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## PERMANENT ADMINISTRATIVE ORDER

### BHS 25-2022

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

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#### RULES:

309-118-0000, 309-118-0005, 309-118-0010, 309-118-0015, 309-118-0020, 309-118-0023, 309-118-0025, 309-118-0030, 309-118-0035, 309-118-0040, 309-118-0046, 309-118-0050, 309-118-0060

AMEND: 309-118-0000

REPEAL: Temporary 309-118-0000 from BHS 10-2022

RULE TITLE: Purpose and Scope

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Purpose and Scope: Prescribes the standards and procedures for the OSH patient grievance process, and review process of grievance resolutions.

#### RULE TEXT:

These rules prescribe a process to address the informal complaints and grievances that an Oregon State Hospital patient, or a representative on the patient's behalf, might have in regards to the hospital or its staff. These rules also establish a review process for patients or their representatives who are not satisfied with the resolution of their grievances.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0005

REPEAL: Temporary 309-118-0005 from BHS 10-2022

RULE TITLE: Definitions

NOTICE FILED DATE: 06/29/2022

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

RULE TEXT:

As used in these rules:

(1) "Abuse" means any act or absence of action toward a patient by staff that falls within the definition of abuse found in ORS 430.735.

(2) "Allegation of Abuse" means a grievance by a patient or their representative alleging that the patient has been abused by OSH staff.

(3) "Communicable Disease" means a disease or condition, the infectious agent of which may be transmitted by any means from one individual or from an animal to an individual, that may result in illness, death or severe disability.

(4) "Director" or "OHA Director" means the individual appointed by the governor to act as the executive head of OHA and is the governing body of OSH. For purposes of these rules, "Director" or "OHA Director" also includes the Director's designee.

(5) "Grievance" means a patient's or their representative's complaint regarding:

(a) The substance or application of any rule or OSH policy that adversely affects the patient;

(b) The lack of a rule or OSH policy concerning a matter that adversely affects the patient; or

(c) Any decision or action by OSH staff that adversely affects the patient.

(6) "Grievance Committee" means a committee at OSH, delegated by the Director of the Oregon Health Authority, to have the responsibility of reviewing and resolving all patient grievances, and is made up of more than one OSH or OHA staff member.

(7) "Informal Complaint" means a patient's or their representative's written or verbal complaint involving a relatively minor request or dissatisfaction regarding the patient's care that can be addressed at the time of the complaint by staff present. Examples include: a change in bedding, housekeeping of a room, and serving a preferred food and beverage. An informal complaint does not include:

(a) An allegation of abuse, neglect, patient harm, or the hospital's compliance with CMS requirements; or

(b) An issue that cannot be resolved at the time of the complaint by staff present, is postponed for later resolution, is referred to other staff for later resolution, requires investigation, or requires further actions for resolution.

(8) "Isolation" means the physical separation and confinement of an individual or a group of individuals who are infected or reasonably believed to be infected with a communicable disease or possible communicable disease from non-isolated individuals to prevent or limit the transmission of the disease to non-isolated individuals.

(9) "Oregon Health Authority" or "OHA" means the state agency that is responsible for operating, controlling, managing and supervising OSH.

(10) "Oregon State Hospital" or "OSH" or "hospital" means any campus of the Oregon State Hospital system.

(11) "Ombuds" means an OSH staff member designated by the Superintendent to provide consultation to the Grievance Committee and to potentially provide another level of review of the grievance resolution.

(12) "Patient" means an individual who is receiving care and/or treatment at OSH, whether the program where the individual is receiving care and/or treatment is licensed as hospital level of care or other licensed level of care.

(13) "Quarantine" means the physical separation and confinement of an individual or group of individuals 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 other individuals 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 individuals.

(14) "Representative" means an individual who has the legal authority or agreement of the patient to act on behalf of the

patient with respect to the grievance or review of 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 informal complaint, grievance or review process.

(15) "Review Process" means a separate procedure that allows the Ombuds and/or OHA Director to review the resolution the grievance.

(16) "Superintendent" means the executive head of OSH or their designee.

(17) "Treatment Staff" means OSH staff who provide direct treatment to patients.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0010

REPEAL: Temporary 309-118-0010 from BHS 10-2022

RULE TITLE: Policy Statement

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Policy: Describes OSH policies related to complaints and grievances.

