



**Hemodialysis Technician Certification Requirements
Rule Advisory Committee
September 29, 2022
9:00 a.m. – 12:00 p.m. via Zoom**

RAC MEMBER ATTENDEES	
Barbara Dommert-Breckler	Comagine Health ESRD Network 16
Corey White	Dialysis Systems Management
Elizabeth Ross	Oregon Medical Board
Elizabeth Vang	US Renal Care
Gretchen Koch	Oregon State Board of Nursing
Jason Scott	US Renal Care
Jeninne Zimmerman (for Jackie Chandler)	Oregon Association of Hospital & Health Systems; Good Samaritan Hospital
Kendall Beatty	US Renal Care
Lynn Ellis	Fresenius
Omar Rios	Fresenius
Phuong Nguyen	US Renal Care
Shannon White	Dialysis Systems Management
Shilah LaMay	US Renal Care
Trish Hayden	Davita Kidney Care
INTERESTED PERSON	
Scott White	Dialysis Systems Management
Oregon Health Authority Staff	
Janis McDowell	Public Health Division, Health Facility Licensing and Certification
John Adams	Public Health Division, Health Facility Licensing and Certification
Lori Brown	Public Health Division, Health Facility Licensing and Certification
Matt Gilman	Public Health Division, Health Facility Licensing and Certification
Mellony Bernal	Public Health Division, Health Care Regulation & Quality Improvement
Sonya Wasson	Public Health Division, Health Facility Licensing and Certification

Welcome, Housekeeping and Agenda Review
<p>Mellony Bernal introduced self and welcomed attendees to the Hemodialysis Technician Certification Rule Advisory Committee (RAC). Housekeeping items were reviewed, including:</p> <ul style="list-style-type: none"> Attendees were asked to enter their name, title and organization into the Chat and identify whether they were a RAC member or a member of the public. RAC members were asked to type the word "Comment" to indicate they wanted to address a specific issue or ask questions. RAC members were told that they would be called upon in

the order appearing in the Chat. RAC members who did not want to speak but wanted the agency to consider information were asked to type into the Chat “For Your Information” or “For the Record” and include the information they wished to share.

- It was noted that, pursuant to the OHA policy, members of the public may attend but may not participate or offer public comment during the meeting. Members of the public who wanted to provide comments or information were instructed to email those comments to mellony.c.bernal@dhsosha.state.or.us.
- It was further noted that after the RAC process has concluded, there would be an opportunity to provide oral public comments at a public hearing, or to send written public comments during the public comment period. Information about the notice of proposed rulemaking and public hearing were to be shared by email. Persons interested in receiving notices through the program's listserv can sign up for the listserv at: https://public.govdelivery.com/accounts/ORDHS/subscriber/new?qsp=ORDHS_16
- The RAC meeting was recorded for purposes of generating written meeting notes.

The agenda was reviewed by M. Bernal.

Rulemaking Advisory Committee Overview and Scope

Overview

M. Bernal shared the following regarding the purpose and scope of Rules Advisory Committees (RACs):

- State agencies convene RACs for a variety of reasons, including when the legislature passes laws that require rules be adopted, when the legislature delegates broad statutory authority and the agency must interpret those laws by rule, and amending, repealing or suspending existing rules.
- RAC membership typically includes persons and communities that are most likely to be affected by the proposed rules, including representation from licensed facilities, special interest groups and associations.
- The Health Facility Licensing and Certification (HFLC) program drafts the proposed rule text and convenes the RAC to gather input and suggestions on the rule text and consider possible changes, concerns, issues, etc. Additionally, the RAC will review the Statement of Need and Fiscal Impact (SNFI), which also includes a statement on how the proposed rules may affect racial equity in Oregon.
- The RACs role is advisory only and consensus is not necessary. The HFLC program retains the final decision-making authority on final rule text.
- Considering information provided by the RAC, the HFLC program will finalize proposed rule text and submit a notice of proposed rulemaking to the Secretary of State along with the SNFI.
- A public hearing will be scheduled where persons can present oral testimony or submit written comments. The public hearing's officer that presides over the public hearing will generate a report summarizing the comments.
- The HFLC program will review and consider all of the testimony and comments received and determine whether additional changes to the rule are necessary based on those comments. Regardless of subsequent rule text changes based on comments received, the HFLC program will provide a response to the testimony and comments received.

