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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BHS 12-2022

CHAPTER 309

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: HANDLING OF PERSONAL PROPERTY OF PATIENTS AND RESIDENTS IN OREGON STATE HOSPITAL

EFFECTIVE DATE: 07/05/2022 THROUGH 12/31/2022

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NEED FOR THE RULE(S):

OSH is modifying its rules concerning patient property to comply with Center for Medicaid and Medicare Services (CMS) rules and guidelines and to ensure the safety and security of Oregon State Hospital, patients and staff with rules that ensure contraband is not introduced into the hospital. These rules set out processes that mitigate against the introduction of contraband that could pose a health and safety risk to patients and staff. As such, failure to take action could result in the inadvertent introduction of contraband that poses a health and safety risk to patients, staff, and the hospital.

JUSTIFICATION OF TEMPORARY FILING:

OSH is modifying its rules concerning patient mail and packages to comply with Center for Medicaid and Medicare Services (CMS) rules and guidelines and to ensure the safety and security of Oregon State Hospital, patients and staff with rules that ensure contraband is not introduced into the hospital. These rules set out processes that mitigate against the introduction of contraband that could pose a health and safety risk to patients and staff. As such, failure to take action could result in the inadvertent introduction of contraband that poses a health and safety risk to patients, staff, and the hospital. OSH is required to follow CMS rules and guidelines, and it is necessary to implement these rules immediately in order to do so concerning patient property at OSH

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

CMS Report on OSH Junction City, May 5, 2022, available at this link:

<https://www.oregon.gov/oha/OSH/Documents/Oregon%20State%20Junction%20City%2090%20Day%20term%20SOD%2005>

RULES:

309-108-0000, 309-108-0005, 309-108-0010, 309-108-0015, 309-108-0020

AMEND: 309-108-0000

RULE SUMMARY: 309-108-0000 Purpose and Statutory Authority: Prescribes the purpose for the rules concerning

patient personal property.

CHANGES TO RULE:

309-108-0000

Purpose and Statutory Authority ¶

~~(1) Purpose. These rules prescribe the standards and procedures for the handling of personal property of patients and residents in state institutions.¶~~

~~(2) Statutory Authority. These rules are authorized by ORS 179.040 and 413.042 and carry out the provisions of ORS 426.385 Oregon State Hospital patients.~~

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

Statutes/Other Implemented: ORS 179.321, 426.385

AMEND: 309-108-0005

RULE SUMMARY: 309-108-0005 Definitions: Prescribes the definitions used in these rules

CHANGES TO RULE:

