



PERMANENT ADMINISTRATIVE ORDER

FILED

01/27/2023 12:12 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

PH 6-2023

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILING CAPTION: Hospice program licensure requirements

EFFECTIVE DATE: 01/27/2023

AGENCY APPROVED DATE: 01/26/2023

CONTACT: Mellony Bernal
971-673-3152
publichealth.rules@odhsoha.oregon.gov

800 NE Oregon St. Suite 465
Portland, OR 97232

Filed By:
Public Health Division
Rules Coordinator

RULES:

333-035-0105, 333-035-0110, 333-035-0115, 333-035-0120, 333-035-0125, 333-035-0130, 333-035-0135, 333-035-0140, 333-035-0145, 333-035-0150, 333-035-0155, 333-035-0160, 333-035-0170, 333-035-0175, 333-035-0180, 333-035-0190, 333-035-0200, 333-035-0210, 333-035-0220, 333-035-0230, 333-035-0240, 333-035-0250, 333-035-0260, 333-035-0270, 333-035-0280, 333-035-0290, 333-035-0300

REPEAL: 333-035-0105

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Repeal OAR 333-035-0105 – Repeals the rule relating to applicability as the dates no longer apply.

CHANGES TO RULE:

~~333-035-0105~~

~~Applicability of Rules~~

~~(1) A hospice program already in operation on September 1, 2010 shall apply to the Division for a license and pay the applicable fee by October 1, 2010.¶~~

~~(2) The Division shall allow a hospice program already in operation on September 1, 2010, three months from its date of application before an on-site inspection is conducted, in order to allow a hospice program to come into compliance with these rules.¶~~

~~(3) A hospice program already in operation on September 1, 2010 shall conduct criminal background checks in accordance with OAR 333-035-0060 prior to September 1, 2012.~~

~~Statutory/Other Authority: ORS 443.860~~

~~Statutes/Other Implemented: ORS 443.860~~

AMEND: 333-035-0110

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0110 (renumbered from 333-035-0045) – Minor corrections made for readability

CHANGES TO RULE:

333-035-0110

Purpose ¶¶

~~These rules establish the authority of the Oregon Health Authority, Public Health Division to license hospice programs in order to ensure the health and safety of individuals who are experiencing the last phases of life~~
purpose of these rules is to establish the standards for licensure of hospice programs.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0115

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0115 – Places requirement that a hospice program must comply with federal Conditions of Participation that govern hospice programs under its own rule for clarity.

CHANGES TO RULE:

333-035-0115

Compliance with CMS Conditions of Participation

(1) Hospice programs must comply with the Conditions of Participation governing hospice programs prescribed by CMS, under 42 CFR Part 418, adopted by reference. ¶

(2) In addition to the requirements of 42 CFR 418, hospice programs must also comply with OAR 333-035-0110 through 333-035-0300. A hospice program licensed on or after January 27, 2023, shall have until March 1, 2023 to comply with these rules.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0120

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0120 (renumbered from 333-035-0050) – Amends definitions for clarity. Removes definition for "Division" and replaces with "Authority." Removes requirement that a hospice aide must be certified by the Oregon State Board of Nursing as a nursing assistant to align with federal regulations. Aligns definitions with Oregon statute and clarifies purpose of interdisciplinary team. Adds definition for "Parent hospice program," "Palliative care," and "These rules."

CHANGES TO RULE:

333-035-0120

Definitions ¶¶

As used in OAR chapter 333, division 35, the following definitions apply:¶¶

- (1) "Accreditation" means a designation by an accrediting organization that a hospice program has met standards that have been developed to indicate a quality program.¶¶
- (2) "Administrator" means a ~~person~~ hospice employee responsible for the administrative functions and day-to-day operations of the hospice program.¶¶
- (3) "Authority" means the Oregon Health Authority, Public Health Division. ¶¶
- (4) "CMS" means Centers for Medicare and Medicaid Services.¶¶
- (45) "Certification" means a state agency's official recommendations and findings to CMS regarding a hospice program's compliance with federal CMS regulations.¶¶
- (56) "Conditions of Participation" mean the applicable federal regulations that hospice programs are required to comply with ~~in order~~ to participate in the federal Medicare and Medicaid programs.¶¶
- (67) "~~Division~~" means the Oregon Health Authority, Public Health Division. Hospice aide" means a person:¶¶
 - (a) Certified by the Oregon State Board of Nursing as a certified nursing assistant (CNA) under ORS 678.442. ¶¶
 - (7b) "~~Hospice aide~~" has the same mean Who has successfully completed a training program and competency evaluation in accordance with 42 CFR 418.76(a); or ¶¶
 - (c) Who has successfully completed a competency evaluation in accordance with 42 CFR 418.76(c). ¶¶
- (8) "Hospice program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life-threatening disease with a limited medical prognosis. A hospice program is an institution for purposes of ORS 146.100.¶¶
- (9) "Hospice services" means items and services provided to a patient-family unit by a hospice program or by other individuals or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include home care, inpatient care for acute pain and symptom management or respite, and bereavement services provided to meet the physical, psychosocial, emotional, spiritual and other special needs of a patient-family unit during the final stages of illness, dying and the bereavement period.¶¶
- (10)(a) "Interdisciplinary team" means a group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the patient-family unit, the patient's attending physician or clinician and one or more of the following hospice program personnel:¶¶
 - (a) who are trained and experienced to provide hospice care:¶¶
 - (A) Physician;¶¶
 - (B) Physician assistant;¶¶
 - (b) Nurse practitioner;¶¶
 - (c) Nurse;¶¶
 - (d) Nurse's aide or hospice aide;¶¶
 - (e) Occupational therapist;¶¶
 - (f) Physical therapist;¶¶
 - (g) Trained lay volunteer;¶¶
 - (h) Clergy or spiritual counselor; ~~or~~¶¶
 - (i) Credentialed mental health professional such as psychiatrist, psychologist, psychiatric nurse or social worker; or¶¶
 - (K) Naturopathic physician.¶¶
 - (b) The interdisciplinary team is not the same as the interdisciplinary group as that term is defined under 42 CFR 418.56; however, interdisciplinary team members may be included in the interdisciplinary group meetings. The

