

OFFICE OF THE SECRETARY OF STATE  
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SECRETARY OF STATE  
  
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ARCHIVES DIVISION  
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800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 309  
OREGON HEALTH AUTHORITY  
HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

**FILED**  
03/09/2018 12:01 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Clarify Procedural Detail and Process for Taking Action on a Behavioral Health Provider Certificate

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/19/2018 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.*

CONTACT: Sandy Cafourek  
503-945-6430  
sandy.c.cafourek@dhsosha.state.or.us

500 Summer St. NE  
Salem, OR 97301

Filed By:  
Sandy Cafourek  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 04/17/2018

TIME: 10:30 AM - 11:30 AM

OFFICER: Sandy Cafourek

ADDRESS: Human Services Building

500 Summer St. NE, Room 137A

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Send comments to

hsd.rules@dhsosha.state.or.us by 5 p.m.

on April 19, 2018.

NEED FOR THE RULE(S):

The Authority needs to adopt and amend these rules and finds that failure to adopt and amend the rule changes would result in serious prejudice to the Authority, existing and prospective providers, current and prospective recipients of services, and the public. These groups have an interest in understanding how and when the Authority may take an action, including the process involved. The members of the public and especially the recipients of services have an interest in assuring that there are clear and timely processes in place to implement minimum standards for the services they may receive. These adoptions and amendments may prevent misunderstanding and reduce unnecessary delay in addressing situations or protecting individuals where providers are not compliant with administrative rules and in situations of abuse, neglect, or mistreatment.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

FISCAL AND ECONOMIC IMPACT:

Amending these rules will have no fiscal or economic impact on the Authority, other state agencies, units of local government, or the public. If conditions are placed on provider certificates and the providers do not satisfy requirements of the conditions, certificates may be suspended or revoked. In these instances, there may be fiscal impacts on businesses, including small businesses.

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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).

(1) Adopting and amending these rules will have no fiscal or economic impact on the Authority, other state agencies, units of local government, or the public. (2)(a) 679 - Outpatient mental health, substance use (to include DUII services), and problem gambling service provider locations. (b) Outpatient behavioral health providers are subject to triannual onsite renewal reviews that include onsite reports indicating areas of non-compliance with Oregon Administrative Rules and Oregon Revised Statutes and may include a required plan of correction to cited deficiencies noted on the onsite report. The Division keeps and maintains all reports and plans of correction. Adopting and amending these rules should add no costs of professional services for small business. (c) Adopting and amending these rules should add no equipment, supplies, labor, or increased administration for small business.

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

Through an administrative rule advisory committee.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

309-008-0200, 309-008-0300, 309-008-0400, 309-008-0500, 309-008-0600, 309-008-0700, 309-008-0800, 309-008-0905, 309-008-1000, 309-008-1100, 309-008-1200, 309-008-1300, 309-008-1500, 309-008-1600

AMEND: 309-008-0200

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-0200

Definitions ¶

(1) "ASAM PCCCriteria" means the most current publication of the American Society of Addiction Medicine Patient Placement Criteria; Treatment Criteria for the Treatment of Addictive, Substance-Related Disorder, and Co-Occurring Conditions, which is a clinical guide used in matching individuals to appropriate levels of care, and

incorporated by reference in these rules.¶

(2) "Applicant" means any provider with an existing certificate listed in OAR 309-008-0100(2) to provide behavioral health treatment services or any person, organizational provider, tribal organization, or Community Mental Health Program seeking initial certification listed in OAR 309-008-0100(2) by submitting an application to provide behavioral health treatment services.¶

(3) "Behavioral Health" means mental health, mental illness, addictive health, and addiction and gambling disorders.¶

(4) "Behavioral Health Treatment Services" means mental health treatment, substance use disorder treatment, and problem gambling treatment services.¶

(5) "Certificate" means the document ~~or documents~~ issued by the Division, ~~which that~~ identifies and declares ~~provider certification of a provider pursuant to these rules~~. A letter accompanying issuance of the certificate ~~will~~ shall detail the scope and approved service delivery locations of the certificate.¶

(6) "Certification Review" means an assessment of a provider or applicant by the Division or by another state agency or contractor on behalf of the Division; for the purpose of assessing compliance with these rules; with applicable service delivery rules; and other applicable regulations.¶

(7) "Community Mental Health Program" (CMHP) means the organization of various services for ~~persons~~ individuals with a mental health diagnosis or addictive disorders; operated by; or contractually affiliated with; a local mental health authority and operated in a specific geographic area of the state under an agreement with the Division pursuant to OAR 309-014-0000.¶

(8) "Condition" means a provision attached to a new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the applicant or provider.¶

(9) "Coordinated Care Organization" (CCO) means an entity that has been certifi~~on~~trac~~ted~~ by the Authority to provide coordinated and integrated health services.¶

(10) "Director" means the Director of the Oregon Health Authority or ~~the Director's~~ designee.¶

(11) "Division" means the Health Systems Division (~~HSD~~) of the Oregon Health Authority or ~~the Division's~~ designee.¶

(12) "Division Staff" means those staff employed by the Division to conduct certification activities under these rules or a contracted entity delegated the authority by the Division to conduct certification activities under these rules.¶

(13) "Individual" means the person requesting or receiving behavioral health treatment services from a provider certified by the Division ~~pursuant to these rules~~.¶

(14) "Individual Services Records" means documentation, written or electronic, regarding an individual including information relating to entry, assessment, orientation, services and supports planning, services and supports provided, and transfer.¶

(15) "Initial Certification" means a certificate issued to a new provider.¶

(16) "Non-Inpatient Provider" means a provider not contractually affiliated with the Division, a CMHP, or other Division contractor ~~of the Division~~, providing behavioral health treatment services under group health insurance coverage ~~which that~~ seeks or maintains Division approval under ORS 743A.168).¶