309-108-0005

Definitions ¶¶

As used in these rules:¶¶

- (1) "Administrator" means the Assistant Director, Human Resources, and Administrator for Mental Health.¶¶
- ~~Contraband~~ means any controlled substance, drugs not prescribed to the patient, drugs not prescribed or authorized by OSH, drug paraphernalia, weapons, unauthorized currency or prohibited items.¶¶
- (2) "Controlled Substance" means a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 USC 811 to 812, as modified under ORS 475.005 and ORS 475.035.¶¶
- (23) "Division" means the Addictions and Mental Health.¶¶
- ~~Cultural Food/Items~~ means an item that relates to a patient's cultural or ethnic identity.¶¶
- (4) "Division" means the Health Systems Division of the Oregon Health Authority.¶¶
- (35) "Patient" means a person who is receiving Drug" means:¶¶
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement to any of them;¶¶
- (b) Substances intended for use in the diagnosis, caure and treatment in a state institution for the mentally ill, mitigation, treatment or prevention of disease in humans or animals;¶¶
- (c) Substances (other than food) intended to affect the structure or any function of the body of humans or animals, including but not limited to vitamins, supplements, dietary powders, synthetic cathinones, synthetic cannabinoids; or¶¶
- (4d) "Prohibited Item" means:¶¶
- (a) Alcoholic beverages, controlled substances, and prescription and non-prescription drugs or medications; Substances intended for use as a component of any article specified in paragraph (a), (b) or (c) of this subsection; however, the term does not include devices or their components, parts or accessories.¶¶
- (6) "Drug Paraphernalia" means all equipment, products and materials of any kind that are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.752 to 475.980.¶¶
- (b7) Any item that reasonably can be used as a weapon or instrument of escape;¶¶
- (c) Any item the possession of which is detrimental to the treatment and training or health and safety o"Excess Personal Property" means property which cannot be stored in the designated storage in the patient's room or personal storage space on the unit. ¶¶
- (8) "Good Faith Belief" means an honest or sincere belief in something.¶¶
- (9) "Harassment" means a patient who is communicating or attempting to communicate with an individual or entity that they are prohibited from contacting by a court order, treatment care plan, or other legal requirement. ¶¶
- (10) "Limited Access Item" means an item that could pose a safety or security risk in the possession of a patient but is permitted for a set duration of time with the prior authorization of OSH staff and, if applicable, with the direct supervision of OSH staff. A limited access item becomes a prohibited item if the patients or residents in a particular ward or cottage and which is prohibited in writing and posted on the affected ward or cottage; and¶¶
- (d) Any item the possession of which is detrimental to the treatment and training of an individual patient or resident and which is recorded in the treatment possesses or uses the item outside of the scope of the authorization or without OSH staff supervision if required. ¶¶
- (11) "Oregon State Hospital" or "OSH" or "hospital" means any campus of the Oregon State Hospital system.¶¶
- (12) "OSH Market" means an on-site retail establishment where patients may purchase unrestricted items or authorized limited access items.¶¶
- (13) "OSH Staff" means OSH employees, contractors, interns, and volunteers who have direct or indirect contact with patients.¶¶
- (14) "Package" means any item sent by or received by a patient that does not meet the definition of mail, journalist mail, or legal mail.¶¶
- (a) "Authorized Package" means a package received by OSH for a patient that has been prior authorized under these rules. ¶¶
- (b) "Unauthorized Package" any package that is not an authorized package.¶¶

(15) "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.

(16) "Patient Clothing" means an item worn to cover the patient's body.

(17) "Patient Property Room" means a designated area where patients may store personal property in a designated bin that ~~and training orders~~ section of the patient's or resident's chart by the treating physician or qualified mental retardation professional.

(5) "Qualified Mental Retardation Professional" means a person who meets the professional requirements prescribed by 42 CFR 442.401 or as amended ~~not be stored in their room.~~

(18) "Personal Bedding" means two pillows, one blanket or comforter, and one sheet set.

(19) "Personal Property" means unrestricted items that belong to the patient that can be kept in the designated storage of the patient's room or patient property room.

(20) "Prohibited Item" means:

(a) Alcohol;

(b) Possession of drugs in the patient's room without authorization by OSH;

(c) Any item that reasonably could be used to escape or leave the hospital without authorization;

(d) Food stored in the patient room or in the patient's storage in the patient property room;

(e) Any item in the possession of a patient who is prohibited from possessing or using that item in their treatment care plan because it is considered detrimental to their treatment;

(f) Excess personal property;

(g) Any limited access item in the possession of a patient that exceeds the scope of the authorization or is not being supervised by OSH staff as required; or

(h) Any item that could pose a safety or security risk for the hospital.

(21) "Reading Materials" means a written or printed work consisting of pages glued or sewn together along one side and bound in covers, such as books or magazines.

(622) "Reasonable Cause" means that the person an OSH staff member has knowledge or notice of facts ~~and or~~ circumstances which would lead a person of ordinary care and prudence to have a strong suspicion.

(7) "Search" means a close inspection of a patient/resident's person, and a patient/resident ~~and the rational~~ inferences drawn therefrom that would lead a reasonable and experienced OSH staff member to come to a conclusion.

(23) "Religious Item" means an item that is associated with the patient's particular system of faith and worship.