purpose of the interdisciplinary team is to include the patient, patient's family, and the patient's attending physician or clinician when formulating a plan of care to ensure that the full range of needs of the patient and family are met. ¶

(11) "Medicare Certification Number" means the unique identification number, also referred to as the Medicare Provider Number, assigned to a qualifying hospice program by CMS.¶

(12) "Nurse's Aide" means a ~~person~~CNA certified as a nursing assistant under ORS 678.442 who has received special hospice training in accordance with CMS Conditions of Participation ~~by the Oregon State Board of Nursing under ORS 678.442.~~¶

(13) "Palliative care" has the meaning given that term in ORS 413.273. ¶

(14) "Parent hospice program" means the program that provides supervision and administrative control to multiple locations providing care that are within a 60-mile radius from the parent hospice program's physical location.¶

(135) "Patient-family unit" includes an individual who has a life-threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the individual.¶

(146) "Person" includes individuals, organizations and groups of organizations.¶

(157) "Survey" means an inspection of an applicant for a hospice program license or a hospice program to determine the extent to which the applicant or hospice program is in compliance with state hospice program statutes, these rules and CMS Conditions of Participation.¶

(18) "These rules" means OAR 333-035-0110 through 333-035-0300.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.850, 443.867

AMEND: 333-035-0125

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0125 (renumbered from 333-035-0055 – Amends application requirements and clarifies that the Authority may reject an application that is incomplete. Specifies that a hospice program must report to the Authority within 30 days of any change in ownership and other business information. Clarifies that a hospice program may provide palliative care. Clarifies requirements for a hospice located in a border state to provide care to an Oregon patient. Specifies that license fees may not be prorated and are non-refundable. Moves information about surveys to new rule number 333-035-0240. Information on issuing a license was removed and placed under new rule number 333-035-0135. Information on expiration and renewal of a license was removed and placed under new rule number 333-035-0145. Requirements for providing care at multiple locations was removed and placed under new rule number 333-035-0135. Mileage radius and waiving mileage guidelines was removed and placed under new rule 333-035-0160.

CHANGES TO RULE:

333-035-0125

Application for Licensure and Fees

- (1) A person may not establish, conduct or maintain a hospice program providing hospice services, or hold itself out to the public as a hospice program, without obtaining a license from the ~~Division~~ Authority.
- (2)(a) A person ~~may applying for a new or renewal license to operate a hospice program by~~ shall submitting a complete application on a form prescribed by the ~~Division~~ Authority, accompanied by the fee ~~established~~ specified in ORS 443.860. ~~An application that is incomplete or that is not accompanied by the correct fee will be returned to the person applying.~~
- (3) ~~In order for a license application to be considered complete, it shall include, but is not limited to:~~
 - (a) ~~Business name;~~
 - (b) ~~Medicare Certification Number (Medicare Provider Number)(if applicable);~~
 - (c) ~~Prim~~
 - (b) ~~A complete application for an initial license includes, but is not limited to:~~
 - (A) ~~Documentation of written policies and procedures, including any forms and curricula to direct all administrative, personnel, and patient care operations;~~
 - (B) ~~Documentation that patient care and multiple locations (if any); documentation systems have been developed; and~~
 - (dC) ~~Tax status;~~
 - (e) ~~Ownership category (for example corporation, partnership, sole proprietorship);~~
 - (f) ~~Physical and mailing addresses;~~
 - (g) ~~Owner information; Documentation that sufficient, qualified, and trained employees or contractors are available to provide hospice services and that personnel records have been prepared for each employee or contractor.~~
 - (h3) ~~Descriptions of services;~~
 - (i) ~~Staffing levels; and~~
 - (j) ~~Average daily census.~~
- (4) ~~The Division shall conduct an initial survey prior to licensure.~~
- (5) ~~In lieu of an initial survey required under The Authority may deem an application incomplete if it does not include the information required by the Authority, is not accompanied by the appropriate fee, or at the time of initial survey fails to comply with subsection (42)(b) of this rule, the Division may accept a CMS certification or a survey conducted within the previous three years by an accrediting organization approved by the Division.~~
- (6) ~~A hospice program licensed in Washington, Idaho or California must be licensed in Oregon in order to provide care in Oregon within a 60 mile radius of the parent agency in the other state. A hospice program licensed in these other states shall pay the required fee and the Division.~~
- (4) ~~The Authority may reject an application that is incomplete.~~
- (5)(a) ~~Within 30 days of the change, a hospice program must inform the Authority in writing of any change in:~~
 - (A) ~~Ownership;~~
 - (B) ~~Ownership category (for example, corporation, partnership, sole proprietorship);~~
 - (C) ~~Administrator;~~
 - (aD) ~~Shall conduct a licensing survey; or Business name;~~

