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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

FILED
04/29/2024 8:56 PM
ARCHIVES DIVISION
SECRETARY OF STATE

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

FILING CAPTION: Revisions describe maintenance and usage of opioid antagonist medications for emergency treatment of suspected overdoses.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/21/2024 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.

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Filed By:
JUAN RIVERA
Rules Coordinator

HEARING(S)

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

DATE: 05/15/2024
TIME: 1:00 PM - 2:00 PM
OFFICER: Juan Rivera

REMOTE HEARING DETAILS
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CONFERENCE ID: 1614323236
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NEED FOR THE RULE(S)

Rule modifications are necessary to ensure mental health adult foster homes are more easily able to provide emergency medications for the treatment of opioid overdoses.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

No documents relied upon.

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

The Oregon Health Authority is wholeheartedly committed to the pursuit of elevating the voice of lived experience with equity as outlined in the overarching strategic goal set by OHA: to eliminate health inequities in Oregon by 2030.

Our dedication to this mission is rooted in the understanding that achieving health equity demands a comprehensive and culturally responsive approach. To align with OHA's definition of health equity, recognizing that true health equity is achieved when all individuals can attain their fullest health potential without being disadvantaged by factors such as race, ethnicity, language, disability, age, gender, gender identity, sexual orientation, social class, or intersections among these communities or identities.

FISCAL AND ECONOMIC IMPACT:

The Division anticipates minimal fiscal impact from these rule changes. Potential impacts include additional staff training, and procurement of opioid overdose kits.

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) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).
The revisions are not expected to financially impact state agencies, units of local government, or other members of the public.

(2) Effect on Small Businesses:
Adult Foster Homes are the only small businesses expected to be impacted by these revisions.

(a) Estimate the number and type of small businesses subject to the rule(s);
Approximately 100 Mental Health Adult Foster Homes will be subject to these rules.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);
The revisions are expected to increase documentation and operational activity related to maintenance and usage of opioid overdose kits Providers will be required to procure and properly maintain opioid overdose kits, as well as document and report usage of the kits. Providers and their staff will also be required to participate in related annual training. (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The Authority anticipates low-cost, possibly no-cost, options to procure opioid overdose kits. Otherwise kits and required components can be purchased for approximately $50-$125. The Authority also anticipates low-cost training options, otherwise costs can range from $10 per credit hour to $190 per course. Increases in administrative activities, related to documentation and reporting, are expected to have minimal to no increase in cost.

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

AFH providers (the business owners impacted) will be invited to RACs.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

309-040-0305, 309-040-0335, 309-040-0390, 309-040-0395

AMEND: 309-040-0305

RULE SUMMARY: Definitions added for “opioid”, “opioid overdose”, and “opioid overdose kit”

CHANGES TO RULE:

309-040-0305
Definitions ¶

(1) "Abuse" includes but is not limited to the following:¶
(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;¶
(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;¶
(c) Willful infliction of physical pain or injury;¶
(d) Sexual harassment or exploitation including but not limited to any sexual contact between an employee of an AFH or community program or provider or other caregiver and the individual. For all other situations, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the individual;¶
(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;¶
(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.¶
(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and OAR 943-045-0000, or any other rules established by the Division applicable to allegations of abuse of individuals residing at an AFH licensed by the Division.¶
(3) "Activities of Daily Living (ADL)" means those individual skills necessary for an individual's continued well-being including eating and nutrition, dressing, personal hygiene, mobility, and toileting.¶
(4) "Administration of Medication" means administration of medicine or a medical treatment to an individual as prescribed by a Licensed Medical Practitioner.¶
(5) "Adult Foster Home (AFH)" means any home licensed by the Health Systems Division of the Authority in which residential care is provided to five or fewer individuals who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. If an adult family member of the provider receives care, they shall be included as one of the individuals within the total license capacity of the AFH. An AFH or individual that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults is considered an AFH. For the purpose of these rules, an AFH does not include facilities referenced in ORS 443.715.¶
(6) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.¶
(7) "Applicant" means any individual or entity that makes an application for a license that is also the owner of the business.¶
(8) "Assessment" means an evaluation of an individual and the individual's level of functioning completed by a qualified provider and provides the basis for the development of the individual's residential care plan and person-centered service plan.¶
(9) "Authority" means the Oregon Health Authority or designee.¶
(10) "Behavioral Interventions" means interventions that modify the individual's behavior or the individual's environment.¶
(11) "Bill of Rights" means civil, legal, or human rights afforded to those individuals residing in an AFH that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in

