BACKGROUND:

Oregon legislation which passed in 2009 and 2011 has required the Division to amend several health facility licensing rules including Home Health Agencies (HHAs). SB 158, passed by the 2009 Oregon Legislature, updates the HHA licensure regulations and application fees. HB 2650, passed by the 2011 Oregon Legislature, establishes provisions for criminal background checks for HHAs. Permanent administrative rules have been filed to address the provisions of these bills as well as aligning the current rules with federal guidelines. For the full text, follow this link: http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_027.html (starting May 1st; full text is available at www.healthoregon.org/hcrqi until then).

SUMMARY OF CHANGES:
These rules address new fees for HHA licensing, provisions of criminal background checks, and incorporate routine provisions in order to align with other health facility licensing rules.

HHA Fees (UPDATED)
Effective January 1, 2010 new fees are in effect for licensing of HHA’s

- $1,600 for initial licensure.
- $850 for renewal licensure.

License Application and Review
Several additions were made clarifying the application process, review of application, and survey process in order to align the rules with other facility types.

Plan of Treatment (NEW Requirements)
Home Health Agencies are responsible for the patient’s plan of treatment signed by the physician or nurse practitioner, including home health services provided to the patient through contractual arrangements with other organizations or individuals. A registered nurse must conduct an initial assessment visit to determine the immediate care and support needs of the patient. When rehabilitation therapy service (speech therapy, physical therapy or occupational therapy) is the only service ordered by the physician, and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

Criminal Records Check (NEW Requirements)
New requirements have been established for conducting criminal background checks in accordance with 443.004. Definitions for the following terms can be found at OAR 333-027-0005:

- Direct contact;
- Disqualifying condition;
- Subject Individual (SI); and
- Vendor

Conducting a check:
If a person will have direct contact with a patient of an agency, the agency must conduct a criminal background check before hiring or contracting with the person and before allowing the person to volunteer to provide services for the agency.

Any person who has or will have direct contact with a patient receiving home health services may not be employed, contract with, or volunteer with an agency in any capacity if the criminal background check reveals the person has been convicted of a crime as described in the attached reference document (appendix A).

An agency must have a policy on criminal background check requirements which must include weighing test actions should the background check screening indicate that a person has been convicted for crimes against an individual or property other than those identified in the attached crimes document. The policy must include the provisions for performing a weighing test including consideration of:

- circumstances regarding the nature of potentially disqualifying convictions and conditions;
- other factors such as information related to criminal activity, periods of incarceration, status of and compliance with parole or probation, evidence of substance abuse, evidence of other treatment related to a criminal behavior, the individual’s cooperation and honesty during the criminal records check process; and
- the relevancy of the individual’s criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the individual will work.

For specific details of the weighing test please see OAR 333-027-0064(4) online at http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_027.html.

A background check must be performed by the Department of Human Services Background Check Unit, by a vendor that is accredited by the National Association of Professional Background Screeners (NAPBS) or by a vendor that is not accredited by the NAPBS but meets all of the following criteria:

- Has been in business for at least two years;
- Has a current business license and private investigator license, if required in the company’s home state; and
- Maintains an errors and omissions insurance policy in an amount not less than $1,000,000.

An agency may use the Oregon State Police, Open Records Unit in order to fulfill the state records requirement for a criminal background check, however, an agency would still need to complete a nationwide check through a qualified vendor.

The criminal background check must include the following:

- Name and address history trace;
- Verification that the individual’s records have been correctly identified, via date of birth check and Social Security number trace;
- A local criminal records check, including city and county records for places of residence for the last seven years;
- A nationwide multijurisdictional criminal database search, including state and federal records;
- A nationwide sex offender registry search;
- The name and contact information of the vendor who completed the background check;
• Arrest, warrant and conviction data, including but not limited to:
  o Charge(s);
  o Jurisdiction; and
  o Date.
• Source(s) for data included in the report.

An agency must also perform and document a query of an employee, contractor or volunteer with the National Practitioner Data Bank (NPDB) and the List of Excluded Individuals and Entities (LEIE). Information on signing up for the NPDB can be found at: http://www.npdb-hipdb.hrsa.gov/hcorg/howToGetStarted.jsp and for LEIE at http://oig.hhs.gov/exclusions/index.asp.

All criminal background checks and weighing tests must be documented in writing and made part of the agency’s personnel files.

If an agency has a contract with the Department of Human Services (Department) or Oregon Health Authority for the provision of home health services on or after April 1, 2012 and is subject to the Department’s criminal records check rules, it does not have to obtain additional background checks for current or potential employees or volunteers.