~~(bE) May accept a CMS certification or a survey conducted within the previous three years by an accrediting organization approved by the Division. edicare certification number.~~

~~(F) Primary and multiple locations.~~

~~(G) Physical location; or~~

~~(H) Mailing address.~~

~~(7b) The Division may waive the mileage guideline in section (6) of this rule if the parent If ownership of a hospice program proposes changes, to provide hospice services to an underserved area of the state and adequately demonstrates the ability to manage and control the services.~~

~~(8) The Division shall issue a license to an applicant that has the necessary qualifications, meets all requirements established by the Division, meets the CMS Conditions of Participation for hospice programs found in 42 CFR Part 418, and has paid the program must submit a new license application indicating change of ownership along with the required fee.~~

~~(c) If a parent hospice program moves 30 miles or more from its current physical location, the parent hospice program must apply for a new license and pay the required fee.~~

~~(9) A license issued under this section is valid for one year and is not transferable.~~

~~(10) A licensee may apply for renewal of a license by completing a renewal application on a form prescribed by the Division and submission of the applicable fee. The Division shall renew a license if the licensee is in compliance with ORS 443.850 through 443.869, these rules, and CMS Conditions of Participation, 42 CFR Part 418.~~

~~(11) The Division may permit a hospice program providing care at multiple locations, to operate under one license for all locations, if:~~

~~(a) All locations are operating under the same Medicare Certification Number; The Authority may issue a civil penalty for failure to timely notify the Authority of any changes under section (5) of this rule or suspend, revoke or deny the license.~~

~~(7) A hospice program may provide palliative care in addition to hospice services as defined in these rules. A hospice program providing palliative care is not subject to licensure as an in-home care agency under ORS 443.867.~~

~~(b) The multiple location provides the same full range of care and services that is required by the hospice program issued the Medicare Certification Number; and~~

~~(c) The locations are located within a 60 mile radius of the parent A hospice program licensed in a bordering state must be licensed in Oregon to provide care to patients located in Oregon. The hospice program applying for licensure.~~

~~(12) The Division may waive the mileage guideline in subsection (11)(c) of this rule if the parent hospice program proposes to provide hospice services to an under must apply and be licensed in accordance with these rules. The hospice program is subject to these rules including, the geographic serviced area of the state and adequately demonstrates the ability to manage and control the services restrictions specified in OAR 333-035-0160.~~

~~(13) An applicant or licensee may be required by CMS to obtain a survey by a CMS deemed accrediting organization in addition to any survey conducted by the Division under section (4) of this rule or OAR 333-035-0075 hospice program license is nontransferable.~~

~~(10) Licensure fees are not prorated and are non-refundable.~~

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860, 443.867

ADOPT: 333-035-0130

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0130 – Specifies the responsibilities of the Authority in reviewing a license application.

CHANGES TO RULE:

333-035-0130

Review of License Application

In reviewing an application for a hospice program license, the Authority shall:¶

(1) Confirm receipt of the required fee and determine if the application is complete; ¶

(2) Verify that the program is primarily engaged in providing hospice services and complies with hospice program licensing laws under ORS 443.860 through 443.869 and these rules; and ¶

(3) Assess capacity for compliance with the Conditions of Participation prescribed by CMS, under 42 CFR 418. ¶

(4) Conduct a survey of the hospice program in accordance with OAR 333-035-0240. ¶

(5) If a hospice program is in compliance with ORS chapter 443 and these rules and intends to provide hospice services to patients, a license may be issued for the operation of the hospice program.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0135

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0135 – Identifies the responsibilities of the Authority and an applicant when a license is approved.

CHANGES TO RULE:

333-035-0135

Approval of License Application

(1) The Authority shall notify an applicant in writing if a license application is approved.¶

(2) A license shall be issued only for the hospice program and person(s) named in the application and may not be transferred or assigned. ¶

(3) The license shall be posted in a clearly visible location in an office that is open to the public.¶

(4) A licensed hospice program shall not in any manner or by any means assert, represent, offer, provide or imply that the program is or may render care or services other than that is permitted or within the scope of the issued license. A licensed hospice program shall not offer or provide any service that is not authorized within the scope of the license. ¶

(5) The Authority may permit a hospice program providing care at multiple locations, to operate under one license for all locations, if: ¶

(a) All locations are operating under the same Medicare Certification Number; ¶

(b) All locations provide the same full range of care and services that is offered by the CMS certified hospice program issued the Medicare Certification Number; and ¶

(c) The locations comply with OAR 333-035-0160.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0140

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0140 – Specifies that the Authority will use the process described in ORS chapter 183 if it intends to deny a license application.

CHANGES TO RULE:

333-035-0140

Denial of License Application

If the Authority intends to deny a license application, it shall issue a Notice of Intent to Deny in accordance with ORS 183.411 through 183.470.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0145

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0145 – Specifies when a license will expire and renewal application requirements.

