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Hospice Program Licensing Rule Advisory Committee
October 28, 2022
1:00 – 3:00 p.m. via Zoom

RAC MEMBER ATTENDEES
Barb Hansen, CEO, Oregon Hospice and Palliative Care Association
Barbara Ju, Policy Analyst Nursing Assistant Education and Assessment, Oregon State Board of Nursing
Iria Nishimura, Executive Director, Willamette Vital Health
JooRi Jun, CEO, Oregon Nonprofit Hospice Alliance
Kristi Youngs, Chief Clinical Operations Officer, House call Providers
Mary Kofstad, President, Signature Healthcare at Home
Robert Drake (for Bernadette Nunley), Compassion and Choices
Rochelle Webster, Quality Control Program Manager, Asante Hospice
Tracy Villarreal, CEO, Care Partners Hospice

Oregon Health Authority Staff	
Anna Davis	Public Health Division, Health Facility Licensing & Certification
Lori Barfield	Public Health Division, Health Facility Licensing & Certification
Mellony Bernal	Public Health Division, Health Care Regulation & Quality Improvement
Sosena Samson	Public Health Division, Health Facility Licensing & Certification
Teri-ann Stofiel	Public Health Division, Health Facility Licensing & Certification

Welcome, Housekeeping and Agenda Review

Mellony Bernal introduced self and welcomed attendees to the Hospice Program Licensing Rule Advisory Committee (RAC). The following housekeeping items were reviewed:

- Attendees were asked to enter their name, title and organization into the Chat and identify whether they are a RAC member, member of public, or an Oregon Health Authority (OHA) employee.
- RAC members were asked to type the word "Comment" to indicate they want to speak to a particular issue or ask questions. RAC members who do not necessarily want to speak but want the agencies to consider information were asked to type into the Chat “For Your Information” or “For the Record” and include the information they wish to share. Persons will be called upon in the order appearing on the Chat.
- Attendees were asked not to use the Chat feature to talk amongst themselves.
- 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 wish provide comments or information should email those comments to mellony.c.bernal@dhsoha.state.or.us.

- It was further noted that after the RAC process has concluded, there will 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 will be shared by email using the GovDelivery Home Health and Hospice Listservs. The link to join the listserv was shared via Chat: https://public.govdelivery.com/accounts/ORDHS/subscriber/new?qsp=ORDHS_16
- The RAC meeting will be recorded for purposes of generating written meeting notes.

M. Bernal identified RAC members and RAC members introduced themselves.

M. Bernal reviewed agenda.

M. Bernal noted that the September RAC meeting notes which were sent by email would not be reviewed at this meeting, however, if RAC members had any concerns or edits, they can email information to M. Bernal.

Administrative Rule Review
M. Bernal opened discussion on the proposed rule changes for OAR 333-035-0250 through 0300. RAC member asked if they could provide a comment on OAR 333-035-0220 that had been discussed in September and staff allowed.
OAR 333-035-0220 – Complaints
RAC member noted that section (3) specifies that an investigation may be carried out after receipt of a complaint in accordance with the rule number 0230. RAC member asked if it was possible to identify the criteria that the Authority uses to determine when a complaint investigation will be conducted and, if it is patient-care related, can additional text be added to the rule. It was further noted that investigations of complaints may qualify as one of the criteria for a hospice to be selected to participate in a CMS Special Focus Program. Staff responded that for purposes of this rule, it is only for state complaints and not for purposes of complaints alleging noncompliance with CMS federal regulations. The reference to 'may' is primarily for situations when there is not enough information to be able to determine if an action can be taken. It is very rare for a complaint not to be investigated. Staff further noted that complaints falling under the state rule would not be reflected in a CMS enforcement action unless the complaint results in the loss of the state license.
ACTION: None
OAR 333-035-0250 – Violations
One minor wording change was made to this rule for clarity and a new section was added stating that it is a violation to fail to report suspected abuse as defined in ORS 124.050. RAC members had no comments.
ACTION: None
OAR 333-035-0260 – Informal Enforcement
Minor changes were made to this rule to align with other facility and provider licensing rules. The term Division was updated to Authority; additional notification requirements by the Authority

when the Authority finds a plan of correction unacceptable; and the time frame for responding to a plan of correction was extended from 45 days to 60 days.

