

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Health Authority (OHA),	Health Systems Division (Division)	309
Agency and Division		Administrative Rules Chapter Number
Sandy Cafourek	500 Summer St NE, Salem, OR 97301	(503) 945-6430
Rules Coordinator	Address	Telephone

RULE CAPTION

Rules Revisions Required to Comply with Federal 1915(i) Home and Community-based Regulations
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

June 15, 2017	10:30 a.m.	500 Summer St. NE, Salem, OR 97301	Room 137B	Sandy Cafourek
Hearing Date	Time	Location		Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: OAR 309-040-0307, 309-040-0393, 309-040-0394

AMEND: OAR 309-040-0300, 309-040-0305, 309-040-0310, 309-040-0315, 309-040-0320, 309-040-0325, 309-040-0330, 309-040-0335, 309-040-0340, 309-040-0345, 309-040-0350, 309-040-0355, 309-040-0360, 309-040-0365, 309-040-0370, 309-040-0375, 309-040-0380, 309-040-0385, 309-040-0390, 309-040-0395, 309-040-0400, 309-040-0405, 309-040-0410, 309-040-0415, 309-040-0420, 309-040-0425, 309-040-0430, 309-040-0435, 309-040-0440, 309-040-0445, 309-040-0450, 309-040-0455

REPEAL: OAR 309-040-0301, 309-040-0391, 309-040-0392, 309-040-0300(T), 309-040-0305(T), 309-040-0307(T), 309-040-0310(T), 309-040-0315(T), 309-040-0320(T), 309-040-0325(T), 309-040-0330(T), 309-040-0335(T), 309-040-0340(T), 309-040-0345(T), 309-040-0350(T), 309-040-0355(T), 309-040-0360(T), 309-040-0365(T), 309-040-0370(T), 309-040-0375(T), 309-040-0380(T), 309-040-0385(T), 309-040-0390(T), 309-040-0393(T), 309-040-0394(T), 309-040-0395(T), 309-040-0400(T), 309-040-0405(T), 309-040-0410(T), 309-040-0415(T), 309-040-0420(T), 309-040-0425(T), 309-040-0430(T), 309-040-0435(T), 309-040-0440(T), 309-040-0445(T), 309-040-0450(T), 309-040-0455(T)

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 413.042, 413.032, 413.735 & 413.085

Other Auth.:

Stats. Implemented: ORS 127.700 – 127.737, 426.072 & 443.705 - 443.825

RULE SUMMARY

Under Oregon Revised Statutes 413.042 and 413.450, the Authority licenses and has authority to regulate mental health treatment providers, including adult foster homes for adults with mental or emotional health disorders. The Authority's administrative rules set the minimum standards for providing services in licensed settings and describe the process by which the Authority regulates the service providers.

The rules provide updated procedural detail regarding federal regulation requirements, as issued by the Centers for Medicare and Medicaid Services (CMS) for 1915(i) Home and Community-Based Services (HCBS). The purpose of these updated regulations is to ensure individuals receive HCBS in settings that are integrated in and support full access to the greater community. The rules also provides clarification of current and appropriate behavioral health terminology, in particular, the use of "adults with mental or emotional disorders" rather than adults with "mental illness."

The amendments are necessary to provide clarification for the Authority and the providers of HCBS practices and procedures regarding each individual's federal rights under HCBS.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

June 19, 2017, by 5 p.m.

Send written comments to: hsd.rules@state.or.us

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Chris Norman

5/1/17

Signature

Printed name

Date

Note: Hearing Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*.

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority (Authority),

Health Systems Division (Division)

309

Agency and Division

Administrative Rules Chapter Number

Rules Revisions Required to Comply with Federal 1915(i) Home and Community-based Regulations

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The adoption of OAR 309-040-0307, 309-040-0393, 309-040-0394; the amendment of OAR 309-040-0300, 309-040-0305, 309-040-0310, 309-040-0315, 309-040-0320, 309-040-0325, 309-040-0330, 309-040-0335, 309-040-0340, 309-040-0345, 309-040-0350, 309-040-0355, 309-040-0360, 309-040-0365, 309-040-0370, 309-040-0375, 309-040-0380, 309-040-0385, 309-040-0390, 309-040-0395, 309-040-0400, 309-040-0405, 309-040-0410, 309-040-0415, 309-040-0420, 309-040-0425, 309-040-0430, 309-040-0435, 309-040-0440, 309-040-0445, 309-040-0450, 309-040-0455; and the repeal of OAR 309-040-0301, 309-040-0391, 309-040-0392, 309-040-0300(T), 309-040-0305(T), 309-040-0307(T), 309-040-0310(T), 309-040-0315(T), 309-040-0320(T), 309-040-0325(T), 309-040-0330(T), 309-040-0335(T), 309-040-0340(T), 309-040-0345(T), 309-040-0350(T), 309-040-0355(T), 309-040-0360(T), 309-040-0365(T), 309-040-0370(T), 309-040-0375(T), 309-040-0380(T), 309-040-0385(T), 309-040-0390(T), 309-040-0393(T), 309-040-0394(T), 309-040-0395(T), 309-040-0400(T), 309-040-0405(T), 309-040-0410(T), 309-040-0415(T), 309-040-0420(T), 309-040-0425(T), 309-040-0430(T), 309-040-0435(T), 309-040-0440(T), 309-040-0445(T), 309-040-0450(T), 309-040-0455(T)

Statutory Authority: ORS 413.042, 413.032, 413.735 & 413.085

Other Authority:

Stats. Implemented: ORS 127.700 – 127.737, 426.072 & 443.705 - 443.825

Need for the Rule(s): The rule amendments are needed to clarify updated procedural detail regarding federal regulation requirements concerning Oregon's compliance with Medicaid 1915(i) Home and Community-Based Services.

Documents Relied Upon, and where they are available:

- OAR chapter 411, division 004 for Home and Community-Based Services and Setting and Person-Centered Service Planning (http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_004.html).
- Final Regulation 1915(i) State Plan HCBS, 5-Year Period for Waivers, Provider Payment Reassignment, Setting Requirements for Community First Choice, and 1915(c) HCBS Waivers - CMS-2249-F/CMS-2296-F <https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf>
- Informational bulletin, press releases, and fact sheets regarding final regulation CMS-2249-F/CMS-2296-F <https://www.medicaid.gov/medicaid/hcbs/guidance/index.html>

Fiscal and Economic Impact: Fiscal impact of the amendments to chapter 309, division 40, of the Oregon Administrative Rules will be varied from provider to provider depending on the capacity and current physical makeup of the setting. The cost associated with the physical setting requirements will, in the Division's assessment, be limited to the cost of replacing unit door hardware to comply with the requirement that all individuals residing in settings regulated by this rule will be able to lock their unit doors and be provided a key to said door. The Division also expects there to be some initial administrative cost associated with the proposed rule changes due to a need to update policies, procedures, and program forms. The cost of this administrative work will vary from site to site.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): The state has taken on the cost associated with the person-centered planning process. No additional cost is associated with state or local government implementation as regulatory oversight will be rolled into existing regulatory activities. There is no anticipated cost to the public associated with the proposed rule changes.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: 128 Adult Foster Homes.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: The Division expects there to be some initial administrative cost associated with the proposed rule changes due to a need to update policies, procedures, and program forms. The cost of this administrative work will vary from site to site due to many factors, and this is not predictable by the state.

c. Equipment, supplies, labor and increased administration required for compliance: The cost associated with the physical setting requirements, which would include equipment, supplied, labor, etc., will, in the Division's assessment, be limited to the cost of replacing unit door hardware to comply with the requirement that all individuals residing in settings regulated by this rule will be able to lock their unit doors and be provided a key to said door. Other administrative cost will vary from site to site due to many factors, and this is not predictable by the state.

How were small businesses involved in the development of this rule? Small businesses were involved in the development of OAR 411-004, which functions as an overarching rule to guide HCBS implementation statewide and the development of OAR 309-035 through monthly stakeholder meeting groups and RAC processes.

Administrative Rule Advisory Committee consulted?: Yes. If not, why?



Chris Norman

5/1/17

Signature

Printed Name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

309-040-0300

Purpose and Scope

(1) **Purpose.** These rules prescribe the care and service standards by which the and procedures for the provision of care and services to residents with mental illness in the Addictions and Mental Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community-based Adult Foster Homes (AFHs) for adults with mental or emotional disorders. ~~(Authority) adult foster homes as a condition for licensure and payment.~~ The care and services standards are designed to promote the individual's resident's right to independence, choice, and decision making while providing a safe, secure, homelike environment. The provider must shall address the individual's ~~The resident's~~ needs ~~shall be addressed~~ in a manner ~~that, which~~ enables the individual resident to function at the highest level of independence possible.

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for home and community-based services authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving these such services consistent with the standards set out in OAR chapter 411, division 4.