(24) "Safety" means protecting the patient and others from potential harm, or preventing the patient from escaping or leaving without authorization, damaging state property, damaging the patient's or another patient's personal property, or committing or attempting to commit a crime.

(25) "Search" means a close inspection, including physical contact of a patient, of a person's room or living area ~~and~~ personal property whenever, or of the patient's personal property. Searches may require the re-is-a-reasonable cause that said patient/resident may be in possess ~~moval~~ and separate inspection of shoes, jackets, purses, bags and other accessories.

(26) "Security inspection" means a visual inspection of ~~r~~ a prohibited item.

(8) "Resident" means a person who is receiving care, ~~re~~non-invasive inspection using a device (e.g., metal detector, x-ray), without the element of a personal contact search.

(27) "Security Reason" means protecting the patmient, ~~and training in a state institution for the mentally retarded~~ from serious and immediate harm and protecting others from threats or harassment.

(28) "Superintendent" means the executive head of the Oregon State Hospital or the Superintendent's designee.

(29) "State Institution" means Dammasch State Hospital in Wilsonville, Oregon State Hospital in Salem, Fairview Training Center in Salem, and Eastern Oregon Psychiatric Center and Eastern Oregon Training Center in Pendleton

Threat" means the patient expressing an intent to harm, cause alarm to, or intimidate another individual.

(30) "Treatment Care Plan" means an individualized and comprehensive written plan of therapeutic interventions designed, in collaboration between the patient and their treatment team, to facilitate rehabilitation of psychiatric symptoms.

(31) "Unauthorized Currency" means paper money and coins in the possession of a patient in an amount or in a location not authorized by OSH.

(1032) "SupeUnrestrictentendd Items" means the executive head of the state institution ~~as~~any item that is not contraband and has been authorized by OSH for the patient's use or possession.

(33) "Weapon" means any item that can be used or modified to be used to harm the patient or others, including but not limited in section (9) of this rule to guns, knives, improvised pointed or bladed instrument, and pepper spray.

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

Statutes/Other Implemented: ORS 179.321, 426.385

AMEND: 309-108-0010

RULE SUMMARY: 309-108-0010 Policy: Sets out the policies concerning patient property, storage, restrictions, inspections or se

CHANGES TO RULE:

309-108-0010

Policy ¶

(1) ~~All patients and resid~~Patients shall have the right to ~~retain~~possess and use on each ~~ward or cottage~~unit reasonable amount of ~~personal property~~ right to possess or use ~~contraband or prohibited items~~. In addition to these rules, OSH maintains a list of items that it has de

July 1, 2022, available at OSH's website for Policies and Procedures

(<https://www.oregon.gov/oha/OSH/Pages/Policies.aspx?RootFolder=%2Foha%2FOSH%2FPolicies%2F8%2E044%20Contra%2F3D33-4C4A-89C9-6D0B57AEFF54%7d>) Patients may also request a paper copy which shall also be posted in areas frequ

(2) OSH shall provide each patient with accessible storage for reasonable amounts of personal property:¶

(a) P in the patient's and residroom and in the patient property room. Patients who needing specific assistance in exercising

(b) Each state institution shall develop procedures to protect the personal property of patients and residents against theft b

(23) State institutions OSH shall designate one or more locations for storage of reasonable amounts of excess personal prop
size or amount.¶

(3) State institutions shall provide a secure location for storage of patients' and residents' valuables. Valuables include, but n
representative, family member, or cottage, heirlooms, credit cards, driver's license and an her individual designated by other
retained in a secure location.¶

(4) Excess property and valuables shall be returned to the patient or resident upon release or discharge of the patient or res

(5) Prohibited items shall be handled as provided in OAR 309-108-0015(6) to the patient's guardian or legal representative.