RAC members had no comments.

ACTION: None

OAR 333-035-0270 – Formal Enforcement

Minor changes were made to this rule to align with other facility and provider licensing rules. The term "Division" was updated to "Authority;" reference was added to 'these rules' and a statute number was amended; and a new section was added specifying that the Authority may reinstate a hospice program license that has been suspended after the Authority determines that compliance with the rules has been achieved.

RAC members had no comments.

ACTION: None

OAR 333-035-0280 – Civil Penalties

Minor housekeeping changes were made to this rule updating the term "Division" to "Authority."

RAC members had no comments.

ACTION: None

OAR 333-035-0290 – Approval of Accrediting Organization

Minor housekeeping changes were made to this rule updating the term "Division" to "Authority" and removing language that is no longer relevant.

RAC members had no comments.

ACTION: None

OAR 333-035-0300 – Waivers

This rule establishes that the Authority may issue waivers and aligns with current practice. Section (1) identifies what must be included in a request for a waiver including identifying special circumstances relied upon to justify the waiver; explain why the hospice program is unable to comply, what alternatives were considered, if any, and why alternatives, including compliance were not selected; demonstrate that the waiver is desirable to maintain or improve the health and safety of patients and will not jeopardize patient health and safety; and the proposed duration of the waiver. Section (2) specifies that the Authority may grant a waiver upon finding that the hospice has satisfied the requirements of the rule. Section (3) states that a waiver cannot be implemented until approved by the Authority. Section (4) indicates that during an emergency the Authority may waive a rule that hospice program is unable to meet for reasons beyond the hospice program's control. Discussion:

- RAC member representing Compassion & Choices via Chat indicated the following, "We appreciate the required demonstration for proposed waivers. We request that hospice programs also demonstrate that they can still provide equitable access to care regardless of patients' race, sexual orientation, or gender identity, in compliance with the regulations. We request amendment of the following rule as follows:

333-035-0300(1) (e) Demonstrate that the proposed waiver is desirable to maintain or improve the health and safety of the patients, to meet the individual and aggregate needs of patients, to support equitable and non-discriminatory delivery of care regardless of patient race, sexual orientation, or gender identity, and will not jeopardize patient health and safety…"

- Staff noted concern about adding information about discrimination specifically into the waiver section because the Authority would expect that non-discrimination applies statewide. Staff asked whether there was a specific concern about waiver covered area? RAC member responded that there are no specific concerns just generally concerned.
- RAC member asked since the rule would apply to state hospice licensure rules can an example be given when a waiver would be requested that would not be a CMS waiver. Staff responded that a waiver could be for extending a geographic service area generally or serving a specific underserved population beyond the existing geographic service area.
- RAC member asked whether the Authority could propose more specific, technical language to rule which is currently very vague. Staff noted that there is specific language noted in OAR 333-035-0160(4) that specifies that the Authority may waive the mileage guidelines specified in rule if the parent hospice program proposes to provide hospice services to an underserved area or population of the state and adequately demonstrates the ability to provide the services to that population and area. Staff further noted that based on the previous RAC meeting, staff are considering a definition for underserved population. **Follow-up: The Authority will propose the following definition for "underserved area or population" – Underserved area or population means an area in which residents have a shortage of hospice services or a group of persons who face economic, racial, cultural, linguistic, religious or aged related barriers to hospice services.**
- Staff noted the intent will be to make it clear that we're looking for a population group that because of race, ethnicity, economic barriers or other barriers that are traditionally underserved and then the hospice program can reflect that they have the specific resources to serve that unique population.
- RAC member commented that Oregon is not a Certificate of Need state for hospice programs and noted that programs are having staffing problems. Theoretically a program may choose to have a smaller service because of staffing issues. Question was raised whether there is anything in Oregon rules that would require a hospice program to accept referrals in their service area. Staff responded that is correct; for example, a hospice program can choose to serve only 10 people a year. There is no requirement that a program serve all of its service area if there is no capability or capacity to do so.

ACTION: None

OAR 333-035-0105 – Applicability of Rules

The Authority is recommending repeal of this rule since the dates are no longer relevant.

RAC member had no comments.