(2) **Scope.** These rules apply to adult foster homes providing services to for five or fewer adults with mental or emotional disorders, regardless of whether the provider receives public funds. ~~residents.~~

Stat. Auth.: ORS 413.042, 413.032, 413.085

Stats. Implemented: ORS 443.705 - 443.825

309-040-0301

Required Home-like Qualities

~~This rule becomes effective July 1, 2016 and is enforceable as described in OAR 309-040-0315(7).~~

~~(1) Each AFH must have all of the following qualities:~~

~~(a) The home is integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for an individual to:~~

~~(A) Seek employment and work in competitive integrated employment settings;~~

~~(B) Engage in greater community life;~~

~~(C) Control personal resources; and~~

~~(D) Receive services in the greater community.~~

~~(b) The AFH is selected by the individual or, as applicable, the individual's representative, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:~~

~~(A) Identified and documented in the individual's person-centered service plan;~~

~~(B) Based on the needs and preferences of the individual; and~~

~~(C) Based on the individual's available resources for room and board.~~

~~(c) The AFH ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint.~~

~~(d) The AFH optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact.~~

~~(e) The AFH facilitates individual choice regarding services and supports, and who provides the services and supports.~~

~~(2) Additional Home-like Requirements. The provider must maintain the following qualities at the AFH:~~

~~(a) The home must be physically accessible to each individual;~~

~~(b) The provider must provide the individual with a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable residency agreement.~~

~~(c) The provider must provide and include in the residency agreement that the individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of the state of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the residency agreement must provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes must be substantially equivalent to the processes provided under landlord-tenant laws.~~

~~(d) The provider must ensure that each individual has privacy in his or her own unit.~~

~~(e) The provider must maintain units with entrance doors lockable by the individual. The provider must ensure that only the individual, the individual's roommate (where applicable), and only appropriate staff, as described in the individual's person-centered service plan, have keys to access the unit.~~

~~(f) The provider must ensure that individuals sharing units have a choice of roommates.~~

~~(g) The provider must provide and include in the residency agreement that individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.~~

~~(h) The provider must permit each individual to have visitors of his or her choosing at any time.~~

~~(i) The provider must ensure each individual has the freedom and support to control his or her own schedule and activities.~~

~~(j) The provider must ensure each individual has the freedom and support to have access to food at any time.~~

~~(3) The provider must take reasonable steps to ensure that the program maintains the qualities identified in this rule. Failure to take reasonable steps may include, but is not limited to:~~

~~(a) Failure to maintain a copy of the person-centered service plan at the home;~~

~~(b) Failure to cooperate or provide necessary information to the person-centered planning coordinator; or~~

~~(c) Failure to attend or schedule a person-centered planning meeting where necessary.~~

~~(4) When a provider is unable to ensure a quality described under sections (2)(d) to (2)(j) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the consent of the individual or, as applicable, the individual's legal representative, through the process described in OAR 411-004-0040 and incorporated by OAR 309-040-0391. The provider may not apply an individually based limitation until the limitation is approved and documented as required by OAR 309-040-0391.~~

Stat. Auth.: ORS 413.042, 413.032, 413.085

Stats. Implemented: ORS 443.705 – 443.825

Definitions

As used in these rules, the following definitions apply:

(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 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) "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.

(20) "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.

(21) "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 would result in the loss of license of the provider or other sanctions that would adversely affect 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.

(22) "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.

(23) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(24) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check and 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).

(25) "Day Care" means care and services in an AFH for ~~aan~~ individual who is not an individual of the AFH. Children under the age of five living in the AFH are included in the licensed capacity of the home.

(26) "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.

(27) "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.

(28) "Director" means the Director of the Oregon Health Authority or designee.

(29) "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 time of discharge.

(30) "Division" means the Health Systems Division of the Oregon Health Authority or designee.

(31) "Division Staff" means an employee of the Division, the Division's designee, or the designee of the local Community Mental Health Program.

(32) "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.

(33) "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.

(34) "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.

(35) "HCB" means Home and Community Based.

(36) "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.

(37) "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.

(38) "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.

(39) "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.

(40) "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.

(41) "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.

(42) "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.

(43) "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.

(44) "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.

(45) "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.

(46) "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.

(47) "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.

(48) "License" means a document issued by the Division to applicants who are determined by the Division to be in substantial compliance with these rules.

(49) "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.

(50) "Licensee" means the individual or entity to whom a license is issued and whose name is on the license.

(51) "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.

(52) "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 that 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.

(53) "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.

(54) "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."

(55) "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 would reasonably believe 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 would pose 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.

(56) "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).

(57) "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.

(58) "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.

(59) "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.

(60) "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.

(61) "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.

(62) "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.

(63) "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.

(64) "Program Staff" means an employee or individual who by contract with an AFH provides a service to an individual.

(65) "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.

(66) "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.

(67) "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.

(68) "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.

(69) "Relative" means any individual identified as a family member.

(70) "Representative" means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.

(71) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual when the individual receives services from the provider.

(72) "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.

(73) "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.

(74) "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.

(75) "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.

(76) "Residents' Bill of Rights" means the AFH residents have the rights set forth in ORS 443.739.

(77) "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.

(78) "Restraints" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.

(79) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.

(80) "Seclusion" means the involuntary confinement of an individual to a room or area where the individual is physically prevented from leaving.

(81) "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.

(82) "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.

(83) "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.

(84) "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.

(85) "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.

(86) "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.

(87) "Variance" means an exception from a regulation or provision of these rules granted in writing by the Division upon written application from the provider.

(88) "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.

Stat. Auth.: ORS 413.042, 413.032

Stats. Implemented: ORS 426.072 & 443.705 - 443.825

309-040-0307

Required Home-like Qualities

This rule becomes effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).

(1) Each AFH ~~must~~shall have all of the following: ~~qualities:~~

(a) The home ~~shall be~~ is integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for an individual to:

(A) Seek employment and work in competitive integrated employment settings;

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The individual selects the AFH ~~is selected by the individual or, as applicable, the individual's representative,~~ from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options ~~must~~mustshall be: ~~the following:~~

(A) Identified and documented in the individual's ~~person-centered service plan~~person-centered service plan;

(B) Based on the individual's needs and preferences of the individual; and

(C) Based on the individual's available resources for room and board.

(c) The AFH shall ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

(d) The AFH shall optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;

(e) The AFH shall facilitates individual choice regarding services and supports and who provides the services and supports.

(2) ~~Additional Home-like Requirements.~~ The provider mustshall maintain the AFH as follows: following qualities at the AFH:

(a) The home mustshall be physically accessible to each individual;

(b) The provider mustshall provide the individual with a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable residency agreement;

(c) The provider mustshall provide and include in the residency agreement that the individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of the State of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the residency agreement mustshall provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes mustshall be substantially equivalent to the processes provided under landlord-tenant laws;

(d) The provider mustshall ensure that each individual has privacy in their his-or her own unit;

(e) The provider mustshall maintain units with entrance doors lockable by the individual and .The provider mustshall ensure that only the individual, the individual's roommate, ~~(where applicable)~~, and only appropriate staff, as described in the individual's person-centered service plan, have keys to access the unit;

(f) The provider mustshall ensure that individuals sharing units have a choice of roommates;

(g) The provider ~~must~~shall provide ~~and include in the residency agreement that individuals have the freedom to decorate and furnish their his or her own unit as agreed to within the Residency Agreement;~~

(h) The provider ~~must~~shall permit each individual to have visitors of ~~their his or her~~choosing at any time;

(i) The provider ~~must~~shall ensure each individual has the freedom and support to control ~~their his or her own~~ schedule and activities;

(j) The provider ~~must~~shall ensure each individual has the freedom and support to have access to food at any time.

(3) The provider ~~must~~shall take reasonable steps to ensure that the program maintains the qualities identified in this rule. Failure to take reasonable steps may include, but is not limited to, ~~failure to;~~ ~~the following:~~

(a) ~~Failure to M~~maintain a copy of the ~~person-centered service plan~~person-centered service plan at the home;

(b) ~~Failure to C~~ooperate or provide necessary information to the ~~person-centered service plan~~ person-centered planning coordinator; or

(c) ~~Failure to A~~attend or schedule a ~~person-centered~~person-centered planning meeting ~~when~~re necessary.

(4) When a provider is unable to ensure ~~a quality described the qualities as outlined in~~under sections (2)(d) ~~to~~through (2)(~~2~~)(k) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the individual's consent ~~of the individual or, as applicable, the individual's legal representative,~~ through the process ~~described~~outlined in OAR 411-004-0040 and incorporated by OAR 309-040-03934. The provider may not apply an individually-based limitation until the limitation is approved and documented as required by OAR 309-040-03934.

Stat. Auth.: ORS 413.042, 413.032, ~~413.085~~

Stats. Implemented: ORS ~~413.085~~, 443.705 - 443.825

~~309-040-0310~~

~~309-040-0305~~

Definitions

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

~~(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 community facility or community program, or provider, or other caregiver and the individual adult. For all other situations other than those involving an employee, provider, or other caregiver and an adult individual, 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 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 adult.~~

~~(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 AuthorityDivision applicable to allegations of abuse of individuals residing at residents of an AFHAdult Foster Home licensed by the Division.~~

~~(3) "Activities of Daily Living (ADL)" are means those individual skills necessary for an individual'sa resident's continued well-being including eating and nutrition, dressing, personal personal individual hygiene, mobility, and toileting.~~

~~(4) "Administration of Medication" means administration of medicine or a medical treatment to an individuala resident as prescribed by a Licensed Medical Practitioner.~~

~~(5) "Adult Foster Home (AFH)" means any home licensed by the Addictions and Mental Health Systems Division of the Oregon Health Authority in which residential care is provided to five or fewer adults individuals who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. For the purpose of these rules, if an adult family member of the provider receives care, they he or she mustshall be included as one of the residents individuals within the total license capacity of the homeAFH. Ahome AFH or individual person that advertises, including word-of-mouth advertising, to~~

~~provide room, board, and care and services for adults, is considered deemed to be an AFH. Adult Foster Home. For the purpose of these rules, an AFH Adult Foster Home does not include facilities referenced in 443.715(1)(2)(3)(4).~~

~~(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)(6) "Applicant" means any individual person or entity that makes an application for a license that is also the owner of the business.~~

