

*Corrected*  
Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Oregon Health Authority, Addictions and Mental Health Division: Addiction Services

Agency and Division	Administrative Rules Chapter Number
<u>Nola Russell</u>	415
Rules Coordinator	(503) 945-7652
500 Summer St. NE, E86, Salem, OR 97301-1118	Telephone
Address	

To become effective Upon filing, Rulemaking Notice was published in the April 2013 Oregon Bulletin.

**RULE CAPTION**

Permanent amendments to OAR 415-012 entitled Approval and Licensure of Substance Abuse Services.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

415-012-0032, 415-012-0035, 415-012-0055, 415-012-0065, 415-012-0067

**AMEND:**

415-012-0000, 415-012-0010, 415-012-0020, 415-012-0030, 415-012-0040, 415-012-0050, 415-012-0080,

*415-012-0060, 415-012-0070, 415-012-0090*

**REPEAL:**

**RENUMBER:**

*5-6-13*

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 413.042 & 430.256

**Other Authority:**

**Statutes Implemented:**

ORS 426.450, 430.010-041, 430.260, 430.306, 430.405, 430.450, 430.590, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

**RULE SUMMARY**

Purpose. These rules establish procedures for approval of the following:

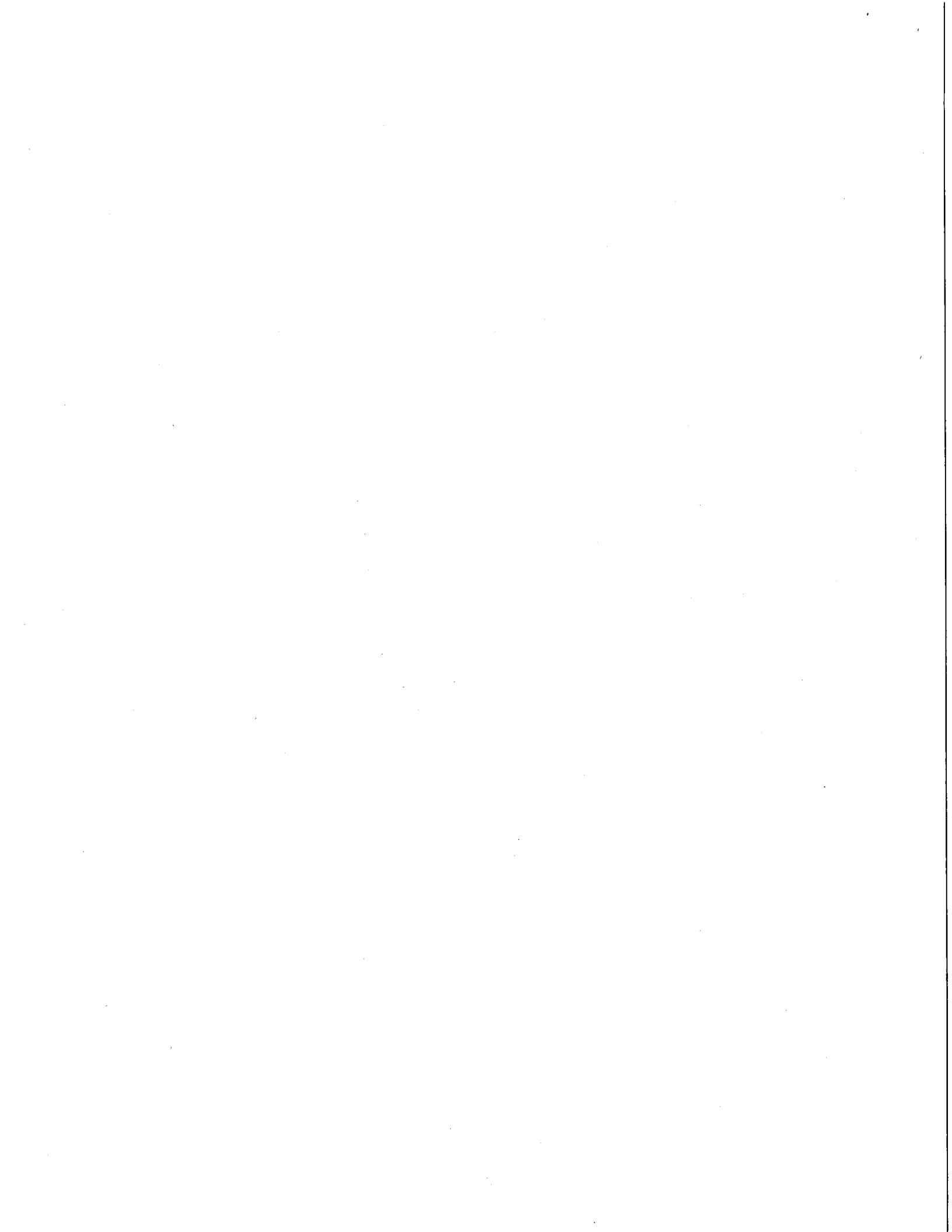
- (1) Any alcohol or drug abuse service provider which is, or seeks to be, contractually affiliated with the Addictions and Mental Health Division, a Coordinated Care Organization, or local mental health authority for the purpose of providing alcohol and other drug abuse treatment and prevention services;
- (2) Any service provider using public funds in the provision of alcohol or drug abuse prevention, intervention, or treatment services in Oregon;
- (3) Performing providers under Addictions and Mental Health Division rules under OAR 309-016-0000 through 309-016-0120;
- (4) Organizations that provide alcohol or drug abuse treatment services seeking approval from the Division to establish eligibility for insurance reimbursement as provided in ORS 430.065;
- (5) Organizations seeking approval from the Division for provision of residential services as provided in ORS 430.010 and 443.400 or detoxification services under ORS 430.306; or
- (6) Alcohol and drug evaluation specialists designated to do Driving Under the Influence of Intoxicants (DUII) diagnostic assessments under ORS 813.020 and 813.260.