- The HFCLC program will finalize rule text and determine effective date and file permanent rulemaking notice with the Secretary of State's office.

Scope

- The purpose of this RAC was to consider proposed changes to the certification requirements for hemodialysis technicians in Oregon. The current rules were adopted in 2001 and no changes have occurred in the past 21 years, with the exception of the emergency certification requirements in response to the COVID-19 pandemic. Amendments have been made to align with standard licensing processes and procedures.
- The RAC was asked to consider proposed amendments, including possible fiscal and economic impact on dialysis facilities and persons seeking certification as a hemodialysis technician or renewal as well as effects on local government, the public, and small businesses. The RAC was also asked to consider the effect on racial equity in Oregon.
- The number of meetings will depend on how quickly the RAC can work through the amended rule text. No more than two meetings were anticipated.
- Staff acknowledged that while most revisions will be discussed during the meeting, additional changes may take place between meetings and RAC members will be advised about any updates. It was noted that the counsel from the Department of Justice must review all of HFCLC's rules, which may result in changes outside the scope of the RAC meeting.
- HFCLC staff will consider information and comments shared by the RAC and finalize proposed text for filing with the Secretary of State's office.
- Goal is to have final proposed rules submitted to the Public Health Division's Rule's Coordinator by November 7 for posting in the December 1 Oregon Bulletin. If this time frame is met, a public hearing could be scheduled on or after December 15 with the written public comment period ending on or around December 22.
- New rules could be effective January 1, 2023.

Administrative Rule Review

M. Bernal shared information on the structure of administrative rule numbers and began the discussion on the proposed amendments.

OAR 333-275-0001 – Purpose

This rule describes the purpose of the rules and only minor modifications were made, including updating statute and rule numbers.

RAC members had no comments.

ACTION – None

OAR 333-275-0010 – Definitions

Definitions have been modified to align with statute, add more clarity, or remove terms not used in rule or no longer needed.

- "Authority" replaced references to Public Health Division.
- "Certified hemodialysis technician" refers to statute.
- "Contact hour" removed.
- "Criminal records check" defined for purposes of rule revisions.

- "Declared emergency" defined for purposes of provisional certifications during an emergency and emergency certification rules.
- "Direct supervision" was modified removing reference to licensed practical nurse (LPN) and incorporating that the nurse or physician is actively involved in the direct oversight and training of the trainee hemodialysis technician or certified hemodialysis technician (CHDT). It was noted that ORS 688.635 does not include an LPN.
- "Division," "Division approved certification," "End stage renal disease," "Law Enforcement Data System," and "License" were removed.
- References to the approved certifying bodies under "national certification exam" were removed and placed within rule text.
- Definitions for "nurse practitioner," "registered nurse," and "physician" were added.
- "Provisional certificate" and the term "these rules" were defined.

Discussion:

M. Bernal asked RAC members whether there were any concerns regarding removing reference to the LPN from 'direct supervision' definition. RAC members did not have any comments on the LPN. RAC member did ask whether there was any consideration for including physician assistants (PAs) given the RN shortage. The RAC member shared that some nephrology offices are using PAs rather than dialysis providers. M. Bernal asked facilities to share whether any physician assistants are used in the field. It was noted that a change in statute may be necessary.

- RAC member indicated via Chat that PAs are not used in US Renal Care facilities for any sort of oversight.
- RAC member asked via Chat, 'With the RN shortage, would we want to include LPN?' Staff responded that we must still comply with statute which does not include the LPN and a statutory amendment would be needed that could take a lot of time.
- RAC member noted that the statute does not include PAs.
- RAC member indicated via Chat that PAs and NPs lack the technical expertise required to operate dialysis machines or the initiation/discontinuation process and as such would not be able to intervene or provide direct oversight of the training.
- RAC member indicated that based on definition the physician or nurse practitioner must be present in the facility at all times, which is not feasible. Staff inquired who would be providing oversight if those providers are not in the facility and RAC member responded it would be the floor nurse. Based on statute, a CHDT may be under the supervision of a registered nurse.

