

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BHS 1-2024

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

FILED

01/09/2024 3:30 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Revisions to maintenance, usage of opioid antagonist medications for the emergency treatment of suspected overdoses.

EFFECTIVE DATE: 01/10/2024 THROUGH 04/11/2024

AGENCY APPROVED DATE: 01/04/2024

CONTACT: Patrick Woods
971-240-7554
Patrick.Woods@oha.oregon.gov

500 Summer Street NE
Salem, OR 97301

Filed By:
JUAN RIVERA
Rules Coordinator

NEED FOR THE RULE(S):

Rule modifications are necessary to ensure licensed residential treatment homes and facilities are more easily able to provide emergency medications for the treatment of opioid overdoses.

JUSTIFICATION OF TEMPORARY FILING:

- (1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s). Failure to adopt these changes would result in less accessible means of opioid overdose prevention.
- (2) Who would suffer these consequences. Residential Treatment Homes, Residential Treatment Facilities, and Secure Residential Treatment Facilities.
- (3) Why or how failure to immediately take rulemaking action would cause these consequences; The current rules do not describe training and documentation requirements or allow opioid overdose kits to be maintained outside of locked storage designated for medications.
- (4) How the temporary action will avoid or mitigate those consequences. Modification of the rules will ensure providers are more easily able to provide these emergency interventions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

none.

RULES:

309-035-0105, 309-035-0135, 309-035-0170, 309-035-0215

AMEND: 309-035-0105

SUSPEND: Temporary 309-035-0105 from BHS 41-2023

RULE SUMMARY: Definitions added for "opioid", "opioid overdose", and "opioid overdose kit".

CHANGES TO RULE:

Definitions ¶¶

As used in these rules, the following definitions apply:¶¶

(1) "Abuse" includes but is not limited to:¶¶

(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 a community facility or community program or provider or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, 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 adult;¶¶

(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) "Adult" means an individual 18 years of age or older.¶¶

(3) "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.¶¶

(4) "Applicant" means the individual or entity, including the Division, who owns, seeks to own or operate, or maintains and operates a program and is applying for a license.¶¶

(5) "Approved" means authorized or allowed by the Authority or designee.¶¶

(6) "Authority" means the Oregon Health Authority or designee.¶¶

(7) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.¶¶

(8) "Care" means services including but not limited to supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.¶¶

(9) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶¶

(10) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for individuals with mental health disorders, operated by or contractually affiliated with a local mental health authority. CMHP's operate in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.¶¶

(11) "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.¶¶

(12) "Contract" means a formal written agreement between the CMHP, CCO, Oregon Health Plan contractor, or the Division and a provider.¶¶

(13) "Controlled" means a provider requires an individual to receive services from the provider or requires the individual to receive a particular service as a condition of living or remaining in the HCB setting.¶¶

(14) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the CCO's members.¶¶

(15) "Criminal Records Check" means the Oregon Criminal Records Check and the processes and procedures required by OAR 943-007-0001 through 943-007-0501.¶¶

(16) "Crisis-Respite Services" means providing services to individuals who are RTF residents for up to 30 days.¶¶