CHANGES TO RULE:

333-035-0145

Expiration and Renewal of License

(1) Each license to operate a hospice program expires 12 months from the date of issue. ¶

(2) A hospice program shall submit a completed application for renewal on a form prescribed by the Authority, accompanied by the required fee, to the Authority not less than 30 days prior to the license expiration date. ¶

(3) A hospice program is not eligible for renewal if a complete renewal application and fee have not been submitted to the Authority within 30 days after the license has expired. To be licensed, the hospice program must submit a new application under OAR 333-035-0125. ¶

(4) The Authority may deny a renewal license if the hospice program failed to timely notify the Authority of any changes specified under OAR 333-035-0125(5) or if there are violations of ORS chapter 443 or these rules. ¶

(5) The Authority may deem an application incomplete if it does not include the information required by the Authority or is not accompanied by the appropriate fee. The Authority may reject an application that is incomplete. ¶

(6) If the ownership of a hospice program changes, other than at the time of the annual renewal, the hospice program shall comply with OAR 333-035-0125(5) and submit a change of ownership form along with the fee for a new license.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0150

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0150 – Specifies that the Authority will use the process described in with ORS chapter 183 if it intends to deny, suspend or revoke or license or issue a civil penalty.

CHANGES TO RULE:

333-035-0150

Denial, Suspension, or Revocation of License

(1) The Authority may impose a civil penalty or deny, suspend or revoke a program's license for failure to comply with ORS chapter 443 or these rules.¶

(2) If the Authority intends to impose a civil penalty or deny, suspend or revoke a hospice program license, it shall do so in accordance with ORS 183.411 through 183.745.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.864, 443.869

ADOPT: 333-035-0155

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0155 – Specifies a hospice licensee's responsibility to return a license if the license is suspended or revoked. Specifies that if the hospice program decides to discontinue its operations it must return license, notify patients and a patient's representative, and specifies clinical record management.

CHANGES TO RULE:

333-035-0155

Return of License and Hospice Program Closure

(1) If a hospice program's license is suspended, revoked, or if the hospice program decides to discontinue operations, the license certificate in the licensee's possession shall be returned to the Authority immediately.¶

(2) A hospice program that discontinues operations must:¶

(a) Inform patients or the patient's representative about the closure at least 14 calendar days prior to closure;¶

(b) Provide information about how an individual may obtain a copy of their clinical records;¶

(c) Notify the Authority at least 14 calendar days prior to closure and submit plans for the transfer, storage and disposal of clinical records and how stored records can be accessed, including the name of the entity for handling access requests. ¶

(3)(a) Clinical records that are less than seven years old from the last date of discharge shall be stored for a minimum of seven years from last date of discharge. Clinical records that are greater than seven years old from last date of discharge may be destroyed. ¶

(b) The clinical records of a patient less than 18 years of age shall be kept at least seven years after the patient reached the age of 18. ¶

(c) Storage and destruction of clinical records shall comply with 45 CFR Part 160, subparts A and E of 45 CFR Part 164, and ORS 192.553 through 192.581.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0160

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0160 – Defines the geographic service area for a hospice program to operate. Allows multiple locations within a portion of the area served and specifies criteria for a hospice program to operate multiple locations under one license. Specifies requirements of a licensee that moves its physical location. Allows mileage guidelines to be waived under specified circumstances.

CHANGES TO RULE:

333-035-0160

Geographic Service Area

(1) A hospice program serves a geographic service area that is within a 60-mile radius from the physical location of the hospice program. ¶

(2) Multiple locations may provide services within a portion of the parent hospice program's geographical service area. ¶

(3) The Authority may permit a hospice program providing care at multiple locations, to operate under one license for all locations, if: ¶

(a) All locations are operating under the same Medicare Certification Number; ¶

(b) All locations provide the same range of care and services offered by the parent hospice program certified by CMS; and ¶

(c) The multiple locations are located within a 60-mile radius of the parent hospice program applying for licensure. ¶

(4) The Authority may waive the geographical restrictions specified in this rule in accordance with OAR 333-035-0300, including but not limited to, 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 manage and control the services. ¶

(5) As used in this rule, "underserved area or population" means an area in which residents have a shortage of available hospice services or a group of persons who face economic, racial, cultural, linguistic, religious, sexual orientation, gender-identity, or age-related barriers to hospice services.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0170

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0170 – Specifies that a hospice program must maintain written policies and procedures relating to advance directives in accordance with ORS 127.649 and must provide patients with material in accordance with ORS 127.652.

CHANGES TO RULE:

333-035-0170

Advance Directives

(1) A hospice program shall comply with ORS 127.649 relating to written policies and procedures on providing information to patients on a patient's right to make health care decisions. ¶

(2) In accordance with ORS 127.652, a hospice program shall provide to a patient the materials necessary to execute an advance directive or a form appointing a health care representative no later than 15 days after the initial provision of care by the hospice program, but in any event before ceasing to provide care to the patient.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 127.649, 127.652, 443.860

ADOPT: 333-035-0175

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0175 – Specifies that a hospice program must comply with health care interpreter services as defined in OAR 333-002-0010 for a patient who prefers to communicate in a language other than English.

CHANGES TO RULE:

333-035-0175

Health Care Interpreter Services

A hospice program shall comply with ORS 413.559 and OAR 333-002-0250 to provide health care interpreting services as defined in OAR 333-002-0010 to a patient who prefers to communicate in a language other than English.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 413.559, 413.561, 443.860

ADOPT: 333-035-0180

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0180 – Specifies requirements related to retaining clinical records including when a hospice program changes ownership or closes.