<b>FILED</b>
5-3-13 8:36 AM
ARCHIVES DIVISION SECRETARY OF STATE

Nola Russell  
Rules Coordinator Name

nola.russell@state.or.us  
Email Address

ADS 4-2013



Secretary of State  
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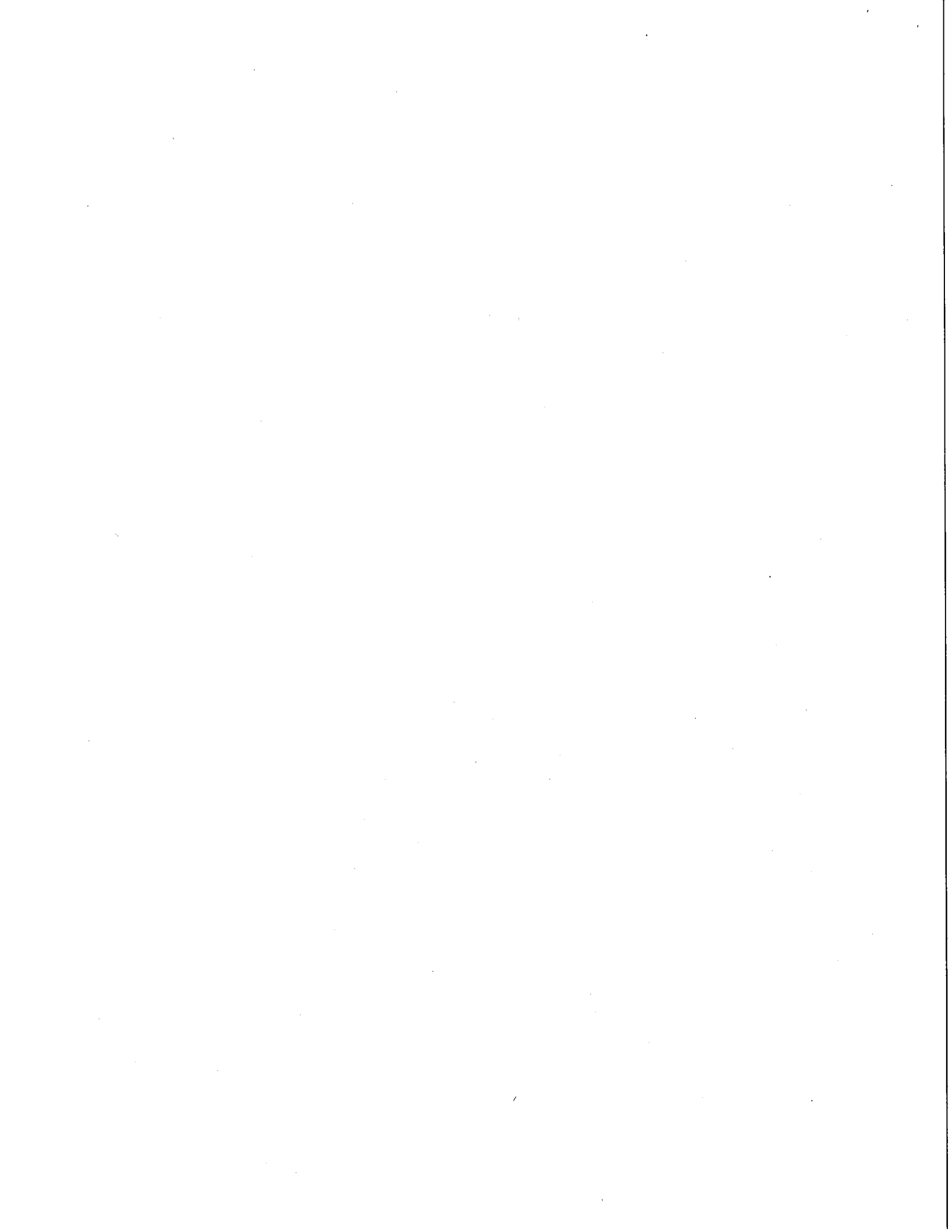
ARCHIVES DIVISION  
SECRETARY OF STATE