- (17) "Designated Representative" means:¶
 (a) Any adult who is not the individual's paid provider who the individual or the individual's legal representative has authorized to serve as the individual's representative;¶
 (b) The power to act as a designated representative, valid until modified or rescinded. The individual or representative must notify the Division or provider of any change in designation. The 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.¶
- (18) "Deputy Director" means the deputy director of the Health Systems Division of the Oregon Health Authority or designee.¶
- (19) "Direct Care Staff" means program staff responsible for providing services for an individual.¶
- (20) "Division" means the Health Systems Division of the Oregon Health Authority or designee.¶
- (21) "Division Staff" means individuals employed by the Division or individuals delegated by the Division to conduct licensing activities under these rules.¶
- (22) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-~~V~~5-TR)" published by the American Psychiatric Association.¶
- (23) "Emergency Admission" means an admission to a program made on an urgent basis due to the pressing service needs of the individual.¶
- (24) "Employee" means an individual employed by a provider who receives wages, a salary, or is otherwise paid by the provider for providing the service.¶
- (25) "Evacuation Capability" means the ability of occupants, including individuals and program staff as a group, to evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:¶
 (a) Impractical (SR-2): A group, even with staff assistance, who cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes;¶
 (b) Slow (SR-1): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes;¶
 (c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. The Division shall determine evacuation capability for programs in accordance with the NFPA 101A 2000 edition. Programs that are determined to be "Prompt" may be used in Group R occupancies classified by the building official in accordance with the building code.¶
- (26) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.¶
- (27) "HCB" means Home and Community-Based.¶
- (28) "HCBS" means Home and Community-Based Services, services provided in the individual's home or community.¶
- (29) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the requirements of OAR 411-004-0020 where an individual receives Home and Community-Based Services.¶
- (30) "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 individual.¶
- (31) "Individual" means any individual being considered for placement or is currently residing in a licensed program receiving residential services regulated by these rules on a 24-hour basis, except as excluded under ORS 443.400.¶
- (32) "Individual Service Record" means an individual's records maintained by the program pursuant to OAR 309-035-0130(4).¶
- (33) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 309-035-0195 due to health and safety risks. An individually-based limitation is based on a specific assessed need and only implemented with the individual's or individual's representative's informed consent as described in OAR 309-035-0195.¶
- (34) "Informed Consent" means:¶
 (a) That options, risks, and benefits of the services outlined in these rules have been explained to an individual or the individual's legal representative in a manner that the individual comprehends; and¶
 (b) That the individual or individual's legal representative 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.¶
- (35) "Legal Representative" means an individual person with the legal authority to act for an individual and only

within the scope and limits to the authority designated by the court or other agreement. A legal representative may include:¶

(a) For an individual under the age of 18, the parent, unless a court appoints another individual 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.¶

(36) "Licensed Medical Professional (LMP)" means an individual who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:¶

(a) Holds at least one of the following educational degrees and valid licensures:¶

(A) Physician licensed to practice in the State of Oregon;¶

(B) Nurse Practitioner licensed to practice in the State of Oregon; or¶

(C) Physician's Assistant licensed to practice in the State of Oregon.¶

(b) Whose training, experience, and competence demonstrate the ability to conduct a comprehensive mental health assessment and provide medication management.¶

(37) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties operating a CMHP or MHO or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation that contracts with the Division to operate a CMHP or MHO for that county.¶

(38) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any individual.¶

(39) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder that limits an individual's ability to perform activities of daily living.¶

(40) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of an individual's need for mental health services. It involves collection and assessment of data pertinent to the individual's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services or a written statement that the person is not in need of community mental health services.¶

(41) "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. ¶

(42) "Mistreatment" means the following behaviors displayed by program staff 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 individual's income or assets 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 program staff 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 his or her room or a specific area or restriction from access to ordinarily accessible areas of the setting, residence, or program, unless agreed to by the service plan.¶

(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 statements, 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 service essential to the individual's well-being;¶

(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 the individual's 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 the use of physical or chemical restraint except for:¶

(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 himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.¶

(423) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to an individual other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶

(434) "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. ¶

(45) "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.¶

(46) "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. ¶

(47) "Person-Centered Service Plan" means written documentation that includes 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.¶

(448) "Person-Centered Service Plan Coordinator" means the individual who may be a case manager, service coordinator, personal agent, or other individual designated by the Division to provide case management services or person-centered service planning for and with an individual.¶

(459) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.¶

(4650) "Program" means the Residential Treatment Facility or Residential Treatment Home licensed by the Division and may refer to the setting grounds, caregiver, staff, or services as applicable to the context.¶

(4751) "Program Administrator" means the individual designated by the provider as responsible for the daily operation and maintenance of the RTH or RTF or the program administrator's designee.¶

(4852) "Program Staff" means an employee, volunteer, direct care staff, or individual who, by contract with a program, provides a service to an individual.¶

(4953) "Progress Notes" means the notations in the individual's record documenting significant information concerning the individual and summarizing progress made relevant to the objectives outlined in the residential service plan.¶

(504) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the individual to prevent self-destructive acts and to safeguard the individual's property and funds when used in the relevant context.¶

(515) "Provider" means the program administrator, individual, or organizational entity licensed by the Division that operates the program and provides services to individuals.¶

(526) "Representative" refers to both "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.¶

(537) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual or the individual's legal representative when the individual receives services. The Residency Agreement identifies the rights and responsibilities of the individual and the provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws, unless otherwise required by administrative rule or statute.¶

(548) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to an individual in or through the program based upon an individual assessment of needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the program is operated by a mental health service agency that provides other services to the individual.¶