the AFH Bill of Rights as outlined in OAR 309-040-0410.¶
(12) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47 and ORS 678.010 to 678.445.¶
(13) "Care" means the provision of but is not limited to services of room, board, services and assistance with ADLs, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum individual independence and enhance quality of life.¶
(14) "Caregiver" means the provider, resident managers, or substitute caregivers who provide services to an individual.¶
(15) "Case Manager" means an individual employed by a local, regional, or state allied agency approved by the Division to provide case management services and assist in the development of the personal care plan. Case manager's evaluate the appropriateness of services in relation to the consumer's assessed need and review the residential care plan every 180 days.¶
(16) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶
(17) "Community Mental Health Program (CMHP)" means the organization of all services for individuals with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse 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.¶
(18) "Compensation" means payments made by or on behalf of an individual to a provider in exchange for room and board, care and services, including services described in the individual's residential care plan and person-centered service plan¶
(19) "Competitive Integrated Employment" means full-time or part-time work:¶
(a) At minimum wage or higher, at a rate that is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer, and who have similar training, experience, and skill;-¶
(b) With eligibility for the level of benefits provided to other employees;-¶
(c) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and-¶
(d) As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.¶
(20) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, or inaction, that is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.¶
(21) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.¶
(22) "Contested Case Hearing" means a hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or the Division in response to an action, sanction, or notice of finding issued by the Division that results in the loss of license of the provider or other sanctions that adversely affects the license of the provider. The hearing group is composed of:¶
(a) The provider and if the provider chooses, the provider's attorney;¶
(b) The Division as represented by the Attorney General's Office; and¶
(c) The Office of Administration Hearings Administrative Law Judge.¶
(23) "Contract" means a written agreement between a provider and the Division to provide room and board, care and services for compensation for individuals of a licensed AFH.¶
(24) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.¶
(25) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).¶
(26) "Day Care" means care and services in an AFH for a person who is not an individual of the AFH.-¶
(27) "Declaration for Mental Health Treatment" means a document that states the individual's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.¶
(28) "Designated Representative" means:¶
(a) Any adult who is not the individual's paid provider, who:¶
(A) The individual has authorized to serve as his or her representative; or¶

(B) The individual's legal representative is authorized to serve as the individual's representative.¶
(b) The power to act as a designated representative is valid until the individual or the individual's legal representative modifies the authorization and notifies the Division of the modification, the individual or the individual's representative notifies the provider that the designated representative is no longer authorized to act the individual's behalf, or there is a change in the legal authority upon which the designation was based. Notice shall include the individual's or the representative's signature as appropriate;¶
(c) An individual or the individual's legal representative is not required to appoint a designated representative; and¶
(d) For the purposes of these rules, the term "individual" shall be considered to include the individual's designated representative.¶
(29) "Director" means the Director of the Oregon Health Authority or designee.¶
(30) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the individual's residential care plan and person-centered service plan, regardless of outcome or attainment of goals described in the individual's individualized personal care plan. In addition, the discharge summary addresses individual's monies, financial assets and monies, medication, and personal belongings at the time of discharge.¶
(31) "Division" means the Health Systems Division of the Oregon Health Authority or designee.¶
(32) "Division Staff" means an employee of the Division, the Division's designee, or the designee of the local Community Mental Health Program.¶
(33) "Employee" means an individual employed by a licensed AFH and who receives wages, a salary, or is otherwise paid by the AFH for providing the service. The term also includes employees of other providers delivering direct services to an individual.¶
(34) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Division to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.¶
(35) "Family Member" means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶
(36) "HCB" means Home and Community Based.¶
(37) "Home" means the Adult Foster Home (AFH) and as indicated by the context of its use may refer to the one or more buildings and adjacent grounds on contiguous properties used in the operation of the AFH.¶
(38) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 4. HCBS are services provided in the individual's home or community.¶
(39) "Home-Like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individuals.¶
(40) "House Rules" means the written standards governing house activities developed by the provider and approved by the Division. These standards may not conflict with the AFH Bill of Rights or other individual rights set out by these rules.¶
(41) "Incident Report" means a written description and account of any occurrence including but not limited to any injury, accident, acts of physical aggression, use of physical restraints, medication error, or any unusual incident involving an individual, the home, or provider.¶
(42) "Individual" means any individual being considered for placement or currently residing in a licensed home receiving residential, HCBS and other services regulated by these rules on a 24-hour basis except as excluded under ORS 443.400.¶
(43) "Individual Care Services" means services prescribed by a physician or other designated individual in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those AFH individuals who are Medicaid eligible, personal care services are funded under Medicaid.¶
(44) "Individually-Based Limitation" means a limitation to the qualities outlined in OAR 309-040-0393(1)(a) through (g), due to health and safety risks. An individually-based limitation is based on a specific assessed need and implemented only with the informed consent of the individual or the individual's legal representative as outlined in 309-040-0393.¶
(45) "Informed Consent" means:¶
(a) Options, risks, and benefits of the services outlined in these rules have been explained to an individual and in a manner that the individual comprehends; and¶
(b) The individual consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-

based limitation.¶
(46) "Initial Residential Care Plan (IRCP)" means a written document developed for an individual, within 24 hours of admission to the home, that addresses the care and services to be provided for the individual during the first 30 days or less until the residential care plan can be developed.¶
(47) "Legal Representative" means an individual who has the legal authority to act for an individual and only within the scope and limits to the authority as designated by the court or other agreement. A legal representative may include the following:¶
(a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian; or¶
(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative;¶
(c) For purposes of these rules, the term individual shall be considered to include the individual's legal representative.¶
(48) "Level One AFH" means an AFH licensed by the Division to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.¶
(49) "License" means a document issued by the Division to applicants who are determined by the Division to be in substantial compliance with these rules.¶
(50) "Licensed Medical Practitioner (LMP)" means any individual who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:¶
(a) Physician licensed to practice in the State of Oregon; or¶
(b) Nurse practitioner licensed to practice in the State of Oregon.¶
(51) "Licensee" means the individual or entity to whom a license is issued and whose name is on the license.¶
(52) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation that directly contracts with the Division to operate a CMHP for that county.¶
(53) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or any individual with whom the official contact while acting in an official capacity has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under 40.225 to 40.295.¶
(54) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any individual.¶
(55) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the individual's social, educational, or economic functioning. Medical diagnosis and classification shall be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-V). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."¶
(56) "Mistreatment" means the following behaviors displayed by an employee, program staff, caregiver, provider, or volunteer of an AFH when directed toward an individual:¶
(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;¶
(b) "Financial Exploitation" means:¶
(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;¶
(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual reasonably believes that the threat conveyed would be carried out;¶
(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;¶
(D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.¶
(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to their room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short-term basis when an individual's presence poses a risk to health or safety to themselves or others;¶