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Rules Coordinator Name

Email Address



**Authorization Page**  
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Oregon Health Authority, Addictions and Mental Health  
Division: Addiction Services

415

Agency and Division

Administrative Rules Chapter Number

Nola Russell

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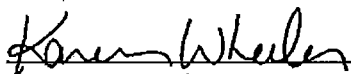
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Authorized Signer

Karen Wheeler

Printed Name

5/2/2013

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

**DIVISION 12**  
**APPROVAL AND LICENSURE OF SUBSTANCE USE DISORDER SERVICES**

**415-012-0000**

**Purpose**

Purpose. These rules establish procedures for approval of the following:

- (1) Any substance use disorder service provider which is, or seeks to be, contractually affiliated with the Addictions and Mental Health Division (AMH), a Coordinated Care Organization, or local mental health authority for the purpose of providing alcohol and other drug abuse treatment and prevention services;
  - (2) Any service provider using public funds in the provision of substance use disorder prevention, intervention, or treatment services in Oregon;
  - (3) Performing providers under AMH rules under OAR 309-016-0000 through 309-016-0120;
  - (4) Organizations that provide substance use disorder treatment services seeking approval from the Division to establish eligibility for insurance reimbursement as provided in ORS 430.065;
  - (5) Organizations seeking approval from the Division for provision of residential services as provided in ORS 430.010 and 443.400 or detoxification services under ORS 430.306; or
  - (6) Alcohol and drug evaluation specialists designated to do Driving Under the Influence of Intoxicants (DUII) diagnostic screenings and assessments under ORS 813.020 and 813.260.
- Stat. Auth.: ORS 413.042 & 430.256  
Stats. Implemented: ORS, 430.01030, 430.306, 430.397, 430.405, 430.450, 430.590, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

**415-012-0010**

**Definitions**

- (1) "Applicant" means any person or entity who has requested, in writing, a letter of approval or license.
- (2) "Director" means the Director of the AMH.
- (3) "Community Mental Health Program (CMHP)" means the organization of all services for individuals with mental or emotional disturbances, drug use problems, mental retardation or other developmental disabilities, and alcoholism and alcohol use problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.
- (4) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.
- (5) "Contract" is the document describing and limiting the relationship and respective obligations between an organization other than a county and the Division for the purposes of operating the alcohol and drug use disorder service within a county's boundaries, or operating a statewide, regional, or specialized service.
- (6) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.
- (7) "Individual" means the person requesting or receiving services addressed in these rules.
- (8) "Intergovernmental Agreement" or "Agreement" is the document describing and limiting the contractual relationship and respective obligations between a county or other government organization and the Division for the purpose of operating an alcohol and drug use disorder service.
- (9) "Letter of Approval (LOA)" means a certificate issued by the Assistant Director to applicants who are in substantial compliance with applicable administrative rules for alcohol and drug use disorder treatment in an outpatient setting, Driving Under the Influence of Intoxicants (DUII) diagnostic assessment, or prevention services, and which is renewable every three years.
- (10) "License" means a certificate issued by the Assistant Director to applicants who are in substantial compliance with applicable administrative rules for alcohol and drug use treatment in a residential setting and which is renewable every two years.
- (11) "Licensed Child Care Facility" means a facility licensed under ORS 657A.280.
- (12) "Non-Funded Provider" means an organization not contractually affiliated with the Division, a CMHP, or other contractor of the Division.
- (13) "Provider" means an organization providing substance abuse prevention, intervention, or treatment services under contract with the Division or under subcontract with a local entity or public body or otherwise receiving public funds for these services.
- (14) "Provisional" means a LOA or license issued for one year or less pending completion of specified requirements because of substantial failure to comply with applicable administrative rules.
- (15) "Quality Assurance" means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of care to identify and resolve identified problems.
- (16) "Restriction" means any limitations placed on a LOA or license such as age of individuals to be served or number of individuals to be served.
- (17) "Revocation" means the removal of authority for a provider to provide certain services under a LOA or license.