(559) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-

hour basis for six to 16 individuals as described in ORS 443.400(9). An RTF does not include the entities set out in ORS 443.405.¶

(560) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to provide services on a 24-hour basis for up to five individuals as defined in ORS 443.400(10). A RTH does not include the entities set out in ORS 443.405.¶

(5761) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of an individual.¶

(5862) "Room and Board" means compensation for the provision of meals, a place to sleep, and tasks such as housekeeping and laundry.¶

(5963) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.¶

(604) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, approved by the Division that restricts an individual's exit from the setting through the use of approved locking devices on individual exit doors, gates, or other closures.¶

(615) "Services and Supports" means those services defined as habilitation services and psychosocial rehabilitation services under OAR 410-172-0700(1), (2) and 410-172-0710(1), (2).¶

(626) "Setting" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a program.¶

(637) "Supervision" means a program staff's observation and monitoring of an individual or oversight of a program staff by the program administrator applicable to the context.¶

(648) "Supervisory Entity" means the court or state agency that has the legal authority to place an individual with a provider or to set legal conditions for the individual to follow in order to be placed or remain in the community, as provided in ORS chapters 161 and 426. Supervisory entity includes the state agency's designee, and any individual or entity that is legally responsible for monitoring the individual, coordinating care, and providing status reports to the supervising court or state agency.¶

(69) "Termination of Residency" means the time at which the individual ceases to reside in the program and includes the transfer of the individual to another program, but does not include absences from the setting for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.¶

(6570) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical, or other symptoms or social, educational, or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability, or alcohol or drug problem.¶

(6671) "Unit" means the bedroom and other space of an individual receiving services from a program, as agreed to in the Residency Agreement. Unit includes private single occupancy spaces and shared units with roommates.¶

(672) "Volunteer" means an individual who provides a service or takes part in a service provided to an individual receiving supportive services in a program or other provider and who is not a paid employee of the program or other provider.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 443.400 - 443.465, 443.991

AMEND: 309-035-0135

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

CHANGES TO RULE:

309-035-0135

Staffing ¶¶

(1) The provider shall maintain a written job description for each staff position that specifies the position's qualifications and job duties:¶¶

(a) A direct care staff person shall be at least 18 years of age, be capable of implementing the setting's emergency procedures and disaster plan, and be capable of performing other duties of the job as described in the job description;¶¶

(b) All program staff having contact with an individual must have a documented approved criminal record clearance in accordance with OAR 943-007-0001 through 943-007-0501. The provider must maintain documentation of approved criminal records clearance for each applicable staff person;¶¶

(c) Program staff who will have contact with individual's must be tested for tuberculosis within two weeks of first employment; additional testing shall take place as deemed necessary; and the employment of program staff who test positive for tuberculosis shall be restricted if necessary; and¶¶

(d) All program staff shall meet other qualifications when required by a contract or financing arrangement approved by the Division.¶¶

(2) Personnel policies shall be made available to all program staff and shall describe hiring, leave, promotion, and disciplinary practices.¶¶

(3) The program administrator shall provide or arrange a minimum of 16 hours pre-service orientation and eight hours in-service training annually for each program staff including:¶¶

(a) Pre-service training for direct care staff shall include but not limited to a comprehensive tour of the setting; a review of emergency procedures developed in accordance with OAR 309-035-0145; a review of setting house rules, policies, and procedures; background on mental and emotional disorders; an overview of individual rights; medication management procedures; food service arrangements; a summary of each individual's assessment and residential service plan; and other information relevant to the job description and scheduled shifts; and¶¶

(b) In-service training shall be provided on topics relevant to improving the care and treatment of individuals in the program and meeting the requirements in these administrative rules. In-service training topics include, but are not limited to, implementing the residential service plan, behavior management, daily living skills development, nutrition, first aid, opioid overdose kits and administration of an FDA-approved short-acting, non-injectable, opioid antagonist medication; understanding mental illness, sanitary food handling, individual rights, identifying health care needs, and psychotropic medications.¶¶

(4) The provider and program administrator shall ensure that an adequate number of program and direct care staff are available at all times to meet the treatment, health, and safety needs of individuals. Program staff must be scheduled to meet the changing needs and ensure safety of individuals. Minimum staffing requirements are as follows:¶¶

(a) In RTHs serving one to five individuals, there shall be at least one direct care staff on duty at all times;¶¶

(b) In RTFs serving six to 16 individuals, there shall be at least one direct care staff on duty at all times;¶¶