CHANGES TO RULE:

333-035-0180

Clinical Records

(1) If a hospice program changes ownership, the hospice program shall retain all clinical records in written or electronic form, and it shall be the responsibility of the successor hospice program to protect and maintain these records in accordance with OAR 333-035-0155(3).¶

(2) In the event of dissolution of a hospice program, the hospice program administrator shall notify the Authority where the clinical records will be stored and how clinical records may be accessed in accordance with OAR 333-035-0155.¶

(3) A hospice program shall comply with 45 CFR Part 160, subparts A and E of 45 CFR Part 164, and ORS 192.553 through 192.581.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0190

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0190 – Requires a hospice program to develop, implement and maintain an infection control program and specifies requirements.

CHANGES TO RULE:

333-035-0190

Infection Control

A hospice program shall develop, implement and maintain an infection control program to prevent and control infections and communicable diseases. The program shall include at a minimum: ¶

(1) A tuberculosis infection control plan in accordance with OAR 333-019-0041; ¶

(2) Appropriate disposal of sharp instruments in accordance with OAR 333-056-0050; ¶

(3) Development and maintenance of policies and procedures that include, at a minimum: ¶

(a) Standard precautions such as hand hygiene, respiratory hygiene and cough etiquette, and personal protective equipment; ¶

(b) Availability of personal protective equipment and other equipment necessary to implement plan of care; and ¶

(c) Exposure to bloodborne pathogens such as Hepatitis B and HIV and other potentially infectious agents. ¶

(4) Education and training on infection control measures to staff, patients, and caregivers.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0200

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0200 – Adds state specific requirements to the existing federal requirement for quality assessment and performance improvement activities.

CHANGES TO RULE:

333-035-0200

Quality Assessment and Performance Improvement

A hospice program must measure, analyze, and track quality indicators, adverse patient events, infection control and other aspects of performance that includes care and services furnished to a patient. A hospice program must document this information at least quarterly and record any performance improvement activities at least quarterly.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0210

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0210 (renumbered from 333-035-0060) – Adds definitions for 'disqualifying condition,' 'subject individual,' and 'fitness determination.' Clarifies weigh test requirements. Requires hospice program to conduct fitness determination after receiving a report about criminal conviction, arrest or other potentially disqualifying condition. Clarifies that a hospice program does not need to complete a background check on contracted staff if the agency the hospice program contracts with has conducted a background check. Minor corrections made for readability.

CHANGES TO RULE:

333-035-0210

Criminal Background Records Checks ¶

(1) ~~Except as provided in section (7) of this rule,~~ As used in this rule:¶

(a) ~~"Disqualifying condition" means a non-criminal personal history issue that makes a subject individual unsuitable for employment, contracting or volunteering for a hospice program must obtain a criminal background check for the following prior to employment, entering into a contract, or permitting a volunteer to have direct patient contact and every three years thereafter, including but not limited to discipline by a licensing or certifying agency, or drug or alcohol dependency; ¶~~

(b) ~~"Subject individual (SI)" means an individual on whom a hospice program may conduct a criminal records check including:¶~~

(A) ~~An employee or prospective employee;¶~~

(B) ~~A contractor, temporary worker, or volunteer who may have contact with patients or access to personal information about patients, including but not limited to Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information; and¶~~

(C) ~~A prospective contractor, temporary worker, or volunteer who may have contact with patients or access to personal information about patients including but not limited to Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information.¶~~

(ac) ~~Hospice program employees;¶~~

(b) ~~Individuals who contract with the hospice program and who have direct patient contact or access to patient records; and¶~~

(c) ~~"Fitness determination" means a decision made by a hospice program pursuant to the policy established in accordance with section (3) of this rule, that a subject individual is or is not fit to hold a position, paid or not paid, have direct access, or otherwise provide services to a patient.¶~~

(2) ~~Except as provided in section (8) of this rule, a hospice program must conduct a criminal records check on a subject individual and make a fitness determination prior to employment, and prior to entering into a contract, or permitting a volunteers wh to have direct patient contact or access to patient recordsersonal information about a patient.¶~~

(23) ~~A hospice program must have written policies and procedures for conducting a criminal background checksrecords check and making a fitness determination in accordance with section (12) of this rule including a description of any criminal convictions that or other disqualifies an individualyng condition that would disqualify a SI from being employed, contracted with or working as a volunteer.¶~~

(3) ~~If the criminal background check or other information obtained by a hospice program indica The policies and procedures must include at a minimum:¶~~

(a) ~~Provisions for performing a weigh test; an employee, contractor or volunteerd¶~~

(b) ~~Weigh test actions should a criminal records check indicate that a SI has been convicted of a-crimes against a person or property that reasonably raises questions about the ability of that individual to safely provide services or care, the hospice program shall notify the individual in writing that they have been found unfit to be employed, contracted with or to be a volunteer.n individual or property, or other disqualifying condition.¶~~

(4) ~~In performing a weigh test, the hospice program shall consider circumstances regarding the nature of the potentially disqualifying conviction or condition using the criteria established under ORS 181A.195(10)(c). ¶~~

(45) ~~If an individual SI has been found unfit in accordance with section (32) of this rule, the hospice program shall provide that individual notify the SI and provide the SI with information on how to appeal to the source of the criminal backgroundrecords check if the individualSI believes the records are in error.¶~~