(17) "Oregon Health Authority" (Authority) means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules, divisions of the Oregon Health Authority include the Public Health Division and the Health Systems Division.¶

(18) "Plan of Correction" (POC) means a written plan and attached supporting documentation created by the provider when required by the Division to address findings of noncompliance with these rules or applicable service delivery rules.¶

(19) "Provider" means a ~~person~~ individual, organizational provider as defined in ORS 430.637(1)(b), tribal organization, or CMHP that holds a current certificate listed in OAR 309-008-0100(2) to provide behavioral health treatment services pursuant to these and applicable service delivery rules.¶

(20) "Program Staff" includes employees of the provider, ~~persons~~ individuals who provide services by contract

with the provider, program administrators, directors, or others who manage the provision of services, and the provider itself where the provider is a ~~person~~ individual or a group of ~~person~~ individuals. ¶

(21) "Program Director" means a ~~person~~ individual with appropriate professional qualifications and experience as regulated by the applicable service delivery rules listed on the certificate; who is designated to manage the operation of a program. ¶

(22) "Public Funds" means financial support, in part or in full, provided directly or indirectly by a local, state, or federal government. ¶

(23) "Regulatory Standard" means a rule, condition, or requirement describing the following information for products, systems, or practices: ¶

(a) Classification of components; ¶

(b) Specification of materials, performance, or operations; or ¶

(c) Delineation of procedures. ¶

(24) "Service Delivery Rules" means the OARs describing the specific regulatory standards for each of the types of behavioral health treatment services the Division certifies ~~under these rules and as listed in OAR 309-008-0100(2)~~. ¶

(25) "Service Delivery Location" means the office, facility, location, or other physical premises where the applicant or provider intends to provide or currently provides behavioral health treatment services. ¶

(26) "Services" means those activities and treatments intended to assist the individual's transition to recovery from a substance use disorder, gambling disorder, or mental health condition, and to promote resiliency; and rehabilitative and functional individual and family outcomes. ¶

(27) "Substantial Compliance" means a level of adherence to applicable administrative rules, statutes, and other applicable regulations ~~which that~~ even if one or more requirements is not met, ~~does not~~, in the determination of the Division: does not. ¶

(a) Constitute a danger to the health, welfare, or safety of any individual or to the public; ¶

(b) Constitute a willful, negligent, or ongoing violation of the rights of any individuals as set forth in administrative rules; or ¶

(c) Constitute impairment to the accomplishment of the Division's purposes in approving or supporting the applicant or provider. ¶

(28) "Substantial Failure to Comply" means a level of adherence to applicable administrative rules, statutes, contractual requirements, and other applicable regulations, ~~which that~~ in the determination of the Division: ¶

(a) Constitutes a danger to the health, welfare, or safety of any individual or to the public; ¶

(b) Constitutes a willful, negligent, or ongoing violation of the rights of individuals as set forth in applicable administrative rules; or ¶

(c) Constitutes impairment to the accomplishment of the Division's purposes in approving or supporting the applicant or provider. ¶

(29) "Treatment" means the planned, medically appropriate, individualized program of medical, psychological, and rehabilitative procedures, and experiences and activities designed to remediate symptoms of a DSM diagnosis.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556;

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260~~.

AMEND: 309-008-0300

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-0300

#### Terms of Certification ¶

- (1) Each applicant and provider ~~agrees, as a term of certification:~~ shall: ¶
- (a) ~~To~~ Permit Division staff to inspect the service delivery location(s) where the applicant or provider intends to provide or currently provides behavioral health treatment services: ¶
- (A) During regular business hours and at any other reasonable hour ~~to~~ verify information contained in the application or ~~to~~ ensure compliance with all applicable statutes, administrative rules, other applicable regulations, or contractual obligations; and ¶
- (B) ~~For~~ Allow immediate entry and inspection, extending to any premises the Division has reason to believe a provider provides behavioral health treatment services. ¶
- (b) ~~To~~ Permit Division staff to inspect, audit, assess, and collect data or copies from all records maintained by the applicant or provider in relation to the certificate including but not be limited to: ¶
- (A) Financial records; ¶
- (B) Individual ~~S~~ service R records; ¶
- (C) Records related to the supply, storage, disbursement, and administration of prescribed and over-the-counter medications; ¶
- (D) Records of utilization and quality assurance reviews conducted by the applicant, provider, or other accredited entity; ¶
- (E) Employee records including, but not limited to: ¶
- (i) Academic degrees; ¶
- (ii) Professional licenses; ¶
- (iii) Supervision notes, disciplinary actions, and logs; ~~and~~ ¶
- (iv) Criminal background checks; ¶
- (v) All documentation required by applicable service delivery rules, statute, other applicable regulations, and administrative rules; ¶
- (vi) Additional documentation deemed necessary by the Division to determine compliance with this or any other applicable administrative rules, statutes, or other applicable regulations; ¶
- (c) ~~That~~ Assure the provider is certified to provide only those services ~~which~~ that are specified in the scope of services and conditions listed on the certificate; ¶
- (d) ~~To~~ Post the certificate or a legible copy and any accompanying letter noting approved service delivery locations or applicable conditions in a public space of each approved service delivery location to be available for inspection at all times; ¶
- (e) ~~That~~ Ascertain the certificate does not create an express or implied contract in the absence of a fully executed written contract; and ¶
- (f) ~~To~~ Ensure that the certificate is not transferable to any other ~~person~~ individual, provider, or service delivery

location without Division approval. ¶

(2) ~~Non-discrimination; Special Populations:~~ The Division ~~shall~~may not discriminate in its review procedures or services on the basis of race, color, national origin, age, or disability. The Division may issue certificates to specialized programs to assure maximum benefit for special populations, in which case, the Division may identify that special population in the certificates and impose applicable program criteria under the applicable service delivery rules. ¶