Under section (20), RAC member suggested via Chat to amend the definition of "Trainee" by removing the term "clinical" for consistency with the revisions made to OAR 333-275-0100(4).

ACTION – Consider amending section (20) by removing reference to term 'clinical' for rule alignment.

OAR 333-275-0020 – Hemodialysis Technician Certification Required

This rule describes the qualifications needed for a person to apply for a certificate issued by the Oregon Health Authority and identifies the approved national certification exams. Rules with dates that are no longer relevant were removed. No changes have occurred to the minimum qualifications. Language has been added providing examples of proof of high school or

equivalency education. The rule text clarifies that for a provisional certificate, completion of a national certification exam is not necessary.

RAC members had no comments.

ACTION – None

OAR 333-275-0030 – Application for Hemodialysis Technician Certificate

This rule clarifies the application process and what constitutes documentation for purposes of evidence of qualification. Criminal background check language was modified. Language was added clarifying when an application is determined incomplete, and that the Authority may reject an incomplete application. Language allowing retention of an incomplete application for one year has been removed as well as an applicant failing to appear for an examination. The following new provisions were added:

- All initial applicants will be required to complete a fingerprint-based criminal background check and the cost to applicant for the background check will be \$58.75;
- If an applicant is licensed by another health professional regulatory boards, the applicant must provide proof of licensure and disclosure of any actions or sanctions against the licensee. Information may be used to determine suitability for hemodialysis technician certification. **Follow-up - While this is new rule text, this information is already gathered as part of the application for purposes of determining suitability.**

RAC members had no comments.

ACTON - None

OAR 333-275-0040 – Application Review and Approval

This rule was renamed but continues to include the criminal background check process. The rule was updated to reflect that the Authority will comply with the Oregon Department of Administrative Services uniform rules ([OAR chapter 125, division 007](#)) for fitness determinations based on passage of [HB 2250 \(2015\)](#). It clarifies that the Authority may issue a certificate if an applicant meets the requirements in rule and statute, or the Authority may investigate based on information found or provided through the background check process.

Discussion:

- RAC member asked via Chat whether the national exam is expected to be kept current once it expires post certification? Staff responded that the proposed rules do not require a CHDT to retain national certification. It was further noted that some corporations require retaining the certification, others encourage retaining the certification while others do not have any requirement. Staff asked for feedback on whether the rules should be amended to require retention of national certification.
 - o RAC member noted that Fresenius requires retaining certification for staff to be able to advance in their position. It was recommended that the rules be revised to require retention of national certification.
 - o RAC member representing US Renal Care noted that it would be beneficial for a patient care technician (PCT) to have both Oregon and national certification. By retaining national certification, a person moving out-of-state is more likely to be able to continue in their role.
 - o RAC member via Chat indicated the ESRD Network agrees with keeping national certification.
 - o RAC member via Chat indicated that Good Samaritan Medical Center in Corvallis requires both Oregon and national certification.
 - o RAC member noted that they have not been required to retain their national certification.
- RAC member questioned whether the proposed rule would require a PCT coming to Oregon to obtain a criminal background check, even if they obtained a background check through their current employer? Staff responded yes. Currently, the Authority obtains a background check on persons living in Oregon. The revised rule will require all persons seeking initial certification in Oregon to complete a fingerprint-based criminal background check in order to identify possible crimes or potentially disqualifying conditions that occurred out-of-state.
 - o RAC member asked if this could potentially slow down the process of a PCT obtaining an Oregon certification. Staff acknowledged there was a significant delay in processing background checks during the height of the COVID-19 pandemic however, that backlog has been cleared. Depending on the number of background checks being conducted it is possible there might be a delay.
 - o RAC member via Chat recommended that the agency consider using a national service should the rules be amended to adopt fingerprint-based background checks to alleviate possible issues with travel to get printed. Staff responded that the State of Oregon has a contract with [Fieldprint](#) which offers Livescan (electronic fingerprinting) across the U.S.
- RAC member commented that retaining national certification is an advancement for a staff member to move forward but the costs associated with this, along with added costs for criminal background checks, creates an additional burden for PCTs who, based on population in Oregon, are not looking to pursue further leadership roles in larger

corporations. It was further noted that nurses are not required to obtain national certification. Retaining national certification should be a company mandate for persons looking for leadership roles versus PCTs working on the floor.