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;¶
(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:¶
(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule;¶
(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;¶
(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual;¶
(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;¶
(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.¶
(f) "Wrongful Restraint" means any use of a physical or chemical restraint except for the following:¶
(A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or¶
(B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming themselves or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.¶
(57) "Naloxone" means an FDA-approved short-acting, non-injectable, opioid antagonist medication used for the emergency treatment and temporary rapid reversal of known or suspected opioid overdose. ¶
(58) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources in accordance with OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).¶
(5~~8~~9) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.¶
(~~59~~60) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.¶
(6~~0~~1) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to individuals other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶
(6~~1~~2) "Nursing Delegation" means that a registered nurse authorizes an unlicensed individual to perform special tasks for individuals in select situations and indicates that authorization in writing. The delegation process includes nursing assessment of an individual in a specific situation, evaluation of the ability of the unlicensed person, teaching the task, and ensuring supervision.¶
(6~~2~~3) "Opioid" means natural, synthetic, or semi-synthetic chemicals normally prescribed to treat pain. This class of drugs includes, but is not limited to, illegal drugs such as heroin, natural drugs such as morphine and codeine, synthetic drugs such as fentanyl and tramadol, and semi-synthetic drugs such as oxycodone, hydrocodone, and hydromorphone. ¶
(64) "Opioid Overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of taking opiates in an amount larger than can be physically tolerated.¶
(65) "Opioid Overdose Kit" means an ultraviolet light-protected hard case containing a minimum of two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication, one pair non-latex gloves, one face mask, one disposable face shield for rescue breathing, and a short-acting, non-injectable, opioid antagonist medication administration instruction card. ¶
(66) Person-Centered Service Plan" means written documentation that includes the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.¶
(6~~3~~7) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agent, and other individual designated by the Division to provide person-centered service planning for and with individuals.¶

(648) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching, and supervising care that promotes the person's optimum health and independence.¶
(659) "Program Staff" means an employee or individual who by contract with an AFH provides a service to an individual.¶
(6670) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an AFH.¶
(671) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400.¶
(6872) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS chapter 678 and OAR chapter 851.¶
(6973) "Related" means the following relationships: Spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶
(704) "Relative" means any individual identified as a family member.¶
(715) "Representative" means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.¶
(726) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual when the individual receives services from the provider.¶
(737) "Resident Manager" means an employee of the provider who is approved by the Division to live in the AFH and is responsible for the care and services of individuals on a day-to-day basis.¶
(748) "Residential Care" means the provision of room, board, and services that assist the individual in activities of daily living such as assistance with bathing, dressing, grooming, eating, medication management, money management, or recreation. Residential care includes 24-hour supervision; being aware of the individual's general whereabouts; monitoring the activities of the individual while on the premises of the AFH to ensure the individual's health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.¶
(759) "Residential Care Plan (RCP)" means a written plan outlining the care and services to be provided to an individual. The RCP is based upon the review of current assessment, referral, observations, individual preference, and input from members of the residential care plan team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the individual's recovery and independence.¶
(7680) "Residential Care Plan Team (RCP Team)" means a group composed of the individual, the case manager or other designated representative, CMHP representative, the provider, resident manager, and others needed including the individual's legal guardian, representatives of all current service providers, advocates, or others determined appropriate by the individual receiving services. If the individual is unable or does not express a preference, other appropriate team membership shall be determined by the RCP team members.¶
(7781) "Residents' Bill of Rights" means the AFH residents have the rights set forth in ORS 443.739.¶
(782) "Respite Care" means the provision of room, board, care, and services in an AFH for a period of up to 14 days. Respite care for individuals shall be counted in the total licensed capacity of the home. Respite care is not crisis respite care.¶
(7983) "Restraints" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.¶
(804) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.¶
(815) "Seclusion" means the involuntary confinement of an individual to a room or area where the individual is physically prevented from leaving.¶
(826) "Self-Administration of Medication" means the act of an individual placing a medication in or on the individual's own body. The individual identifies the medication and the times and manners of administration and placed the medication internally or externally on the individual's own body without assistance.¶
(837) "Self-Preservation" means in relation to fire and life safety the ability of individuals to respond to an alarm without additional cues and be able to reach a point of safety without assistance.¶
(848) "Services" means those activities that are intended to help the individual develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure the individual's access to necessary medical care, treatment, or services identified in the individual's personal care plan.¶
(859) "Substitute Caregiver" means any individual meeting the qualifications of a caregiver who provides care and services in an AFH under the Division's jurisdiction in the absence of the provider or resident manager. An

individual may not be a substitute caregiver.¶
(~~86~~90) "Unit" means the bedroom and other space of an individual residing in an AFH as agreed to in the residency agreement. Unit includes the following:¶
(a) Private single occupancy spaces; and¶
(b) Shared units with roommates as allowed by these rules.¶
(~~87~~91) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of an individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of an individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.¶
(~~88~~92) "Variance" means an exception from a regulation or provision of these rules granted in writing by the Division upon written application from the provider.¶
(~~89~~3) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving services in an AFH or other provider and who is not a paid employee of the AFH or other provider. The services shall be non-clinical unless the person has the required credentials to provide a clinical service.~~¶~~
~~Publications referenced are available from the agency.~~
Statutory/Other Authority: ORS 413.042; 413.032
Statutes/Other Implemented: ORS 426.072, 443.705 - 443.825

