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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 859
PSYCHIATRIC SECURITY REVIEW BOARD

FILED

02/15/2023 2:18 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: The proposed amendments will make permanent temporary rules that are currently in effect.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/10/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

Amendments to OAR 859-010-0005 (Definitions) and OAR 859-510-0005 (Definitions):

Individuals under the jurisdiction of the Psychiatric Security Review Board (Board) must have a qualifying mental disorder in order to remain under the jurisdiction of the Board. The qualifying mental disorder must be defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM). The current reference to the DSM lists the "DSM 5" and must be updated to "DSM-5-TR" to reflect the most recent edition.

Amendment to OAR 859-540-0010 (Quorum and Decisions):

The Juvenile Panel of the Psychiatric Security Review Board (Board) is required to make decisions regarding the commitment, conditional release and discharge of juveniles committed to its jurisdiction. In the event that an insufficient number of Juvenile Panel members are available to make up the quorum necessary to make those decisions within the timeframes required by ORS 419C.542, this rule permits the Board to assign an Adult Panel board member to a case in order to timely move forward with the hearing.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

PSRB rulemaking files (available upon request from the PSRB).

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The permanent amendment of these rules continues the temporary rules in effect and will not significantly affect racial equity in the state.

FISCAL AND ECONOMIC IMPACT:

This statement takes into account the fiscal impact on Oregon's community mental health providers, the Oregon Health Authority, the Oregon State Hospital, local government, and the public. The PSRB does not anticipate a fiscal impact to

any of the above-mentioned entities.

The amendments to OAR 859-010-0005 and OAR 859-510-0005 make a modification in what edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) providers for persons under the jurisdiction of the Board reference when determining whether the person under the jurisdiction of the Board has a qualifying mental disorder. The DSM-5-TR is the most current version of the DSM published by the American Psychiatric Association and is the industry standard for mental disorder diagnoses and treatment.

The amendment to OAR 859-540-0010

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The PSRB does not anticipate that there would be any costs to comply with the proposed rules for local governments, small businesses, or the public.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The proposed amendments do not affect small businesses in any way and as such, no small businesses were involved in developing the proposed rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The amendments to OAR 859-010-0005 and OAR 859-510-0005 are minor updates to reference that the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) is in use. This is a minor change and persons who would have been included within an administrative rules advisory committee for the PSRB will be contacted directly for public comment.

The amendment to OAR 859-540-0010 impacts a total of three persons under the jurisdiction of the Board. The attorneys for the persons impacted will be notified directly of the proposed amended language to provide public comment. As the change ensures that the impacted persons will receive timely hearings and the number of impacted persons is low, a rules advisory committee was not convened.

RULES PROPOSED:

859-010-0005, 859-510-0005, 859-540-0010

AMEND: 859-010-0005

RULE SUMMARY: This rule was amended to update references to the most current Diagnostic and Statistical Manual of Mental Disorders from DSM 5 to DSM-5-TR.

CHANGES TO RULE:

859-010-0005
Definitions ¶

(1) "Administrative Hearing" means a meeting of the Board where a quorum is present and a matter is reviewed (e.g. an outpatient supervisor request for modification to a client's conditional release plan). The Board shall consider information in the written record only and no oral testimony shall be received; If an objection is made to the administrative hearing, the client or the state has the right to request a full hearing. On its own motion, the Board may require further information, testimony or the presence of the client and therefore, set the matter for a full hearing.¶

(2) "Administrative Meeting" is any meeting of the Board where a quorum is present for the purpose of considering matters relating to Board policy and administration. Minutes shall be taken during an administrative meeting and distributed to Board members and interested persons. Minutes shall be voted on and approved at subsequent administrative meetings;¶

(3) "Case Monitors" are individuals designated in the conditional release order who are responsible for ensuring clients on conditional release receive the services and support they need and reporting to the PSRB a client's progress, activities and compliance with conditions of release or lack thereof.¶

(4) "Client" refers to any person under the jurisdiction of the Board and may be used interchangeably with "person," "patient," or "outpatient."¶