~~(8)(7) "Assessment" means an evaluation of an individual a resident and the individual's resident's level of functioning completed by a case manager qualified provider and provides the basis for the development of the individual's resident's Personal Care Plan and Person Centered Service Plan.~~

~~(9)(8) "Authority" means the Oregon Health Authority or its designee.~~

~~(10) "Division Staff (9) "Authorized Department Representative" means an employee of the Addictions and Mental Health Division, the Division's designee, or the designee of the local Community Mental Health Program.~~

~~(11)(10) "Behavioral Interventions" means those interventions that will modify the individual's resident's behavior or the individual's resident's environment.~~

~~(12)(11) "Bill of Rights" means civil, legal, or human rights afforded to those individuals residing in an AFH Adult Foster Home residents, which 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 Adult Foster Home Bill of Rights as described in OAR 309-040-03900410(7).~~

~~(13)(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.~~

~~(14)(13) "Care" means the provision of but is not limited to services of room, board, services and assistance with activities of daily living ADLs, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum individual resident independence and enhance quality of life.~~

~~(15) "Caregiver" means the provider, resident managers, or substitute caregivers who provide services to an individual.~~

~~(14) "Case Management" means identified services provided by qualified persons to residents by local, regional or state allied agencies or other service~~

providers. Case management includes advocating for the resident's treatment needs, providing assistance in obtaining entitlements based on mental or emotional disability, accessing housing or residential programs, coordinating services including mental health treatment, educational or vocational activities, and arranging alternatives to inpatient hospital services.

~~(165) "Case Manager" means an individual person employed by a local, regional, or state allied agency approved by the Division to provide case management services. In accordance with OAR 309-032-0545(2)(g)-(j), Standards for Adult Mental Health Services, when an individuala resident resides in anAFHa Adult Foster Home, the case manager shall assist in development of the Personal Care Plan. Additionally, the case manager mustshall evaluate the appropriateness of services in relation to the consumer's assessed need and review the Personal Care Plan every 180 days.~~

~~(17) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.~~

~~(18)(16) "Community Mental Health Program (CMHP)" means the organization of all services for individuals persons 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.~~

~~((19)17) "Compensation" means payments made by or on behalf of an individuala resident to a provider in exchange for room and board, care and services, including services described in the individual'sresident's Personal Care Plan and Person Centered Service Plan.~~ (2018) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, or inaction, which that is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.

~~(21)19) "Condition" means a provision attached to a new or existing license, which that limits or restricts the scope of the license or imposes additional requirements on the licensee.~~

~~(22)20) "Contested Case Hearing" means aan arbitrated 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 would result in the loss of license of the provider or other sanctions that would adversely affect 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.~~

~~(2321) "Contract" means a written agreement between a provider and the Division to provide room and board, care and services for compensation for individuals residents of a licensed AFH Adult Foster Home.~~

~~(2422) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.~~

~~(2523) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check and or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-00010 through 943-007-05010 (Criminal History Checks).~~

~~(2624) "Day Care" means care and services in an AFH Adult Foster Home for a individual person who is not an individual a resident of the AFH Adult Foster Home. Children under the age of five living in the AFH Adult Foster Home are included in the licensed capacity of the home.~~

~~(2725) "Declaration for Mental Health Treatment" means a document that states the individual's resident'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 has 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 mustshall 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.~~

~~(d) For the purposes of these rules, the term individual shall be considered to include the individual's designated representative~~

~~(29)~~

~~(26) "Director" means the Director of the Oregon Health Authority or that person's designee.~~

~~(3027) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the individual's resident's individualized personal care plan and personcentered service plan, regardless of outcome or attainment of goals described in the individual's resident's individualized personal care plan. In addition, the discharge summary addresses individual's resident's monies, financial assets and monies, medication and personal belongings at time of discharge.~~

~~(3128) "Division" means the Addictions and Mental Health Systems Division of the Oregon Health Authority or its designee.~~

~~(3229) "Employee" means an individual person who is employed by a licensed AFH and Adult Foster Home (AFH), 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 clients of AFHs.~~

~~(3330) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFHs Adult Foster Homes which that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and which that has entered into an agreement with the Authority Division to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.~~

~~(3431) "Family Member" for the purposes of these rules, 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.~~

~~(35) "HCB" means Home and Community Based.~~

~~(36)(32) "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.~~

~~(37) "Home and Community-Based Services" or "HCBs" (33) "Homelike Environment" 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 of an individual.~~

~~(38) "Home-like" means an environment that Adult Foster Home setting, which promotes the dignity, safety, independence, security, health and comfort of individuals residents through the provision of personalized care and services and encourages to encourage independence, choice, and decision-making by of the individuals residents.~~

~~(3934) "House Rules" means the those written standards governing house activities developed by the provider and approved by the Authority Division or designee. These standards must may not conflict with the AFH Adult Foster Home Bill of Rights or other individual rights set out by these rules.~~

~~(4035) "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 a resident or the home, and/or providers.~~

~~(41) "Individual" means any individual person 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.~~
~~individual pc(42) "Individually-Based Limitation" means a limitation to a quality listed in OAR 411-004-0020(2)(c) to (2)(g) and as incorporated by OAR 309-040-0410(3) applied in accordance with the required process described in OAR 309-040-0391.~~
~~An individually-based limitation is based on specific assessed need and only implemented only with the informed consent of the individual or the individual's legal representative, as described in OAR 411-004-0040 and these rules.~~
~~These qualities include the individual's right to:~~

~~(a) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws;~~

~~(b) The freedom and support to access food at any time;~~

~~(c) Have visitors of the individual's choosing at any time;~~

~~(d) Have a lockable door in the individual's unit, which may be locked by the individual;~~

~~(e) Choose a roommate when sharing a unit;~~

~~(f) Furnish and decorate the individual's unit according to the Residency Agreement;~~

~~(g) The freedom and support to control the individual's schedule and activities; and~~

~~(h) Privacy in the individual's unit.~~

~~(4336) "Informed Consent for Services" means: the following:~~

~~(a) Options, risks, and benefits of that the services outlined in these rules to be provided by the Adult Foster Home provider to the person have been explained to an individual the person and, as guardian, if applicable, the individual's legal representative and explained in a manner that the individual and, as applicable, the legal representative comprehends; and~~

(b) The individual and, as applicable, the individual's legal representative consents to a of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated or any individually-based limitation.

(44)(37) "Initial Personal Care Plan (IPCP)" means a written document developed for an individuala resident within 24 hours of admission to the home. The document mustshall address the care and services to be provided for the individualresident during the first 30 days or less until the Personal Care Plan can be developed. At a minimum the IPCP mustshall contain goals that address the following: Immediate health care support needs, medication management issues, safety and supervision needs, activities of daily living that the individualresident needs assistance with completing as well as any pertinent information as required by the case manager or their designee at the time of the admission. The provider mustshall develop an Initial Personal Care Plan (IPCP) within 24 hours of admission to the AFHAdult Foster Home.

(45) "Legal Representative" means an individual person who has the legal authority to act for an individual and only within the scope and limits to the his or her 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.

(46) "Level One AFH" means an AFH(38) "Level One Adult Foster Home" means an Adult Foster Home licensed by the Division to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(47)(39) "License" means a document issued by the AuthorityDivision to applicants who are determined by the AuthorityDivisionor designee to be in substantial compliance with these rules.

(4840) "Licensed Medical Practitioner (LMP)" means any individual person 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.

~~(4941) "Licensee" means the individual person or entity to whom a license is issued and whose name(s) is on the license.~~

~~(5042) "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 which that directly contracts with the Authority Division to operate a CMHP for that county.~~

~~(5143) "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 that any individual person 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.~~

~~(5244) "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 person individual.~~

~~(5345) "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 person's social, educational, or economic functioning. Medical diagnosis and classification must shall be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-IV). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."~~

~~(5446) "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 would reasonably believe 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 his or her 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 would pose a risk to health or safety to the themselves individual 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 of the individual.;~~

~~(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of: the following:~~

~~(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 wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or.~~

~~(B) A(B) Wrongful restraint does not include physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming themself himself or herself or others, provided. Provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.~~

~~(5547) "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 943-007-00010 through 943-007-05010 (Criminal History Checks) Rules.~~

~~(5648) "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.~~

~~(5749) "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.~~

~~(5850) "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 persons 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.~~

~~(5951) "Nursing Delegation" means that a registered nurse authorizes an unlicensed individual person to perform special tasks of individual client/nursing care in selected situations and indicates that authorization in writing. The delegation process includes nursing assessment of a client individual in a specific situation, evaluation of the ability of the unlicensed person, teaching the task, and ensuring supervision.~~

~~(60) "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.~~

~~(61) "Person-Centered Service Plan Coordinator" means the individual person, which may be a case manager, service coordinator, personal agent, and other~~

~~individual person designated by the Division to provide case management services or person-centered service planning for and with individuals.~~

~~(62)(52) "Personal Care Plan (PCP)" means a written plan outlining the care and services to be provided to an individual a resident. The PCP is based upon the review of current assessment, referral, observations, individual resident preference, and input from members of the Personal Care Plan Team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the individual's resident's recovery and independence.~~

~~(63)(53) "Personal Care Plan Team (PCP Team)" means a group composed of the individual resident, the case manager or other designated representative CMHP representative, the provider, and or resident manager, and others needed including the individual's resident's legal guardian, representatives of all current service providers, advocates or others determined appropriate by the individual resident receiving services. If the individual resident is unable or does not express a preference, other appropriate team membership must be determined by the PCP team members.~~