- (18) "School Attended Primarily By Minors" means an existing public or private elementary, secondary or career school attended primarily by individuals under age eighteen.
- (19) "Service Element" means a distinct service or group of services for persons with alcohol or other drug use disorders defined in administrative rule and included in a contract or agreement issued by the Division.
- (20) "Subcontract" means the document describing and limiting the relationship and respective obligations between a government and other entity having an agreement or contract with the Division and a third organization (subcontractor) for the purpose of delivering some or all of the services specified in the agreement or contract with the Division.
- (21) "Substantial Compliance" means a level of adherence to applicable administrative rules which, while not meeting one or more of the requirements, does not, in the determination of the Division:
- (a) Constitute a danger to the health or safety of any individual;
  - (b) Constitute a willful or ongoing violation of the rights of service recipients as set forth in administrative rules; or
  - (c) Prevent the accomplishment of the state's purposes in approving or supporting the subject service.
- (22) "Substantial Failure to Comply" is used in this rule to mean the opposite of "substantial compliance."
- (23) "Suspension" means a temporary removal of authority for a provider to conduct a service for a stated period of time or until the occurrence of a specified event under a LOA or license.
- (24) "Temporary" means a LOA license issued for 185 days to a program approved for the first time. A temporary LOA license cannot be extended.
- (25) "Variance or Exception" means a waiver of a regulation or provision of these rules granted by the Division upon written application.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0020**

##### **General Requirements**

- (1) Providers That Must Have LOA or License: Every provider that operates a service element by contract with the Division or subcontracts with a local entity or public body or otherwise receives public funds for providing substance abuse prevention, intervention, or treatment services must have an LOA or license:
- (a) No provider shall represent themselves as conducting any service described in this rule without first obtaining an LOA or license;
  - (b) A provider that does not have an LOA or license for conducting a service described in this rule may not admit a person needing that service; and
  - (c) The LOA or license shall be posted in the facility and available for inspection at all times.
- (2) Discretionary LOA: The Division may also issue an LOA to organizations seeking approval for insurance reimbursement as provided in ORS 430.065 or to other non-funded providers.
- (3) Facilities Requiring License: Any facility which meets the definition of a residential treatment facility for substance-dependent persons under ORS 443.400 or a detoxification center as defined in ORS 430.306 must be licensed by the Division:
- (a) No individual or entity shall represent themselves as a residential treatment facility for substance-dependent persons or as a detoxification center without first being licensed;
  - (b) A residential treatment facility or a detoxification center that is not licensed may not admit individuals needing residential or detoxification care or treatment; and
  - (c) A license shall be posted in the facility and available for inspection at all times.
- (4) LOA or License is not a Contract: Approval or licensure of a service element pursuant to this rule does not create an express or implied contract in the absence of a fully executed written contract.
- (5) Distance Requirements for Methadone Treatment Programs: Programs using methadone to treat opioid addiction may not operate within 1,000 linear feet of a licensed child care facility or school primarily attended by minors pursuant to ORS 430.590. The Division will not issue a variance to programs unable to meet this requirement.
- (5) Services eligible for an LOA include but are not limited to:
- (a) Outpatient alcohol or other drug treatment;
  - (b) Outpatient methadone maintenance and outpatient methadone detoxification;
  - (c) Outpatient DUII alcohol and other drug information and rehabilitation services and marijuana education and treatment services;
  - (d) Outpatient occupational drivers license services;
  - (e) Title XIX service;
  - (f) Prevention services;
  - (g) Alcohol and drug evaluation specialists; and
  - (h) Marijuana evaluation specialists.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0030**