(5) "Community Evaluation" is a written report ordered by the Board or other court and conducted by a qualified mental health professional from a local mental health program designated by the Board to determine if an individual can be adequately controlled with supervision and treatment if conditionally released and that appropriate supervision and treatment are available.¶

(6) "Conditional Release" is a grant by the court or the Board for a client, patient or defendant to reside outside a state hospital in the community under conditions mandated by the court or Board for monitoring and treatment of mental and physical health.¶

(7) "Consultation" is a screening completed on a PSRB template, ordered by a court and conducted by a qualified mental health professional from a local mental health program designated by the Board, to determine whether the necessary supervision and treatment for the individual are available in the community and appropriate for the individual and informs the court as to whether a community evaluation is necessary to determine whether the person can be adequately controlled with supervision and treatment if conditionally released.¶

(8) "Danger"; "Substantial Danger"; or "Dangerousness" means a demonstration or previous demonstration of intentional, knowing, reckless or criminally negligent behavior which places others at risk of physical injury because of the person's qualifying mental disorder.¶

(9) "Escape" means:¶

(a) A client committed to a state hospital;¶

(A) Leaves the supervision of hospital staff without permission;¶

(B) Leaves the hospital without permission; or¶

(C) Fails to return at the appointed time to the hospital.¶

(b) Any client who leaves the State of Oregon without authorization of the Board;¶

(c) Any client who fails to return to the State of Oregon as directed by the Board.¶

(10) "Full Hearing" is a meeting of the Board where parties are present, testimony is taken and written findings on the issue(s) before the Board are made.¶

(11) "Incident Report" means a report completed by the case monitor that describes any significant behavioral or mental health changes, serious violations of conditional release requirements, psychotropic medication refusals, or any other information that is relevant to an individual's ability to be safely managed in a community setting. The incident report shall contain the following information:¶

(a) A description of incident;¶

(b) A summary of the interventions that were used by community mental health provider staff;¶

(c) A summary of the debrief with the individual or a summary of why a debrief did not occur; and¶

(d) Any recommendations on how to mitigate future incidents, including but not limited to modifications to the individual's conditional release plan.¶

(12) "Insanity Defense", also known as "GEI", refers to a plea or finding of "Guilty Except for Insanity".

Nomenclature. For offenses committed on or after January 1, 1984, a person is guilty except for insanity if, as a result of a qualifying mental disorder (formerly "mental disease or defect") at the time of engaging in criminal conduct, the person lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. The name of the insanity defense from January 1, 1978, through December 31, 1983, was "not responsible due to mental disease or defect." From January 1, 1971, through December 31, 1977, the insanity defense was known as "not guilty by reason of mental disease or defect." The name of the insanity defense prior to 1971 was "not guilty by reason of insanity."¶

(13) "Jurisdictional Report" means a report completed by a psychiatrist, psychiatric mental health nurse practitioner, or licensed psychologist that assists the Board in making the determinations described in ORS 161.341(1), ORS 161.346(1), or ORS 161.336(5)(a) and includes an analysis of the following information:¶