~~(64)(54) "Personal Care Services" means services prescribed by a physician or other designated person 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 Adult Foster Home individuals who are Medicaid eligible, Personal Care services are funded under Medicaid.~~

~~(65)(55) "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 which that promotes the person's optimum health and independence.~~

~~(66)(56) "Program Staff" means includes means an employee or individual person who, by contract with an AFH provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and Supports Rule (ISSR) (OAR 309-032-1500 through 309-032-1565) to an individual provide the service.~~

~~(67)(57) "Provider" means a qualified individual person 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.~~

~~(68)(58) "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 and OAR 309-032-1540.~~

~~(6959) "Registered Nurse" means an individual personan 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.~~

~~(7060) "Related" means includes the following relationships: means 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.~~

~~(7161) "Relative" means any individual person identified as a family membermembers.~~

~~(72) "Representative" refers to means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.~~

~~(73) "Residency Agreement62) "Resident" means the written, legally enforceable agreement between a provider and an individualany person age 18 or the individual's representative when the individualolder who receives room, board, care, and services from the provider. The Residency Agreement identifies the rights and responsibilities of the individual and the provider. The Residency Agreement mustshall provide the individual protection from eviction substantially equivalent to landlord-tenant lawsin an Adult Foster Home.~~

~~(74(63) "Resident Manager" means an employee of the provider who is approved by the Division to live in the AFHAdult Foster Home and is responsible for the care and services of individualsresidents on a day-to-day basis.~~

~~(73564) "Residential Care" means the provision of room, board, and services that assist the individualresident 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'sresidents' general whereabouts; monitoring the activities of the individualresident while on the premises of the AFHAdult Foster Home to ensure the individual'stheir health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.45shall~~

~~(76665) "Residents' Bill of Rights" means the AFH residents of the AFHAdult Foster Home have the following rights set forth as defined in ORS 443.739. Each individualresident has a right to:~~

~~-(a) Be treated as an adult, with respect and dignity;~~

~~(b) Be informed of all individualresident rights and all house rules;~~

~~(c) Be encouraged and assisted to exercise legal rights, including the right to vote;~~

- ~~(d) Be informed of the individual's resident's medical condition and the right to consent to or refuse treatment;~~
- ~~(e) Receive appropriate care and services, and prompt medical care as needed;~~
- ~~(f) A safe and secure environment;~~
- ~~(g) Be free from mental and physical abuse;~~
- ~~(h) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;~~
- ~~(i) Complete privacy when receiving treatment or personal care;~~
- ~~(j) Associate and communicate privately with any person the individual resident chooses;~~
- ~~(k) Send and receive personal mail unopened;~~
- ~~(l) Participate in activities of social, religious, and community groups;~~
- ~~(m) Have medical and personal information kept confidential;~~
- ~~(n) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;~~
- ~~(o) Manage the individual's resident's own money and financial affairs unless legally restricted;~~
- ~~(p) Be free from financial exploitation. The provider must maynot charge or ask for application fees or nonrefundable deposits and must maynot solicit, accept, or receive money or property from anindividuala resident other than the amount agreed to for services;~~
- ~~(q) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider mustshall give 30 days' written notice before any change in the rates or the ownership of the home;~~
- ~~(r) Not to be transferred or moved out of the AFHadult foster home without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge anindividuala resident only for medical reasons including a medical emergency described in ORS 443.738(11)(a), or for the welfare of the individualresident or other individualsresidents, or for nonpayment;~~
- ~~(s) Be free of discrimination in regard to race, color, national origin, sexual orientation, disability, sex, or religion;~~
- ~~(t) Make suggestions and complaints without fear of retaliation.~~

~~(77766) "Respite Care" means the provision of room, board, care, and services in an AFHAdult Foster Home for a period of up to 14 days. Respite care for individualsresidentswill be counted in the total licensed capacity of the home. Respite care is not crisis respite care.~~

~~(787867) "Restraints" means any physical hold, device, or chemical substance, which thatrestricts, or is meant to restrict, the movement or normal functioning of an individuala resident.~~

~~(797968) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.~~

~~(08069) "Seclusion" means the involuntary confinement of an individual to a room or area where the individualperson is physically prevented from leaving.~~

~~(81170) "Self-Administration of Medication" means the act of an individuala resident placing a medication in or on the individual'stheir own body. The individualresident identifies the medication and the times and manners of administration, and placed the medication internally or externally on the individual'stheir own body without assistance.~~

~~(82271) "SelfPreservation" means in relation to fire and life safety means the ability of individualresidents to respond to an alarm without additional cues and be able to reach a point of safety without assistance.~~

~~(83372) "Services" means those activities which that are intended to help the individualsresidents 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 residents individual's access to necessary medical care, treatment, and/or services identified in the individual'sresident's personal care plan.~~

~~(84473) "Substitute Caregiver" means any individual person meeting the qualifications of a caregiver who provides care and services in an AFHAdult Foster Home under the Division's jurisdiction of the AuthorityDivision in the absence of the provider or resident manager. AnindividualA resident may not be a substitute caregiver.~~

~~(855) "Unit" means the personal space and bedroom of an individual as agreed to in the rResidency aAgreement. the following(866(74) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of anindividuala resident requiring a non-routine visit to a health care practitioner, suicide attempts, death of anindividuala resident, a fire requiring the services of a fire dDepartment, or any incident requiring an abuse investigation.~~

~~(87775) "Variance" means an exception from a regulation or provision of these rules, granted in writing by the Authority~~Division, upon written application from the provider.

~~(888876) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving supportive services in an AFH or other provider, and who is not a paid employee of the AFH or other provider. The services must~~shall ~~be non-clinical unless the person has the required credentials to provide a clinical service.~~

~~[Publications: Publications referenced are available from the agency.]~~

Stat. Auth.: ORS 413.042, 413.032

Stats. Implemented: ORS 426.072 & 443.705 ~~443.825~~

309-040-0310

License Required

(1) License Required. In accordance with ORS 443.725, every provider of Adult Foster Care ~~must~~shall~~will~~ be licensed ~~by~~with the ~~Oregon Health~~AuthorityDivision before opening or operating an ~~Adult Foster Care Home~~AFH~~for adult residents.~~

(a) ~~The~~A provider ~~must~~shall~~will~~ live in the home that is to be licensed or hire a resident manager to live in the home.

(b) There ~~must~~ ~~must~~shall~~will~~ be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an ~~AFH~~Adult Foster Home under the jurisdiction of the ~~Department~~Division.

(2) Placement. ~~An AFH must~~ ~~may not~~No Adult Foster Home will accept placement of ~~an individual~~ ~~a person~~ without first being licensed by the ~~Authority~~Division.

(3) Unlicensed ~~AFH~~Adult Foster Home. No individual ~~may~~shall~~will~~ be placed in an ~~AFH~~Adult Foster Home that is not licensed.

(4) Criminal History Check Requirements. Providers, resident managers, substitute caregivers, volunteers, and occupants over the age of 16, excluding ~~individuals, must~~shall~~residents, will~~ have documentation of an approved criminal history ~~background~~ check in accordance with ORS 181 ~~A.200~~537, 443.735 and OAR 943-007 ~~-0001 through 0501.~~

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0315

License Application and Fees

- (1) ~~Application.~~ A completed, written application ~~will~~shall be submitted by the applicant on forms supplied by the Division. The application is not complete until all information ~~requested is received~~ by the ~~Department~~Division. ~~and on the forms supplied by the Division is submitted to the Department.~~ Incomplete applications are void 60 days after initial receipt ~~of~~ by the Division.
- (2) ~~Additional Homes.~~ ~~An applicant must~~shall submit ~~a~~ separate application ~~is required~~ for each location operated as an ~~AFH~~Adult Foster Home.
- (3) ~~Contents of Application.~~ The application ~~must~~shall~~will~~ include the following:
 - (a) The maximum ~~resident~~ capacity requested and a written statement describing~~will include~~ family members needing care, ~~persons~~individuals who receive respite care, ~~persons~~individuals who receive day care, ~~and/or persons~~ individuals who receive room and board;
 - (b) A written statement from an ~~LMP~~ Licensed Medical Practitioner regarding the mental and physical ability of the applicant to provide care to ~~individuals~~residents and to operate the ~~AFH~~Adult Foster Home. If the applicant ~~will~~employs a resident manager, the applicant ~~must~~shall~~will~~ provide a written statement from a physician or a ~~Licensed Medical Practitioner~~LMP regarding the mental and physical ability of the resident manager to operate the ~~AFH~~Adult Foster Home and to provide care to ~~individuals~~residents;
 - (c) A completed financial information form provided by the Division. The applicant ~~must~~shall~~will~~ demonstrate to the Division ~~the applicant's~~their financial ability and the resources necessary to operate the ~~AFH~~Adult Foster Home. Financial ability ~~will~~ must~~shall~~ include but is not limited to, providing the Division with a list of unsatisfied judgments, pending litigation, and unpaid taxes and notifying the Division regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required, the Division may require the applicant to furnish a financial guarantee as a condition of initial licensure in accordance with ORS 443.735(3)(e) ~~and 443.745~~;
 - (d) A completed Facility Provider Enrollment Application;
 - (e) A signed letter of support from the Local Mental Health Authority or designee for the applicant to be licensed to operate the ~~AFH~~Adult Foster Home;
 - (f) ~~A copy of the~~dDocumentation of a Criminal History Check approval in accordance with ~~OAR 943-007~~OAR 943-007-0001 through 0501407-007-0009

~~through 407-007-0640~~ for the provider~~(s)~~, the resident manager, caregiver~~s(s)~~, volunteers and other occupants over the age of 16, excluding ~~individuals residents~~, and other persons as defined in ORS 443.735~~(5)(a)(b), (6)(a)(b)(c)~~;

(g) A floor plan of the ~~AFH Adult Foster Home~~ showing the location and size of rooms, exits, secondary emergency egress, smoke detectors and fire extinguishers, and evidence of compliance with facility safety requirements as ~~described~~ outlined in OAR 309-040-0370~~(1) through (13)~~;

(h) A completed ~~AFH Adult Foster Home~~ Self-Inspection Guide; and

(i) Each application ~~must must~~ shall ~~will~~ be accompanied by a fee of \$20 per bed requested for license. ~~This fee is waived for county-operated facilities.~~

(4) ~~Review of Application.~~ The Division ~~will~~ shall determine compliance with these rules based on receipt of the completed application material and fees, a review of information submitted, an investigation of information submitted, an inspection of the ~~AFH Adult Foster Home~~ and interviews with the provider determined by the Division and other ~~individuals persons~~ as identified by the Division.