(c) In the case of a specialized program, staffing requirements outlined in the contractual agreement for specialized services shall be implemented;¶¶

(d) Class I and Class II SRTFs shall ensure staffing levels meet the requirements set forth in chapter 309, divisions 32 and 33; and¶¶

(e) Program and direct care staff on night duty shall be awake and dressed at all times. In settings where individuals are housed in two or more detached buildings, program staff shall monitor each building at least once an hour during the night shift. An approved method for alerting program staff to problems shall be in place and implemented. This method shall be accessible to and usable by the individuals.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0170

SUSPEND: Temporary 309-035-0170 from BHS 41-2023

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

CHANGES TO RULE:

309-035-0170

Termination of Residency ¶¶

(1) Each provider's termination policy and procedure shall designate the program staff responsible for each step of the process for terminating residency. The provider shall designate responsibilities organized and assigned to promote a fair and efficient termination process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the program administrator shall be responsible for initiating and coordinating termination proceedings. The provider shall make reasonable efforts to prevent unnecessary terminations by making reasonable accommodations within the program and setting. ¶

(2) ~~A resident or guardian individual or an individual's legal representative~~ may terminate residency in a facility upon providing at least 30-days' notice. Upon mutual agreement between the administrator and the ~~resident or guardian~~, less than 30 days' notice may be provided individual or individual's legal representative, less than 30 days' notice may be provided. This right may be limited if the individual is placed with the provider under a court, OHA, CMHP, or PSRB order. ¶

(3) If an individual's behavior poses a serious and immediate threat to the health or safety of others in or near the program or setting, the program administrator, after providing 24 hours advance written notice to the individual ~~or representative, the individual's legal representative, and the supervisory entity, if applicable,~~ specifying the causes, may ~~immediately terminate the residency~~ initiate an involuntary transfer or discharge. The notice shall specify the individual's right to appeal the ~~emergency termination decision in accordance with OAR 309-035-0183(3)~~ notice of involuntary transfer or discharge in accordance with OAR 309-035-0183(3). The individual ~~has the right to remain in the facility until due process is complete or supervisory entity has ordered otherwise.~~ ¶

(4) When other circumstances arise providing grounds for ~~termination of residency~~ issuing a notice of involuntary transfer or discharge under this section, the program administrator shall discuss these grounds with the individual, ~~or representative, and with the individual~~ the individual's legal representative, and the supervising entity, if applicable, and with the individual's or the individual's legal representative's permission, other individuals with an interest in the individual's circumstances. If a decision is made to ~~terminate residency~~ transfer or discharge the individual, the program administrator shall provide at least 30 days' written notice specifying the causes to the individual ~~or representative, the individual's legal representative, and the supervisory entity, if applicable.~~ This notice shall also specify the individual's right to appeal the termination decision in accordance with OAR 309-035-0183(3). ~~Upon~~ Early transfer or discharge may occur with less than 30 days advance notice with the mutual agreement between of the program administrator and the individual's ~~representative, termination may occur with less than 30 days' notice.~~ The program who does not have a legal representative and is not under the jurisdiction of a supervisory entity, or the individual's legal representative where the individual is not under the jurisdiction of a supervisory entity, or the supervisory entity. The program is required to initiate a transfer and discharge service that must include a pre-discharge meeting with the CMHP and the individual's legal representative, advocate, or supervisory entity, as applicable, and shall make reasonable efforts to establish a reasonable ~~termination~~ transfer or discharge date in consideration of both the program's needs and the individual's need to find alternative living arrangements. Grounds for ~~termination~~ transfer or discharge include the following: ¶

(a) The individual no longer needs or desires services provided by the program and expresses a desire to move to an alternative setting, unless the individual is placed with the provider by a supervisory entity, or with the individual's legal representative's consent; ¶

(b) The individual is assessed by a Licensed Medical Professional or other qualified health professional to require services such as continuous nursing care or extended hospitalization that are not available or cannot be reasonably arranged at the facility; ¶

(c) The individual's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others, and these behavioral concerns cannot be adequately addressed with services available at the setting or services that can be arranged outside of the program setting; ¶

(d) The individual cannot safely evacuate the setting in accordance with the setting's SR Occupancy Classification after efforts described in OAR 309-035-0145(5)(b) have been taken; ¶

(e) Nonpayment of fees in accordance with program's fee policy; and ¶

(f) The individual continuously and knowingly violates house rules resulting in significant disturbance to others. ¶