AMEND: 309-040-0335

RULE SUMMARY: These changes update training requirements to include overdose response.

CHANGES TO RULE:

309-040-0335
Training Requirements for Providers, Resident Managers, and Substitute Caregivers ¶

(1) All providers, resident managers, and substitute caregivers shall satisfactorily meet all educational requirements established by the Division. Providers and staff may not provide care to any individual prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety, and welfare of the individual. Required course work and necessary skills may include, but are not limited to, physical caregiving; screening for care and service needs; appropriate behavior towards individuals with physical, cognitive, and emotional disabilities; emergency procedures; medication management; personal care products; food preparation; home environment and safety procedures; residents' rights; issues related to architectural accessibility; and mandatory abuse reporting.¶
(2) The provider, resident manager, and substitutive caregivers shall be able to understand and communicate in oral and written English in accordance with ORS 443.730.¶
(3) Training for all providers, resident managers, and substitute caregivers shall comply with ORS 443.738. The provider shall satisfactorily pass any testing requirements established by the Division before being licensed or becoming a resident manager or substitute caregiver. The test shall be completed by the caregiver without the help of any other individual. The provider, resident manager, and substitute caregiver shall have the ability to, but not be limited to, understand and respond appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, and individuals' preferences and conflicts.¶
(4) The Division may make exceptions to the training requirements for individuals appropriately licensed medical care professionals in Oregon or who possess sufficient education, training, or experience to warrant an exception. The Division may not make any exceptions to the testing requirements.¶
(5) In accordance with ORS 443.738, the Division may permit a person who has not completed the training or passed the required test to act as a resident manager until the training and testing are completed or for 60 days, whichever is shorter, if the Division determines that an unexpected and urgent staffing need exists. The provider shall notify the Division of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the individual meets the requirements for a substitute caregiver for the AFH, and that the provider shall provide adequate supervision.¶
(6) The provider or resident manager shall maintain current documentation of the training and testing of substitute caregivers including but not limited to:¶
(a) Documentation of criminal history check in compliance with OAR 943-007-0001 through 0501;¶
(b) Documentation that a substitute caregiver has successfully completed the training required by the Division;¶
(c) Documentation that the provider has trained the caregiver to meet the routine and emergency needs of the individuals;¶
(d) Documentation that the provider has oriented the caregiver to the individuals in the AFH, their care needs and skills training, personal care plan, and the physical characteristics of the AFH.¶
(7) The Division shall require a minimum of twelve hours of training annually directly related to the care and services for individuals with mental illness. The provider, resident manager, and substitute caregiver of an AFH must complete required training and document the training in the provider, resident manager, and substitute caregiver's training records. The training is in addition to any orientation that is attended by applicants prior to licensing and shall include, but is not limited to:¶
(a) Understanding and recognizing severe and persistent mental illness;¶
(b) Mandatory abuse reporting;¶
(c) Medication management, dispensing, and documentation;¶
(d) Incident report writing;¶
(e) Individual rights;¶
(f) AFH emergency planning;¶
(g) Fire safety;¶
(h) Complaints and grievances; and¶
(i) Cardiopulmonary Resuscitation (CPR) and First Aid.¶
(j) Opioid overdose kits and administration of an FDA-approved short-acting, non-injectable, opioid antagonist medication. ¶
(8) The Division may require the provider, resident manager, or substitute caregiver to obtain additional training, whether or not the twelve-hour annual training requirement has already been met.¶

(9) Providers, resident managers, or substitute caregivers who perform delegated or assigned nursing care services as part of the residential care plan shall receive training and appropriate monitoring from a registered nurse on performance and delivery of those services.
Statutory/Other Authority: ORS 413.042
Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0390

RULE SUMMARY: These changes include requirements for a stock supply of opioid overdose kits to be maintained at the setting as well as documentation requirements for when these kits are used.

