OFFICE OF THE SECRETARY OF STATE
TOBIAS READ
SECRETARY OF STATE

MICHAEL KAPLAN
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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

TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

BHS 25-2026

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

FILED: 10/23/2026 9:57 AM
ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL

FILING CAPTION: Revision describes reasons for which providers may issue less than 30 day notice of move.

EFFECTIVE DATE: 10/23/2026 THROUGH 11/25/2026

AGENCY APPROVED DATE: 10/23/2026

CONTACT:
Connie Rush
503-559-5795
connie.l.rush@oha.oregon.gov
500 Summer St, NE
Salem, OR 97301

Filed By:
JUAN RIVERA
Rules Coordinator

NEED FOR THE RULE(S):

This change adds an additional reason licensed residential treatment facilities and residential treatment homes can issue less than 30-day notice of move to a resident when the resident's behaviors seriously threaten the health or safety of others. Providers are responsible for the well-being of all person in a facility or home including all residents, staff, visitors, vendors and others. Providers must be able to protect all others in the home and ensure they discharge residents with these behaviors to a more appropriate level of care. Rule modifications are necessary to ensure licensed residential treatment home and facilities can issue less than 30-day notices of move to residents whose behaviors seriously threaten the health or safety of others, this emergency rule updates 309-035-0170(4).

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 implement these changes immediately place residents, staff, visitors, vendors and others at risk of serious harm or death.

(2) Who would suffer these consequences:Providers, residents, staff, visitors, vendors and others would suffer the

consequences of these changes not being implemented immediately.

(3) Why or how failure to immediately take rulemaking action would cause these consequences: Providers who are not able to issue a less than 30-day notice are only able to issue a 30-day notice of move. This means the provider remains responsible for the individual threatening the health or safety of others for a longer period of time, creating a greater risk of potential harm.

(4) How the temporary action will avoid or mitigate those consequences: Providers will be able to issue a less than 30-day notice ensuring the resident will be moved earlier, reducing the risk of potential harm to others.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Public comments received during the permanent rule making process for these rules. Please see 309-035 Responses to Written Public Comment Fall 2026, lines 2, 11, 15, 30, 55 and 86.

AMEND: 309-035-0170

SUSPEND: Temporary 309-035-0170 from BHS 13-2026

RULE TITLE: Standards for Residency Transfers and Discharges

RULE SUMMARY: This change adds an additional reason licensed residential treatment facilities and residential treatment homes can issue less than 30-day notice of move to a resident when the resident's behaviors seriously threaten the health or safety of others in order to protect others in the home and ensure they discharge residents with these behaviors to a more appropriate level of care.

RULE TEXT:
(1) Each provider's transfer and discharge policy and procedure must designate the program staff responsible for each step of the process for transferring or discharging residency. The provider must designate responsibilities organized and assigned to promote a fair and efficient transfer and discharge process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the program administrator is responsible for initiating and coordinating transfer and discharge proceedings. The provider must make reasonable efforts to prevent unnecessary transfer and discharges by making reasonable accommodations within the program and setting.
(2) A resident or a resident's legal representative as applicable, may terminate residency in a program upon providing at least 30-days' written notice. Upon mutual agreement between the administrator and the resident or resident's legal representative as applicable, less than 30 days' notice may be provided. This agreement may be limited under a court, OHA, CMHP, or PSRB order. The provider must immediately document the resident's notification of intent to voluntarily move in the resident records.
(3) When circumstances arise providing grounds for issuing a notice of involuntary transfer or discharge under this section, the program administrator must discuss these grounds with the resident, the resident's legal representative or the supervising entity, if applicable, and with the resident's or the resident's legal representative's permission, other persons with an interest in the resident's circumstances. If a decision is made to transfer or discharge the resident, the program administrator must provide at least 30 days' written notice specifying the cause(s) for the notice in the form and manner required by the Division to the resident, the resident's legal representative or supervisory entity, if applicable, the CMHP and the Division. This notice must specify the resident's right to an administrative hearing.
(4) When a resident's behavior has directly threatened or resulted in serious physical harm to others or actions against facility property could result in serious physical harm to others, the program administrator may initiate a less than 30 days but no less than 24 hours advance written notice in the form and manner required by the Division to the resident, the resident's legal representative or the supervisory entity, if applicable, the CMHP, and Division specifying the cause(s) of an involuntary transfer or discharge. This notice must specify the resident's right to an administrative hearing for