- RAC member state via Chat that if there are companies that are not covering the costs of national certification, background checks, and licensure, this can severely impact equity and equality.
- RAC member noted that because there is no standardization between the training received at a private company, the national certification ensures a consistent level of knowledge.
- RAC member concurred with statement above and noted that requiring the initial national certification exam and retaining that standardization is important. RAC member asked others what is the benefit of have PCTs maintain national certification along with state licensure?
 - RAC member noted that the benefit is for emergency situations and noted that rules should be looked at for the future not just the present. If faced with another pandemic or a hurricane such as the recent hurricane in Florida, having technicians retain a national certification makes the argument for emergency licensure more sustainable because we can prove a certain level of certification.
 - RAC member echoed comments above and noted that with the pandemic, corporations recognized the limited number of Oregon staff who could work in Washington in an emergency situation because many PCTs did not have current national certification. Retaining national certification is strongly encouraged. Persons who did not retain their national certification have not been required to get it back unless they want to work in Washington. It was noted that retaining national certification would be a good practice going forward.
 - RAC member via Chat concurred with comments provided.
 - RAC member agreed with comments but asked whether state licensure would need to be maintained if rules retaining national certification. Staff responded yes as Oregon certification is required by law.
 - RAC member stated via Chat that being certified by the state is beyond satisfactory.

ACTION – Consider amending the rules to require a certified hemodialysis technician to retain national certification.

OAR 333-275-0045 – Denial of Certified Hemodialysis Technician Application

This rule clarifies that the Authority may deny an application and final actions must be done in accordance with ORS chapter 183, the Administrative Procedures Act.

RAC members had no comments.

ACTION – None

OAR 333-275-0050 – Hemodialysis Technician Certification Expiration

Minor changes were made to this rule for clarity.

RAC members had no comments.

ACTION – None

OAR 333-275-0060 – Hemodialysis Technician Certification Renewal

This rule was modified removing dates that were no longer relevant and clarified the renewal application process. The revised rule adds a criminal background check requirement at time of renewal. For residents out-of-state, an additional fingerprint-based background check would be required at the cost of \$58.75. Additional requirements were added for reinstating a certification that had expired – less than 90 days requires payment of late fee; between 90 days and 365 day requires payment of late fee and completion of an abbreviated training program unless; greater than 365 days would require payment of late fee and completion of extended training program. If a CHDT has retained current national certification, completion of the abbreviated or extended training program would not be required. CHDTs who do not provide documentation of minimum hours worked and who do not hold current national certification would need to complete an abbreviated or extended training program, depending on how many hours were unmet.

Discussion:

- RAC member asked whether the fingerprint-based background check would apply for a CHDT moving back into the state. **Follow-up - A nationwide, fingerprint-based check would be required at time of renewal for a CHDT under the following circumstances: 1) the subject individual has been outside of Oregon for 60 or more consecutive days during the previous five years; 2) has out of state residency evidenced by possession of an out-of-state driver's license or state issued ID card; 3) information found in a LEADS check, subject individual disclosures, or other criminal history information indicates there may be criminal records outside of Oregon; and 4) the Authority has reason to question the identity or history of the subject individual.**
 - RAC member asked via Chat what is the reason behind requiring this for out-of-state technicians at renewals? The RAC member asked if there was a way to know if any changes in this area for in-state technicians. Staff replied that for CHDTs that reside in Oregon, at time of renewal, a check of the Law Enforcement Data System (LEADS) is completed to determine whether there has been any criminal activity. A LEADS check would not necessarily capture criminal activity that may have occurred out-of-state. The nationwide, fingerprint check would identify possible criminal activity in other states.
 - RAC member via Chat stated that it would appear that the biggest impact would be for those CHDTs living on the borders that work in a couple of states. Staff responded yes. RAC member responded this could be a large impact, especially for CHDTs that work both in Portland and Washington and who might live across the river in Washington.

ACTION – Consider the possible impact to CHDTs and facilities requiring an additional fingerprint-based background check at time of renewal for technicians that live out-of-state.