(65) State institutions OSH may restrict the amount of cash/urrency allowed to be retained by patients or residents on the liv

(7) A patient/resident may be searched by Division personnel whenever said personnel have reasonable cause to believ the

(8) No employee or any person acting through, or on behalf of the Division shall censor a patient's or resident's personal pro

resident's record by the treating physiciao an individual listed in section (2) of this rule, or deposited in the patient's trust a

(6) OSH may conduct a security inspection or search of a patient, patient's room or qualified mental retardation professiona

(97) Patients and residents shall have the right to appeal the application of any portion of these ru
Contraband, including pro

(10) Violation of the rights, policies, and procedures set forth in these rules by an employee of the Division constitutes caus

(8) The patient may contest the application of these rules under OSH's grievance and review process in OAR chapter 309, d

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

Statutes/Other Implemented: ORS 179.321, 426.385

AMEND: 309-108-0015

RULE SUMMARY: 309-108-0015 Procedures: Sets out the procedures for OSH staff in identifying and processing patient property, searches for and processing and/or disposal of contraband from OSH.

CHANGES TO RULE:

309-108-0015
Procedures ¶¶

(1) All personal property that a patient ~~or resident~~ brings into the ~~institution~~ hospital at the time of admission must be itemized in writing with an accompanying description, regardless of where or how the item is stored or otherwise disposed.¶¶

(2) ~~SO~~ OSH staff shall encourage and assist patients ~~and residents~~ to mark all personal property in such a way which identifies it as an individual patient's ~~or resident's~~ possession.¶¶

(3) Any medications brought by the patient ~~or resident~~ at the time of admission should be ~~sent home with a legal guardian~~ given to the patient's guardian, legal representative, or family member if possible. If this is not possible, the medication ~~must be marked with the patient's or resident's name and case number and sent to the pharmacy of the state institution until the patient or resident is discharged.~~¶¶

~~(4) Patients and resid~~ shall be placed in the medical waste barrel for later destruction. Any controlled substances shall be destroyed and logged in the pharmacy record.¶¶

~~(4) If OSH identifies a prohibited item in the possession of the patient, in the patient's~~ may bring, or have brought or sent in, nutritional supplements (e.g., vitamins and minerals), and may use them room or living area, or in their personal/excess property, OSH shall:¶¶

(a) Store the item as excess personal property; ¶¶

(b) Provided that the patient's or resident's treating physician inspects, tests, or otherwise checks the substance claimed to be a nutritional supplee item to an individual listed in OAR 309-108-0010(2); or ¶¶

(c) Dispose of any prohibited items that may pose a safety or security risk. Disposal shall be documented and determines that:¶¶

(a) The substance is a nutritional supplement; shall be witnessed by two OSH staff members.¶¶

~~(b5) The substance is safe for hum~~ lf OSH identifies any consumption or use; and¶¶

(c) Use or consumption of the nutritional supplement will not interfere with rolled substances, drug paraphernalia, or weapons in the testing, diagnosis, tre possession of the patmient, or training of in the patient or resident; and¶¶

(d) The nutritional supplements are kept by the ward or cottage staff in a secure place and dispensed upon request: s room or living area, or in their personal/excess property, then OSH shall:¶¶

(a) Create a chain of custody and hold the item in a secure area;¶¶

~~(5b) Any items sent through the mail or given by a visitor to a patient or resident become the personal property of that patient or resident and shall be handled in accordance with the procedures set forth in these rules.~~¶¶

~~(6) Prohibited items shall be handled as follows:~~¶¶

(a) The rules regard Contact law enforcement and turn over the contraband, if law enforcement is willing to accept it, and document the action taken;¶¶

(c) If law enforcement declines to investigate further or accept the contraband, then dispose of the contraband ing the possession of prohibited items shall be discussed with the patient or resident and if the patient or resident is an unemancipated minor or legally incapacitated, resence of at least two OSH staff, and document the action taken.¶¶

(6) If OSH identifies any drugs not prescribed to the patient's or resident's parent or legal guardian, and such items shall be dis, drugs not prescribed or authorized by OSH, or unauthorized currency in the posed of as follows:¶¶