- (a) An opinion as to the mental condition of the person;¶
 - (b) Whether the person presents a substantial danger to others; and¶
 - (c) Whether the person could be adequately controlled with treatment as a condition of release.¶
 - (14) "Monthly Progress Report" means a template report available on the PSRB's website that is required to be completed for all individuals who are on conditional release by the individual's case monitor each month that includes the following information attached, if applicable:¶
 - (a) Prescriber and specialty progress notes that occurred within the reporting month of the monthly progress report; and¶
 - (b) Any incident reports that that occurred within the reporting month of the monthly progress report.¶
 - (15) "Qualifying Mental Disorder" (formerly "Mental disease or defect") means:¶
 - (a) a developmental or intellectual disability, traumatic brain injury, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM-5-5-TR) of the American Psychiatric Association; or¶
 - (b) any diagnosis of a psychiatric condition which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-5-TR) of the American Psychiatric Association.¶
 - (c) "Qualifying Mental Disorder," described in subsections (a) and (b), excluding those conditions described in subsection (d) includes:¶
 - (A) A disorder in a state of remission which could with reasonable medical probability occasionally become active; or¶
 - (B) A disorder that could become active as a result of a non-qualifying mental disorder.¶
 - (d) "Non-Qualifying Mental Disorder" is defined as a mental disorder in which the condition is:¶
 - (A) A diagnosis solely constituting the ingestion of substances (e.g., chemicals or alcohol), including but not limited to alcohol-induced psychosis;¶
 - (B) An abnormality manifested solely by repeated criminal or otherwise antisocial conduct; or¶
 - (C) An abnormality constituting a personality disorder.¶
 - (16) "Party" means the State, which includes the Oregon Department of Justice or, if representing the State's interest, the District Attorney from the county where the GEI was adjudicated, client and client's counsel.¶
 - (17) "PSRB" or "Board" means the Oregon Psychiatric Security Review Board.¶
 - (18) "Quorum" means the presence of at least three members, in person or on the telephone, of the Adult Panel of the Board.¶
 - (19) "State Hospital" means any state institution or facility operated by the Oregon Health Authority.¶
 - (20) "Unauthorized Departure" means a person who is under the jurisdiction of the Board who is conditionally released to the community that:¶
 - (a) Leaves the supervision of the community mental health program staff without permission;¶
 - (b) Leaves the authorized placement listed on the conditional release order without permission;¶
 - (c) Fails to return to the authorized placement listed on the conditional release order at the appointed time;¶
 - (d) Leaves the State of Oregon without authorization of the Board; or¶
 - (e) Fails to return to the State of Oregon as directed by the Board.¶
 - (21) "Victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime that brought the client under the Board's jurisdiction. In the case of a homicide or abuse of a corpse, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor. In no event shall the PSRB client be considered a victim of his/her own GEI case.
- Statutory/Other Authority: ORS 161.387
 Statutes/Other Implemented: ORS 161.387, ORS 161.295 - 161.400

AMEND: 859-510-0005

RULE SUMMARY: This rule was amended to update references to the most current Diagnostic and Statistical Manual of Mental Disorders from DSM 5 to DSM-5-TR.

CHANGES TO RULE:

859-510-0005

Definitions ¶¶

- (1) "Administrative Hearing" means a meeting of the Board at which a quorum is present but the youth is not for the purpose of deliberating about a youth's status or conditional release plan based upon the written record before the Board.¶¶
- (2) "Administrative Meeting" means any meeting of the Board at which a quorum is present for the purpose of considering matters relating to Board policy and administration, at which minutes are taken, and approved at a subsequent administrative meeting by a majority of members present.¶¶
- (3) "Board" means the juvenile panel of Oregon Psychiatric Security Review Board as constituted under ORS 161.385.¶¶
- (4) "Burden of proof" means the responsibility of the youth or the state to convince the Board of the truth of its version or interpretation of facts or issues in dispute.¶¶
- (5) "Commit" means order of placement in a secure facility.¶¶
- (6) "Community Evaluation" is a written report ordered by the Board or other court and conducted by a qualified mental health professional from a local mental health program designated by the Board to determine if a youth can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available. ¶¶
- (7) "Conditional Release" means an order by the court or Board authorizing a youth to reside outside a Secure Adolescent In-patient Program (SAIP), Secure Children's In-patient Program (SCIP), or Intensive Treatment Services (ITS), in the community under conditions established for the monitoring and treatment of the youth's mental and physical health.¶¶
- (8) "Department of Human Services" and "Department" mean the Oregon Department of Human Services as constituted under ORS 409.010.¶¶
- (9) "Discharge" means the termination of a youth's jurisdiction under the Board because the youth is either no longer affected by a serious mental condition or no longer affected by a qualifying mental disorder that presents a substantial danger to others and requires regular medical care, medication, supervision or treatment; or term of jurisdiction has lapsed.¶¶
- (10) "Escape" means:¶¶
 - (a) A youth committed to a state hospital, SAIP, SCIP, or SITP who:¶¶
 - (A) Leaves the supervision of treatment staff without permission;¶¶
 - (B) Leaves the facility without permission; or¶¶
 - (C) Fails to return at the appointed time to the facility.¶¶
 - (b) Any youth who leaves the State of Oregon without authorization of the Board;¶¶
 - (c) Any youth who fails to return to the State of Oregon as directed by the Board.¶¶
- (11) "Full Hearing" means a meeting of the Board at which a quorum is present, the youth is present, evidence is received, a youth's status is reviewed pursuant to Chapter 419C and at the conclusion of which the Board makes findings of fact and conclusions of law as required by law from which written orders will issue.¶¶
- (12) "Incident Report" means a report completed by the JPSRB case monitor or supervisor that describes any significant behavioral or mental health changes, serious violations of conditional release requirements, psychotropic medication refusals, or any other information that is relevant to a youth's ability to be safely managed in a community setting. The incident report should contain the following information:¶¶
 - (a) A description of incident;¶¶
 - (b) A summary of the interventions that were used by community mental health provider staff;¶¶
 - (c) A summary of the debrief with the youth or a summary of why a debrief did not occur; and¶¶
 - (d) Any recommendations on how to mitigate future incidents, including but not limited to modifications to the youth's conditional release plan.¶¶
- (13) "Jurisdictional Report" means a report completed by a psychiatrist, psychiatric mental health nurse practitioner, or licensed psychologist that assists the Board in making the determinations described in ORS 419C.532, and includes the following information:¶¶
 - (a) An opinion as to the mental condition of the youth;¶¶
 - (b) Whether the youth presents a substantial danger to others; and¶¶
 - (c) Whether the youth could be adequately controlled with treatment as a condition of release.¶¶

- (14) "Monthly Progress Report" means a template report available on the PSRB's website that is required to be completed for all youth who are on conditional release by the community agency mental health provider that includes the following information attached, if applicable:¶¶
- (a) Prescriber and specialty progress notes that occurred within the reporting month of the monthly progress report; and¶¶
 - (b) Any incident reports that that occurred within the reporting month of the monthly progress report.¶¶
- (15) "Qualifying Mental Disorder" (formerly "Mental disease or defect") means:¶¶
- (a) that which is manifested by developmental delay or disability if a mental deficiency exists concurrently with qualitative deficits in activities of daily living and is not otherwise attributable to mental illness or substance abuse or influenced by current situational trauma; or¶¶
 - (b) any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM-5-5-TR) of the American Psychiatric Association.¶¶
- (16) The term "qualifying mental disorder" does not include an abnormality manifested solely by repeated criminal or otherwise antisocial conduct; nor constituting solely a conduct or a personality disorder; nor solely an alcohol or drug abuse or dependence diagnosis.¶¶
- (17) "Mental status" is defined as the mental, emotional, and behavioral functioning of a youth.¶¶
- (18) "Patient" means any youth under the jurisdiction of the JPSRB, residing in a SAIP or SCIP.¶¶
- (19) "Proof" means the achievement of a designated legal standard for persuading the trier of fact that a proposition is true. The standard of proof on all issues at hearings of the Board is by the preponderance of the evidence.¶¶
- (20) "Quorum" means the presence at a hearing or meeting of at least three members of the Board.¶¶
- (21) "Reasonable medical probability" means the finding by a physician or other qualified health professional that a given condition or illness is more likely than not to exist.¶¶
- (22) "Responsible Except for Insanity" means the affirmative defense one must successfully assert in order to be placed under the jurisdiction of the JPSRB; or a finding by a judge that a youth, as a result of a qualifying mental disorder at the time the youth committed the act(s) alleged in the petition, lacked substantial capacity either to appreciate the nature and quality of the act or to conform the youth's conduct to the requirements of law.¶¶
- (23) "Revocation" means the return to a secure residential adolescent or children's treatment facility of a youth pursuant to an order of the Board when the youth has violated the terms of a conditional release order or has experienced a change in mental status giving reasonable cause to believe that the youth may present a danger to others and cannot be controlled by appropriate interventions.¶¶
- (24) "SAIP" means secure adolescent in-patient treatment program designated by the Oregon Health Authority.¶¶
- (25) "SCIP" means secure child in-patient treatment program designated by the Oregon Health Authority.¶¶
- (26) "SITP" means a secure child and adolescent Seniors and People with Disabilities (SPD) in-patient treatment program designated by Department of Human Services.¶¶
- (27) "Secure" means that the doors to the facility are locked at all times. Ingress and egress are controlled by staff.¶¶
- (28) "Secure In-patient Program Pass", means any time a youth is authorized to be away from a secure child or adolescent facility's grounds for any length of time unaccompanied by facility staff.¶¶
- (29) "Serious mental condition" is one of the three specifically delineated diagnoses listed in 419C.520 (3).¶¶
- (30) "Substantial danger" means the level of danger exhibited by threats of or engagement in acts of intentional, knowing, reckless or negligent behavior which places another person at risk of physical injury.¶¶
- (31) "Unauthorized Departure" means:¶¶
- (a) A youth who is under the jurisdiction of the Board who is conditionally released to the community that:¶¶
 - (A) Leaves the supervision of the community mental health program staff without permission;¶¶
 - (B) Leave the authorized placement listed on the conditional release order without permission;¶¶
 - (C) Fails to return to the authorized placement listed on the conditional release order at the appointed time;¶¶
 - (b) Any youth who leaves the State of Oregon without authorization of the Board; or¶¶
 - (c) Any youth who fails to return to the State of Oregon as directed by the Board.
- Statutory/Other Authority: ORS 161.387, ORS 419C.533
 Statutes/Other Implemented: ORS 419C.533