OAR 333-275-0070 – Employment and Continuing Education Requirements for Hemodialysis Certification

- Staff noted that the changes to this rule included clarifying existing language. The minimum employment and continuing education requirements were not changed. Added provisions include allowing someone who was on active military duty additional time to complete continuing education requirements; clarification of the types of activity for continuing education where hour for hour credit is granted; clarification that the CHDT is responsible for tracking continuing education and ensuring the continuing education meets the requirements; and clarification of acceptable continuing education documentation requirements.

Discussion:

- RAC member comment that 'it is being regulated to death.' The PCT is the cornerstone of the company and sometimes the least paid. PCTs are being required to do a lot in order to cross state lines and work. Is it too much? It was noted that facilities struggle to find candidates to fill roles and proposed regulations may deter that. Regulations could be detrimental to both small and large companies. RAC member thanked John Adams for his work getting PCTs licensed. Staff thanked RAC member for comments and asked for further clarification on the specific regulations that would be imposing hardship and the background check was noted. Concerns were raised that it appears that there are lot of new regulations when there was no evidence that the process was not working under the current regulations.
- RAC member via Chat agreed with comments "on the amount of cost and regulations to PCTs for the rate of pay they make."
- RAC member via Chat noted that DaVita pays for all certification fees for the PCTs.
- Staff asked whether dialysis facilities currently offer continuing education and track completion of continuing education for their dialysis technicians.
 - RAC member via Chat stated that DaVita provides continuing education opportunities and continuing education is saved on the PCT's electronic learning that can be pulled when needed. The PCT is responsible for tracking.
 - RAC member via Chat stated that Fresenius has CEUs available.
 - RAC member stated that Fresenius offers free CEs. It was noted that BONENT and NNCC offer CEs as well, but there is usually a charge.
 - RAC member via Chat indicated that US Renal Care offers CEUs, but it is the PCT's responsibility to track their number of hours completed. CEUs completed in the electronic learning management system are logged and available for PCTs to retrieve.
 - RAC member via Chat stated they feel it is the responsibility of the PCT to track.
- Staff asked whether the information required for purposes of documenting completion of CE were currently being documented by dialysis facilities. RAC members noted via Chat that neither the instructor's name nor location are included on training documents.
- RAC member via Chat noted that California has a list of certified CE instructors approved for providing CEUs and recommended that Oregon consider having a list of approved providers as well.

ACTION – Consider the following: 1) whether physical location and instructor name are necessary for CE documentation; 2) developing a list of approved CE instructors;

333-275-0080 – Hemodialysis Technician Provisional Certification

This rule specifies the process for an individual to apply for the provisional certification. Dates that are no longer relevant were removed. Language referring to a person obtaining education and training through an educational institution (defined as a community college, college or university, or a career school) was added in the event that hemodialysis technician training may be offered through this avenue in the future. Language was added clarifying that a provisional certificate holder has 12 months from the time of receiving a provisional certificate to pass the national certification exam. A CHDT must report to Authority if they have failed to pass the national certification exam within 12 months. If the provisional certificate holder fails to pass the exam in 12 months, the provisional certificate is revoked. Language further clarifies that an individual whose provisional was revoked for failing to pass the exam may work as a trainee hemodialysis technician until the next exam and must complete an abbreviated training program.

Discussion:

- RAC member inquired whether a PCT would be allowed to work if they failed national certification exam within the 12 months, and they were testing three months later. Staff responded that the PCT would revert to a trainee hemodialysis technician. Once they passed the national exam they would have to apply for a full certification.

ACTION - None

OAR 333-275-0085 – Hemodialysis Technician Provisional Certificate Renewal

New rule clarifies the process for renewing a provisional certificate. Text was added clarifying that a provisional certificate that has been expired for 90 days or less is eligible for reinstatement after completing application and paying late fee; after 90 days the certificate is not eligible for renewal.

RAC members had no comments.

ACTION - None

OAR 333-275-0087 – Temporary Authorization to Practice for a Military Spouse

In accordance with ORS 670.400, agencies that license, certify or otherwise authorize individuals to provide an occupational service are required to issue a temporary authorization to a military spouse whose spouse is stationed in Oregon if they are licensed to practice in another state. The military spouse would need to show proof of out-of-state licensure and must pass a criminal background check. They must also either be nationally certified or provide evidence of meeting the continuing education and employment requirements.

