: If the patient is not satisfied with the~~grievance committee to review the~~then~~response to their formal grievance for any of the following reasons: failure of the treatment team to~~did not~~receive a written response to their formal 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~~business days, the patient may request an OSH Grievance Review. ¶¶

(a) OSH must receive a completed written request for an OSH Grievance Review within 30 business days after receiving a written response to their formal grievance or from the date a written response;

(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; none should have been issued under subsection (2) of this rule. If the patient or their representative fail to timely request an OSH Grievance Review, OSH shall not grant an OSH Grievance Review unless there is good cause for the untimely submission.

(b) The patient or their representative must submit their request on the OSH Grievance Review form to the Ombuds and the Superintendent. The request must state the patient's or their representative's reason for requesting a review and requested resolution. The patient or their representative must attach their request for a formal grievance and OSH's written response to the formal grievance.

(g) The grievance committee shall have 21 days after completion of the hearing to decide the matter and make the decision known. Superintendent shall provide a written response to the Grievance Review Request to the patient, resident, or their 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; within 30 business days of receipt of the request for OSH Grievance Review.

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

(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 OHA Review Process: If the patient is not satisfied with the OSH Grievance Review response to their grievance, or did not receive a written response to their formal grievance within 30 business days, the patient or the hearing; dissatisfaction with the grievance committee's decision; or dissatisfaction with implementation of the decision. The following procedures shall be observed: their representative may request an OHA Grievance Review.

(A) A request for OHA Grievance 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 designated OHA Grievance Review form;

(b) A request for OHA Grievance Review shall state the patient's, resident, or representative that the request for review has been received;

(C) The superintendent shall review the report of the reason for requesting the review and shall attach a copy of the

original grievance committee and may take such other action to investigate form, and if received, the matter as the superintendent deems appropriate;

~~(D) The superintendent shall prepare written grievance response as written report affirming or modifying the grievance committee's decision concerning the grievance, and shall give copies of the~~ as the OSH Grievance Review form and OSH Grievance Review written report to the patient, resident;

~~(c) Copies of~~ 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~~ quest for OHA Grievance Review shall be sent to the OSH Ombuds and Superintendent, and the OHA Director at the time the request is made;

~~(d) An OHA Grievance Review request must be filed by the patient~~ 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~~ 30 business days after having received a written OSH Grievance Review response. This may be extended for good cause;

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

~~(df) The Administrator shall prepare~~ provide a written report of the decision in response to the request for review of the grievance, and shall give copies of the response within 30 business days of receipt of an OHA Grievance Review request to the patient, resident, or their 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.~~

~~(g) The OHA review decision is final and is not subject to further review by OHA.~~

Statutory/Other Authority: ORS 179.040, 413.042, 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0025

RULE SUMMARY: The OSH Superintendent shall ensure grievances are collected, reviewed and maintained as per Oregon State archive retention schedule.

CHANGES TO RULE:

309-118-0025

Emergency Grievances, Civil Rights Complaints or Abuse Allegations ¶

~~(1) If a patient, resident, or representative the grievance alleges patient abuse, or the patient 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 or civil rights violation, the grievance shall be sent to the OSH Ombuds. Nothing in this section modifies an individual's mandatory abuse reporting obligations.¶~~

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

~~(a) Hear or investigate the matter and/or alleges a civil rights violation or abuse, and shall:¶~~

~~(a) For allegations of civil rights violations or emergency grievances, determine if the grievance makes a decision;¶~~

~~(b) If it appears credible complaint of a civil rights violation or emergency. ¶~~

~~(b) If the Ombuds determines that the grievance does not make a credible allegation of a civil rights violation or emergency, the grievance, send the matter to the interdisci is returned to the formal grievance process as set out in 309-118-0020.¶~~

~~(A) If the grievance makes a credible complainary team for attempted rest of a civil rights violation; 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 emergency, the grievance is not subject to requirements set out in OAR 309-118-0020, and the Ombuds shall:¶~~

~~(i) Investigate the alleged violation; and¶~~

~~(ii) Provide the patient and Superintendent with a written response within 30 business days.¶~~

~~(iii) Once a written response has been provided as set out in this subsection, if the patient is dissatisfied with the written response, the patient may seek OHA Review as set out in OAR 309-118-0020(4).¶~~

~~(B) Nothing in this section effects any rights a patient may have to seek recourse through the courts or other process.¶~~

~~(C) Refer all allegations of abuse; theno 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 agency responsible for coordinating and conducting abuse investigations as set out in ORS 430.745 and OAR 407-045-0150 through 407-045-0240.¶~~

~~(i) While the agency responsible for investigating allegations of abuse reviews the allegation, the OSH formal grievance process is suspended pending the outcome of that review.¶~~