(3) A certificate is void immediately: ¶

(a) Upon voluntary closure by a provider; ¶

(b) Upon change in the provider's majority or controlling ownership; or ¶

(c) Upon the listed expiration date of the certificate if the provider fails to timely submit a complete application for certification renewal pursuant to these rules; ¶

(4) Discontinuation of services: ¶

(a) A provider discontinuing services voluntarily must: ¶

(A) Notify the Division at least 60 days prior to the date of voluntary closure and provide a written plan to comply with record retention standards set out in OAR 309-014-0035(4) and 42 CFR Part 2, "Federal Confidentiality Regulations" as applicable; ¶

(B) Make reasonable and timely efforts to obtain alternative treatment placement or other services for individuals currently being served; and ¶

(~~c~~C) Make reasonable and timely efforts to contact individuals on waitlists and refer them to other treatment services; and ¶

(~~d~~b) A provider discontinuing services must provide individuals with a minimum 30-day written notice regarding discontinuation of services. In circumstances where undue delay might jeopardize the health, safety, or welfare of individuals or the public, including where the Division has revoked or immediately suspended the certificate pursuant to OAR 309-008-1100, the provider must notify individuals regarding the discontinuation of services as soon as possible.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260.~~

AMEND: 309-008-0400

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-0400

### The Application Process ¶

- (1) ~~Application Required.~~ An applicant seeking initial certification or certification renewal; and an existing provider seeking to expand its certified scope of services, relocate an existing service delivery location, or open new service delivery location(s) must submit a completed application to the Division. ¶
- (2) The Division ~~wish~~ shall furnish an application with instructions; and provide appropriate technical assistance to facilitate completion of the application; upon: ¶
  - (a) Request from an applicant seeking initial certification; ¶
  - (b) Request from an existing provider seeking certification renewal congruent with timelines established by these rules; ¶
  - (c) Request from an existing provider seeking to add or relocate service delivery location(s); and ¶
  - (d) Request from an existing provider seeking to change the scope of services approved on the current certificate. ¶
- (3) An applicant with multiple service delivery locations must submit documentation with the application sufficient for the Division to evaluate each service delivery location. A separate application for each service delivery location is not required. ¶
- (4) The application must be legible and completed on the forms furnished by the Division; in the manner specified by the Division. Each application must include: ¶
  - (a) A detailed plan outlining the implementation of the proposed services congruent with these rules, applicable service delivery rules, other applicable regulations, and OAR and ORS noted herein; ¶
  - (b) Written attestation by the applicant that all applicable rules of the Division for provision of the proposed services ~~wish~~ shall be met and maintained in substantial compliance with applicable service delivery rules; ¶
  - (c) Other documentation required by applicable OAR, ORS, other applicable regulations, local regulations, contract or by judgment of the Division to assess applicant's compliance ~~with administrative rules~~; and ¶
  - (d) Complete and current copies of the following documents: ¶
    - (A) A description of the applicant's service delivery location(s) describing the type and scope of behavioral health treatment services provided or proposed by the applicant at each service delivery location; ¶
    - (B) Applicant's policies regarding credentialing practices of individual practitioners; ¶
    - (C) Applicant's liability insurance coverage listing all covered service delivery location(s); ¶
    - (D) Applicant's policies and procedures regarding seclusion and restraint practices; and ¶
    - (E) Applicant's Code of Conduct. ¶
- (5e) Where applicable, the Division will maintain copies of the documents listed in sub Identification of financial interest of any individual including stockholders who have an incident of ownership in the applicant representing an interest of five percent or more. For purposes of these rules, an individual with a five percent or more incident of ownership is presumed to have an effect on the operation of the provider, unless the individual establishes that

the individual has no involvement in the operation of the provider. ¶

(f) Background information on all licenses, certifications, and letters of approval held or previously held by the applicant or by any owner disclosed under subsection (e) of this rule to provide care or treatment or engage in a profession or trade. The list shall include every license, certification, and letter of approval regardless of whether it was issued by the Authority or another regulatory body: ¶

(A) The type of license or certification;¶

(B) The name of the issuing regulatory body; ¶

(C) The name of the individual or business to whom it was issued; ¶

(D) The start and end date of the period of license or certification; ¶

(E) A list of the dates of any suspensions, revocations, conditions, penalties, denials, nonrenewal, or other adverse actions initiated or taken on a license or certificate, including documentation of the final resolution of those actions; ¶

(F) Disclosure of whether any of the licenses or certificates had expired or were relinquished while a suspension, revocation, condition, penalty, denial, nonrenewal, or other adverse action was pending or proposed; and¶

(G) Copies of all current licenses or certificates.¶

(g) Disclosure of any substantiated findings of abuse, neglect, or mistreatment by the applicant, owner, or program staff.¶

(5) Where applicable, the Division shall maintain copies of the documents listed in section (4)(d) of this rule within the Division's CCO document bank.¶

(6) Timeframe for application submission:¶

(a) ~~Initial Certification:~~ An applicant seeking initial certification under these rules must submit a completed application at least six months in advance of the applicant's desired date of certification;¶

(b) ~~Certification Renewal:~~ An applicant seeking to renew its certificate must:¶

(A) Request an application from the Division; and¶

(B) Submit a complete application at least six months prior to the expiration of the existing certificate.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260.~~



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CHANGES TO RULE:

309-008-0500

Response to Application ¶

- (1) ~~Within 60 days~~ upon receipt of application materials, the Division ~~wi~~shall conduct a comprehensive audit of the application materials to determine compliance with these rules: ¶
- (a) ~~Complete If the Application. Within 60 days of the Division's receipt of a complete application compliant with these rules: ¶~~
- (A) ~~The Division will notify the ap~~ is found to be complete and the materials demonstrate compliance ~~that ce~~ with the application has been accepted as complete; and ¶
- (B) ~~Table administrative rules, the Division will~~may contact the applicant to schedule a certification review; ¶
- (b) ~~Incomplete If the Application. Within 60 days of the Division's receipt of an incomplete application is not complete or does not demonstrate compliance,~~ the Division ~~wi~~shall provide written feedback ~~notice of the incomplete or noncompliant application~~ describing any necessary amendment to the application ~~prior to resubmission. To resubmit, t~~. The applicant must submit an amended application to the Division ~~for review~~ within 21 ~~4~~ calendar days of receipt of the Division's ~~written feedback.~~ ¶
- (2) ~~When an application is denied, t~~notice: ¶
- (2) The Division ~~wi~~shall issue a written notice of denial ~~within 14 days of the determin~~intent to deny ~~completed applications~~ in accordance with ORS 183. ¶
- (3) An ~~applications~~ for certification ~~will~~may be denied where: ~~n~~: ¶
- (a) The applicant's proposed behavioral health treatment services are not subject to the service delivery rules listed in OAR 309-008-0100(2) and, therefore, are not subject to certification under these rules; ¶
- (b) The applicant fails to demonstrate the ability to sustain substantial compliance with applicable statutes, administrative rules, or other applicable regulations; ¶
- (c) ~~The applicant fails to re-submit complete application materials within 21 calendar days of receipt of the Division's written feedback;~~ ¶
- (d) ~~The applicant timely re-submits the application but the Division finds the re-submitted application remains incomplete or fails to demonstrate substantial compliance with applicable statutes, administrative rules, s~~ operation would threaten the health, welfare, or safety of one or more individuals ~~or other applicable regulations; public; or~~ ¶
- (ed) The applicant submits an application within 180 days of a prior application denial or certificate revocation under these rules by the Division. ¶
- (4) The Division may ~~ele~~issue a notice of intent to deny an ~~completed~~ application ~~prior to review~~ when: ¶
- (a) The applicant has previously had any certification or license suspended or revoked by the Division, Oregon Health Authority, the Oregon Department of Human Services, or any other similar state agency outside of Oregon; ¶
- (b) The applicant ~~has been denied certification due to failure to submit complete application materials two or more~~

~~times within the previous three calendar years; employs or contracts with any program staff for whom there is substantiated evidence of abuse, neglect, or mistreatment.~~ ¶

(c) The applicant is listed on any current Medicaid exclusion list under OAR 410-120-1380(1)(c)(J); or ¶

(d) The applicant submits false or inaccurate information to the Division. ¶

(5) ~~Withdrawal of Application.~~ An applicant may withdraw an initial or renewal application at any time prior to the Division acting on the application unless the Division has determined that the applicant submitted false or misleading information in which case the Division may refuse to accept the withdrawal and may issue a notice of proposed denial in accordance with this rule.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

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CHANGES TO RULE:

309-008-0600

Appealing Denial of Application for Certification ¶

(1) ~~Hearing.~~ ~~When~~ the Division has denied an application ~~under these rules~~, the Division ~~must~~ shall notify the applicant within 30 days of the denial determination in writing and provide the applicant the opportunity to request a hearing under ORS Chapter ~~183.411 to 500~~. Any request for a contested case hearing must be submitted in writing to the Division by the applicant according to the deadline set out in the notice of denial. ¶

(2) ~~Review by~~ When the Division ~~Where the Division has~~ has issued a notice of intent to deny an application under these rules; in addition to, or in lieu of, a hearing under ORS Chapter 183, an applicant may request, in writing; an appeal review ~~by the Director.~~ ¶

~~(a) To obtain review, the applicant must submit a written request for the appeal review to the Division within fourteen (14) calendar days of receipt of the notice of denial; ¶~~

~~(b) The Director, whose decision is final, must conduct an appeal review meeting within 30 days of receipt of the applicant's written request; ¶~~

~~(c) If the Director overturns the denial, the Division will issue written notice to the applicant within fourteen (14) calendar days of the appeal review meeting. The notice will ~~in~~ informal conference with the Division as set form the applicant of the outcome of their appeal hearing and will either: ¶~~

~~(A) Include an approved certification per these rules; or ¶~~

~~(B) Include written notice of required amendment to application materials and a timeframe for re-submission per these rules. ¶~~

~~(d) If the Director affirms the denial, the notice of denial will become final, the application closed, and a notice of the appeal review outcome mailed to the applicant within fourteen (14) days of the appeal review meeting th in OAR 309-008-1200.~~

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260.~~

AMEND: 309-008-0700

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-0700

### Types of Reviews ¶

(1) The Division may conduct the following types of certification reviews as appropriate: ¶

~~(a) Initial Certification Review. After receipt of a complete application and consistent with OAR 309-008-0500(1)(a)(B); ¶~~

(a) After receipt of a complete application, the Division staff will complete a comprehensive audit of the required application documentation and the service delivery location(s)s. The Division ~~will~~may not issue an initial certification without a completed Initial Certification Review; ¶

~~(b) Certification Renewal Review. After receipt of a complete application and consistent with OAR 309-008-0500(1)(a)(B), the Division staff will~~ complete a comprehensive audit of the required application documentation and the service delivery location(s)s. For continued certification, Certification Renewal Reviews must occur prior to the expiration of the existing certificate and at least once every three years; ¶

~~(c) Discretionary Certification Reviews. The Division may conduct Discretionary Certification Reviews with reasonable notice to ensure compliance with applicable statute, administrative rules, other applicable regulations, and contractual obligations. ¶~~

~~(A) Discretionary Certification Reviews may be conducted by the Division with or without notice for the following reasons: ¶~~

~~(i) A) The Division has reasonable concern the provider may act to alter records or make them unavailable for inspections; ¶~~

~~(ii) B) The Division has received a complaint or information which that suggests or alleges conditions or practices which that could threaten the health, safety, rights, or welfare of individuals; or ¶~~

~~(iii) C) The Division has reason to believe a certification review is necessary to ensure a provider is in substantial compliance with these rules, service delivery rules, other applicable administrative rules, contractual obligations, or with conditions placed upon the certificate; ¶~~