(5) Except in the case of emergency ~~terminations~~ transfer or discharge, or crisis-respite services, a pre-termination meeting shall be held with the individual, the individual's legal representative, and ~~with the individual~~ the supervising entity, if applicable, and with the individual's or the individual's legal representative's permission, others interested in the individual's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting shall be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason shall be documented in the individual service record.¶

(6) Documentation of discussions and meetings held concerning termination of residency and copies of notices shall be maintained in the individual service record.¶

(7) At the time of termination of residency the individual shall be given a statement of account, any balance of funds held by the program, and all property held in trust or custody by the program as in the following:¶

(a) In the event of pending charges, the program may withhold the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the program shall provide the individual with a final financial statement along with any funds due to the individual; and¶

(b) In the case of an individual's property being left at the setting for longer than seven days after termination of residency, the program shall make a reasonable attempt to contact the individual or the individual's legal representative. The program shall allow the individual or the individual's legal representative at least 15 days to make arrangements concerning the property. If the program determines that the individual has abandoned the property, the program may then dispose of the property. If the property is sold, proceeds of the sale minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the individual shall be forwarded to the individual or the individual's legal representative.¶

(8) Because crisis-respite services are time-limited, the planned end of services may not be considered a termination of residency and subject to requirements in OAR 309-035-0170(2)(4)(5). Upon admission to crisis-respite services, the individual or the individual's legal representative shall be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the program administrator and the individual or the individual's legal representative. A program providing crisis-respite services shall implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.¶

(9) Because placement pursuant to a court, OHA, CMHP, or PSRB order is contingent on the continued jurisdiction of a supervisory entity, the end of services or the individual's revocation ordered by that supervisory entity is not considered an automatic termination of residency.¶

(10) If an individual moves out of the setting without providing notice or is absent without notice for more than seven consecutive days, the provider may ~~terminate residency~~ initiate transfer or discharge process in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the individual's absence. The provider shall make an attempt to contact the individual ~~or representative and others interested in the individual's circumstances to confirm the individual's intent to discontinue residency~~ and must contact the individual's legal representative or supervisory entity if applicable, and with the individual's or the individual's legal representative's permission, others interested in the individual's circumstances to confirm the individual's intent to discontinue residency.¶

(11) 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, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991

AMEND: 309-035-0215

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:

309-035-0215

Health Services ¶¶

(1) The program administrator shall ensure that all individuals are offered medical attention when needed. The provider shall arrange for health services with the informed consent of the individual or the individual's representative. The program shall arrange for physicians to be available in the event the individual's regular physician is unavailable. The provider shall identify a hospital emergency room that may be used in case of emergency.¶¶

(2) The provider shall ensure that each individual admitted to the program shall be screened by an LMP or other qualified health care professional to identify health problems and to screen for communicable disease. The provider shall maintain documentation of the initial health screening in the individual service record:¶¶

(a) The health screening shall include a brief history of health conditions, current physical condition, and a written record of current or recommended medications, treatments, dietary specifications, and aids to physical functioning;¶¶

(b) For regular admissions, the health screening shall be obtained prior to the individual's admission and include the results of testing for tuberculosis;¶¶

(c) For emergency admissions including crisis-respite admissions, the health screening shall be obtained as follows:¶¶

(A) For individuals experiencing psychiatric or medical distress, a health screening shall be completed by an LMP prior to the individual's admission or within 24 hours of the emergency placement. The health screening shall confirm that the individual does not have health conditions requiring continuous nursing care, a hospital level of care, or immediate medical assistance. For each crisis-respite individual who continues in the program for more than seven consecutive days, a complete health examination shall be arranged if any symptoms of a health concern exist;¶¶

(B) For other individuals who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening shall be obtained within 72 hours after the individual's admission;¶¶

(C) The health screening criteria may be waived for individuals admitted for crisis-respite services who are under the active care of an LMP if it is the opinion of the attending health care professional that the crisis-respite placement presents no health risk to the individual or other individuals in the program. Such a waiver shall be provided in writing and be signed and dated by the attending health care professional within 24 hours of the individual's admission.¶¶

(3) Except for crisis-respite individuals, the program shall ensure that each individual has a primary physician who is responsible for monitoring their health care. Regular health examinations shall be done in accordance with the recommendations of this primary health care professional but not less than once every three years. Newly admitted individuals shall have a health examination completed within one year prior to admission or within three months after admission. Documentation of findings from each examination shall be placed in the individual's service record.¶¶