##### **Initial Application Procedures**

- (1) Application Packet: The Division shall mail an application packet to all applicants, except those who wish to become Alcohol and Drug Evaluation Specialists (ADES), who should refer to OAR 415-054-0045 to 415-054-0100.
- (2) Initial Meeting: All programs applying for the first time for a LOA or license to operate a treatment or prevention program shall schedule a meeting with Division staff for the purpose of receiving needed technical assistance regarding the approval and licensure criteria and procedures.
- (3) Multiple Locations: A separate application is required for each location where the provider intends to operate.
- (4) Copy of Application: A copy of the application shall be provided by the applicant to the local mental health authority (CMHP) and to the Local Alcohol Planning Committee (LAPC) for review and comment. A program seeking to provide services on a statewide or regional basis must provide application material to the CMHP and the LAPC in the county where the program resides.
- (5) Withdrawal of Application: The applicant may withdraw the application at any time during the application process by notifying the Division in writing. At such time, all materials shall be returned to the applicant.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0032**

##### **Initial Application Information**

- (1) Initial Application Information: An applicant for a LOA or license shall submit the information listed below on forms provided by the Division:
  - (a) Name and address of the applicant;
  - (b) Name, address, and qualifications of the executive director or administrator;
  - (c) Outline of the staff organization with names and qualifications;
  - (d) Articles of incorporation and bylaws;
  - (e) Names and addresses of the board of directors, sponsors, or advisory boards of the program;
  - (f) Names and addresses of physicians, other professionally trained personnel, medical facilities, and other individuals or organizations with whom the program has a direct referral agreement or is otherwise affiliated;
  - (g) Description of the treatment services provided by the program setting forth program philosophy, goals, objectives, and a description of the treatment methodology for each service element;
  - (h) Materials demonstrating compliance with the administrative rules governing the specific service provided;
  - (i) Materials showing compliance with all related federal, state and local acts, ordinances, rules and amendments such as State Fire Marshal rules, board of health and building zoning codes, and the American Disabilities Act;
  - (j) Materials substantiating compliance with distance requirements subject to ORS 430.590 for programs using methadone to treat opioid addiction. These application procedures apply to new programs and existing programs moving to a new location after 1-14-2013.
  - (k) Materials substantiating compliance with other licensing authorities such as the Children, Adults and Families (CAF) Division for residential adolescent services or the Drug Enforcement Administration and a federally approved accreditation agency for methadone treatment services;
  - (l) For residential treatment and detoxification facilities, the maximum individual capacity requested;
  - (m) Source of funds used to finance the program such as an annual budget of the organization or a copy of the most current fiscal audit or review;
  - (n) Written evidence of applicable insurance such as liability insurance;
  - (o) Floor plan for the proposed facility;
  - (p) Representative sample individual file;
  - (q) Written nondiscrimination policy including:
    - (A) Explanation of methods used to disseminate the policy;
    - (B) Description of procedures used to communicate with sensory impaired person or persons of limited English proficiency;
    - (C) Written statement about the accessibility of the facility and services for disabled persons; and
    - (D) Written grievance procedure for handling discrimination complaints.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0035**

##### **Responses To Application**

- (1) Application Satisfactory: If the application is found to be complete and if the material documents compliance with applicable administrative rules, the Division shall issue a temporary LOA or license no later than 30 days after final approval of the application.
- (2) Unsatisfactory Application: If the application is not complete or if the application does not document compliance:

- (a) The applicant shall be provided with written notification that identifies needed information or areas of non-compliance within 60 days of receipt of the application; and
- (b) The original application shall be kept on file for 60 days after written notice has been given, at which time, if no further material is submitted to correct the deficiencies noted, the application shall be denied and all material shall be returned to the applicant.

(3) Application Denied: If an initial LOA or license is denied:

- (a) The applicant shall be entitled to a hearing with the Assistant Director if the applicant requests a hearing in writing within 60 days of the receipt of the notice;
- (b) The Assistant Director, whose decision is final, shall hold a hearing within 60 days of receipt of the written request; and
- (c) If no written request for a hearing is received within the 60-day timeline, the notice of denial shall become the final order by default and the Assistant Director may designate its file as the record for purposes of order by default.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0040**

##### **Letters of Approval and Licenses**

(1) Types of Certification: The Division may issue the following types of certificates:

- (a) Temporary LOA or temporary license for 185 days;
- (b) Provisional LOA or license for one year or less;
- (c) A license for two years; or
- (d) An LOA for three years.