~~(5) 2) If the Division staff are not permitted access to records or service delivery location(s)s for the purpose of conducting a certification review consistent with these rules, the Division may take action on the certificate up to and including the application of conditions, suspension, or revocation. ¶~~

~~(6) 3) Inspections By Other Agencies: A provider or applicant must permit state or local fire inspectors and state or local health inspectors to enter and inspect the service delivery location(s)s as required by administrative rule, state fire code, or local regulations. ¶~~

~~(7) Desk Reviews. 4) At the sole discretion of the Division, the Division staff may complete a certification review partially or fully via a desk review process. A desk review process is when the Division staff conducts a certification review based on the provider or applicant's submission of required documentation and telephonic interviews when the Division staff does not physically visit the service delivery location(s)s. ¶~~

~~(a) The Division will~~ furnish a list of documentation necessary to complete the desk review to the applicant or

provider;¶

(b) The applicant or provider must submit all requested documents to the Division in compliance with state and federal privacy and data transmission regulations;¶

(c) The Division may elect to schedule telephone interviews deemed necessary to fulfill the objectives of a certification review; and.¶

(d) Upon completion of the desk review, the Division ~~wi~~shall securely dispose of documentation containing protected health information submitted by the applicant or provider.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260.~~

AMEND: 309-008-0800

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-0800

### Conduct of Certification Reviews ¶

(1) The Division shall employ review procedures deemed adequate to determine applicant or provider compliance with applicable administrative rules, statutes, other applicable regulations, and as necessary, contractual obligations. These procedures may include but are not limited to: ¶

(a) Entry and inspection of any service delivery location; ¶

(b) ~~Review of documents pursuant to this rule~~ Document review; and ¶

(c) Interviews with or a request for completion of a questionnaire by individuals knowledgeable about the provider or applicant. Individuals interviewed may include program staff, managers, governing or advisory board members, allied agencies, individuals, their family members, and significant others. ¶

(2) Program staff must cooperate with the Division staff during a certification review. ¶

(3) Within 30 days following the completion of each discretionary review, the Division may, at ~~their~~its discretion, issue a report and require a Plan of Correction (POC) congruent with section (4) of this rule. ¶

(4) Within 30 days following the completion of each initial or renewal certification review, the Division shall issue a report that includes: ¶

(a) A statement of any deficiency including a description of the review findings related to non-compliance with applicable administrative rules, statutes, other applicable regulations, and any required corrective actions where applicable; ¶

(b) Pursuant to a certification review when the Division determines a provider or applicant is not operating in substantial compliance with all applicable statutes, administrative rules, and other regulations, and the ~~plan of correction~~ (POC) process is appropriate, the Division may require the provider or applicant to submit a POC. The Division shall provide written notice of the requirement to submit a POC, and the provider or applicant shall prepare and submit a POC according to the following terms: ¶

(A) The provider or applicant shall submit the POC to the Division within 30 days of receiving the statement of deficiency. The Division may issue up to a 90-day extension to the existing certification to allow the provider or applicant to complete the ~~plan of correction~~ POC process; ¶

(B) The POC shall address each finding of non-compliance and shall include: ¶

(i) The planned action already taken or to be taken to correct each finding of non-compliance; ¶

(ii) The anticipated or requested timeframe for the completion of each corrective action not yet complete at the time of POC submission to the Division; ¶

(iii) A description of and plan for quality assurance activities intended to ensure ongoing compliance; and ¶

(iv) The name of the individual responsible for ensuring the implementation of each corrective action within the ~~plan of correction~~ POC. ¶

(c) If the Division finds that clarification or supplementation to the POC is required prior to approval, the Division staff shall contact the provider or applicant to provide notice of requested clarification or supplementation, and

the provider or applicant shall submit an amended ~~plan of correction~~ POC within 14 calendars days of notification;

¶

(d) The provider shall submit a sufficient POC approved by the Division prior to receiving a certificate. Upon the Division's approval of the POC, the Division shall issue the appropriate certification; ¶

(e) The Division may deny, ~~suspend, or revoke~~ revoke, not renew, or place conditions on an applicant or provider's certification if the provider fails to submit an adequate POC within the timeframes established in this rule.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260~~

AMEND: 309-008-0905

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-0905

Conditions ¶¶

(1) The Division may elect at any time and at its discretion to place conditions on a certificate upon a finding that:

¶¶

- (a) The applicant or provider employs or contracts with any program staff for whom there is substantiated evidence of abuse, neglect, or mistreatment; ¶¶
- (b) The applicant or provider employs or contracts with any program staff that fails to meet relevant minimum qualifications described in these rules, service delivery rules, or other applicable law; ¶¶
- (c) There is substantiated evidence of abuse, neglect, or mistreatment; ¶¶
- (d) The applicant or provider operates such that there is a threat to the health, welfare, or safety of an individual or the public; ¶¶
- (e) The applicant or provider has substantially failed to comply with these rules, service delivery rules, or other applicable law; ¶¶
- (f) The applicant or provider fails to fully implement a ~~Plan of Correction~~ OC or adequately maintain a corrective action; ¶¶
- (g) The Division has issued the applicant or provider through two or more consecutive certification reviews substantially similar findings of non-compliance with these rules, service delivery rules, or other applicable administrative rules, statutes, or regulations; ¶¶
- (h) There is a need for increased regulatory oversight of the applicant or provider; or ¶¶
- (i) The applicant or provider fails to comply with any reporting requirements relating to funding certification. ¶¶

(2) The Division shall consider the sum of the circumstances including but not limited to the following criteria when deciding whether to impose conditions as opposed to denying, suspending, refusing to renew, or revoking a certificate: ¶¶