(56) ~~A hospice program shall keep the information obtained from a criminal backgroundrecords checks confidential and use it solely to determine an individual SI's eligibility to be employed, contracted with or to be a~~

volunteer.¶

~~(67)(a) A hospice program shall require the individuals described in subsection (1)(a) through (c) of this rule to report a SI to report to the hospice program within 10 days.¶~~

~~(a) A any criminal conviction;¶~~

~~(b) Any, arrest, indictment, or charge for a sexual offense or property crime; and¶~~

~~(c) A, or any disciplinary action taken by a health professional regulatory board or agency.¶~~

~~(7b) An individual hospice program shall conduct a fitness determination in accordance with section (3) to determine whether the SI is fit to continue to hold position. ¶~~

~~(8) Notwithstanding section (2) of this rule, a hospice program is not required to complete a background check on:¶~~

~~(a) A SI licensed by a health professional regulatory board as defined in ORS 676.160 is not subject to the criminal background checks described in section (1) of this rule; or¶~~

~~(b) A contractor employed by a company that has completed a criminal records check on the contractor and has determined the contractor is fit to have contact with patients, have access to personal information about the patient, or otherwise provide services to a patient on behalf of the hospice program.¶~~

~~(89) A hospice program shall have policies and procedures that ensure the entities it contracts with have conducted criminal background checks for individuals records checks on a SI that will have direct contact with a patient of the hospice program's patients or access to hospice program patient record or access to personal information about a hospice patient.¶~~

~~(10) A hospice program shall ensure that a criminal records check is performed on a SI every three years from the date of the SI's last criminal records check in accordance with these rules.~~

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0220

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0220 (renumbered from 333-035-0065) – Minor grammatical changes and rule number update.

CHANGES TO RULE:

333-035-0220

Complaints ¶

(1) Any person may make a complaint verbally or in writing to the ~~Division~~Authority regarding an allegation as to the care or services provided by a hospice program or violations of any hospice program laws or regulations.¶

(2) ~~The identity of a person making a complaint will be kept confidential.¶~~

~~(3) An investigation will be carried out as soon as practicable.~~Authority may investigate after the receipt of a complaint in accordance with OAR 333-035-007230.¶

~~(4)~~ If the complaint involves an allegation of criminal conduct or an allegation that is within the jurisdiction of another local, state, or federal agency, the ~~Division will~~Authority may refer the matter to that agency.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0230

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0230 (renumbered from 333-035-0070) – Minor corrections made for readability. Specifies that a complaint investigation may be unannounced. Adds caregivers and patient representative to the list of persons that may be interviewed during an investigation. Specifies that all requested documents must be made available to Authority surveyor. Clarifies that a hospice program must cooperate with other agencies investigating allegations of abuse including the Oregon Department of Human Services, Authority's Adult Protective Services, and law enforcement.

CHANGES TO RULE:

333-035-0230

Investigations ¶¶

- (1) As soon as practicable after receiving a complaint, taking into consideration the nature of the complaint, ~~Division~~Authority staff may ~~begin an~~conduct an unannounced complaint investigation.¶¶
- (2) A hospice program shall permit ~~Division~~Authority staff access to any location from which it is operating its program or providing services during an investigation.¶¶
- (3) An investigation may include but is not limited to:¶¶
 - (a) Interviews of the complainant, ~~patients of the hospice program, caregivers, patients, a patient's representative, a patient's~~ family members, witnesses, and hospice program management and staff;¶¶
 - (b) On-site observations of the patients and(s), staff performance, or patient environment; and¶¶
 - (c) Review of documents and records.¶¶
- (4) ~~Except as otherwise specified in 42 CFR § 401, Subpart B, the Division shall draft an investigation report and may make publicly available a copy of that report that does not contain any information that could lead to the identification of the complainant, a patient, or any other information that is confidential under state law~~A hospice program shall timely make all requested documents and records available to the surveyor for review and copying.¶¶
- (5) The hospice program shall cooperate with investigations of allegations of abuse and neglect conducted by the Oregon Department of Human Services (ODHS), Oregon Health Authority, Adult Protective Services, and other agencies such as law enforcement.¶¶
- (6) Information obtained by the Authority during an investigation of a complaint or reported violation under this rule will not be disclosed unless required by law. Upon the conclusion of the investigation, except as otherwise specified in 42 CFR § 401, Subpart B, the Authority may publicly release a report of its findings. The Authority may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a hospice program and may report information obtained during an investigation to a health professional licensing regulatory board as defined in ORS 676.160 as that information pertains to a licensee of the board.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0240 (renumbered from 333-035-0075) – Clarifies that site inspections are in-person. Clarifies that a survey is conducted at time of initial license and every three years thereafter. Describes requirements for the Authority to accept a survey conducted by a federal agency or approved accrediting organization. Specifies that a hospice program administrator must immediately notify the Authority if the deemed status of hospice program changes or if the program decides not to renew its affiliation with the accrediting organization. Removes requirement that an administrator must return a signed copy of the written notice that the agency complies with licensing laws.