Discussion:

- RAC member noted that a military spouse may have worked for the military and therefore may not have had a license or certificate from the state. **FOLLOW-UP – Per ORS 670.400, in order to be eligible for a temporary authorization the military spouse must hold a license or certification in the other state.**
- RAC member via Chat inquired whether a military spouse must re-obtain national certification if their national certification expires. **FOLLOW-UP – As the rule is currently proposed, a spouse of an armed forces member who is licensed or certified in another**

state is eligible for a temporary authorization to work as a CHDT. The spouse must pass a criminal background check and must EITHER be currently nationally certified or provide evidence that they meet the employment and continuing education hours specified in Oregon rule. Prior to expiration of the temporary authorization, the spouse would need to apply for full certification. The spouse would NOT need to show proof of current national certification in order to obtain full certification unless the rule is amended to require retention of national certification.

ACTION - None

OAR 333-275-0090 – Scope of Practice of Hemodialysis Technician

Only minor changes were made to this rule to provide additional clarity. It was noted that pursuant to ORS 688.635, reference to the LPN was removed and reference to a CHDT being prohibited from altering any treatments prescribed by a physician was added. Staff noted that pursuant to ORS 688.635, the Oregon Medical Board (OMB) and Oregon State Board of Nursing (OSBN) were invited to participate in this RAC meeting should the RAC request changes to the scope of practice.

- RAC member indicated via Chat that they had no comments at this time.
- Given the requirement to collect specified data under subsection (1)(b), RAC member asked whether language should be added to clarify that any abnormal data findings should be reported to the registered nurse.
- RAC member indicated via Chat that their dialysis facility includes in their policy that abnormal findings must be reported.
- RAC member asked what the definition of abnormal findings would be. RAC member responded that their facility is required to identify minimal reporting standards. Staff asked whether these are prescribed by CMS. RAC member responded that CMS does not prescribe.
- OMB RAC representative indicated via Chat they would discuss suggestion with medical director and follow-up. **Follow-up: In terms of reporting abnormal findings, the OMB medical director offered that each dialysis facility or center have clearly written parameters and any deviation from those standards must be reported to the supervising clinician. The OMB medical director also suggested that it may be helpful to have the scope of practice rules reviewed by a nephrologist for further consideration.**
- The OSBN RAC representative noted that from the registered nurse perspective, data is going to be normal or abnormal for which they would report. It was suggested that subsection (1)(b) be revised by adding 'and plan of care' at the end of the sentence. It was further noted that the reporting of normal or abnormal data, as well as being directed by the RN or whoever is providing supervision, would be captured under the requirements of the certification or the competency validation that the dialysis technician brings to the position. **Follow-up: The OSBN via email suggested that subsection (1)(b) be revised to "Collect and communicate patient data, such as pre-weight, complaints, and vital signs, to the registered nurse." OSBN further noted that the amended language does not include what the registered nurse will do with the data received because an RN's action in response to the data is already regulated by OSBN administrative rules chapter 851, division 045, in combination with rules governing renal dialysis facilities, professional nephrology nursing scope and standards of practice, policies of a dialysis facility**

(OAR 333-700-0085) and any existing nursing plan of care the RN has established for the patient.

ACTION – Consider adding language to the rule that would require any abnormal findings be reported to the registered nurse or supervising clinician.

OAR 333-275-0100 – Trainee Hemodialysis Technician

No substantial changes were made to this rule with the exception of defining "directly supervised" to mean supervision of dialysis treatment in the same room in which treatment is being performed and immediately available to furnish assistance and direction."

– RAC members had no comments.

ACTION - None

OAR 333-275-0110 – Hemodialysis Technician Training Programs

Changes to this rule were made to provide clarification on a few additional elements. Section (1) provides that a facility may provide extended or abbreviated training programs and describes the purpose of each training program. The Authority must approve these training programs. Section (2) specifies that the training programs must include core curriculum elements specified in Appendix A. No changes were made to the curriculum elements. Sections (3) and (4) describe minimum hours for each training program. Section (5) and (6) describes who can teach the course and it was noted that reference to a 'preceptor' has been removed. Section (7) is a new requirement which specifies that dialysis facility must document the qualifications of the educators specified in section (5). Minor changes were made to section (8) for clarity. Section (9) adds a requirement that a dialysis facility must submit the extended and abbreviated training programs to the Authority for approval within six months, once the revised rules become effective and specifies that a dialysis facility must have the Authority approve any substantive changes once approved.