(A) Given to the patient's or resident's ssion of the patient, in the partient, guardian, spouse, friend, attorney's room or living area, or e in their person-designated by the patient or resident; al/excess property, OSH shall:¶¶

(Ba) In the case of gifts, returned to the sender or giver;¶¶

(C) Kept in a secure location on the ward or cottage or central location of the institution for delivery Follow the process in section (4) of this rule if OSH does not have a good cause belief that the drugs not prescribed to the patient or resident upon release or discharge from the institution; or¶¶

(D) Destroyed in the presence of at least two employees of the state institution.¶¶

(b) If agreement cannot be reached over the disposition of such items, the patient or resident may appeal the proposed disposition of prohibited items pursuant to the Division's grievance procedures in OAR 309-118-0000 through 309-118-0050. T, drugs not prescribed or authorized by OSH, or the unauthorized currency are evidence of a crime or attempted crime; or¶¶

(b) Follow the process in section (5) of this rule if OSH has a good cause belief that the drugs not prescribed to the state institution mus patient, drugs not pretain the prohibited item in a secure location until a decision is made;¶¶

~~(c) The possession of items prohibited by law shall be turned over to the appropriate law enforcement authorities scribed or authorized by OSH, or the unauthorized currency are evidence of a crime or attempted crime. ¶~~

(7) Searches shall adhere to the following restrictions:¶

~~(a) Except for visual inspection of nose, mouth or ears without digital intrusion, all~~ Searches of a patient that require physical contact shall be conducted by a physician, a nurse, or a same-sex OSH staff member (who is not a physician or a nurse), except in cases of emergencies. ¶

~~(b) Searches of the patient that require digital or internal examinations must shall~~ be conducted by either a physician or a nurse and only upon authorization of the sSuperintendent or designee;¶

~~(b) Except for physicians and nurses, only same sex personnel shall carry out searches of a patient/resident's person except in emergencies, except in emergencies where harm or injury may occur to the patient by delaying the search;¶~~

(c) Upon the completion of a searches of a patient/~~resident's's room~~, living area and/or personal/~~excess~~ property, OSH staff shall return the area to a neat and orderly condition and ensure that ~~authorized property is in no way damaged or dispossessed.¶~~

~~(8) State institutions~~ the personal/excess property is returned in the same condition.¶

(8) OSH shall develop written procedures for handling missing personal or excess property. These procedures may include the involvement of law enforcement authorities.¶

(9) The patient may contest the application of these rules under OSH's grievance and review process in OAR chapter 309, division 118.

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

Statutes/Other Implemented: ORS 179.321, 426.385

AMEND: 309-108-0020

RULE SUMMARY: 309-108-0020 Notice to Patients and OSH Staff: Requires patient and staff notification of the policies and procedures in these rules

CHANGES TO RULE:

309-108-0020

Notice to Patients, ~~Residents, and Employees~~ and OSH Staff ¶

~~(1) Upon admission, state institutions shall inform patients and residents, orally and in writing, to OSH, patients shall be informed of their rights, policies, and procedures set forth in these rules. In addition, a clear and simple statement of the title and number of these rules, their general purpose, and under these rules, both verbally and in writing, and will be provided instructions on how to obtain a copy of these rules and how to seek advice about their content. Information about these rules shall also be prominently displayed in areas frequented by patients and residents in all state institutions.¶~~

~~(2) All employees of state institutions.¶~~

~~(2) OSH staff~~ shall be notified in writing at the commencement of their employment, or, for ~~present employees~~ existing OSH staff, within a reasonable time of the effective date of these rules, of the rights, policies, and procedures set forth in these rules. OSH staff shall review the rules, policies, procedures and updates annually.¶

~~(3) Violation of these rules and any related OSH policies or procedures by OSH staff may constitute cause for disciplinary action.~~

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

Statutes/Other Implemented: ORS 179.321, 426.385