CHANGES TO RULE:

333-035-0240

Surveys ¶

(1) The ~~Division~~Authority shall, in addition to any investigations conducted under OAR 333-035-007230, conduct at least one ~~survey of each hospice program every three years~~ in-person site inspection of each hospice program prior to licensure and once every three years thereafter as a requirement for licensure, and at such other times as the ~~Division~~Authority deems necessary. ¶

(2) In lieu of a survey required under section (1) of this rule, the ~~Division~~may: ¶

~~(a) Accept certification by a federal agency; or~~ ¶

~~(b) Accept a survey perform~~Authority may accept deemed status by a CMS-approved accrediting organization following a survey conducted within the previous three years by that accrediting organization if: ¶

~~(a) The certification or accreditation is recognized by the Authority as addressing the standards and Condition for Participation requirements of the CMS and other standards set by the Authority;~~ ¶

~~(b) The hospice program notifies the Authority to participate in any exit interview conducted by an~~the accrediting organization approved by the ~~Divis~~body; and ¶

~~(c) The hospice program provides copies of all documentation concerning the certification or accreditation requested by the Authority including:~~ ¶

~~(A) Written evidence of all corrective actions under OAR 333-035-0100, and conducted within the last three years;~~way, or completed, in response to approved accrediting organizations recommendations; ¶

~~(B) All progress reports; and~~ ¶

~~(C) The letter from CMS indicating its deemed status.~~ ¶

(3) A hospice program administrator must notify the Authority within seven calendar days if: ¶

~~(a) The deemed status of the hospice program changes; or~~ ¶

~~(b) The hospice program decides not to renew its affiliation with the accrediting organization.~~ ¶

(34) A hospice program shall permit ~~Division~~Authority staff access to any location from which it is operating its program or providing services during a survey. ¶

~~(45)~~ A survey may include but is not limited to: ¶

(a) Interviews of patients, patient family members, hospice program management and staff; ¶

(b) On-site observations of patients and staff performance; ¶

(c) Review of documents and records; and ¶

(d) Patient audits. ¶

~~(56)~~ A hospice program shall timely make all requested documents and records available to the surveyor for review and copying. ¶

~~(67)~~ Following a survey, ~~Division~~Authority staff may conduct an exit conference with the hospice program administrator or ~~his or her~~the administrator's designee. During the exit conference ~~Division~~Authority staff shall may: ¶

(a) Inform the hospice program representative of the preliminary findings of the inspection; and ¶

(b) Give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings. ¶

~~(78)~~ Following the survey, ~~Division~~Authority staff shall prepare and provide the hospice program administrator or ~~his or her~~administrator's designee specific and timely written notice of the findings. ¶

~~(89)~~ If the findings result in a referral to another regulatory agency, ~~Division~~Authority staff shall submit the applicable information to that referral agency for its review and determination of appropriate action. ¶

~~(910)~~ If no deficiencies are found during a survey, the ~~Division~~Authority shall issue written findings to the hospice program administrator indicating that fact. ¶

~~(10) If the surveyor's written notice of findings indicates that the agency was in compliance with hospice program licensing laws and no deficiencies were cited, the agency administrator or administrator's designee shall sign the written notice and return it to the Division.~~

(11) If deficiencies are found, the Division ~~found~~, the Authority shall take informal or formal enforcement action in compliance with OAR 333-035-0085260 or 333-035-009270.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0250

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-025-0250 (renumbered from 333-035-0080) – Minor corrections made for readability. Adds failure to report suspected abuse as a violation.

CHANGES TO RULE:

333-035-0250

Violations ¶¶

In addition to non-compliance with any ~~law that governs a hospice program licensing law~~ or CMS Conditions of Participation, it is a violation to:¶¶

(1) Refuse to cooperate with an investigation or survey, including but not limited to failure to permit ~~Division Authority~~ staff access to the hospice program, its documents or records;¶¶

(2) Fail to implement an approved plan of correction;¶¶

(3) Fail to comply with all applicable laws, lawful ordinances and rules relating to safety from fire;¶¶

(4) Refuse or fail to comply with an order issued by the ~~Division Authority~~;¶¶

(5) Refuse or fail to pay a civil penalty;¶¶

(6) Fail to comply with rules governing the storage of records following the closure of a hospice program; ¶¶

(7) Fail to report suspected abuse when required under ORS 124.060; or¶¶

(78) Fail to obtain a license.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0260

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0260 (renumbered from 333-035-0085) – Updates term 'Division' to 'Authority.'
Changes the number of days that a hospice program has to correct deficiencies from 45 days to 60 days from date of the exit conference. Adds requirements of the Authority if finding a plan of correction is unacceptable.

CHANGES TO RULE:

333-035-0260

Informal Enforcement ¶

(1) If during an investigation or survey ~~Division~~Authority staff document violations of hospice program licensing laws or conditions of participation, the ~~Division~~Authority may issue a statement of deficiencies that cites the law alleged to have been violated and the facts supporting the allegation.¶

(2) A signed plan of correction must be received by the ~~Division~~Authority within 10 business days from the date the statement of deficiencies was ~~mail received to~~by the hospice program. A signed plan of correction will not be used by the ~~Division~~Authority as an admission of the violations alleged in the statement of deficiencies.¶

(3) A hospice program shall correct all deficiencies within ~~45~~60 days from the date of the exit conference, unless an extension of time is requested from the ~~Division~~Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.¶

(4) The ~~Division~~Authority shall determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the ~~Division~~,~~the Division~~Authority, the Authority shall notify the hospice program administrator in writing ~~and for~~by telephone:¶

(a) Identifying which provisions in the plan the Authority finds unacceptable;¶

(b) Citing the reasons the Authority finds them unacceptable; and¶

(c) Requesting that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was ~~mail received to~~by the administrator.¶

(5) If the hospice program does not come into compliance by the date of correction reflected on the plan of correction or ~~45~~60 days from date of the exit conference, whichever is sooner, the ~~Division~~Authority may propose to deny, suspend, or revoke the hospice program license, or impose civil penalties.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0270

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0270 (renumbered from 333-035-0090) – Updates term 'Division' to 'Authority.'
Specifies that the Authority may reinstate a license that has been suspended after it determines that the hospice program complies with OAR chapter 333, division 027.