– RAC members had no comments.

ACTION - None

OAR 333-275-0120 - Investigation

The changes made to this rule were for purposes of alignment with other program licensing rules. Section (1) provides more information on when the Authority can investigate, and section (2) clarifies what the Authority may do during an investigation. Section (3) specifies that if during an investigation the Authority finds evidence that indicates immediate danger to the public, the Authority may temporarily suspend a CHDT's certificate.

– RAC members had no comments.

ACTION - None

OAR 333-275-0130 – Unprofessional and Dishonorable Conduct Contrary to Recognized Standards for a Hemodialysis Technician

This rule was amended to align with ORS 688.655(2) and includes a reference to unprofessional conduct. Minor updates were made to recognize current terminology related to race and gender. Three new elements were added that are considered unprofessional or

dishonorable conduct: 1) Soliciting money, gifts or other items or services from a patient; 2) Failing to cooperate with an investigation including complying with requests for information; and 3) Failing to comply with request for psychological, physical, psychiatric, or chemical dependency assessment.

- RAC members had no comments.

ACTION - None

OAR 333-275-0140 – Reporting Obligations

Amendments were made to this rule to clarify existing language in section (1). Section (2) is a new reporting requirement relating to reporting arrests, charges or convictions; disciplinary restrictions placed on a CHDT’s scope of practice; actions taken by a health professional regulatory board; and legal actions taken against a CHDT for misconduct or malpractice; and any change in physical or mental health. Section (3) specifies that the Authority may investigate after receiving a report. Section (4) specifies that if a CHDT fails to comply with reporting requirements, they may face disciplinary action.

- RAC member suggested via Chat to amend section (1) by adding nurse practitioner to the list of those responsible to make a report to the Authority.
- RAC member asked via Chat whether the rules could be amended to link ORS 676.150 relating to licensed health care professional reporting obligations. It was further noted that ORS 676.150 does not apply to hemodialysis technicians.

ACTION – Consider amending section (1) by adding nurse practitioner to list of persons responsible for making a report.

OAR 333-275-0150 – Grounds for Denying, Suspending or Revoking Certificate

Amendments to this rule were made to clarify existing language and/or update terms. No substantial changes were made.

RAC members had no comments.

ACTION – None

OAR 333-275-0160 – Disciplinary Action and Civil Penalty

Changes to this rule were made to align with statute, current process and provide additional clarity. Section (2), regarding temporary suspension was removed as it is specified in rule number 0120. Issuing a civil penalty for conviction of a criminal offense was removed.

- RAC members had no comments.

ACTION - None

OAR 333-275-0170 – Hearings

The Authority is repealing this rule as compliance with the Administrative Procedures Act (ORS Chapter 183) is specified in applicable rules.

- RAC members had no comments.

ACTION - None

OAR 333-275-0175 – Responsibility to Notify the Authority of Changes

This new rule specifies that a CHDT must keep the Authority informed of any changes to the CHDT's name on record, current contact information, and employer of record. Changes must be reported to the Authority within 30 days and failure to report may result in disciplinary action.

- RAC members had no comments.

ACTION - None

OAR 333-275-0180 – Fees for Hemodialysis Technician Certification and Certification Renewal

Rather than referring to a separate table, the current fees have been added to this new rule. No changes to fees are proposed.

- RAC members had no comments.

ACTION - None

OAR 333-275-1000 – Provisional Certification During Declared Emergency
OAR 333-275-1010 – Fees for Hemodialysis Technician Certification and Certification Renewal

The two rules noted were initially implemented as a result of the COVID pandemic. Language has been revised to remove specific dates and apply to future emergencies.

- RAC member asked whether these rules apply only if an emergency is declared, and staff responded yes.

ACTION - None

Appendices and Tables

Staff noted that Appendix A regarding the curriculum requirements for training remains unchanged. Appendix B has been added identifying prorated employment and continuing education requirements which remain unchanged. Tables 1 and 2 referring to crimes that may result in denying an application were removed based on legislation that passed in 2015, noted previously and ORS 670.280. Fitness determinations are made based on whether the potentially disqualifying conditions relates to the job.