ACTION: None

Statement of Need and Fiscal Impact

M. Bernal noted that in accordance with the Authority's policy and recommendation in the Administrative Procedures Act, RACs' are asked to consider the Statement of Need and Fiscal Impact and offer comments. Additionally, with the passage of HB 2993, RACs' are being asked to consider what affects the proposed rules will have on racial equity in Oregon.

Staff reviewed Oregon's racial equity vision including definitions and posted definitions in the Chat.

- Oregon's racial equity vision: 1) Dismantle institutional and structural racism in Oregon state government, and by doing so have resounding impacts on the communities of our great state; 2) Build a more equitable Oregon where everyone has the opportunity to thrive and everyone's voice is heard; and 3) Ensure an inclusive and welcoming Oregon for all by celebrating our collective diversity of race, ethnicity, culture, color, disability, gender, gender identity, marital status, national origin, age, religion, sex, sexual orientation, socio-economic status, veteran status, and immigration status.
  - Equity. An acknowledgement that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.
  - Institutional Racism. A form of racism that occurs within institutions that reinforces systems of power. It is often more difficult to name or witness because it is more deeply embedded in practices and policies, often presenting as a norm. Institutional racism refers to the discriminatory policies and practices of particular institutions (schools, workplaces, etc.) that routinely cause racially inequitable outcomes for people of color and advantages for white people. Individuals within institutions take on the power of the institution when they reinforce racial inequities.
  - Structural Racism. A system in which public policies, institutional practices, cultural representations and other norms work in various, often reinforcing ways to perpetuate racial group inequities. It is a feature of the society in which we all exist.
- Staff asked RAC members to consider what populations are affected or most harmed by the rule from a racial equity perspective and how or in what ways are the specific communities affected.
- RAC member noted that they are not a member of a disadvantaged group and thus cannot point to a specific group that might be impacted, for example, by a defined service area. It was further noted that there is a lack of community representation on the RAC. It was stated that hospice tends not to serve people of color and the changes to rule that could be made to better serve other communities is an interesting question. Staff responded that HB 2993 further requires state agencies to identify communities impacted and invite those communities to serve on the RAC to help better inform responses to these questions. It was noted that multiple communications were sent out seeking community representation on the RAC including through community newsletters, notification to the nine federally recognized Tribal Nations, and organizations such as Compassion and Choices, and others. **Follow-up:**

The following organizations were contacted to try and identify additional community representation - Disability Rights Oregon, End of Life Choices, LeadingAge Oregon, Self-Advocacy Coalition, POLST Coalition, Oregon Geriatrics Society, Oregon Veterans Home, Oregon Council on Development Disabilities, Oregon Medical Association, Oregon Health Care Association, Oregon Department of Veterans Affairs, and the American Association of Retired Persons.

- Staff noted that the Authority is aware of other efforts across the country of hospice programs working to better serve communities of color which played a role in the waiver language shared.
- RAC member concurred with previous RAC comments and echoed that hospice programs have traditionally not done a good job serving underserved communities, especially communities of color. It was noted that the CMS final rule talked about a structural composite measure that may, in the future, hold hospice programs responsible to demonstrate outreach and consider different factors in hiring. Because it's been so long since rules have been updated, it was recommended to see what final rules CMS issues and then re-open the Oregon rules to strengthen activities such as demonstration of outreach to underserved communities. RAC member via Chat concurred with waiting for final CMS rules.
- RAC member via Chat noted the following:
  - The rules should account for a hospice facility's changes in policies for specific types of end-of-life care if they change ownership, including publicly publishing (either on their website or in another conspicuous location) any policies that would limit their implementation of an individual's end of life wishes. Notice to OHA should be made before the change in ownership to ensure adequate provision of all legal end-of-life options in a particular region. Is there any requirement that a hospice publicly post its policies for all end-of-life options, e.g., Voluntary Stopping of Eating and Drinking?
  - Who will be providing the information related to Advance Directives and educating people about Advance Directives to ensure that the proxy's wishes/representation of patient's wishes in an Advance Directive is honored. Further, to what extent do these rules around Advance Directives require factual education about end-of-life options covered on the state's Advance Directive form? What constitutes "reason to believe" under proposed 333-035-0170(5)?
  - Advance Directives–hospice must provide all Advance Directive-related information at the very beginning of services–or include urgent timeline for people closer to death.
  - Include equity considerations for waivers.
- M. Bernal reviewed Statement of Need and Fiscal Impact including need for rule, documents relied upon, and the racial equity impact statement. Staff acknowledged previous request to wait until CMS finalizes its rule and will consider adding information to the equity impact statement that communities of color are not well served and the Authority will reconvene the RAC after federal rules are promulgated to address this issue.
- RAC member inquired about the use of term 'palliative care' and recommended use of 'comfort care' instead. A RAC member disagreed and noted that with palliative care a person can continue curative treatments as well as comfort care. Discussion ensued and information shared that there are two different bills that may be causing confusion. These draft rules include language that allows a hospice program to provide palliative care in accordance with passage of SB 177 from the 2019 legislative session (2019 Oregon Laws, Ch. 238). It was further noted that HB 2981 from the 2021 legislative session (2021 Oregon Laws, Ch. 462)

