

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Addictions & Mental Health Division 309
Agency and Division Administrative Rules Chapter Number

Richard Luthe 503-947-1186
Rules Coordinator Address Telephone

RULE CAPTION

Amending rules defining who may represent persons during \capacity\ hearings at the Oregon State Hospital
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 (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing
ADOPT:

AMEND:
Rules in OAR 309-114

REPEAL:

Stat. Auth.: ORS 179.040

Other Auth.: SB 288 Enrolled (2009 Session)

Stats. Implemented: ORS 179.321, 183.458; 426.070, 426.385, 427.031 & 427.255

RULE SUMMARY

The Addictions & Mental Health (AMH) Division is amending rules in OAR 309-114 to comply with SB 288, which changed who may represent patients at hearings to determine "capacity" prior to the administration of "significant procedures." The bill added "or the right to be free from potentially unusual or hazardous treatment procedures under ORS 426.385(3)" (Rights of committed persons) to ORS 183.458.

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

December 18th, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

	Richard Luthe	November 13 th , 2009
Signature	Printed name	Date

*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. ARC 923-2005

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Addictions & Mental Health Division 309
Agency and Division Administrative Rules Chapter Number

Amending rules defining who may represent persons during \capacity\ hearings at the Oregon State Hospital.

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

In the Matter of:

Revision of administrative rules under OAR 309-114 "INFORMED CONSENT TO TREATMENT AND TRAINING BY PATIENTS AND RESIDENTS IN STATE INSTITUTIONS."

Statutory Authority: ORS 179.040

Other Authority: SB 288 Enrolled (2009 Session)

Stats. Implemented: ORS 179.321, 183.458; 426.070, 426.385, 427.031 & 427.255

Need for the Rule(s):

These rules are being revised to change who may represent persons at "capacity" hearings when determining if a state institution has "good cause" to involuntarily administer "significant procedures." SB 288 Enrolled (2009 Legislative Session) added "or the right to be free from potentially unusual or hazardous treatment procedures under ORS 426.385(3)" to ORS 183.458 (Rights of committed persons), allowing that a person may be represented at such hearings by "An authorized representative who is an employee of the system described in ORS 192.517 (1). The authorized representative must be supervised by an attorney also employed by the system."

Documents Relied Upon, and where they are available:

OAR 309-114, available through the Oregon Secretary of State's Office, or this link:

http://www.sos.state.or.us/archives/rules/OARs_300/OAR_309/309_114.html

ORS 179, ORS 183, ORS 426 & ORS 427, available through the Oregon Office of Legislative Counsel, or this link: <http://www.leg.state.or.us/ors/home.htm>

SB 288 Enrolled (2009 Legislative Session), available through the Oregon Office of Legislative Counsel, or this link: <http://www.leg.state.or.us/09reg/measpdf/sb0200.dir/sb0288.en.pdf>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of this rule revision.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No additional "cost of compliance" is anticipated as a result of this rule revision.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

There are no small businesses affected by this rule revision.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No additional reporting, recordkeeping or other administrative costs are anticipated as a result of this rule revision.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor or increased administration are anticipated as a result of this rule revision.

How were small businesses involved in the development of this rule?

There are no small businesses affected by, or involved with this rule revision.

Administrative Rule Advisory Committee consulted? No

If not, why?

As this is considered a "technical" revision only, no Rules Advisory Committee was consulted.

Signature	Richard Luthe	November 13 th , 2009
	Printed name	Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

DIVISION 114
INFORMED CONSENT TO TREATMENT AND TRAINING BY
PATIENTS AND RESIDENTS IN STATE INSTITUTIONS

309-114-0005

Definitions

As used in these rules:

- ~~(1) "Certified Law Student" means an eligible law student certified by the Oregon State Bar to appear in court or in an administrative proceeding and is supervised by an attorney licensed by the Oregon State Bar.~~
- (1) "Authorized Representative" or "representative" means an individual who is an employee of the system described in ORS 192.517(1) and who may represent a party in a contested case hearing; the representative must be supervised by an attorney that is licensed by the Oregon State Bar and employed by the same system described in ORS 192.517(1).
- (2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.
- (3) "Division," ~~as used in these rules~~ means these Divisions of the Department of Human Services:
- (a) Addictions and Mental Health Division (AMH) when referring to "patients;" and
 - (b) The Seniors and People with Disabilities Division (SPD) when referring to "residents."
- (4) "Guardian" means a legal guardian who is an individual ~~person~~ appointed by a court of law to act as guardian of a minor or a legally incapacitated person.
- (5) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.
- (6) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's or resident's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes, and metabolic changes.
- (7) "Medication Educator" means a Qualified Mental Health Professional (QMHP) or Qualified Mental Retardation Professional who provides information about the proposed significant procedures to patients and residents.
- (8) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.
- (9) "Person Committed to the Division" or "Person" means a patient or resident committed under ORS 161.327, 161.370, 179.478, 426.130, or 427.215, or certified by the State Training Center Review Board under ORS 427.020.

- (10) "Psychiatric Nurse Practitioner," ~~as used in these rules,~~ means a registered nurse with prescription authority who independently provides health care to clients with mental and emotional needs or disorders.
- (11) "Qualified Mental Health Professional" (QMHP) means any individual ~~person~~ meeting the following minimum qualifications as documented by the state institution:
- (a) Graduate degree in psychology;
 - (b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;
 - (c) Graduate degree in social work or counseling;
 - (d) Graduate degree in a behavioral science field;
 - (e) Graduate degree in recreational art, or music therapy;
 - (f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or
 - (g) Bachelor's or graduate degree in a relevant area.
- (12) "Qualified Mental Retardation Professional" means an person individual who meets the professional requirements under 42 CFR 483.430.
- (13) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.
- ~~(14) "Representative" is an individual allowed to represent a party or the agency in an administrative hearing under Oregon law.~~
- (154) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient or resident, including, but not limited to physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing, and hygiene.
- (165) "Significant Procedure" means a diagnostic or treatment modality, and all significant procedures of a similar class that pose a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures. For purposes of these rules, "Human immunodeficiency virus" (HIV) testing shall be considered a "Significant Procedure."
- (176) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's or psychiatric nurse practitioner's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure. Significant procedures of a similar class do not need to be specifically listed on the treating physician's or psychiatric nurse practitioner's form.
- (187) "State Institution" or "Institution" means all Oregon State Hospital campuses, Blue Mountain Recovery Center and Eastern Oregon Training Center.
- (198) "Superintendent" means the executive head of the state institution listed in section (18) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, ORS 183.458; 426.070, 426.385, 427.031 & 427.255