RULE TEXT:

- (1) It is the policy of OSH that the care and treatment of its patients be administered in a manner that preserves their civil and legal rights. OSH will maintain a process for patients and their representatives to resolve informal complaints or grievances concerning the patient's care, treatment and rights. It is OSH's policy to encourage all personnel to alert treatment staff concerning any patient's or their representative's informal complaint, grievance, or request for review.
- (2) OSH recognizes the responsibility and authority of other state and federal agencies to receive and review complaints from patients or their representatives. No patient or representative shall be subjected to reprisal by OSH or OSH staff for contacting or seeking review of an informal complaint or grievance under these rules or outside of OSH.
- (3) A patient or patient's representative who files an informal complaint or grievance may pursue other remedies, including, but not limited to, filing a grievance directly with the state agency that has licensure survey responsibility over OSH.
- (4) If the grievance involves an allegation of abuse, the Grievance Committee shall refer the allegation immediately to the agency responsible for investigating patient abuse pursuant to ORS 430.745 and OAR 407-045-1050 through OAR 407-045-0240.
- (5) Nothing in this section modifies an individual's mandatory abuse reporting obligations.
- (6) Nothing in these rules is intended to affect the right of a patient to seek independent redress of grievances by access to state or federal courts.

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

REPEAL: Temporary 309-118-0015 from BHS 10-2022

RULE TITLE: Issues Ineligible for Grievance or Review Process

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Issues Ineligible for Grievance Process: Describes issues that are not covered by the OSH grievance process or OSH and OHA Review processes.

RULE TEXT:

Notwithstanding the definition of a grievance in OAR 309-118-0005, a patient's or their representative's complaint shall not be processed through the grievance or review procedures set forth in these rules if:

- (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, including but not limited to institutional reimbursement orders, 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 patient has previously submitted a grievance or review request on the issue that resulted in a written response, and nothing has occurred that changes the previous response;
- (4) Grieving an issue on behalf of another patient;
- (5) Statements that do not allege a grievance; or
- (6) Disagreements about a treating practitioner's medical diagnosis of the patient.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0020

REPEAL: Temporary 309-118-0020 from BHS 10-2022

RULE TITLE: Grievance Process

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Grievance Process: Describes OSH's complaint and grievance process.

RULE TEXT:

(1) Informal Complaint: Whenever possible, a patient or patient's representative should attempt to present and resolve complaints informally with the individual(s) involved in the complaint.

(a) An informal complaint may be made verbally or in writing by the patient or patient's representative, provided that the writing is not on an OSH Grievance Form.

(b) No written response is required for an informal complaint.

(c) Informal complaints are not subject to review or appeal.

(d) If the patient is dissatisfied with the outcome of the informal complaint or the issue qualifies as a grievance, then the treatment staff shall provide the patient or their representative with the OSH Grievance Form and assist the patient or their representative with completing the form if requested.

(2) Grievance: A patient or their representative may submit a grievance using the OSH Grievance Form, and may request treatment staff to assist them with completion of the form. The form shall provide notice to the patient or their representative that the grievance may be submitted directly to the state agency that has licensure survey responsibility over OSH, and provide the patient or their representative with the contact information for that agency.

(a) A grievance must include a reason for the grievance and a proposed resolution and must be set out in writing on an OSH Grievance Form.

(b) The patient or their representative must put the completed OSH Grievance Form into the designated grievance area;

(c) Upon receipt of the Grievance form, the Grievance Committee shall:

(A) Assign a treatment staff member, who is not the subject of the grievance, to discuss the matter personally, either in person or through simultaneous telephonic or video means, with the patient and, if applicable, their representative, unless the patient or their representative declines to meet with the treatment staff member;

(B) Consider information provided by the patient or their representative, the assigned treatment staff member, appropriate subject matter experts, and any other information relevant to the grievance;

(C) Prepare a written response to the grievance, which contains: the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion;

(D) Provide a copy of the written response to the patient or their representative and to the Ombuds within 7 calendar days.

(E) Notwithstanding subsection (2)(c)(D) of this rule, the Grievance Committee may extend the 7 calendar day response timeline for good cause, including but not limited to the need for additional investigation, multiple grievances included in one form, the number of grievances being processed at one time by the Grievance Committee, or delays caused by quarantine or isolation. If the response time is extended, within 7 calendar days of the Grievance Form being received, the Grievance Committee shall notify the patient or their representative in writing that their grievance is being reviewed and provide an estimated length of time before the patient will receive their written response of resolution and the good cause reason for the delay.