(2) Renewal: Renewal of three-year letters of approval and two-year licenses shall be contingent upon demonstration of compliance with appropriate administrative rules:

- (a) A program may continue to operate until final determination of its approval or licensure status is made by the Division;
- (b) Failure to demonstrate compliance may result in the issuance of a provisional LOA, license, suspension, or revocation.

(3) Provisional Certification: Programs with provisional letters of approval or licenses upon demonstrating substantial compliance with appropriate administrative rules may be eligible for a three-year LOA or a two-year license. However, the provider's failure to demonstrate substantial compliance may result in an extension, suspension, or revocation of the provisional LOA or license.

(4) Nondiscrimination; Special Populations: The Division shall not discriminate in its review procedures or services on the basis of race, color, national origin, age, or disability. The Division may issue LOA or licenses to specialized programs to assure maximum benefit for special populations, in which case, the Division may identify that special population in the LOA or license and impose applicable program criteria.

(5) Restrictions: Restrictions which may be attached to a LOA or license include:

- (a) Limiting the total number of individuals (in residential or detoxification treatment);
- (b) Defining the age level of individuals (i.e., youth or adult) to be admitted into the facility;
- (c) Defining the gender of individuals, if the provider is identified as serving only males or females;
- (d) Assuring compliance with other licensing entities such as the CAF Division, the State Public Health Division, or the Food and Drug Administration; or
- (e) Other restrictions as required by the Division.

(6) Time Limits on Restrictions: Restrictions may be imposed for the extent of the approval period or limited to some other shorter period of time. If the restriction corresponds to the licensing period, the reasons for the restriction shall be considered at the time of renewal to determine if the restrictions are still appropriate.

(7) Restriction to Appear on LOA or License: The effective date and expiration date of the restriction shall be indicated on the certificate.

(8) Non-Transferability: An LOA or license issued by the Division for the operation of a substance use disorder program applies both to the applicant program and the premises upon which the program is to be operated. A LOA or license is not transferable to another person, entity, or to any other location:

- (a) Any person or other legal entity acquiring an approved licensed facility for the purpose of operating a substance use disorder program shall make an application as provided herein for a new LOA or license;
- (b) Any person or legal entity having been issued a license and desiring to fundamentally alter the treatment philosophy or transfer to different premises must notify the Division 30 days prior to doing so in order for the Division to review the program or site change and to determine further necessary action.

(9) Change of Administrator: If the administrator of the program changes during the period covered by the letter of approval or license:

- (a) A request for a change must be submitted to the Division within 15 days, along with the qualifications of the proposed new administrator;
- (b) Upon a determination that the administrator meets the requirements of applicable administrative rules, a revised LOA or license shall be issued with the name of the new administrator.

(10) Discontinued Program: When a program is discontinued, its current LOA or license is void immediately and the certificate shall be returned to the Division. A discontinued program is one which has terminated its services for which it has been approved or licensed. A program planning to discontinue services must:

(a) Notify the Division 60 days prior to a voluntary closure of a facility with written notice of how the provider will comply with OAR 309-014-0035(4) and 42 CFR Part 2, Federal Confidentiality Regulations, regarding the preservation of all individual records; and

(b) Provide individuals 30 days written notice and shall be responsible for making reasonable efforts to obtain treatment placement of individuals as appropriate.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0050**

##### **Onsite Reviews and Access Requirements**

(1) Scheduled Inspections: The Division shall inspect the facilities and must review procedures utilized:

(a) Before issuing a LOA or license to an applicant; and

(b) Before renewal of an existing LOA or license.

(2) Discretionary Onsite Inspections: The Division may conduct onsite inspections:

(a) Upon receipt of verbal or written complaints of violations that allege conditions that may threaten the health, safety, or welfare of individuals or for any other reason to be concerned for individual welfare; or

(b) Any time the Division has reason to believe it is necessary to assure if a provider is in compliance with the administrative rules or with conditions placed upon the LOA or license.

(3) Substance of Reviews: The review may include but is not limited to case record audits and interviews with staff and individuals, consistent with the confidentiality safeguards of state and federal laws.

(4) Access to Facilities and Records: Each applicant or provider agrees, as a condition of LOA or license approval:

(a) To permit designated representatives of the Division to inspect premises of programs to verify information contained in the application or to assure compliance with all laws, rules, and regulations during all hours of operation of the facility and at any other reasonable hour;

(b) To permit properly designated representatives of the department to audit and collect statistical data from all records maintained by the approved or licensed program; and

(c) That such right of immediate entry and inspection shall, under due process of law, extend to any premises on which the Division has reasons to believe a program is being operated by the provider in violation of these rules.