CHANGES TO RULE:

309-040-0390
Standards and Practices for Care and Services ¶

(1) There shall be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH in accordance with ORS 443.725(3).¶
(2) Medications and Prescriber's Orders:¶
(a) There shall be a copy of a medication, treatment, or therapy order signed by a physician, nurse practitioner, or other licensed prescriber in the individual's file for the use of any medications, including over the counter medications, treatments, and other therapies except as otherwise permitted under OAR 309-040-0390(3)-(4);¶
(b) A provider, resident manager, or substitute caregiver shall dispense medications, treatments, and therapies as prescribed by a physician, nurse practitioner, or other licensed prescriber. Changes to orders for the dispensing and administration of medication or treatment may not be made without a written order from a physician, nurse practitioner, or other licensed prescriber. A copy of the medication, treatment, or therapy order shall be maintained in the individual's record. The provider, resident manager, or substitute caregiver shall promptly notify the individual's case manager of any request for a change in the individual's orders for medications, treatments, or therapies;¶
(c) Each individual's medications shall be clearly labeled with the pharmacist's label or the manufacturer's originally labeled container and kept in a locked location except as otherwise permitted under OAR 309-040-0390(3)-(4). The provider or provider's family medication shall be stored in a separate locked location. All medication for pets or other animals shall be stored in a separate locked location. Unused, outdated, or recalled medications may not be kept in the AFH and shall be disposed in a manner to prevent diversion into the possession of people other than for whom it was prescribed. The provider shall document disposal of all unused, outdated, and recalled medication on individuals' drug disposal forms;¶
(d) Medications may not be mixed together in another container prior to administration except as packaged by the pharmacy or by physician order;¶
(e3) The program must ensure at least one unexpired opioid overdose kit for emergency response to suspected overdose is available in the facility at all times. Opioid overdose kits do not require a prescription and are not specific to an individual (see ORS 689.684).¶
(a) All opioid overdose kits must include an ultraviolet light-protected hard case and must contain, but not be limited to:¶
(A) Two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication;¶
(B) One pair non-latex gloves;¶
(C) One face mask;¶
(D) One disposable face shield for rescue breathing; and¶
(E) One short-acting, non-injectable, opioid antagonist medication administration instruction card.¶
(b) Opioid overdose kits must be:¶
(A) Installed in an easily accessible, highly visible, and unlocked location;¶
(B) At a height of no more than 48 inches from the floor;¶
(C) In a location without direct sunlight;¶
(D) In an area where temperatures are maintained between 59□F and 77□F; and¶
(E) Have a sign clearly indicating the location and content of the kit.¶
(c) Short-acting, non-injectable, opioid antagonist medication not within installed opioid overdose kits must be stored in a locked cabinet with other resident medications. ¶
(d) Opioid overdose kits must be:¶
(A) Checked daily to ensure the required components have not been removed or damaged;¶
(B) Checked monthly to ensure the short-acting, non-injectable, opioid antagonist medication has not expired; and¶
(C) Restocked immediately after use.¶
(e) Upon recognizing a person is likely experiencing an overdose, program staff must immediately respond based on the medical emergency procedures of the facility.¶
(f) A person who has reasonable cause to believe an individual is experiencing an overdose, and in good faith administers short-acting, non-injectable, opioid antagonist medication, is protected against civil liability or criminal prosecution unless the person, while rendering care, acts with gross negligence, willful misconduct, or

intentional wrongdoing as described in Oregon Revised Statute (ORS) 689.681.¶
(g) Administration of short-acting, non-injectable, opioid antagonist medication must be documented by the caregiver who administered the medication. Documentation must be submitted to the Authority within 48 hours of the incident and must include:¶
(A) Name of the individual;¶
(B) Description of the incident including date, time, and location;¶
(C) Time 9-1-1 contacted;¶
(D) Time of administration(s) of short-acting, non-injectable, opioid antagonist medication;¶
(E) Individual's response;¶
(F) Transfer of care to EMS; and¶
(G) Signature of caregiver.¶
(H) Program staff must fully cooperate with emergency medical service (EMS) personnel. Program staff must not interfere with or impede the administration of emergency medical services.¶
(4) Opioid overdose medication and kits which are the personal property of a resident, do not need to be kept in a locked location or maintained as described under OAR 309-040-0390(3).¶
(5) A written medication administration record (MAR) for each individual shall be kept of all medications administered by the program staff to that individual, including over the counter medications. The MAR shall indicate name of medication, dosage and frequency of administration, route or method, dates and times given, and be immediately initialed by the caregiver dispensing using only blue or black indelible ink. Treatments, therapies, and special diets shall be immediately documented on the medication administration record including times given, type of treatment or therapy, and initials of the caregiver giving it using only blue or black indelible ink. The medication administration record shall have a legible signature for each set of initials using only blue or black indelible ink;¶
(~~f~~a) The MAR shall include documentation of any known allergy or adverse reactions to a medication and documentation and an explanation of why a PRN medication was administered and the results of such administration;¶
(~~g~~b) For any individual who is self-administering medication, the individual's record shall include the following documentation:¶
(A) That the individual has been trained for self-administering of prescribed medication or treatment or that the prescriber has provided documentation that training for the individual is unnecessary;¶
(B) That the individual is able to manage his or her own medication regimen, and the provider shall keep medications stored in an area that is inaccessible to others and locked;¶
(C) Of retraining when there is a change in dosage, medication, and time of delivery;¶
(D) Of review of self-administration of medication as part of the residential care plan process; and¶
(E) Of a current prescriber order for self-administration of medication.¶
(~~h~~c) Injections may be self-administered by the individual or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or providers who have been trained and are monitored by a physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047. Documentation regarding the training or delegation shall be maintained in the individual's record;¶
(~~3~~6) Nursing tasks may be delegated by a registered nurse to providers and other caregivers only in accordance with administrative rules of the Board of Nursing chapter 851, division 47. This includes but is not limited to the following conditions:¶
(a) The registered nurse has assessed the individual's condition to determine there is not a significant risk to the individual if the provider or other caregiver performs the task;¶
(b) The registered nurse has determined the provider or other caregiver is capable of performing the task;¶
(c) The registered nurse has taught the provider or caregiver how to do the task;¶
(d) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;¶
(e) The registered nurse provides written instructions for the provider or caregiver to use as a reference;¶
(f) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other individuals or taught to other care providers;¶
(g) The registered nurse has determined the frequency for monitoring the provider or caregiver's delivery of the delegated task; and¶
(h) The registered nurse has documented a residential care plan for the individual including delegated procedures, frequency of registered nurse follow-up visits, and signature and license number of the registered nurse doing the delegating.¶
(4~~7~~) The initial residential care plan shall be developed within 24 hours of admission to the AFH.¶
(~~5~~8) This section and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-