(F) For purposes of providing a written response or notice of delay under subsections (2)(c)(D) and (E) of this rule, the response or notice will be considered provided on the date that it is personally delivered, mailed by regular mail to the address on record, or by email to the patient or their representative.

(3) The Grievance Committee's written response under subsections (2)(c)(D) and (E) of this rule resolves the grievance for purposes of the grievance process.

(4) Nothing in this rule creates a right to a contested hearing under ORS Chapter 183.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

ADOPT: 309-118-0023

REPEAL: Temporary 309-118-0023 from BHS 10-2022

RULE TITLE: OSH and OHA Review Processes for Resolved Grievances

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: OSH and OHA Review Processes for Resolved Grievances: Sets out the process for OSH and OHA review of grievances that have been resolved by the Grievance Committee.

RULE TEXT:

- (1) OSH and OHA recognize that a patient or their representative may not be satisfied with the resolution of their grievance(s) as provided in OAR 309-118-0020 and therefore provide an optional two-tiered review process.
- (2) OSH Review Process: If the patient or their representative is not satisfied with the resolution of their grievance by the Grievance Committee, the patient or their representative may request an OSH Review.
  - (a) The patient or their representative must complete an OSH Review Form or may request treatment staff to assist them with completion of the form. The patient or their representative must provide a reason why they disagree with the resolution of the grievance and provide a proposed resolution.
  - (b) To be timely, the patient or their representative must provide the completed OSH Review Form to treatment staff to submit to the Ombuds or submit the OSH Review Form directly to the Ombuds within 14 calendar days after receiving the Grievance Committee Response. If the patient or their representative fail to timely request an OSH Review, OSH shall not grant an OSH Review unless there is good cause for the untimely submission. Good cause means a delay caused by something outside the control of the patient or their representative.
  - (c) The Ombuds shall review the OSH Review Form, Grievance Form, and Grievance Committee response. The Ombuds shall also consider information provided by the patient or their representative, any other information relevant to the grievance, and may take any other action to investigate the matter as they deem appropriate.
  - (d) The Ombuds shall provide a written response to the OSH Review Request to the patient or their representative within 14 calendar days of receipt of the request.
- (2) OHA Review Process: If the patient or their representative is not satisfied with the OSH Review Response or did not receive an OSH Review Response within 14 calendar days of submitting their OSH Review Request, the patient or their representative may request an OHA Review.
  - (a) The patient or their representative must complete an OHA Review Form or may request treatment staff to assist them with completion of the form. The patient or their representative must provide a reason why they disagree with the OHA Review Response and provide a proposed resolution.
  - (b) To be timely, the patient or their representative must provide the completed OHA Review Form to treatment staff to submit to the Ombuds or submit the OSH Review Form directly to the Ombuds within 14 calendar days after receiving the OSH Review Response or, if they did not timely receive an OSH Review Response, within 28 calendar days of submitting their OSH Review Request. If the patient or their representative fail to timely request an OHA Review, OSH shall not grant an OHA Review unless there is good cause for the untimely submission. Good cause means a delay caused by something outside of the control of the patient or their representative.
  - (c) The Ombuds shall provide copies of the OHA Review Request, Grievance Form, Grievance Committee's Response, OSH Review Form, and OSH Review Response to the OHA Director.
  - (d) The OHA Director shall review all documents provided and may take any other action to investigate the matter as they deem appropriate.
  - (e) The OHA Director shall provide a written response within 21 calendar days of receipt of an OHA Review Request to the patient or their representative.
  - (f) The OHA Review decision is final and is not subject to further review by OHA.
- (3) Nothing in this section creates a right to a contested hearing under ORS Chapter 183.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360



STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

REPEAL: 309-118-0025

REPEAL: Temporary 309-118-0025 from BHS 10-2022

RULE TITLE: Emergency Grievances, Civil Rights Complaints or Abuse Allegations

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Emergency Grievances, Civil Rights Complaints or Abuse Allegations: Provides direction on reporting specific types of complaints.

RULE TEXT:

(1) If the grievance alleges patient abuse, or the patient believes the grievance is an emergency grievance 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 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 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 is returned to the formal grievance process as set out in 309-118-0020.

(c) If the grievance makes a credible complaint of a civil rights violation or emergency, the grievance is not subject to requirements set out in OAR 309-118-0020, and the Ombuds shall:

(A) Investigate the alleged violation; and

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

(C) 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).

(d) Nothing in this section affects any rights a patient may have to seek recourse through the courts or other process.