- (a) The expressed willingness and demonstrated ability of the applicant or provider to gain and maintain compliance with all applicable administrative rules and law; ¶¶
- (b) Submission of a POC prescribing reasonable, sustained, and timely resolution to areas of non-compliance; ¶¶
- (c) The relative availability of alternative providers to address any service needs that would be unmet if the applicant or provider is not issued a certificate with conditions as an alternative to revocation or refusal to award a certificate; or ¶¶
- (d) The applicant or provider's historical compliance with Division rules, previous conditions placed on certificates, and previous POC's. ¶¶

(3) Conditions to the certificate may include: ¶¶

- (a) Requiring corrective actions with associated timeframes for completion necessary for the applicant or provider to correct areas of non-compliance or concerns identified by the Division; ¶¶
- (b) Limiting the total number of individuals enrolled in services or on a waitlist for services; ¶¶



- (c) Limiting the population such as narrowing the age range of individuals who the applicant or provider may serve; ¶
  - (d) Limiting the scope and type of services that the applicant or provider may provide; ¶
  - (e) Other conditions deemed necessary by the Division to ensure the health and safety of individuals and the public; and ¶
  - (f) Other conditions deemed necessary by the Division for the purpose of ensuring regulatory compliance with this or other applicable administrative rules and law. ¶
- (4) The Division may issue a notice of intent to impose conditions as described in section (15) of this rule or may impose conditions on a certificate ~~W~~with ~~N~~notice or ~~W~~without ~~N~~notice. In both processes as described in sections (4) to (8). In imposing conditions with notice or without notice, a provider or an applicant may request an informal conference. ¶
- (a) The Division may issue the conditions ~~W~~with ~~N~~notice by issuing a Notice of Impending Imposition of Certificate Condition (Notice) at least 48 hours prior to issuing an Order Imposing Certificate Condition (Order) to a provider or an applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered. ¶
  - (b) The Division may impose the conditions ~~W~~without ~~N~~notice only if the Division determines that there is an imminent threat to individuals such that the Division determines it is not safe or practical to give an applicant or a provider advance notice. The Division may impose the conditions without notice by issuing an Order ~~Imposing Certificate Condition (Order)~~ to a provider or an applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered. ¶
- (5) The Notice may be provided in writing or orally. When the Notice is provided in writing, it shall be sent by certified or registered mail or delivered in person to the applicant or provider. If the Notice is provided orally, it may be provided by telephone or in person to the applicant, provider, or person represented as being in charge of the program. When the Notice is delivered orally, the Division shall subsequently provide written notice to the applicant or provider by registered or certified mail. The Notice shall: ¶
- (a) Generally describe the acts or omissions of the applicant or provider and the circumstances that led to the finding that the imposition of a certificate condition is warranted; ¶
  - (b) Generally describe why the acts or omissions and the circumstances create a situation for which the imposition of a condition is warranted; ¶
  - (c) Provide a brief statement identifying the impending condition; ¶
  - (d) Identify a person within the Division whom the applicant or provider may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order; ¶
  - (e) Specify the date and time the Order is scheduled to take effect; and ¶
  - (f) Offer that the applicant or provider may request an informal conference prior to the issuance of the Order Imposing Certificate Condition, or if the provider has already requested an informal conference, specify the date and time that an informal conference shall be held. ¶
- (6) If an informal conference is requested regarding conditions, the conference shall be held at a location designated by the Division. If determined to be appropriate by the Division, the conference may be held by telephone. Following the informal conference, the Division may modify the conditions. The timing of the informal conference is described as follows: ¶
- (a) If a Notice is issued, the applicant or provider may request an informal conference to object to the Division's proposed action before the condition is scheduled to take effect. The request for an informal conference shall be made prior to the date the conditions are intended to be effective. If timely requested, the informal conference shall be held within seven days of the request. The Order Imposing Condition may be issued at any time after the informal conference; ¶
  - (b) If an Order Imposing Condition is issued without a prior Notice, the applicant or provider may within 48 hours of the issuance of the Order request an informal conference. If timely requested, the informal conference shall be held within two business days of receipt of the request. Following the informal conference, the Division at its discretion may modify the conditions. ¶

- (7) When an Order is issued, the Division must serve the Order either personally or by registered or certified mail. The Order must include the following statements: ¶
- (a) The authority and jurisdiction under which the condition is being issued; ¶
  - (b) A reference to the particular sections of the statute and administrative rules involved; ¶
  - (c) The effective date of the condition; ¶
  - (d) A short and plain statement of the nature of the matters asserted or charged; ¶
  - (e) The specific terms of the certificate condition; ¶
  - (f) Right to request a contested case hearing under ORS Chapter 183; ~~411 to 500~~; ¶
  - (g) A statement that if a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider shall have waived the right to a hearing under ORS Chapter 183; ~~411 to 500~~; ¶
  - (h) Findings of specific acts or omissions of the applicant or provider that are grounds for the condition and the reasons the acts or omissions create a situation for which the imposition of a certificate condition is warranted; and, ¶
  - (i) A statement that the Division may combine the hearing on the Order with any other proceeding affecting the certificate. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the certificate. ¶
- (8) Hearing: ¶
- (a) If the Division serves an Order Imposing Condition, the applicant or provider is entitled to a contested case hearing ~~pursuant to ORS Chapter 183~~; ¶
  - (b) The Division must receive the request for a hearing within 21 days of the date of Order. If a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider shall have waived the right to a hearing ~~under ORS Chapter 183~~; ¶
  - (c) The applicant or provider may request a contested case hearing, ~~ORS Chapter 183~~, regarding the imposition of the conditions in addition to, or in lieu of, an informal conference. Requesting a contested case hearing may not delay the effective date of the conditions. ¶
- (9) When a restriction of enrollment or intake is in effect pursuant to an Order, the Division in its sole discretion may authorize the provider to admit or serve new individuals for whom the Division determines that alternate placement or provider is not feasible. ¶
- (10) Conditions may be imposed for the duration of the certificate or limited to some other shorter period of time. If the condition corresponds to the certificate period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on the certificate. ¶
- (11) When the applicant or provider determines that the circumstances leading to imposition of the condition no longer exist and that effective systems are in place to ensure that similar deficiencies do not recur, the applicant or provider may make written request to the Division for re-inspection. ¶
- (12) Re-inspection: ¶
- (a) If the Division finds that the situation for which the condition was imposed has been corrected and finds that systems are in place to ensure that similar deficiencies do not recur, the condition shall be withdrawn, and the Division must revise the certificate accordingly. Following re-inspection, the Division shall notify the facility by telephone of the decision to withdraw the condition. Telephone notification shall be followed by written notification; ¶
  - (b) If the Division determines after a re-inspection that the situation for which the condition was imposed continues to exist or that there are not sufficient systems in place to prevent similar deficiencies, the certificate condition may not be withdrawn, and the Division is not obligated to re-inspect again for at least 45 days. A decision not to withdraw the Order shall be given to the applicant or provider in writing, and the applicant or provider shall be informed of the right to a contested case hearing ~~pursuant to ORS Chapter 183~~. Nothing in this rule is intended to limit the Division's authority to conduct a certification review at any time. ¶
- (13) The Division may deny, ~~suspend~~, and refuse to renew or revoke the certificate when the provider or applicant fails to comply timely with the condition. ¶