(5) Access if Requirement for LOA or License: An applicant or provider shall not be granted approval or licensing which does not permit inspection by the Division or examination of all records, including financial records as appropriate, methods of administration, the disbursement of drugs and method of supply, and any other records the Division considers to be relevant to the establishment of such a program.

(6) Inspection by Other Agencies: Each applicant or provider agrees, as a condition of LOA or license approval that:

(a) State or local fire inspectors shall be permitted access to enter and inspect the facility regarding fire safety upon the request of the Division; and

(b) State or local health inspectors shall be permitted access to enter and inspect the facility regarding health safety upon the request of the Division.

(7) Notice: The Division has authority to conduct inspections with or without advance notice to the administrator, staff, or individuals:

(a) The Division is not required to give advance notice of any onsite inspection if the Division reasonably believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these administrative rules; and

(b) If Division staff are not permitted access for inspection, a search warrant may be sought.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0055**

##### **Review Process and Review Reports**

(1) For renewal of a LOA or license:

(a) The Division shall designate a lead specialist and other onsite review members as appropriate, such as a peer reviewer or the designee of the CMHP, to perform a formal onsite review of the service element or elements;

(9) Access to Reports: Public access to final reports of onsite inspections, except for confidential information, shall be available upon written request from the Division during business hours in accordance with OAR chapter 407, division 003.

(2) Corrective Action Plan. Programs issued a provisional LOA or license must submit an action plan to the Assistant Director or his or her designee for approval no later than 30 days following receipt of the final onsite report. The corrective action plan shall include, but not be limited to:

(a) Specific problem areas cited as out of compliance;

(b) A delineation of corrective measures to be taken by the program to bring the program into compliance; and

(c) A delineation of target dates for completion of corrective measures for each problem area.

(3) Failure to Take Corrective Action: Failure to demonstrate compliance with the corrective action plan may result in an extension, suspension or revocation of the provisional LOA or license.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0060**

##### **Denial, Revocation, or Non-renewal**

(1) Denial of Application or Request for Renewal: The Division shall deny an application or request for renewal, or revoke an LOA or license where it finds any of the following:

(a) The provider has substantially failed to comply with applicable administrative rules or with local codes and ordinances or any other applicable state or federal law or rule;

(b) The applicant or provider has had a prior LOA or license to operate an alcohol and drug use disorder treatment program denied, revoked, or refused to be renewed in any county in Oregon within three years preceding the present application for reason of abuse or neglect of individuals or the administrator's failure to possess adequate physical health, mental health, or good personal character;

(c) If such prior denial, revocation, or refusal to renew occurred more than three years from the present action, the provider is required to establish to the Division by clear and convincing evidence his or her ability and fitness to operate a treatment program. If the applicant or provider does not provide such evidence, the Division shall deny the application;

(d) The applicant or provider submits fraudulent or untrue information to the Division;

(e) The applicant or provider has a history of, or currently demonstrates, financial insolvency such as filing for bankruptcy, foreclosures, eviction due to failure to pay rent, termination of utility services due to failure to pay bills, failure to pay taxes such as employment or social security in a timely manner;

(f) The applicant or provider refuses to allow immediate access and onsite inspection by the Division; or

(g) The applicant or provider fails to maintain sufficient staffing or fails to comply with staff qualifications requirements.

(2) Notification of Denial: When the Division determines that an applicant's request for an LOA or license should be denied, the Assistant Director or designee shall notify the applicant, by certified mail, return receipt requested, of the Division's decision to deny the approval or licensure and the reasons for the denial.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0065**

##### **Suspension of LOA**

If the Division finds that the health, safety, or welfare of the public are seriously endangered by continued operation of a treatment or prevention program and sets forth specific reasons for its findings, summary suspension of an LOA or license may be ordered. The Division may suspend an LOA or license for any of the following reasons:

(a) Violation by the program, its director or staff, of any rule promulgated by this Division pertaining to treatment or prevention services;

(b) Permitting, aiding or abetting the commission of an unlawful act within the facilities maintained by the program, or permitting, aiding or abetting the commission of an unlawful act involving chemical substances within the program;

(c) Conduct or practices found by the Division to be detrimental to the general health or welfare of an individual in the program; or

(d) Deviation by the program from the plan of operation originally approved or licensed which, in the judgment of the Division, adversely affects the character, quality or scope of services intended to be provided to individuals within the program.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0067**

##### **Response to Criminal Records**

(1) The Division may deny, refuse to renew, suspend, or revoke an LOA or license if:

(a) Any of the program's staff, within the previous three years, has been convicted of:

(A) Any crime or violation under ORS chapter 475, including but not limited to the Uniform Controlled Substances Act, or under ORS 813.010, driving under the influence of intoxicants;

(B) A substantially similar crime or violation in any other state; or

(C) Any felony.