(e) Refer all allegations of abuse to the agency responsible for coordinating and conducting abuse investigations as set out in ORS 430.745 and OAR 407-045-0150 through 407-045-0240.

(A) 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.

(B) 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.

(C) If after the agency responsible for investigating allegations of 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, 179.321, 179.360

AMEND: 309-118-0030

REPEAL: Temporary 309-118-0030 from BHS 10-2022

RULE TITLE: Representatives

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Representatives: Sets out the right of a patient to have a representative and outlines the requirements to be a representative.

RULE TEXT:

- (1) A patient has the right to have a representative, as defined in OAR 309-118-0005, to assist them in the grievance and review process. A patient shall not act as a representative for another patient in the grievance process.
- (2) If the patient and the representative disagree about submitting the grievance or request for review, the patient's grievance or review request will be addressed as provided in these rules, except where the representative is the patient's legal guardian or health care representative and has legal authority to make decisions on behalf of the patient.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0035

REPEAL: Temporary 309-118-0035 from BHS 10-2022

RULE TITLE: Responsibilities of OSH Staff in Grievance and Review Process

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Responsibilities of OSH Staff in Grievance and Review Process: Describes responsibilities of treatment staff in relation to the grievance and OSH and OHA Review processes.

RULE TEXT:

(1) Treatment staff and Ombuds shall be notified in writing of the rules and policies related to the grievance and review process.

(2) Treatment staff shall assist the patient or their representative with the grievance and review process upon request.

(a) Treatment staff and Ombuds responsible for administering the grievance or review process shall do so with the intent of achieving a fair resolution.

(b) Treatment staff who assist patients or their representatives in using the grievance or review process shall not be disciplined or otherwise subjected to reprisal for those actions, provided that such individuals act in good faith and for the purpose of protecting the rights of the patient.

(3) All OSH staff shall cooperate with the Grievance Committee, Ombuds, OSH Office of Legal Affairs, and OHA Director in the resolution of grievances or in the review process.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

REPEAL: 309-118-0040

REPEAL: Temporary 309-118-0040 from BHS 10-2022

RULE TITLE: Review by Courts

NOTICE FILED DATE: 06/29/2022

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

RULE TEXT:

(1) Nothing in these rules is intended to affect the right of a patient 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

ADOPT: 309-118-0046

REPEAL: Temporary 309-118-0046 from BHS 10-2022

RULE TITLE: Grievance Committee

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Grievance Committee: Describes the composition and requirements of the Grievance Committee

RULE TEXT:

(1) If any member of the Grievance Committee is the subject of the patient's or their representative's grievance, then that member shall recuse themselves from the decision-making process on that grievance. If recusal will lead to fewer than two members on the Grievance Committee, then another treatment staff member or Ombuds will be assigned to that Grievance Committee.

(2) Prior to serving on a Grievance Committee, all members or potential members shall participate and successfully complete OSH-approved grievance training and review the current grievance policy.

(3) For grievances related to race, religion, national origin, gender identity, sexual orientation, tribal affiliation, cultural practices, immigration status, and limited English proficiency, the Grievance Committee shall consult with the hospital's Liaison to the Office of Equity and Inclusion, the Ombud's office or OSH's Office of Legal Affairs before issuing a written response.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

AMEND: 309-118-0050

REPEAL: Temporary 309-118-0050 from BHS 10-2022

RULE TITLE: Posting of Grievance and Review Process

NOTICE FILED DATE: 06/29/2022

RULE SUMMARY: Posting of OSH Grievance and Review Processes: Requires posting of patient rights related to the grievance and OSH and OHA Review processes.

RULE TEXT:

Upon admission, OSH shall inform patients both orally and in writing, of the rights, policies, and processes set forth in these rules. A clear and simple statement of the grievance and review processes shall be prominently posted in areas frequented by patients, including each OSH unit, suite and cottage. Copies of the OSH Grievance Form, OSH Review Form, and OHA Review Forms shall be accessible and available to patients and their representatives.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 413.042, 179.321, 179.360

STATUTES/OTHER IMPLEMENTED: ORS 426.385, 179.321, 179.360

REPEAL: 309-118-0060

REPEAL: Temporary 309-118-0060 from BHS 10-2022

RULE TITLE: States of Emergency, Public Health Emergencies, Epidemics, Quarantines and Isolation

NOTICE FILED DATE: 06/29/2022

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

RULE TEXT:

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