(14) When the Division orders a condition be placed on a certificate With Notice or Without Notice under the provisions of this rule, the applicant or provider is entitled to request a ~~hearing in accordance with ORS Chapter 183~~ contested case hearing.

(15) In addition to or instead of imposing conditions With Notice or Without Notice as described in sections (4) to (8) and (14), the Division may issue a notice of intent to impose a condition with the opportunity for a contested case hearing prior to imposing the condition. Notices of intent to impose a condition shall be issued consistent with sections (1)-(3) and (9)-(13).

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260~~

AMEND: 309-008-1000

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-1000

Modification to Certification ¶

(1) ~~Modifying Certificates.~~ A provider with a current certificate seeking to open new service delivery location(s), relocate current service delivery locations, or provide additional types of treatment services under different service delivery rules must submit a written request for Division approval prior to any such changes: ¶

(a) The Division must receive the written request for such changes at least 60 days prior to the desired effective date for any such changes: ¶

(b) The Division ~~wi~~shall make reasonable efforts to make final determination for approval or disapproval of changes to the certificate within 45 days of receiving the written request: ¶

(2) A provider with a current certificate seeking to designate a new Pprogram Ddirector must submit a written request for Division approval prior to making such a designation: ¶

(a) The provider must include copies of relevant qualifications with its written request when designating a new Pprogram Ddirector: ¶

(b) The Division ~~wi~~shall make every reasonable effort to review documents and make a final determination regarding whether the proposed Pprogram Ddirector meets applicable service delivery rule requirements and qualifications within 30 days of receipt of the provider's written request. The Division ~~wi~~shall provide written notice of its determination: ¶

(c) When an emergency requires a provider to designate a new Pprogram Ddirector prior to Division approval: ¶

(A) The provider must make every reasonable effort to expediently designate a new Pprogram Ddirector and must submit a request for the designation to the Division within 15 calendar days of the new designation and include copies of relevant qualifications of the new Pprogram Ddirector; and ¶

(B) The Division ~~wi~~shall make every reasonable effort to expediently review the provider's request for the designation and make a final determination whether the proposed Pprogram Ddirector meets applicable service delivery rule requirements. The Division ~~wi~~shall provide written notice of its determination.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556:

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260.~~

AMEND: 309-008-1100

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-1100

Nonrenewal, Suspension, and Revocation of Certification ¶¶

(1) ~~Immediate Revocation or S~~suspension of a certificate may occur ~~when:~~¶¶

~~(a) The Division finds there is substantial failure to comply with applicable statutes, administrative rules, service delivery rules, or other applicable regulations, such that the Division finds there is a serious danger to the public health or safety;~~¶¶

~~(b) The provider demonstrate~~if there is a serious danger to the public health and safety during a period of time the Division sets forth specific reasons for its finding. The provider may request a contested case hearing to contest the immediate suspension order. Requests for a hearing must be received by the Division within 90 days from the date the immediate suspension order was served on the provider personally or was mailed by certified or registered mail. If the provider requests a hearing, the hearing shall be held as soon as practicable;¶¶

~~(a) The Division finds there is~~ substantial failure to comply with ~~these~~applicable statutes, administrative rules and service delivery rules, or other applicable regulations such that the health or safety of individuals is jeopardized to the degree that immediate cessation of services by the provider is considered necessary to prevent harm to the;¶¶

~~(b) There is a threat to health or safety of individual~~s. ¶¶

(2) The Division may revoke, ~~suspend~~, or refuse to renew a certificate of one or more service delivery locations listed on the certificate when the Division determines that there is substantiated evidence of abuse, neglect, or mistreatment or determines that a provider: ¶¶

(a) Demonstrates substantial failure to comply with these administrative rules or with applicable state or federal law; ¶¶

~~(b) Demonstrates a substantial failure to comply with applicable rules and regulations such that the health or safety of individuals is found to be jeopardized during two certification reviews within a six-year period; There is a threat to the health or safety of individuals;~~ ¶¶

(c) Fails to maintain any State of Oregon license that is a prerequisite for providing services that were approved; ¶¶

(d) Has a direct contract with the Division, and the Division terminates its agreement or contract with the provider; ¶¶

(e) Fails to comply with the requirements of one or more conditions on the certificate; ¶¶

(f) Fails to submit and or implement a POC sufficient to come into substantial compliance with these and other applicable rules or regulations; ¶¶

(g) Submits falsified or incorrect information to the Division; ¶¶

(h) Refuses to allow access to information for the purpose of verifying compliance with applicable statutes, administrative rules, or other applicable regulations within a specified date or fails to submit such information following the date specified for such a submission in the written notification; ¶¶

(i) Fails to maintain sufficient staffing or fails to comply with staff qualification requirements; ¶¶

(j) The provider fails to demonstrate the ability to meet and sustain compliance with all applicable statutes, rules,

and regulations:¶

(3) When the Division determines the need to revoke, ~~suspend~~, or deny renewal of a certificate issued under these rules, a notice of intent to take action on the certificate shall be issued to the provider.