(5) ~~Withdrawal of Application.~~ The applicant may withdraw the application at any time during the application process by notifying the ~~Authority~~ Division in writing.

(6) ~~Revocation, Surrender, Non-Renewal, or Denial of Application.~~ An applicant whose license has been revoked or voluntarily surrendered, following a receipt of Notice of Intent to Revoke or Notice of Intent of Non-Renewal from the ~~Authority~~ Division, or whose application has been denied by the ~~Authority~~ Division for reasons relating to but not limited to, criminal convictions, civil proceedings against the applicant, or substantiated allegations of abuse by the applicant, ~~will~~ may not be permitted to submit an application for one year from the date that the revocation, surrender, or denial is made final. A longer period may be specified in the order revoking or denying the license.

(7) Enforcement of Home and Community-Based Required Qualities:

(a) An AFH licensed on or after July 1, 2016, ~~must~~ shall be in full compliance with all ~~regulatory~~ requirements under these rules at the time of initial licensure;

(b) An AFH licensed prior to July 1, 2016, ~~shall~~ must come into compliance with applicable rules as follows:

(A) All AFH's ~~must~~ shall be in full compliance with all applicable rules no later than January 1, 2017;

(B) For those rules designated by the Division to become effective July 1, 2016, the provider must make measurable progress towards compliance with those rules. The Division ~~will~~may not issue sanctions or penalties for failure to meet those rules effective July 1, 2016, or those obligations imposed by OAR chapter 411, division 4, until January 1, 2017, if the provider demonstrates measurable progress towards compliance.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0320

Classification of AFHs~~Adult Foster Homes~~

(1) The Division licenses Level 1 ~~AFHs~~Adult Foster Homes. Level 1 ~~AFHs~~Adult Foster Homes provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(2) ~~Level One.~~ A Level 1 ~~AFH~~Adult Foster Home license may be issued by the ~~Authority~~Division based upon a determination that ~~an AFH~~a facility is in substantial compliance with these rules and a review of the qualifications of the provider and the resident manager ~~if applicable, if there is one~~, and ~~is in~~ compliance with the ~~following requirements.~~OAR 309-040-0300 through 0455 and has met the training requirements set forth in OAR 309-040-0335.

(a) ~~Requirement for Issuance of License.~~ A Level 1 ~~AFH~~Adult Foster Home license ~~will~~may be issued by the Division if the applicant or resident manager completes the training requirements outlined in OAR 309-040-0335, and the home and provider are in compliance with 309-040-0300 through 309-040-0455.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0325

Capacity

(1) ~~Number of Individuals~~Residents. The ~~Division~~will~~shall~~ determine the number of ~~individuals~~residents permitted to reside in an ~~AFH~~based on Adult Foster Home ~~will be determined by~~ the ability of the caregiver to meet the care needs of the ~~individuals~~residents, the fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum licensed capacity ~~will~~must~~shall~~ include consideration of total household composition including children. Sleeping requirements for children are: See the following:

(a) Sleeping arrangements for children in care ~~must~~shall~~will~~ be safe and appropriate, based on the child's age, gender, special needs, behavior, and history of abuse and neglect;

(b) Each child in care ~~must~~shall~~will~~ have a safe and adequate bed in which to sleep.

(2) Limiting Capacity. The following limits apply:

(a) The number of ~~individuals~~is residents~~will be~~ limited to five;

(b) Respite care ~~persons~~individuals are included in the licensed capacity of five;

(c) Day care ~~persons~~individuals are included in the licensed capacity of five;

(d) Adult family members of the provider or resident manager who need care are included in the licensed capacity of five; and,

(e) Child family members of the provider or resident manager who need care may be included in the licensed capacity of five.

(3) ~~Ability to Provide Care.~~ If the number of ~~persons~~individuals who receive care exceeds the ability of the provider to meet the care, health, life, and safety needs of the ~~individuals~~residents, the Division may reduce the AFH licensed capacity ~~of the AFH adult foster home.~~

(4) ~~Conditions on Capacity.~~ ~~The~~ Division may place conditions, restrictions, or limitations on the AFH license as necessary to maintain the health, life, and safety of the ~~individual~~residents.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0330

Zoning for Adult Foster Homes

~~(1)(1)~~ -An ~~AFH Adult Foster Home~~ is a residential use of property for zoning purposes. Under ORS 197.665, an ~~AFH Adult Foster Home~~ is a permitted use in any residential zone, ~~including a residential zone, which that~~ allows a single family dwelling, and in any commercial zone ~~which that~~ allows a single family dwelling.

~~Can (1) become (1) and (2)? We're not really supposed to have just a (1) without at least a (2) or an (a) without at least a (b).~~

~~(2)~~ (2) No city or county may impose any zoning requirement on the establishment and maintenance of an AFH Adult Foster Home in ~~these residential or commercial~~ zones that is more restrictive than that imposed on a single-family dwelling in the same zone.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0335

Training Requirements for Providers, Resident Managers, and Substitute Caregivers

(1) ~~Training Requirements and Compliance.~~ All providers, resident managers, and substitute caregivers ~~must~~shall~~will~~ satisfactorily meet all educational requirements established by the ~~Oregon Health Authority~~Division. ~~No providers~~Providers and staff may not ~~person may~~ provide care to any ~~individual~~resident 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~~resident. 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~~residents 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) ~~Ability to Communicate.~~ The provider, resident manager, and substitutive caregivers ~~must~~shall~~will~~ be able to understand and communicate in oral and written English in accordance with ORS 443.730.

(3) ~~Testing Requirements.~~ Training for all providers, resident managers, and substitute caregivers ~~must~~shall~~will~~ ~~comply~~be in compliance with ORS 443.738. The provider ~~must~~shall~~will~~ satisfactorily pass any testing requirements established by the ~~Authority~~Division before being licensed or becoming a resident manager or substitute caregiver. The test ~~must~~shall~~will~~ be completed by the caregiver without the help of any other ~~individual~~individual~~person~~. The provider, resident manager, and substitute caregiver ~~must~~shall~~will~~ have the ability to, but ~~will~~ not be limited to, understanding and responding appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, ~~and individuals'~~and residents' preferences and conflicts.

(4) ~~Exceptions to Training Requirements.~~ The Authority Division may make exceptions to the training requirements for individuals ~~persons who are~~ appropriately licensed medical care professionals in Oregon or who possess sufficient education, training, or experience to warrant an exception. The Authority Division ~~will~~ may not make any exceptions to the testing requirements.

(5) ~~Unexpected and Urgent Staffing Need.~~ In accordance with ORS 443.738, the Authority 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 Authority Division determines that an unexpected and urgent staffing need exists. The licensed provider ~~must~~ shall ~~will~~ notify the Division of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the individual person ~~has met~~ meets the requirements for a substitute caregiver for the AFH Adult Foster Home, and that the provider ~~shall~~ will provide adequate supervision.

(6) ~~Documentation of Current Training and Testing.~~ The provider or resident manager ~~must~~ shall ~~will~~ maintain current documentation of the training and testing of substitute caregivers including but is not limited to: ~~the following:~~

(a) Documentation of criminal history check in compliance with OAR 943-007-0001 through 0501410-007-00200 through 410-007-03800640;

(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 residents;

(d) Documentation that the provider has oriented the caregiver to the individuals residents in the AFH Adult Foster Home, their care needs and skills training, personal care plan, and the physical characteristics of the AFH Adult Foster Home.