~~(ii) If the agency responsible for investigating allegations of abuse declines to investigate the allegation, upon written notification from the agency, the OSH formal grievance process as set out in OAR 309-118-0020 is resumed. ¶~~

~~(iii) If after the agency response to anible for investigating allegations of patient or resident abuse, the patient or resident may appeal to the Administrator of the Division abuse investigates the allegation, if the patient is dissatisfied with result of that investigation, the patient may still grieve the issue, provided that they refile the grievance using the formal grievance process as set out in OAR 309-118-0020.~~

Statutory/Other Authority: ORS 179.040, 413.042, 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, 179.360

AMEND: 309-118-0030

RULE SUMMARY: Who can represent the patient

CHANGES TO RULE:

309-118-0030

Representatives ¶¶

~~(1) A patient or resident shall have~~has the right ~~not to be~~to have a 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~~ative, as defined in OAR 309-118-0005, to assist them in the grievance process. Another patient may not act for~~as~~ 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 resident patient's representative for the grievance process.¶¶

~~(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~~ss, if the patient and the representative ~~dis~~is acting on their behalf with respect to the subject matter of agree about 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 t,~~ the patient's grievance will be addressed, except whe 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~~ the representative is the patient's legal guardian and has legal authority to make decisions on behalf of the patient.

Statutory/Other Authority: 179.321, 179.360, ORS 179.040, 413.042

Statutes/Other Implemented: 179.321, 179.360, ORS 426.385

AMEND: 309-118-0035

RULE SUMMARY: Describes what staff should do during the grievance process

CHANGES TO RULE:

309-118-0035

Responsibilities of OSH Staff Role in Grievance Procedures

~~(1) The superintendent shall ensure 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~~
All OSH staff shall be notified in writing at the commencement of their employment, or, for present staff, within a reasonable time of the effective date of these rules to the grievance rights, policies, and procedures, the designated staff person should make set forth in these rules.

~~(2) All OSH staff shall assist 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 committees necessary in utilizing the grievance process.~~

(3) All OSH staff shall cooperate with the OSH Ombuds, Superintendent, and the OHA Director in the resolution of grievances.

Statutory/Other Authority: ORS 179.040, 413.042, 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0040

RULE SUMMARY: Notification that these rules do not create a contested case subject to judicial review

CHANGES TO RULE:

309-118-0040

Review by Courts ¶

(1) 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. ¶

(2) These rules do not create a contested case subject to judicial review.

Statutory/Other Authority: ORS 179.040, 413.042, 179.321, 179.360

Statutes/Other Implemented: ORS 426.385, 179.321, 179.360

REPEAL: 309-118-0045

RULE SUMMARY: Describes what the grievance committee does

CHANGES TO RULE:

~~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~~

AMEND: 309-118-0050

RULE SUMMARY: Describes patient notification procedure, orally and in writing as set forth in these rules.

CHANGES TO RULE:

309-118-0050

Posting of OSH Grievance Procedures II

Upon admission, ~~state institutions~~ OSH shall inform patients ~~and residents,~~ both 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~~ OSH unit, suite and cottage. Copies of the OSH grievance Statement and Request of a Grievance and review forms shall be accessible and available to patients and ~~residents and~~ their representatives.

Statutory/Other Authority: ORS 179.040, 413.042, 176.321, 179.360

Statutes/Other Implemented: ORS 426.385, 176.321, 179.360

ADOPT: 309-118-0060

RULE SUMMARY: Describes the process to follow during a States of Emergency, Public Health Emergencies, Epidemics, Quarantines and Isolation

CHANGES TO RULE:

309-118-0060

States of Emergency, Public Health Emergencies, Epidemics, Quarantines and Isolation

In case of a state of emergency or public health emergency, or where OSH has designated quarantine or isolation units in response to a communicable disease outbreak or epidemic, patients or their representative will continue to receive a written response to the grievance or grievance review within the timeframes as set out in OAR 309-118-0020 and 309-118-0025, unless due to the state of emergency, notification is not possible.¶

(1) Information will be posted in common areas, and a written notice will be provided to the patient notifying that a state of emergency or public health emergency has been declared, or that a communicable disease outbreak or epidemic has caused OSH to designate and use quarantine and isolation units;¶

(2) Once the state of emergency or public health emergency has been terminated, or in the case of a communicable disease outbreak or epidemic, OSH has determined quarantine and isolation units are no longer required to protect the health and safety of patients and staff, the grievance and grievance review process will revert to the original process as outlined in the rules set out in OAR 309-118-0020 and 309-118-0025.

Statutory/Other Authority: ORS 179.040, ORS 179.321, 179.360, 413.042

Statutes/Other Implemented: ORS 179.321, 179.360, 426.385