0315(7):¶
(a) During the initial 30 calendar days following the individual's admission to the AFH, the provider shall continue to assess and document the individual's preferences and care needs. The provider shall complete and document the assessment in an RCP within 30 days after admission, unless the individual is admitted to the AFH for crisis-respite services;¶
(b) An RCP is an individualized plan intended to implement and document the provider's delivery of services and identifies the goals to be accomplished through those services. The RCP shall describe the individual's needs, preferences, capabilities, and what assistance the individual requires for various tasks;¶
(c) The provider shall develop the RCP based upon the findings of the individual assessment and the person-centered service plan with participation of the individual and through collaboration with the individual's primary mental health treatment provider. With consent of the individual, family members, representatives from involved agencies, and others with an interest in the individual's circumstances may be invited to participate in the development of the RCP. The provider shall have proper, prior authorization from the individual or the individual's representative prior to such contact;¶
(d) The RCP shall adequately consider and facilitate the implementation of the individual's person-centered service plan by addressing the following:¶
(A) Address the implementation and provision of services by the provider consistent with the obligations imposed by the person-centered service plan;¶
(B) Identify the individual's service needs, desired outcomes, and service strategies to advance all areas identified in the person-centered service plan, the individual's physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation, as well as any other area of concern or the other goals set by the individual;¶
(C) If the person-centered service plan is unavailable for use in developing the RCP, providers shall still develop an RCP based on the information available. Upon the person-centered service plan becoming available, the providers shall amend the RCP as necessary to comply with this rule; and¶
(D) The provider shall attach the person-centered service plan to the RCP.¶
(e) The RCP shall be signed by the individual, the provider, or the provider's designee, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan;¶
(f) The provider shall review and update each individual's RCP every six months and when an individual's condition changes. The review shall be documented in the individual's record at the time of the review and include the date of the review and the provider's signature. If an RCP contains many changes and becomes less legible, the provider shall write a new care plan.¶
(~~6~~9) A person-centered service plan shall be completed in the following circumstances:¶
(a) A person-centered service plan coordinator under contract with the Division shall complete a person-centered service plan with each individual pursuant to OAR 411-004-0030. The provider shall make a good faith effort to implement and complete all elements the provider is responsible for implementing as identified in the person-centered service plan;¶
(b) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible;¶
(c) The person-centered service plan shall be developed by the individual, and as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the individual's representative;¶
(d) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant exceptions when it determines that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area;¶
(e) For private pay individuals, a person-centered service plan may be developed by the individual, or as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers shall assist private pay individuals in developing person-centered service plans when no alternative resources are available. Private pay individuals are not required to have a written person-centered service plan.¶
(~~7~~10) A person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process includes the following:¶
(a) Is driven by the individual;¶
(b) Includes people chosen by the individual;¶
(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;¶
(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;¶

(e) Reflects the cultural considerations of the individual;¶
(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the individual's representative;¶
(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:¶
(A) Discussing the concerns of the individual and determining acceptable solutions;¶
(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;¶
(C) Utilizing any available greater community conflict resolution resources;¶
(D) Referring concerns to the Office of the Long-Term Care Ombudsman; or¶
(E) For Medicaid recipients, following existing, program-specific grievance processes.¶
(h) Offers choices to the individual regarding the services and supports the individual receives and from whom, and records the alternative HCB settings that were considered by the individual;¶
(i) Provides a method for the individual to request updates to the person-centered service plan for the individual;¶
(j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;¶
(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;¶
(L) Includes any services that are self-directed, if applicable;¶
(m) Includes but is not limited to individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;¶
(n) Includes risk factors and plans to minimize any identified risk factors; and¶
(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual, participants in the person-centered service planning process, and all individuals responsible for the implementation of the person-centered service plan, including the provider, as described in these rules. The person-centered service plan is distributed to the individual and other people involved in the person-centered service plan as described in these rules.¶
(~~8~~11) Required contents of the person-centered service plan:¶
(a) When the provider is required to develop the person-centered service plan, the provider shall ensure that the plan includes the following:¶
(A) HCBS and setting options based on the needs and preferences of the individual and for residential settings, the available resources of the individual for room and board;¶
(B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater community;¶
(C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;¶
(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;¶
(E) The strengths and preferences of the individual;¶
(F) The service and support needs of the individual;¶
(G) The goals and desired outcomes of the individual;¶
(H) The providers of services and supports, including unpaid supports provided voluntarily;¶
(I) Risk factors and measures in place to minimize risk;¶
(J) Individualized backup plans and strategies, when needed;¶
(K) People who are important in supporting the individual;¶
(L) The person responsible for monitoring the person-centered service plan;¶
(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services;¶
(N) The written informed consent of the individual;¶
(O) Signatures of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (c) of this section;¶
(P) Self-directed supports; and¶
(Q) Provisions to prevent unnecessary or inappropriate services and supports.¶
(b) When the provider is not required to develop the person-centered service plan but provides services to the individual, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator or other persons developing the plan to fulfill the characteristics described in these rules;¶
(c) The individual decides on the level of information in the person-centered service plan that is shared with