(7) ~~Annual Training Hours.~~ The Authority Division ~~will~~ shall require a minimum of twelve hours of training annually directly related to the care and services for person individuals with mental illness. The ~~training for the~~ provider, resident manager, and substitute caregiver of an AFH must complete required training and document the training ~~Adult Foster Home will be documented~~ in the provider, resident manager, and substitute caregiver's training records. ~~The Such~~ training ~~is will be~~ in addition to any orientation, ~~which that~~ is attended by applicants prior to licensing and ~~must~~ shall ~~will~~ include, but is not limited to: ~~the following:~~

(a) Understanding and rRecognizing sSevere and pPersistent mMental iIllness;

- (b) Mandatory ~~a~~Abuse ~~r~~Reporting;
 - (c) Medication ~~m~~Management, ~~d~~Dispensing, and ~~d~~Documentation;
 - (d) Incident ~~r~~Report ~~w~~Writing;
 - (e) ~~Individual Resident~~ ~~r~~Rights;
 - (f) ~~AFH Adult Foster Home~~ ~~e~~Emergency ~~p~~Planning;
 - (g) Fire ~~s~~Safety;
 - (h) Complaints and ~~g~~Grievances; and
 - (i) Cardiopulmonary Resuscitation (CPR) and First Aid.
- (8) ~~Additional Training Requirements.~~ The Authority 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, ~~as specified by the Authority Division.~~
- (9) ~~Training for Delegated and/or Assigned Nursing Care Services.~~ Providers, resident managers, or substitute caregivers who perform delegated and/or assigned nursing care services as part of the Personal Care Plan residential care plan ~~must shall will~~ receive training and appropriate monitoring from a registered nurse on performance and delivery of those services.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0340

Issuance of a License

- (1) ~~Issuance of a License.~~ Applicants must shall will be in substantial compliance with these ~~rules Administrative Rules and Oregon Revised Statutes (ORS)~~ 443.705 through 443.825 before the Division shall issue a license ~~is issued. If if~~ cited deficiencies are not corrected within time frames specified by the Authority Division, the application will may be denied. ~~The Authority Division will may issue a license to an applicant that is found to be in substantial compliance with these rules.~~ The license must shall includewill state, but is not limited to, the name of the applicant, name of the ~~AFH Adult Foster Home~~, address of the home premises to which the license applies, the maximum number of individuals residents, resident manager, ~~(if applicable)~~, conditions, if applicable, license number, payment received, effective date and expiration date, and the signature of the aAssistant aAdministrator of the Division. The license

~~mustshall~~will be visibly posted in the ~~AFHAdult Foster Home~~ and available for inspection at all times.

(2) ~~Conditions on a License.~~ The ~~AuthorityDivision~~ may attach conditions to the license, ~~which that~~ limit, restrict, or specify other criteria for operation of the ~~AFHAdult Foster Home~~. Conditions to a license may include, but are not limited to, care of a specifically identified individual. The conditions ~~mustshall~~will be posted with the license in the ~~AFHAdult Foster Home~~ and be available for inspection at all times.

(3) ~~Reporting Changes.~~ Each ~~provider mustshall~~licensee will report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. ~~Such C~~changes include, but are not limited to, changes in the ~~AFHAdult Foster Home~~ name, owner entity, resident manager, telephone number, ~~and/or~~ mailing address, ~~and staffing changes if those .~~ ~~Such changes include, but are not limited to, changes in staffing when such~~ changes are significant or impact the health, safety, or well-being of ~~individuals~~residents.

(4) ~~Change of Ownership of an AFHAdult Foster Home.~~ When an ~~AFHAdult Foster Home~~ is sold, the prospective new owner ~~mustshall~~will apply for a license in accordance with OAR 309-040-0315 ~~License Application and Fees~~ if the new owner intends to operate an ~~AFHAdult Foster Home to be licensed by the Division.~~

(5) ~~Transfer of License.~~ An ~~AFHAdult Foster Home~~ license is not transferable or applicable to any location or ~~individuals~~ persons other than those specified on the license.

(6) ~~Effective Date of a License.~~ A license is valid for one year from the effective date on the license unless sooner revoked or suspended.

(7) ~~Substantial Compliance Requirements.~~ Applicants ~~mustshall~~will be in substantial compliance with these ~~rules~~ Administrative Rules before a license is issued. If cited deficiencies are not corrected within the time frames specified by the ~~AuthorityDivision~~, the license ~~will-shall~~ be denied.

(8) ~~Issuing a License in Compliance.~~ The ~~AuthorityDivision may mayshall~~will not issue an initial license unless:

(a) The applicant and the ~~AFHAdult Foster Home~~ are in compliance with ORS 443.705 to 443.825 and the rules of the ~~AuthorityDivision~~;

(b) The ~~AuthorityDivision~~ has completed an inspection of the ~~AFHAdult Foster Home~~. If cited deficiencies are not corrected within the time frames specified by the ~~AuthorityDivision~~, the application ~~will-shall~~ be denied;

(c) The AuthorityDivision has received an approved criminal history records check on the applicant, resident manager, substitute caregiver, and any occupant (other than an individuala resident), 16 years of age or older or is identified in ORS 443.735~~(5)(a)(b), (6)(a)(b)(c)~~ and who will will shall be residing in or employed by the AFHAdult Foster Home, as identified in OAR chapter 943-division 007; and any other rules established by the AuthorityDivision.

(9) Financial Ability and Resources. The applicant mustshallwill demonstrate to the AuthorityDivision the financial ability and resources necessary to operate the AFHAdult Foster Home. The demonstration of financial ability mustshallwill include, but is need not be limited to, providing the AuthorityDivision with a list of any unsatisfied judgments, pending litigation and unpaid taxes, and notifying the AuthorityDivision regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required -in this sectionby this paragraph, the AuthorityDivision may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(10) Resident Manager Changes. If a resident manager leaves changes during the period of the license, the provider mustshallwill notify the Division immediately and identify a plan for providing care to the individualsresidents. The provider mustshallwill submit a completed resident manager application on forms supplied by the Division that include, a copy of the documentation of criminal history background check and approval in accordance with OAR chapter 943, division -007, a physicianphysicians statement, and payment of a \$10-00 fee. If the original plan includes changing the resident manager -is to change during the license renewal process, the \$10-00 is not applicable.

(11) Revised License. Upon receipt of the completed resident manager application and Division approval by the Division, a revised license willmay be issued by the Division in accordance with ORS 443.738(1) through (4).

(12) A 60-Day Provisional License. Notwithstanding any other provision of ORS 443.735, -or 443.725, or 443.738, the AuthorityDivision may issue a 60-day provisional license to a qualified individualperson if the AuthorityDivision determines that an emergency situation exists after being notified that the licensed provider of an AFHAdult Foster Home is no longer overseeing operation of the AFHAdult Foster Home.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0345

Renewal

(1) ~~Renewal Application and Fee.~~ The provider ~~must~~shall~~will~~ submit a completed ~~the Division~~ renewal application and the required fee at least 165 days prior to the expiration date of the license. If the renewal application is not received ~~by~~ ~~from~~ the Division within the time period described, the provider ~~must~~shall request the application from the Division or the County Mental Health partner. If the completed renewal application and fee are not submitted prior to the expiration date, the ~~AFH Adult Foster Home~~will~~shall~~ be treated as an unlicensed ~~homefacility~~, subject to civil penalties.

(2) ~~Exceptions for Renewal Application.~~ The renewal application ~~must~~must~~shall~~will include the same information and fee as required for a new application, except that a physician's statement and financial information form are not required if the Division can reasonably assume this information has not changed.

(3) ~~Additional Requirements for Renewal Application.~~ ~~The~~the Division ~~may~~will require the applicant to submit a current, ~~-(within six months,)~~ physician's statement and a current, ~~-(within six months,)~~ criminal history check if investigation by the Division for license renewal indicates that it is necessary.

(4) ~~Information Investigation and Site Inspection.~~ ~~The~~the Division ~~will~~shall investigate any information in the renewal application and ~~must~~shall~~will~~ conduct an inspection of the ~~AFH Adult Foster Home~~.

(5) ~~Inspection Report.~~ The provider ~~will~~shall be given a formal written report from the inspection citing any deficiencies and a time frame for correction that does not exceed 30 days from the date of the inspection report unless otherwise noted in the inspection report.

(6) ~~Correction of Deficiencies.~~ ~~The AFH~~the Division ~~will require the Adult Foster Home~~ provider ~~must~~shall~~to~~ correct cited deficiencies prior to issuing a renewed license. If cited deficiencies are not corrected within the time frame specified by the Division, the renewal application ~~will~~shall be denied and administrative sanctions ~~may~~will be imposed.

(7) ~~Requirements for License Renewal.~~ ~~The~~the Division ~~may~~will not renew a license unless:

(a) The applicant and the ~~AFH Adult Foster Home~~ are in compliance with ORS 443.705 to 443.825 and the ~~se~~ rules ~~of the Division~~;

(b) The Division has completed an inspection of the ~~AFH Adult Foster Home~~;

(c) The Division has completed a criminal records check, as required by ORS 181.536 through 181.537, 443.735 and OAR chapter 943, division 007, on the applicant and any occupant, other than ~~an individual a resident~~, 16 years of age

or older or is identified in ORS 443.735(5)(a)(b), (6)(a)(b)(c) and who ~~will~~ shall be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFHAdult Foster Home provider.

(8) ~~National Criminal Record Check.~~ The provider, resident manager, substitute caregiver, or volunteer or individual person residing in the AFHAdult Foster Home may continue to work or reside in the home pending the national criminal records check provided that the Oregon criminal record check was clear and no convictions were self-disclosed in accordance with OAR chapter 943, division - 007.

(9) ~~Criminal Record Check.~~ A criminal records check ~~must~~shall~~will~~ be completed for the applicant and any occupant, other than ~~an individual a resident~~, 16 years of age or older who ~~will~~ shall be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFHAdult Foster Home provider if the Division believes there is reason to justify a new criminal history check in accordance with OAR chapter 943, division 007 ~~Criminal History Check Required~~.

(10) ~~Burden of Proof — Less than 24 Months.~~ An AFHAdult Foster Home provider seeking initial licensing or that has been in operation for less than 24 months, ~~has~~ carries the burden of proof to establish compliance with ORS 443.705 to 443.825 and the Division rules.

(11) ~~Burden of Proof — More than 24 Months.~~ The burden of proof ~~will~~ shall be upon the Division to establish compliance with ORS 443.705 to 443.825 and the Division rules if an AFHAdult Foster Home provider is seeking renewal of a license and has been in continuous operation for more than 24 months.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0350

Variance

(1) A provider or applicant may apply to the AuthorityDivision for a variance from a provision of these rules. The provider ~~must~~ shall ~~provide justification justify to the AuthorityDivision that such~~ a variance does not jeopardize the health, life, or safety of the individualsresidents, and ~~the variance~~ would not violate or compromise an applicable ORS.