(4) A written order signed by a physician is required for any medical treatment, special diet for health reasons, aid to physical functioning, or limitation of activity.¶¶

(5) A written order signed by a physician is required for all medications administered or supervised by program staff. This written order is required before any medication is provided to an individual. Medications may not be used for the convenience of staff or as a substitute for programming. Medications may not be withheld or used as reinforcement or punishment or in quantities that are excessive in relation to the amount needed to attain the client's best possible functioning:¶¶

(a) Medications shall be self-administered by the individual if the individual demonstrates the ability to self-administer medications in a safe and reliable manner. In the case of self-administration, both the written orders of the prescriber and the residential service plan shall document that medications shall be self-administered. The self-administration of medications may be supervised by program staff who may prompt the individual to administer the medication and observe the fact of administration and dosage taken. When supervision occurs, program staff shall enter information in the individual's record consistent with section (5) (h) below;¶¶

(b) Program staff who assist with administration of medication shall be trained by a Licensed Medical Professional on the use and effects of commonly used medications;¶¶

(c) Medications prescribed for one individual may not be administered to or self-administered by another

individual;¶

(d) The program may not maintain stock supplies of prescription medications. The facility may maintain a stock supply of non-prescription medications including FDA-approved short-acting, non-injectable, opioid antagonist medications;¶

(e) The program shall develop and implement a policy and procedure that ensures all orders for prescription drugs are reviewed by an LMP, as specified by a physician, at least every six months. When this review identifies a contra-indication or other concern, the individual's primary physician or LMP shall be immediately notified. Each individual receiving psychotropic medications shall be evaluated at least every three months by the LMP prescribing the medication, who shall note for the individual's record the results of the evaluation and any changes in the type and dosage of medication, the condition for which it is prescribed, when and how the medication is to be administered, common side effects, including any signs of tardive dyskinesia, contraindications or possible allergic reactions, and what to do in case of a missed dose or other dosing error;¶

(f) The provider shall dispose of all unused, discontinued, outdated, or recalled medications and any medication containers with worn, illegible or missing labels. The provider shall dispose of medications in a safe method consistent with any applicable federal statutes and designed to prevent diversion of these substances to persons for whom they were not prescribed. The provider shall maintain a written record of all disposals specifying the date of disposal, a description of the medication, its dosage potency, amount disposed, the name of the individual for whom the medication was prescribed, the reason for disposal, the method of disposal, and the signature of the program staff disposing of the medication. For any medication classified as a controlled substance in schedules 1 through 5 of the Federal Controlled Substance Act, the disposal shall be witnessed by a second staff person who documents their observation by signing the disposal record;¶

(g) The provider shall properly and securely store all medications in a locked space for medications only in accordance with the instructions provided by the prescriber or pharmacy except as otherwise permitted in OAR 309-035-0215 (9). Medications for all individuals shall be labeled. Medications requiring refrigeration shall be stored in an enclosed, locked container within the refrigerator. The provider shall ensure that individuals have access to a locked, secure storage space for their self-administered medications. The program shall note in its written policy and procedures which persons have access to this locked storage and under what conditions;¶

(h) For all individuals taking prescribed medication, the provider shall record in the medical record each type, date, time, and dose of medication provided. All effects, adverse reactions, and medication errors shall be documented in the individual's service record. All errors, adverse reactions, or refusals of medication shall be reported to the prescribing LMP within 48 hours;¶

(i) P.R.N. medications and treatments shall only be administered in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.¶

(6) Nursing tasks may be delegated by a registered nurse to direct care staff within the limitations of their classification and only in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.¶

(7) 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).¶

(8) 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.¶

(9) 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 59F and 77F; and¶

(e) Have a sign clearly indicating the location and content of the kit.¶

(10) Short-acting, non-injectable, opioid antagonist medication not within installed opioid overdose kits must be stored in a locked cabinet with other resident medications.¶

(11) 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.¶

(12) Upon recognizing a person is likely experiencing an overdose, program staff must immediately respond based

on the medical emergency procedures of the facility.

(13) A person who has reasonable cause to believe and in good faith administers short-acting, non-injectable, opioid antagonist medication to a person experiencing an overdose, 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.

(14) 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.

(15) 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.

Statutory/Other Authority: ORS 413.042, 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465, 443.991