providers. To effectively provide services, providers shall have access to the portion of the person-centered service plan that the provider is responsible for implementing;¶
(d) The person-centered service plan is distributed to the individual and other people involved in the person-centered service plan as described in these rules;¶
(e) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-040-0393 when an individual's rights under OAR 309-040-0410(2)(b) through (i) may not be met due to threats to the health and safety of the individual or others;¶
(f) The person-centered service plan shall be reviewed and revised:¶
(A) At the request of the individual:¶
(B) When the circumstances or needs of the individual change; or¶
(C) Upon reassessment of functional needs as required every 12 months.¶
(~~9~~12) Because it may not be possible to assemble complete records and develop a person-centered service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan under these rules, but shall, at a minimum, develop an initial care plan as required by section (7) of these rules to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in section (11)(b) of this rule.¶
(1~~0~~3) The provider shall develop an individual record for each individual. The provider shall keep the individual record current and available on the premises for each individual admitted to the AFH. The provider shall maintain an individual record consistent with the following requirements:¶
(a) The record shall include:¶
(A) The individual's name, previous address, date of entry into AFH, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid or Medicare numbers where applicable, guardianship status, and;¶
(B) The name, address, and telephone number of:¶
(i) The individual's legal representative, designated representative, family, advocate, or other significant person;¶
(ii) The individual's preferred primary health provider, designated back up health care provider or clinic;¶
(iii) The individual's preferred dentist;¶
(iv) The individual's day program or employer, if any;¶
(v) The individual's case manager; and¶
(vi) Other agency representatives providing services to the individual.¶
(C) Individual records shall be available to the Authority conducting inspections or investigations as well as to the individual or the individual's representative;¶
(D) Original individual records shall be kept for a period of three years after discharge when an individual no longer resides in the AFH;¶
(E) In all other matters pertaining to confidential records and release of information, providers shall comply with ORS 179.505.¶
(b) Medical Information:¶
(A) History of physical, emotional, and medical problems, accidents, illnesses or mental status that may be pertinent to current care;¶
(B) Current orders for medications, treatments, therapies, use of restraints, special diets, and any known food or medication allergies;¶
(C) Completed medication administration records from the license review period;¶
(D) Name and claim number of medical insurance and any pertinent medical information such as hospitalizations, accidents, immunization records including previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of any individual.¶
(c) Individual Account Record:¶
(A) Individual's Income Sources;¶
(B) Refer to the individual's residential care plan with supporting documentation from the income sources to be maintained in the individual's individual record;¶
(C) The individual or the individual's representative shall agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy shall be given to the individual, the individual's representative, and the original in the individual's individual record;¶
(D) Individual's record of discretionary funds.¶
(d) If an individual maintains custody and control of his or her discretionary funds, then no accounting record is required;¶
(e) If a designee of the AFH maintains custody and control of an individual's discretionary fund, a signed and dated account and balance sheet shall be maintained with supporting documentation for expenditures $10 and greater. The AFH designee shall have specific written permission to manage an individual's discretionary fund;¶

(f) The provider shall maintain a copy of the written house rules with documentation that the provider discussed the house rules with the individual;¶
(g) A written incident report of any unusual incidents relating to the AFH including but not limited to individual care. The incident report shall include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the individual. In compliance with HIPAA rules, only the individual's name may be used in the incident report. Separate reports shall be written for each individual involved in an incident. A copy of the incident report shall be submitted to the CMHP within five working days of the incident. The original shall be placed in the individual's individual record;¶
(h) Any other information or correspondence pertaining to the individual;¶
(i) Progress notes shall be maintained within each individual's record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes as identified in the individual's personal care plan. A progress note shall be entered in the individual's record at least once each month.¶
(11~~4~~) Residents' Bill of Rights:¶
(a) The provider shall guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider shall post a copy of the Residents' Bill of Rights in a location that is accessible to individuals, individuals' representatives, parents, guardians, and advocates. The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representative, parent, guardian, and advocate along with a description of how to exercise these rights;¶
(b) The provider shall explain and document in the individual's file that a copy of the Residents' Bill of Rights was given to each individual at admission and is posted in a conspicuous place including the name and phone number of the office to call to report complaints.¶
(12~~5~~) Providers, resident managers, or substitute caregivers may not use physical restraints for individuals receiving personal care services authorized or funded through the Division.¶
(13~~6~~) The provider shall:¶
(a) Conspicuously post the State license and Abuse and Complaint poster where it can be seen by individuals;¶
(b) Cooperate with Division personnel or designee in complaint investigation procedures, abuse investigations, and protective services, planning for individual care, application procedures, and other necessary activities, and allow access of Division personnel to the AFH, its individuals, and all records;¶
(c) Give care and services, as appropriate to the age and condition of the individual and as identified on the RCP. The provider shall ensure that physicians' orders and those of other medical professionals are followed and that the individual's physicians and other medical professionals are informed of changes in health status or if the individual refuses care;¶
(d) House Rules:¶
(A) The provider shall develop reasonable written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on refunds in case of departure, hospitalization, or death;¶
(B) The provider shall discuss house rules with the individual and families at the time of arrival and be posted in a conspicuous place in the facility. The provider shall maintain written documentation in the individual record that the provider discussed the house rules with the individual along with a copy of the house rules;¶
(C) House rules are subject to review and approval by the Division and may not violate individual's rights as stated in ORS 430.210;¶
(D) House rules may not restrict or limit the individual rights under OAR 309-040-0410(2). This subsection is effective July 1, 2016, and enforceable according to 309-040-0315(7).¶
(e) In the provider's absence, the provider shall have a resident manager or substitute caregiver on the premises to provide care and services to individuals. For absences greater than 72 consecutive hours, the CMHP shall be notified of the name of the substitute caregiver for the provider or resident manager;¶
(f) A provider, resident manager, or substitute caregiver shall be present in the home at all times;¶
(g) Allow and encourage individuals to exercise all civil and human rights accorded to other citizens;¶
(h) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of individuals;¶
(i) Provide care and services as agreed to in the RCP;¶
(j) Keep information related to individuals confidential as required under ORS 179.050;¶
(k) Ensure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the Division or CMHP;¶
(L) Not admit individuals who are clients of Aging and People with Disabilities without the express permission of the Division;¶
(m) Notify the Division prior to a closure and give individuals, the individuals' representative, families, and CMHP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize

the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH, an individual may not be shifted from one AFH to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and CMHP;¶
(n) Exercise reasonable precautions against any conditions that threatens the health, safety, or welfare of individuals;¶
(o) Immediately notify the appropriate RCP Team members (in particular the CMHP representative and family or guardian) if: The individual has a significant change in medical status; the individual has an unexplained or unanticipated absence from the AFH; the provider becomes aware of alleged or actual abuse of the individual; the individual has a major behavioral incident, accident, illness, hospitalization; the individual contacts or is contacted by the police; or the individual dies, and follow-up with an incident report.¶
(147) The provider shall write an incident report for any unusual incident and forward a copy of the incident report to the CMHP within five working days of the incident. Any incident that is the result of or suspected of being abuse shall be reported to the Office of Investigations and Training within 24 hours of occurrence.
Statutory/Other Authority: ORS 413.042
Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0395

RULE SUMMARY: These changes include requirements for opioid antagonist medications to be provided to residents at discharge.

CHANGES TO RULE:

309-040-0395
Standards for Admission, Transfers, Respite, Discharges, and Closures ¶

(1) Each individual referred for placement in an AFH may select and choose from available service settings.¶
(2) A provider may only admit an individual with a referral from, or the prior written approval of the CMHP or the Division. At the time of the referral, a provider shall be given complete information about the case history of the individual as it relates to behavior, skill level, medical status, or other relevant information. The provider may deny admission of any individual if the provider believes the individual cannot be managed effectively in the AFH, or for any other reason not specifically prohibited by this rule. AFHs may not be used as a site for foster care for children, adults from other agencies, or any type of shelter or day care without the written approval of the CMHP or the Division.¶
(3) Transfers:¶
(a) An individual may not be transferred by a provider to another AFH or moved out of the AFH without 30 days advance written notice to the individual, the individual's representative, guardian, or conservator, and the CMHP;¶
(b) The written notice shall state the reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070 and the individual's right to a hearing as provided in ORS 443.738(11)(b);¶
(c) Except where undue delay might jeopardize the health, safety, or well-being of the individual or other individuals, a provider shall only transfer an individual for the following reasons:¶
(A) Behavior that poses a significant danger to the individual or others;¶
(B) Failure to make payment for care;¶
(C) The AFH has had its license revoked, not renewed, or voluntarily surrendered; or¶
(D) The individual's care needs exceed the ability of the provider.¶
(d) Individuals who object to the transfer shall be given the opportunity for a hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, a family member, and a CMHP staff member.¶
(4) Providers may not exceed the licensed capacity of the AFH. However, respite care of no longer than two weeks duration may be provided an individual if the addition of the respite individual does not cause the total number of residents to exceed five. Thus, a provider may exceed the licensed number of residents by one respite individual for two weeks or less if approved by the CMHP or the Division, and if the total number of residents does not exceed five.¶
(5) Discharge:¶
(a) A provider may only discharge an individual for the reasons stated in section (3) of this rule. The provider shall give at least 30 days written notice to an individual and the Division before termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or others;¶
(b) The provider shall promptly notify the CMHP or Division if an individual gives notice or plans to leave the AFH or if an individual abruptly leaves.¶
(6) Providers shall notify the Division prior to a voluntary closure of an AFH and give individuals, families, and the CMHP 30 days' written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of an individual, provider, or caregiver. If a provider has more than one AFH, an individual cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CMHP.¶
(7) Upon transfer or discharge from the facility, program staff must offer two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication to the individual. If the individual accepts, program staff must:¶
(a) Provide the individual with an instruction card on the use of short-acting, non-injectable, opioid antagonist medication; and¶
(b) Document distribution of the short-acting, non-injectable, opioid antagonist medication in the individual's record.
Statutory/Other Authority: ORS 413.042
Statutes/Other Implemented: ORS 443.705 - 443.825