- RAC members had no comments.

ACTION - None

Additional Comments and Recommendation

RAC member asked if the rules could be modified to include additional clarification on when a licensed provider type, such as an LPN, must also obtain certification as a CHDT. Staff replied that if the duties fall within a licensed providers scope of practice, certification should not be necessary.

- RAC member representing the OSBN noted that the practice of nursing is not defined by procedures, rather, it is defined by an application of a body of knowledge. If an LPN has the knowledge, skills and competency, clinical reasoning and ethical principals to engage in

activities that are codified in statute and rule, then it's possible that the duties are within scope, but it is not a one size fits all.

- RAC member stated it would be helpful to ensure that some language is in rule that prescribes that if the duties of a CHDT are within a licensed providers scope of practice then a CHDT certification is not necessary.

ACTION - Consider adding additional language in rule regarding whether a CHDT certification is required for other licensed provider types.

Statement of Need Fiscal Impact

Review the Statement of Need and Fiscal Impact (SNFI). These rules have not been amended since 2001 and are being revised to incorporate updated processes and procedures and changes to state and federal regulations.

The racial equity impact statement was shared and it was noted that due to the proposed new requirement that all initial certification applicants must complete a nationwide background check, Black, Indigenous and People of Color may be particularly impacted by this policy due to biased policing and charging which have resulted in people of color disproportionately incarcerated. Specific crimes lists, however, have been removed from the rules and fitness determinations are now made based on whether the potentially disqualifying condition relates to the job.

Additionally, in making a fitness determination, the Authority may not consider: 1) a conviction that is more than 10 years old unless the conviction is for a crime under ORS 443.004(3) or (4); 2) a charge or arrest for which there is no conviction unless the crime or arrest is under ORS 443.004(3) or (4); 3) a conviction or charge relating to marijuana if the charge is no longer a criminal offense; 4) a conviction for DUUI if there is no more than one conviction in the previously five year period; 5) a deferred sentence, conditional discharge or participation in diversion unless the crime is listed under ORS 443.004; or a pending indictment unless the crime is listed under 443.004. The Authority must still consider the relevancy of the alleged crime to the position.

The fiscal and economic impact statement was considered. Staff noted the current number of certified full and provisional dialysis technicians in Oregon. It was noted that the fingerprint-based check would apply to initial applicants and renewal applicants who live out-of-state (or meet other factors noted previously). There are currently 224 CHDTs living out-of-state.

Additional possible costs identified include:

- Possible costs to a CHDT who may be required to complete additional training for failing to renew certification in a timely manner or who fails to pass the national exam. It is unknown whether dialysis facilities charge for this training;
- Possible civil penalties issued to a CHDT who fails to report required information;
- Removal of the LPN as a person who can supervise a CHDT;
- Additional documentation requirements that may increase staff time;
- Additional background check costs should the facility pay for the fee.

RAC members had no comments.

ACTION – Consider comments received by RAC members with respect to CHDTs being lower paid and the possible adverse impact on requiring fingerprint-based background checks. Also, consider relevant costs if the Authority decides to adopt retention of national certification based on discussion.

Next Steps

- Staff noted that written minutes will be generated based on meeting today.
- Rather than holding another meeting, staff suggested that any additional information sharing occur via email. RAC members via Chat concurred.
- RAC member asked for deadline to send additional comments. Staff responded October 14, 2022.
- Based on feedback from RAC members, staff will consider adding retention of the national certification requirement.
- November 7, 2022 – Deadline to submit final proposed rules to the Public Health Division's Rules Coordinator.
- December 1, 2022 - Final proposed rules posted in the Oregon Bulletin.
- On or after December 15, 2022 – A public hearing will be held.
- On or after December 22, 2022 – Written public comment period will close.
- On or after January 1, 2023 – Rule could become effective.

Staff asked and RAC members responded that adding additional time for compliance would be necessary.

RAC member asked via Chat for staff to consider a "longer sunset time we could put on the re-obtaining of national certification."

Meeting adjourned at 11:25 a.m.