

Department of Human Services

Seniors and People with Disabilities Rule Training

Chapter 411 Division-054 Residential Care and
Assisted Living Facilities

July 2010

WELCOME to Rule Training!



Why are we here???

As a result of legislation passed in 2009 and 2010.
Changes have occurred to Chapter 411 Division-054
Residential Care and Assisted Living Facilities

Click on question mark
throughout this training
for more information.



Chapter 411 Division-054

- Changes to rule became effective July 1, 2010
- Location of rules on web:

www.dhs.state.or.us/policy/spd/rules/411_054.pdf

Areas of Change

- Abuse Definition
- Disqualifying Crimes
- Employee Application Requirements
- Licensee Abuse Notification Requirements
- Apportionment of Abuse Findings
- New Mandatory Civil Penalty
- Appointment of Manager

Abuse Definition

The new definition of abuse is now located at:

- **OAR 411-020-0002**
- Adult Protective Services and Alleged Elderly Abuse.

Highlights of Definition Changes

■ Physical Abuse:

- The use of physical force that may result in bodily injury, physical pain, or impairment.
- Physical injury to an adult caused by other than accidental means.



Highlights of Definition Changes

■ Neglect

- Failure of a person who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse.
- Active or passive failure to provide the care, supervision, or services necessary to maintain the physical health and emotional well-being of an adult that creates a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity.



Components of Neglect

- Risk of serious harm
- Actual physical harm
- Significant emotional harm
- Unreasonable discomfort
- Serious loss of personal dignity



Highlights of Definition Changes

■ Abandonment

- Includes desertion or willful forsaking of an adult for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.



Highlights of Definition Changes

- Verbal or Emotional Abuse
 - Includes threatening significant physical or emotional harm to an adult through the use of derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or
 - Harassment, coercion threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.



Highlights of Definition Changes

■ Financial Exploitation

- Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult.
- Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.



Highlights of Definition Changes

■ Sexual Abuse

- Sexual harassment or sexual exploitation of an adult, or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language.
- Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act.



Highlights of Definition Changes

■ Involuntary Seclusion

- For the convenience of a caregiver or to discipline the adult

Includes: confinement or restriction of an adult to his or her room or a specific area or placing restrictions on a residents ability to interact, or communicate with other individuals.



Highlights of Definition Changes

■ Restraints

- Wrongful use of a physical or chemical restraint of an adult.
- Wrongful use of a medication or controlled substance for the purpose of sedation.



Employment Applications


- An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse.
- The licensee must check all potential employees against the Oregon State Board of Nursing and inquire whether the person is licensed or certified by the Board and check for any disciplinary action against the individual.

Disqualifying Crimes

- **411-054-0016 New Applicant Qualifications**
 - An applicant for licensure may not have convictions of any crimes listed on the disqualifying crimes list.
 - The list of disqualifying crimes is located at: OAR 407-007-0275 DHS Background Check Rules.
 - Licensees must complete form number 301 criminal background check every two years.



Criminal Records Checks

- Criminal records checks are required:
 - For subject individuals
 - Prior to training or working in a facility
 - Prior to job changes, promotion, demotion, transfer and re-employment
 - For cause 

Criminal Records Check Requirements

- Effective on July 28, 2009, no person may be a licensee, or employed in any capacity in a residential care or assisted living facility, who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.
- Subject individuals who are employees and hired prior to July 28, 2009 are exempt from the above requirement provided that the employee remains in the same position working for the same employer after July 28, 2009. **This exemption is not applicable to licensees.**

Criminal Records Check Requirements

411-054-0025 (3) Facility Administration

- Portability of criminal records check approval
 - An individual may be approved to work in multiple facilities under the same operational entity.
 - The Background check request form must be completed to show the intent to work at various assisted living or residential care facilities.

Complaint Investigations

- Upon completion of an investigation:
 - The local office will send preliminary findings to the licensee and complainant within 7 business days of completion of an investigation.
 - A notice will be included informing the licensee this is an opportunity to provide additional information or facts to the local office relevant to the content of the report.
 - The licensee may respond with additional information regarding an investigation.



(continued on next page)

Complaint Investigations

- Upon completion of an investigation:
 - Response to the local office must occur within 10 calendar days of receipt of the report.
 - This is an opportunity for the licensee to respond to report inaccuracies or provide additional, relevant report information.
 - Resolving report discrepancies with local office staff prior to central office review and follow-up is best practice and strongly encouraged.



Facility Notification of Abuse Findings

- OAR 411-054-0105(7)
- If the victim of an abuse finding is an adult with a developmental disability who is currently receiving services from a community program or facility that offers services for adults with developmental disability; or
- If the victim of an abuse finding is an adult with a mental illness who is currently receiving services from a community MH program or facility that offers services for adults with a mental illness.

Facility Notification of Abuse Findings

- The facility must provide written notice of the findings to:
 - The person who committed the abuse
 - Residents of the facility
 - The residents' case managers, and
 - The residents' guardians

Apportionment of Abuse Findings

411-054-0105 (6)(b)

If Division determines there is substantiated abuse:

- Facility, individual or both may be responsible for the abuse.
- Consideration in determination:
 - Intent
 - Knowledge
 - Ability to Control
 - Adherence to professional standards



New Mandatory Civil Penalty

411-054-0120 (4)(b)

- Civil penalty of not less than \$2,500 will be imposed for each occurrence of substantiated abuse that results in:
 - Death
 - Serious injury
 - Rape
 - Sexual abuse of a resident

Applicable Definitions

- For the purposes of this civil penalty, the following definitions apply:
- "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.
- "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

Applicable Definitions

- For the purposes of this civil penalty, the following definitions apply:
- "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

Criteria for Imposing \$2,500 Penalty

- The Division must establish:
 - Abuse arose from deliberate or other than accidental action or inaction;
 - The conduct resulting in the abuse was likely to cause death, serious injury, rape or sexual abuse of a resident; and
 - The person substantiated for the abuse had a duty of care toward the resident.

Temporary Manager Appointment

411-054-0133

- Authorizes appointment of temporary manager:
- With consent of the licensee,
- For the purpose of assuming control of the day-to-day operation of the facility,
- For a period not to exceed six months.

Criteria for Appointing Temporary Manager

- If the Division determines that the health or safety of residents in the facility are, or will be, in jeopardy based upon:
- The licensee's unwillingness or inability to comply with Department rules in the operation of the facility;
- The imminent insolvency of the facility.

Criteria for Appointing Temporary Manager

- The Division's revocation or suspension of the license of the facility; or
- The Division's determination that the licensee intends to cease operations and to close the facility without adequate arrangements for the relocation of the residents.

Questions???

- If you have additional questions:
- Please send to SPD by either Email or Fax:
 - Email CBC.team@state.or.us
 - Fax: 503-378-8966

Frequently asked questions and answers will be posted to this web site.



CEU Credit

- This training qualifies for two hours of CEU.
- Upon completion of this training and submission of answers to the questions to CBC.team@state.or.us or via fax: 503-378-8966



Please click on the link below. You will be taken to a web site that contains the test for the rule update. Please fill in the demographic information and answer the questions. When you are finished please click done. We will receive your test. Once confirmation of a score of 80% or better you will receive a certificate of completion along with CEUs. If you have any questions, please contact via email and fax listed below.

<http://www.surveymonkey.com/s/5SSRK88>

Thank you!!

CBC.team@state.or.us

Fax: 503-378-8966