Statutory/Other Authority: ORS 430.870, 743A.168, ~~ORS 161.390, 161.392~~, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260~~

AMEND: 309-008-1200

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-1200

Informal Conference ¶

(1) ~~Within ten calendar days of when the Division issuance of es~~ an Order of Suspension, a notice of intent to revoke ~~or~~ notice of intent to ~~nonrenew (deny an application or notice of refusal to renew)~~ the certificate to an applicant or provider pursuant to these rules, the Division shall offer the applicant or provider an opportunity for an informal conference. The applicant or provider shall make its request for an informal conference in writing within ~~seven~~14 calendar days of the issuance of ~~the notice of intent and within 14 calendar days of an Order of Suspension~~. Upon receipt of a timely written request, the Division shall select a location and time for such a conference, ~~provided that the conference occurs within 14 days of the Division's receipt of the request.~~ ¶

(2) Following ~~such a~~ the conference, the Division may: ¶

(a) ~~Approve the application or renewal or initiate the process of imposing conditions to certification as described and allowed by these rules as an alternative to denying or revoking certification;~~ ¶

~~(b) Continue to proceed with action on the provider's certificate up to and including suspension, revocation, or refusal to renew the certificate; or~~ ¶

~~(c) Withdraw or amend the order of suspension, notice of intent to revoke, or notice of intent to nonrenew the certificate.~~Withdraw or amend the notice of intent or suspension order; or ¶

(b) Choose not to withdraw the notice of intent or suspension order. ¶

(3) The Division shall provide written notice of its decision under section (2) of this rule within 14 calendar days of the informal conference. ¶

(4) Informal conferences regarding conditions are not described in this rule and instead are described in OAR 309-008-0905.

Statutory/Other Authority: ORS ~~161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260~~

AMEND: 309-008-1300

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-1300

Hearings ¶

(1) An applicant or provider who issued a notice of intent to revoke, ~~suspend~~impose conditions, or refuse to renew its certificate under these rules shall be entitled to request a hearing in accordance with ORS Chapter 183. ¶

(2) When the Division orders the imposition of a condition or orders immediate suspension of a certificate under the provisions of this rule, the provider shall be entitled to request a hearing in accordance with ORS Chapter 183.

Statutory/Other Authority: ORS ~~161.390, 161.392~~, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260~~



AMEND: 309-008-1500

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-1500

### Complaints ¶

(1) ~~Complaints Concerning Providers. Any person~~Any individual may file a complaint with the Division concerning a provider holding a certificate under these rules. The Division may require the complainant to exhaust grievance procedures available through the provider and, if applicable, the Medicaid payer, prior to initiating an investigation. ¶

(2) ~~Complaint Investigation.~~ The Division ~~wi~~shall only investigate a complaint concerning a provider falling within the Division's scope and regulatory authority; ¶

(a) The Division ~~wi~~shall investigate and respond to a complaint pursuant to Division policies and procedures; ¶

(b) The Division ~~wi~~shall refer the complainant to the appropriate entity if the complaint pertains to a provider falling outside the Division's scope or regulatory authority or otherwise regulated by another state or local entity. ¶

(3) Consequences of a substantiated complaint related to the health, safety, or welfare of an individual or the public may result in the suspension, revocation, denial, or ~~refusal to renew~~nonrenewal of an applicant or provider's application or certificate.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556.

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260.~~

AMEND: 309-008-1600

RULE SUMMARY: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues, substance use and/or problem gambling disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

CHANGES TO RULE:

309-008-1600

Variance ¶

- (1) An applicant or provider may request a variance to these rules, applicable service delivery rules, or other applicable regulations. ¶
- (2) ~~Variance Submission.~~ The applicant or provider must submit the variance request directly to the Division along with the application documents submitted to the Division. The variance request must include: ¶
  - (a) A description and applicable details of the variance requested, including the applicable section of the rule for which the variance is sought; ¶
  - (b) The rationale and necessity for the requested variance; ¶
  - (c) The alternative practice proposed, where relevant; and ¶
  - (d) The proposed duration of the variance, including a plan and timetable for compliance with the rule exempted or adjusted by the variance. ¶
- (3) ~~Outcome of Requests for Variance.~~ The Director, whose decision is final, will approve or deny the variance request and include an expiration date for the variance not to exceed the length of the provider's current certificate. ¶
- (4) ~~Variance Expiration.~~ A variance granted by the Division becomes part of the certificate. Continuance of the variance will not be automatic, and will be re-considered at the expiration of the variance, or when the certification is being considered for renewal, whichever comes first. ¶
- (5) ~~Variance Renewal.~~ Requesting renewal of a variance in advance of current variance expiration is the responsibility of each provider. ¶
- (6) ~~Failure to Implement Variance.~~ Failure by the provider to implement approved alternative practices or otherwise demonstrate noncompliance with an approved variance may result in the Division withdrawing approval for a variance. ¶
- (7) Failure by the provider to implement approved alternative practices or otherwise demonstrate noncompliance with an approved variance such that the health or safety of individuals is jeopardized to the degree that cessation of services by the provider is considered necessary to prevent harm to the individual may result in the Division taking action on the certificate pursuant to OAR 309-008-1100.

Statutory/Other Authority: ~~ORS 161.390, 161.392,~~ 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.175, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168, 743.556;

Statutes/Other Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, ~~813.021, 813.260.~~