passed and requires the Authority to administer a program to reimburse for palliative care services through coordinated care organizations and shall adopt by rule eligibility requirements and provider qualifications for the program. Staff noted that the Health Systems Division of the Authority will be responsible for drafting those rules. Staff further noted that these rules refer to the definition of palliative care under ORS 413.273 and these rules are specific to hospice licensure; issues related to reimbursement of hospice programs generally and reimbursement for specific services are regulated by Health Systems Division.

- RAC member noted that 'palliative' is a core competency and should not be removed.
- RAC member noted that with regard to the equity impact statement, poverty is a huge barrier for persons being able to access hospice services. When a hospice RAC is reconvened, text should be considered that requires a hospice program to serve patients regardless of ability to pay. Currently, a hospice can refuse to serve a patient based on ability to pay.

Staff continued with the review of the fiscal and economic impact noting number of hospice programs licensed and noting that hospice programs may face a financial burden for the following elements:

- Staff time necessary to track and report changes to ownership, organizational structure or other information noted on the application form to the Authority within 30 days of the change;
- Staff time and costs associated with notifying patients within 14 calendar days if the hospice program closes or its license is suspended or revoked and the necessary storage of clinical records;
- Staff time necessary and costs associated with development of additional infection control policies and procedures that address standard precautions and availability of personal protective equipment;
- Staff time necessary to document, in writing, quarterly quality assessment and performance improvement activities; and
- Costs associated with providing health care interpreter services to persons who prefer to communicate in a language other than English which is currently required under OAR 333-002-0010.

It was noted that there is no anticipated increased costs to state agencies, units of local governor or the public.

In terms of impacts on small businesses, it was noted that the Authority cannot accurately identify the number of hospices program that are considered a small business. It was further noted that additional reporting, recordkeeping, other administrative duties, equipment, supplies, labor and increased administration are anticipated for the following, but some hospice programs may already comply with these requirements:

- Reporting changes to ownership, organizational structure or other information noted on the application form to the Authority within 30 days of the change;
- Notifying patients within 14 calendar days if the hospice program closes or its license is suspended or revoked and necessary storage of clinical records;
- Development of additional infection control policies and procedures that address standard precautions and availability of personal protective equipment; and
- Written documentation of quarterly quality assessment and performance improvement activities.

- Providing health care interpreter services to persons who prefer to communicate in a language other than English which is currently required under OAR 333-002-0010; and
- Availability of personal protective equipment and other equipment necessary to implement a plan of care.

Hospice programs may see a cost savings, especially in rural Oregon, given the removal of the requirement that a hospice aide must be a CNA.

ACTION – Staff will consider additional edits to the equity impact statement based on discussion.

Next Steps

Staff thanked RAC members for their comments and feedback and appreciate the willingness of programs to reconvene in the future to discuss possible improvements around equity.

The goal is to send the proposed rules to the Public Health Division's rule coordinator by Monday, November 7th and file a proposed rulemaking hearing notice in the December 1 Oregon Bulletin. A public hearing would be held on or after December 15, 2022 and written public comments would be taken until on or after December 22, 2022.

RAC members were asked to submit any additional comments or proposed changes by early next week.

RAC members and interested parties will be informed about the public hearing and written public comment period via email through the home health listserv and hospice program listserv.

Meeting adjourned at 2:21 p.m.