CHANGES TO RULE:

333-035-0270

Formal Enforcement ¶

(1) If during an investigation or survey ~~Division~~Authority staff document a substantial failure to comply with hospice program licensing laws or conditions of participation, or if a hospice program fails to pay a civil penalty imposed under ORS 443.869, ~~the Division and these rules, the Authority~~ may issue a Notice of Proposed Suspension or Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470~~1~~.¶

(2) The ~~Division~~Authority may issue a Notice of Imposition of Civil Penalty for violations of hospice program licensing laws.¶

(3) At any time the ~~Division~~Authority may issue a Notice of Emergency License Suspension under ORS 183.430~~(2)~~.¶

(4) If the ~~Division~~Authority revokes a hospice program license, the order shall specify when, if ever, the hospice program may reapply for a license.¶

(5) The Authority may reinstate a hospice program license that has been suspended after the Authority determines that compliance with these rules have been achieved.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

AMEND: 333-035-0280

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0280 (renumbered from 333-035-0095) – Updates term 'Division' to 'Authority.'

CHANGES TO RULE:

333-035-0280

Civil Penalties ¶

(1) In addition to any other liability or penalty provided by law, the ~~Division~~Authority may impose a civil penalty of \$1,000 per day, up to \$10,000 in any 30-day period, for any of the following:¶

(a) Violation of any of the terms or conditions of a license issued under these rules;¶

(b) Violation of any of these rules or an order issued by the ~~Division~~Authority to a hospice program licensed under these rules;¶

(c) Violation of any final order of the ~~director~~Authority that pertains specifically to a hospice program owned or operated by the person incurring the penalty; or¶

(d) Violation of ORS 443.860 or ~~of the~~ rules adopted under ORS 443.860.¶

(2) In determining the amount of a civil penalty, the ~~Division~~Authority shall consider whether:¶

(a) The ~~Division~~Authority made repeated attempts to obtain compliance;¶

(b) There is a history of noncompliance with hospice program licensing laws;¶

(c) The violation poses a serious risk to the public's health;¶

(d) The person or licensee gained financially from the noncompliance; and¶

(e) There are mitigating factors, such as a person or licensee's cooperation with an investigation or actions to come into compliance.¶

(3) The ~~Division~~Authority shall document its consideration of the factors in section (2) of this rule.¶

(4) Each day a violation continues is an additional violation.¶

(5) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.869

AMEND: 333-035-0290

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Amend 333-035-0290 (renumbered from 333-035-0100) – Updates term 'Division' to 'Authority' and removes obsolete language.

CHANGES TO RULE:

333-035-0290

Approval of Accrediting Organizations ¶¶

(1) An accrediting organization must request approval by the ~~Division~~Authority to accredit hospice programs in Oregon.¶¶

(2) An accrediting organization shall request approval in writing and shall provide, at a minimum:¶¶

(a) Evidence that it is recognized as a ~~deem~~CMS-approved accrediting organization ~~by CMS~~; or¶¶

(b) Documentation of program policies and procedures that the accreditation meets standards and conditions established for hospice programs by CMS;¶¶

(c) Accreditation history; and¶¶

(d) References from a minimum of two hospice programs currently receiving services from the organization.¶¶

(3) If the ~~Division~~Authority finds that an accrediting organization's qualifications are equal to or exceed state licensing requirements in Oregon, the ~~Division will~~Authority may enter into an agreement with the accrediting organization permitting it to accredit hospice programs in Oregon.¶¶

(4) ~~CMS will not accept accreditation by an organization that is not a deemed organization by CMS, for purposes of CMS certification.~~

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860

ADOPT: 333-035-0300

NOTICE FILED DATE: 11/21/2022

RULE SUMMARY: Adopt 333-035-0300 – Adds rule that allows a hospice program to request a waiver and specifies information that must be submitted for consideration. Specifies that the Authority may waive a rule that a hospice program is unable to meet for reasons beyond the hospice program's control.

CHANGES TO RULE:

333-035-0300

Waivers

(1) While all hospice programs are required to maintain continuous compliance with these rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. A request for a waiver from a rule must:

(a) Be submitted to the Authority in writing;

(b) Identify the specific rule for which a waiver is requested;

(c) Identify the special circumstances relied upon to justify the waiver;

(d) Explain why the hospice program is unable to comply, what alternatives were considered, if any, and why alternatives (including compliance) were not selected;

(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, and will not jeopardize patient health and safety; and

(f) Include the proposed duration of the waiver.

(2) Upon finding that the hospice program has satisfied the conditions of this rule, the Authority may grant a waiver.

(3) A hospice program may not implement a waiver until it has received written approval from the Authority.

(4) During an emergency the Authority may waive a rule that a hospice program is unable to meet, for reasons beyond the hospice program's control. If the Authority waives a rule under this section it shall issue an order, in writing, specifying which rules are waived, which hospice programs are subject to the order, and how long the order shall remain in effect.

Statutory/Other Authority: ORS 443.860

Statutes/Other Implemented: ORS 443.860