AMEND: 859-540-0010

RULE SUMMARY: This rule describes the requirements for the juvenile panel Board members of the Psychiatric Security Review Board to obtain quorum and make decisions.

CHANGES TO RULE:

859-540-0010

Quorum and Decisions ¶¶

The presence of at least three members of the Board constitutes a quorum.¶¶

(1) Three concurring votes (affirmative or negative) are required for a Board decision.¶¶

(2) When three members cannot agree on a decision, the hearing shall be continued for no longer than 60 days. A recording of the hearing and the exhibits shall be reviewed by the remaining member(s) and a decision by the majority of the members shall be the finding and order of the Board.¶¶

(3) If the attorney for the youth objects to the remaining member's or members' review as set forth in section (2) of this rule and if good cause is shown, the Board may reschedule the matter for a full hearing before the entire Board.¶¶

(4) Prior to commencing a hearing, if an objection for good cause is made to a specific member of the Board sitting on the panel considering a specific case and the Board sustains it, that member shall withdraw and, if necessary, the hearing shall be continued and rescheduled.¶¶

(5) If a member of the juvenile panel is unable to be present for a hearing pursuant to ORS 419C.538 (Conditional release), 419C.540 (Discharge or conditional release after commitment) or 419C.542 (Hearings before juvenile panel of Psychiatric Security Review Board) due to an emergency, and quorum cannot be reached, a member of the adult panel of the Oregon Psychiatric Security Review Board, as defined in ORS 161.385(2) and OAR 859-010-0005(13), may sit on the Board for the purposes of obtaining quorum and holding the hearing.¶¶

(6) For the purposes of this rule, an emergency situation is defined as a situation wherein there are no other members of the juvenile panel available due to unplanned or unforeseen circumstances, including but not limited to a conflict of interest or a serious medical emergency.

Statutory/Other Authority: ORS 161.385, ~~161.387~~, OL 2007, Ch. 889 ~~¶ 6~~ (SB 328) ORS 419C.533(1)

Statutes/Other Implemented: ORS 161.385(1)-(7), ~~161.387~~, ORS 419C.532, ORS 419C.533(1)