involuntary transfer or discharge.
(5) Early transfer or discharge may occur with less than 30 days advance notice with the mutual agreement of the program administrator and the resident when the resident does not have a legal representative and is not under the jurisdiction of a supervisory entity, or the resident's legal representative, if applicable, when the resident is not under the jurisdiction of a supervisory entity, or the supervisory entity, if applicable.
(6) Grounds for transfer or discharge include the following:
(a) The resident no longer needs or desires services provided by the program and expresses a desire to move to an alternative setting, unless the resident is placed with the provider by a supervisory entity, or with the consent of the resident's legal representative;
(b) The resident 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 program;
(c) The resident'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 with services that can be arranged outside of the program setting;
(d) The resident cannot safely evacuate the setting in accordance with the setting's occupancy classification after efforts described in OAR 309-035-0145(6)(b) have been taken;
(e) Nonpayment of room and board fees in accordance with program's fee policy;
(f) The resident has moved from the setting or has been absent without notice for more than seven consecutive days and the provider has not been able to confirm the intent to continue or discontinue residency from the resident, the resident's legal representative or the resident's supervisory entity, if applicable. The transfer or discharge process must be voided if the resident returns to the program prior to the final date of residency indicated on the written notice;
(g) The resident has been incarcerated, and the provider has been notified by the supervisory entity that the resident will remain incarcerated for longer than 30 days. The transfer or discharge process must be voided if the resident returns to the program prior to the final date of residency indicated on the written notice;
(h) The IQA has determined services and supports from the program are no longer required;
(i) The resident's revocation has been ordered by the supervisory entity; or
(j) The program has had its license revoked, not renewed, suspended, voluntarily surrendered, or has terminated its Medicaid contract.
(7) Except in the case of emergency transfer or discharge, or crisis-respite services, a pre-transfer and discharge meeting must be held with the resident, the resident's legal representative or the supervising entity, if applicable, the CMHP, and with the resident's or the resident's legal representative's permission, others interested in the resident's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the transfer and discharge decision. The meeting must be scheduled to occur at least two weeks prior to the transfer or discharge date. In the event a pre-transfer and discharge meeting is not held, the reason must be documented in the resident service record.
(8) Documentation of discussions and meetings held concerning transfer and discharge of a resident and copies of notices must be maintained in the resident service record.
(9) Except when a program has had its license revoked, not renewed, suspended, voluntarily surrendered, or terminates its Medicaid contract, a resident who received a notice of involuntary transfer and discharge is entitled to an administrative hearing:
(a) Provided the resident, the resident's legal representative, if applicable, or the authorized representative, if applicable, completes and submits the administrative hearing request in the form and manner required by the Division to the CMHP and the Division:
(A) Within ten (10) business days from the date a 30-day notice of involuntary transfer and discharge was received; or
(B) Within five (5) business days from the date a less than 30-day notice of involuntary transfer and discharge was received.
(b) The resident may receive assistance in submitting the request for an administrative hearing. If requested by the

resident, program staff must be available to assist the resident.
(c) The program remains responsible for the provision of care and services as identified in the person-centered service plan during the administrative hearing process unless and until the resident has moved. Care and services include the provision of one-to-one supervision if necessary to ensure the safety of all residents.
(d) The Division will review the notice of transfer or discharge to verify the notice meets the regulatory criteria. If the notice does not meet the regulatory criteria, the Division will notify the provider they must withdraw the notice.
(e) The resident has the right to remain in the program until due process is complete or the supervisory entity has ordered otherwise.
(10) If the notice of transfer and discharge meets the regulatory criteria, the Division will notify the Office of Administrative Hearings of the request for an administrative hearing and for less than 30-day notices, will request an expedited hearing be held within five (5) business days.
(11) At the time of transfer or discharge of a resident, the resident must be provided a written statement of account, any balance of funds held by the program, and all property held in trust or custody by the program. In the case of a resident's property being left at the setting for longer than seven days after resident has moved, the program must make a reasonable attempt to contact the resident or the resident's legal representative, if applicable. The program must allow the resident or the resident's legal representative, if applicable, at least 15 calendar days to make arrangements concerning the property. If the program determines that the resident 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 resident must be forwarded to the resident or the resident's legal representative, if applicable.
(12) The end of a supervisory entity's jurisdiction is not cause for a program to issue a notice of involuntary transfer or discharge.
(13) If a resident moves out of the setting without providing notice or is absent without notice for more than seven consecutive days, the provider may initiate the transfer or discharge process as described in 309-035-0170(3). The provider must make an attempt to contact the resident and must contact the resident's legal representative or supervisory entity, if applicable, and with the resident's or the resident's legal representative's permission, if applicable, others interested in the resident's circumstances to confirm the resident's intent to discontinue residency. The transfer or discharge process must be discontinued if the resident returns to the program prior to the final date of residency indicated on the written notice.
(14) When a resident's right to an administrative hearing for involuntary transfer or discharge is initiated, the Division may determine the notice was issued wrongfully and take action on the program's license up to and including revocation as outlined in OAR 309-035-0280.
(15) Upon transfer or discharge from the program, program staff must offer two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication to the resident. If the resident accepts, program staff must:
(a) Provide the resident 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 resident's record.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 413.032, 443.400 - 443.465, 443.991