For a person hired to working or volunteer for an agency on or after July 6, 2011, an agency will have until June 29, 2012 to ensure that it is in compliance with not employing individuals convicted of crimes identified in the attached crimes list.

On or after April 1, 2012, an agency must ensure that a criminal records check is completed on employees, contractors and volunteers who have direct contact with patients every three years from the date of the person’s last criminal records check.

Lastly, the Division shall begin conducting a criminal records check on an owner of any agency who has or may have direct contact with a patient. The Division will conduct a criminal records check:
  • At the time of application for a person who applies for a license on or after April 1, 2012 and every three years thereafter.
  • By April 1, 2013 for an agency that is licensed on or before April 1, 2012, and every three years thereafter.

Questions? Contact the HCRQI program at 971-673-0540 or by email at mailbox.hclc@state.or.us
A home health or in-home care agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the agency, if the individual will have direct contact with a patient or client of the agency. The background check must be conducted in accordance with rules established by the Oregon Health Authority, Public Health Division.

If a background check conducted by an agency reveals that the individual who is subject to the background check has been convicted of any of the following crimes, the agency may not employ the individual nor allow an individual to volunteer to provide services:

- ORS 163.095 Aggravated murder
- ORS 163.115 Murder
- ORS 163.118 Manslaughter I
- ORS 163.125 Manslaughter II
- ORS 163.145 Criminally negligent homicide
- ORS 163.149 Aggravated vehicular homicide
- ORS 163.165 Assault III
- ORS 163.175 Assault II
- ORS 163.185 Assault I
- ORS 163.187 Strangulation
- ORS 163.200 Criminal mistreatment II
- ORS 163.205 Criminal mistreatment I
- ORS 163.225 Kidnapping II
- ORS 163.235 Kidnapping I
- ORS 163.263 Subjecting another person to involuntary servitude II
- ORS 163.264 Subjecting another person to involuntary servitude I
- ORS 163.266 Trafficking in persons
- ORS 163.275 Coercion
- ORS 163.355 Rape III
- ORS 163.365 Rape II
- ORS 163.375 Rape I
- ORS 163.385 Sodomy III
- ORS 163.395 Sodomy II
- ORS 163.405 Sodomy I
- ORS 163.408 Unlawful sexual penetration II
- ORS 163.411 Unlawful sexual penetration I
- ORS 163.415 Sexual Abuse III
- ORS 163.425 Sexual Abuse II
- ORS 163.427 Sexual Abuse I
- ORS 163.432 Online sexual corruption of a child II, if the offender reasonably believed the child to be more than five years younger than the offender
- ORS 163.433 Online sexual corruption of a child I, if the offender reasonably believed the child to be more than five years younger than the offender
- ORS 163.435 Contributing to the sexual delinquency of a minor
- ORS 163.445 Sexual misconduct, if the offender is at least 18 years of age
- ORS 163.465 Public Indecency
- ORS 163.467 Private Indecency
- ORS 163.525 Incest with a child victim
- ORS 163.535 Abandonment of a child
- ORS 163.537 Buying or selling a person under 18 years of age
- ORS 163.547 Child neglect I
- ORS 163.670 Using a child in display of sexually explicit conduct
- ORS 163.684 Encouraging child sexual abuse I
- ORS 163.686 Encouraging child sexual abuse II
- ORS 163.687 Encouraging child sexual abuse III
- ORS 163.688 Possession of materials depicting sexually explicit conduct of a child I
- ORS 163.689 Possession of materials depicting sexually explicit conduct of a child II
- ORS 163.700 Invasion of personal privacy
- ORS 164.055 Theft I
- ORS 164.057 Aggravated Theft I
- ORS 164.098 Organized retail theft
- ORS 164.125 Theft of services, if charged as a felony
- ORS 164.215 Burglary II
- ORS 164.225 Burglary I
- ORS 164.325 Arson I
- ORS 164.377 Computer crime, if charged with a felony
- ORS 164.405 Robbery II
- ORS 164.415 Robbery I
- ORS 165.013 Forgery I
- ORS 165.022 Criminal possession of a forged instrument I
- ORS 165.032 Criminal possession of a forgery device
- ORS 165.800 Identity theft
- ORS 165.803 Aggravated identity theft
- ORS 167.012 Promoting prostitution
- ORS 167.017 Compelling prostitution
- ORS 167.057 Luring a minor
- ORS 167.320 Animal abuse I
ORS 167.322 Aggravated animal abuse I
ORS 181.594 Sex Crimes, including:
   - Transporting child pornography into the state;
   - Paying for viewing a child’s sexually explicit conduct; and

Any conviction for delivery (selling) of drugs or manufacture (making) of drugs (or attempt, conspiracy, or solicitation for these crimes) in the past 10 years.