(2) ~~The Division may not grant a~~No variance ~~will be granted~~ from a regulation or provision of these rules pertaining to the license capacity of the AFHAdult Foster Home, inspections of the AFHAdult Foster Home, civil, legal, and human rights.

and inspection of the public files. ~~The Division may not grant a~~ No variance related to fire and life safety ~~will shall be granted by the Authority~~ Division without prior consultation with the local fire ~~a~~ Authority or ~~its~~ designee.

(3) A provider or applicant may apply to the Authority Division for a variance specific to each individual ~~resident~~ under ORS 443.725, subject to the following requirements:

(a) The variance is effective only for the specific ~~individual~~ resident who has been assessed and meets the safety requirements prescribed by the Authority Division. This assessment shall become part of the individual's ~~resident's~~ RPCP;

(b) A variance allowing a specific ~~individual~~ resident to be in the AFH Adult Foster Home alone ~~shall~~ may not exceed ~~4~~ four hours in a 24-hour period;

(c) No variance allows a provider to leave ~~an individual a~~ resident alone in the AFH Adult Foster Home between the hours of 11 ~~:0000~~ p.m. to 6 ~~:0000~~ a.m.; and

~~(d)~~ 24 ~~Twenty-four~~ hour per day care shall continue for any ~~individual~~ resident that does not qualify to be in the AFH Adult Foster Home alone.

(4) Variances ~~must~~ shall ~~will~~ be granted or denied in writing. All variances granted ~~must~~ shall ~~will~~ be reviewed with each license renewal under OAR 309-040-0345. A variance granted to one AFH Adult Foster Home provider, or a variance granted regarding a specific ~~individual~~ resident, does not constitute a precedent for any other AFH Adult Foster Home, provider, applicant, or individual resident.

(5) The AFH provider or applicant may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Authority Division. The Authority Division ~~will~~ shall make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Authority Division ~~will~~ shall be final.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0355

Contracts

(1) ~~Public Assistance Individuals~~. Providers who care for public assistance individuals must enter into a contract with the Authority Division and comply with ~~follow~~ Authority Division rules governing reimbursement for services and refunds.

(2) ~~Private Pay Individuals~~. Providers who care for private paying ~~individuals~~ residents must enter into a signed contract with the individual resident or person paying for care. This contract shall ~~will~~ include, but is not limited to, an a

~~Personal Care Plan (R)PCP~~, a schedule of rates, conditions under which the rates ~~may~~ can be changed, and the ~~AFH's Adult Foster Home's~~ policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) ~~Notification of Increases, Additions, and Other Modifications of Rates. The provider must~~ shall provide a 30-days ~~Thirty days~~ prior written notification to private pay individuals or persons paying for care of increases, additions, and other modifications to of the rates to be charged will be given by the provider to private residents or persons paying for care U unless the change is due to a medical emergency resulting in a greater level of care, in which case the provider must ~~shall give~~ notice will be given within ten days of the change.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0360

Qualifications for ~~AFH Adult Foster Home~~ Providers, Resident Managers, and Other Caregivers

(1) ~~Qualifications for a Provider.~~ An ~~AFH Adult Foster Home~~ provider ~~must~~ shall must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the ~~AFH Adult Foster Home~~ to be licensed, unless an approved resident manager lives in the ~~AFH Adult Foster Home~~;

(c) Provide evidence satisfactory to the ~~Authority~~ Division regarding experience, training, knowledge, interest, and concern in providing care to persons with severe and persistent mental illness. ~~Such~~ e Evidence may include, but is not limited to, the following:

(A) Certified nurse's aide training;

(B) Nursing home, hospital, or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Division approved ~~t~~ Training ~~approved by the Authority~~ Division;

(E) Experience in caring for ~~person~~ individuals with severe and persistent mental illness at home; and

(F) Home management skills.

(d) Possess the physical health and mental health determined necessary by the AuthorityDivision to provide 24-hour care for adults who are mentally ill. Applicants ~~must-shall~~ have a statement from a physician, on a Division approved form ~~provided by the AuthorityDivision~~, that they are physically and mentally capable of providing care;

(e) Undergo a criminal history check in accordance with OAR chapter 943-division 007 and be found deemed eligible for licensure by the AuthorityDivision. The AuthorityDivision ~~will-shall~~ evaluate and verify information regarding criminal history;

(f) Provide evidence of sufficient financial resources to operate an AFHAdult Foster Home for at least two months, unless the application is for renewal of an AFHAdult Foster Home that is already in operation. A credit reference check may be required;

(g) Be literate and capable of understanding written and oral orders and communicating with individualsresidents, physicians, case managers, and appropriate others; and be able to respond appropriately to emergency situations at all times;

(h) If transporting individualsresidents by motorized conveyance, ~~must-shall~~ have a current driver's license in compliance with the AuthorityDepartment of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(2) Qualifications for a Resident Manager. The resident manager ~~mustshallwill~~ meet the provider qualifications listed in subsection (1)(a) through (h) of this rule. A resident manager applicant may work in the home pending outcome of the national criminal history check, if the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization.

(3) Qualifications for a Substitute Caregiver. Substitute caregivers left in charge of an individualresidents for any period of time ~~mustshallwill~~ have access to individualresident records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be subject to a cCriminal hHistory cCheck. A substitute caregiver may work in the home pending outcome of the national criminal history check providing the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization;

(c) Be able to communicate orally and in writing with individualsresidents, physicians, case managers, and appropriate others;

(d) Know fire safety and emergency procedures;

- (e) Have a clear understanding of job responsibilities, have knowledge of ~~Personal Care Plans~~ PCPs, and be able to provide the care specified for each ~~individual's~~ resident's needs;
 - (f) Be able to meet the requirements of a resident manager when left in charge of an ~~AFH~~ Adult Foster Home for 30 days or longer;
 - (g) Not be ~~an individual~~ a resident; and
 - (h) If transporting ~~individual(s)~~ residents by motorized conveyance, ~~must~~ shall have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.
- (4) ~~Providers Responsibility for Standards. The provider must~~ Providers will not hire or continue to employ a resident manager or substitute caregiver ~~who~~ that does not meet the ~~requirements of standards stated in~~ of this rule.
 - (5) ~~Providers Responsibility for Supervision and Training. A provider shall be~~ responsible for the supervision and training of resident managers and substitute caregivers and monitor their general conduct when acting within the scope of their employment ~~and/or~~ duties.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0365

Facility Standards

- (1) In order to qualify for or maintain a license, an ~~AFH~~ must ~~shall~~ Adult Foster Home will meet the following provisions:
 - (a) ~~Compliance with Building and Fire Code.~~ Demonstrate compliance with Oregon Structural Specialty Code (OSSC) and Oregon Fire Code: and
 - (b) ~~Each AFH must~~ shall ~~Adult Foster Home will~~ M maintain up-to-date documentation verifying they meet applicable local business license, zoning, and building and housing codes, and state and local fire and safety regulations. It is the duty of the provider to check with local government to be sure all applicable local codes have been met;
 - (c) ~~For Each AFH's Adult Foster Home~~ established on or after October 1, 2004, ~~must~~ shall ~~will~~ meet all applicable ~~s~~ State building, mechanical, and housing codes for fire and life safety. The ~~AFH~~ must ~~shall~~ Adult Foster Home will be inspected for fire safety by an inspector designated by the ~~Authority~~ Division using the recommended standards established by the State Fire Marshal for facilities

housing one to five persons. Refer to Appendix I of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Authority Division, a request for fire inspection mustshallwill be made to the State Fire Marshal;

(de) The building and furnishings mustshallwill be clean and in good repair and grounds will mustshall be maintained. Walls, ceilings, and floors mustshallwill be of such character to permit frequent washing, cleaning, or painting or painting. There mustshallwill be no accumulation of garbage, debris, rubbish, or offensive odors;

(ed) Stairways mustshallwill be provided with handrails. A functioning light mustshallwill be provided in each room, stairway, and exit way; incandescent light bulbs mustshallwill be protected with appropriate covers. Yard and exterior steps mustshallwill be accessible to individuals residents;

(fe) The heating system mustshallwill be in working order. Areas of the AFH Adult Foster Home used by individuals mustshall residents will be maintained at no less than 68 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider mustshallwill make a reasonable effort to make the individuals residents comfortable using available ventilation or fans;

(gf) There mustshallwill be at least 150 square feet of common space, and sufficient comfortable furniture in the AFH Adult Foster Home to accommodate the recreational and socialization needs of the occupants at one time. Common space mustshallwill not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space is will be required if wheelchairs are to be accommodated;

(gh) Pools and hot tubs mustshallwill be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(2) Accessibility for Persons with Disabilities. Any accessibility improvements made to accommodate an identified individual mustshall resident will be in accordance with the specific needs of the individual resident and will comply with Chapter 11 of the building code.

(3) Outdoor Areas. An AFH shall have an accessible outdoor area is required and must that shall will be made available to individuals residents. A portion of the outdoor area must will be covered and have an all-weather surface, such as a patio or deck.

(4) ~~Storage Areas.~~ Storage ~~offer~~ a reasonable ~~size amount for an de~~ individual's ~~residentpersonal individual~~ belongings beyond that of the ~~individual's unit~~ ~~mustshall~~ resident sleeping room will be made available.;

(a) All yard maintenance equipment ~~mustshall~~ will be maintained in a locked storage if such equipment poses a safety threat.;

(b) A locked storage area for ~~individualresident~~ medications separate from food, laundry, and toxic or hazardous materials ~~mustshall~~ will be made accessible to all caregivers. For ~~individualsresidents~~ who are self-medicating, ~~the provider~~ ~~mustshall make~~ a secured locked box ~~will be made~~ available to assure the safety of all occupants of the home.;

(c) A locked storage area separate from food and medications ~~mustshall~~ will be designated when there are toxic or hazardous materials on the premises.