(b) Any of the program's staff has entered into, within the past three years, a diversion agreement under ORS 813.010 or ORS 135.907 through 135.921, or a diversion agreement under a substantially similar law in any other state;

(2) Criminal Record Checks: The Assistant Director or designee may make criminal record inquiries necessary to ensure implementation of these rules.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0070**

##### **Hearings**

(1) Requesting Hearings: If a license or letter of approval is suspended, not renewed, or revoked:

(a) The provider shall be entitled to a hearing preceding the effective date of the denial, suspension, non-renewal, or revocation if requested in writing within 21 days after receipt of notice. (b) If no timely written request is received, the notice shall become the final order by default and the Assistant Director may designate the Division file as the record for purposes of order by default.

(2) Contested Case Hearings: Programs that wish to contest the suspension, non-renewal, or revocation of their LOA or license shall have an opportunity for a hearing by the Division according to the Attorney General's Model Rules of Procedure.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0080**

##### **Complaints**

(1) Investigation of Complaints: Any person who believes that administrative rules have been violated may file a complaint with the Division:

(a) The Division may require that complainant exhaust grievance procedures available to them through the provider prior to initiation of an investigation;

(b) The Division shall investigate complaints and notify the provider of the results of the investigation and any proposed action.

(2) Records of Complaints: A record shall be maintained by the Division of all complaints and any action taken on the complaint and shall:

(a) Be placed into the public file. Any information regarding the investigation of the complaint shall not be filed in the public file until the investigation has been completed;

(b) Protect the identification of the complainant; and

(c) Treat the identities of the witnesses and individuals as confidential information.

(3) Inspection of Records: Any person may inspect and receive a photocopy of the public complaint files maintained by the Division upon requesting an appointment to do so. A fee shall be charged in accordance with OAR chapter 407, division 003.

(4) Substantiated Complaint Grounds for Action: Providers who acquire substantiated complaints pertaining to the health, safety, or welfare of individuals may have their LOA or licenses suspended, revoked, or not renewed and arrangements made to move the individuals.

(5) Retaliation Toward An Individual Forbidden: The provider shall not retaliate against any individual for filing a complaint with the Division by:

(a) Increasing charges; decreasing services; rights or privileges;

(b) Threatening to increase charges or decrease services, rights, or privileges;

(c) Taking or threatening to take any action to coerce or compel the individual to leave the facility; or

(d) Abusing or threatening to harass or abuse an individual in any manner.

(6) Retaliation Toward Employee or Witness: The provider shall not retaliate against any complainant, witness, or employee of a facility for making a report to or being interviewed by the Division about a complaint including restriction to access to the service or to an individual or, if an employee, to dismissal or harassment.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

#### **415-012-0090**

##### **Variance or Exception**

(1) Procedure for Submission of Request. Request must be made in writing:

(a) For an initial application it should be included with the application documents submitted to the Division, local mental health authority, and the Local Alcohol Planning Committee;

(b) If the provider is an agency under contract with the local mental health authority, it must submit the request through the local mental health authority to the Assistant Director; and

(b) If the provider is not under contract to the local mental health authority, the request should be submitted directly to the Assistant Director.

(2) Substance of Request: The request should include the following:

- (a) The reason for the proposed variance or exception;
  - (b) The alternative practice proposed; and
  - (c) For an exception, a plan and timetable for compliance with the section of the rule from which the exception is sought.
- (3) Approval or Denial: The Assistant Director, whose decision shall be final, shall approve or deny the request for variance or exception.
- (4) Notification: The Division shall notify the provider requesting the variance or exception and the community mental health program of the decision.
- (5) Variance Part of LOA or License: A variance granted by the Division shall be attached to, and become part of, the LOA or license. Continuance of the variance shall be reviewed at the time the LOA or license is considered for renewal.
- Stat. Auth.: ORS 413.042 & 430.256
- Stats. Implemented: ORS 430.01030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500