(5) ~~Bathrooms.~~ All equipment ~~mustshall~~ will be clean and in good repair, ~~and~~ ~~will~~ provide individual privacy, and ~~shall~~ have, ~~but is not limited to, the following:~~

(a) ~~Aa~~ finished interior, ~~a~~ mirror, ~~an~~ operable window or other means of ventilation, ~~and~~ a window covering.;

(b) ~~MustWill have t~~ Tubs or showers, toilets and sinks, ~~and hot and cold water.~~ A sink ~~mustshall~~ will be located near each toilet. A toilet and sink shall ~~will~~ be provided on each floor where rooms of non-ambulatory ~~individualsresidents~~ or ~~individualsresidents~~ with limited mobility are located. There ~~mustshall~~ will be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(c) ~~MustWill have hH~~ Hot and cold water in sufficient supply to meet the needs of ~~individualsresidents~~ for personal hygiene. Hot water temperature sources for bathing areas ~~mustshall~~ will not exceed 120 degrees Fahrenheit;

(d) ~~MustWill have shower~~ Shower enclosures with nonporous surfaces, ~~G~~ glass shower doors ~~will~~ ~~mustshall~~ be tempered safety glass. Shower curtains ~~mustshall~~ will be clean and in good condition. Non-slip floor surfaces ~~will~~ ~~mustshall~~ be provided in tubs and showers;

(e) ~~MustWill have grab~~ Grab bars for toilets, tubs, ~~and/or~~ showers for ~~individual'sresident's~~ safety as required by ~~an individual'sresident's~~ disabilityies;

(f) ~~The homeAFH must~~ may not be designed such that to allow an ~~N~~ person ~~individual or employee mustto~~ will walk through another ~~person's-individual's~~ bedroom to get to a bathroom. ~~Individuals~~ ~~mustshall~~ and will have barrier-free access to toilet and bathing facilities with appropriate fixtures.

(gf) If there are non-ambulatory ~~individuals~~residents; alternative arrangements ~~for non-ambulatory individuals~~residents must shall be appropriate to meet the non-ambulatory individual's~~individual's~~ resident needs for maintaining good personal hygiene.

(hg) ~~Individuals mustshall~~Residents will have appropriate racks or hooks for drying bath linens.

(6) ~~Bedrooms~~Units. All furniture and furnishings ~~mustshall~~will be clean and in good repair. ~~Bedrooms~~Units for all household occupants ~~mustshall~~will have been constructed as a bedroom when the home was built or remodeled under permit; be finished, with walls or partitions of standard construction ~~which that~~ go from floor to ceiling, and a door which opens directly to a hallway or common use room without passage through another ~~bedroom-unit~~ or common bathroom; be adequately ventilated, heated, and lighted with at least one operable window ~~which that~~ meets fire egress regulations. (See Section R310 Emergency Escape and Rescue Openings in the Oregon Residential Specialty Code.) All units mustshall~~resident sleeping rooms will~~ include a minimum of 70 square feet of usable floor space for each ~~individual~~resident or 120 square feet for two ~~individuals~~residents, and have no more than two persons per room, and allow for a minimum of three feet between beds. In addition, the provider mustshall ensure that e following;

(a) Each unit has a lockable entrance door for the individual's privacy: as follows:

(A) The locking device mustshall release with a single-action lever on the inside of the unit and, open to a hall or common-use room;

(B) The provider mustshall provide each individual with a personalized key that operates only the door to his or her unit door from the corridor side;

(C) The provider mustshall maintain a master key to access all of the units that is quickly available to the provider or resident manager as appropriate and documented in the individual's ~~person-centered service plan~~person-centered service plan;

(D) The provider mustmay not disable or remove a lock to a unit without first obtaining consent from the individual ~~or the individual's legal representative~~ through the individually-based limitations process ~~described~~outlined in OAR 411-0040(2) and as incorporated by OAR 309-040-03943; and

(E) ~~Section (6)(a) of these rules and its subsections are~~ is effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(b) Providers, resident managers, or their family members ~~must~~may~~will~~ not sleep in areas designated as living areas, nor share ~~bedrooms-units~~ with ~~individuals~~residents;

(c) In determining maximum capacity, consideration ~~must~~shall~~will~~ be given to whether children over the age of five have a bedroom separate from their parents;

(d) ~~Units must~~shall ~~(e) Bedrooms will~~ be on ground level for ~~individuals~~residents who are non-ambulatory or have impaired mobility;

(e) ~~Individual units must~~shall ~~(d) Resident bedrooms will~~ be in close enough proximity to alert the provider or resident manager to night time needs or emergencies, or be equipped with a call bell or intercom.

(7) ~~Housing Codes. Each AFH's Adult Foster Home~~ established on or after October 1, 2004, ~~must~~shall~~will~~ meet all applicable ~~s~~State building, residential, fire, mechanical, and housing codes for fire and life safety. The ~~AFH must~~shall ~~Adult Foster Home will~~ be inspected for fire safety by an inspector designated by the Authority Division using the recommended standards established by the State Fire Marshal for facilities housing one to five ~~person~~individuals. Refer to Appendix I of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Department Division, a request for fire inspection ~~must~~shall~~will~~ be made to the State Fire Marshal.

(8) Special hazards such as the following:-

(a) Flammable and combustible liquids and hazardous materials ~~must~~shall~~will~~ be safely and properly stored in original, properly labeled containers, or safety containers, and secured to prevent tampering by ~~individuals or others. residents and vandals.~~ Firearms on the premises of an AFH ~~must~~shall be stored in a locked cabinet. The firearms cabinet ~~must~~shall be located in an area of the home that is not readily accessible to ~~individuals~~clients, and all ammunition ~~must~~shall be stored in a separate, locked location;

(b) Smoking regulations ~~will~~shall be adopted to allow smoking only in designated areas. Smoking ~~will~~shall be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design ~~will~~must~~shall~~ be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons, and insecticides ~~must~~shall~~will~~ be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.

(9) ~~Common Use Rooms.~~ All furniture and furnishings ~~must~~shall~~will~~ be clean and in good repair. There ~~must~~shall~~will~~ be at least 150 square feet of common space, and sufficient comfortable furniture in the ~~AFH Adult Foster Home~~ to accommodate the recreational and socialization needs of the occupants at one time. Common space ~~must~~may~~will~~ not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space ~~will~~ shall be required if wheelchairs are to be accommodated.

(10) ~~Laundry and Related Space.~~ All equipment ~~must~~shall~~will~~ be clean and in good repair. Laundry facilities ~~must~~shall~~will~~ be separate from food preparation and other ~~individual resident~~ use areas. The provider must shall maintain the following:

(a) Locked storage area for chemicals that pose a safety threat to ~~individuals residents~~ or family members;

(b) Sufficient, separate storage and handling space to ensure that clean laundry is not contaminated by soiled laundry;

(c) Outlets, venting, and water hookups according to State Building Code requirements; and

(d) Washing machines ~~ers~~ ~~must~~shall~~will~~ have a minimum rinse temperature of 140 degrees Fahrenheit.

(11) ~~Kitchen.~~ All equipment ~~must~~shall~~will~~ be clean and in good repair. The provider must shall maintain an area for dry~~Dry~~ storage, not subject to freezing, in cabinets or a separate pantry ~~with~~for a minimum of one week's supply of staple foods. The provider must shall maintain the following:

(a) Sufficient refrigeration space, maintained at 45 degrees Fahrenheit or less, and freezer space, maintained at 0 degree Fahrenheit or less, for a minimum of two ~~days~~days supply of perishable foods;

(b) A dishwasher with a minimum final rinse of 140 degrees Fahrenheit;

(c) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(d) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(e) Stove and oven equipment for cooking and baking needs;

(f) Storage for a mop and other cleaning tools and supplies used for food preparation, dining, and adjacent areas. Such cleaning tools mustshallwill be maintained separately from those used to clean other parts of the home; and

(g) Dining Space where meals are served mustshallwill be provided to seat all individualsresidents at the same seating.

(12) Details and Finishes:

(a) The building and furnishings mustshallwill be clean and in good repair, and grounds will mustshall be maintained. Walls, ceilings, and floors will mustshall be of such character to permit frequent washing, cleaning, or painting;

(b) ~~Doors, Locks~~If locks are used on doors to individuals' units mustshallresident sleeping rooms, they will be in good repair with an interactive lock to release with operation of the inside door handle and be master keyed from the corridor side and comply with the requirements established by OAR 309-040-0365(6)(a) and its subsections. Exit doors mustmaywill not haveinclude locks that, which prevent evacuation except as permitted by Section 1008.1.8 of the building code. An exterior door alarm or other acceptable system may be provided for security purposes and alert the provider when individualsresident(s) or others enter or exit the home.

(c) Handrails. Handrails mustshallwill be secured on all stairways.

(13) ~~Heating and Ventilation.~~ The heating system mustshallwill be in working order:

(a) ~~Temperature Control.~~ Areas of the ~~AFHAdult Foster Home~~ used by individuals mustshallresidents will be maintained at no less than 68 degrees Fahrenheit during daytime hours and no less than 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider mustshallwill make reasonable effort to make the residents comfortable using available ventilation or fans;

(b) ~~Exhaust Systems.~~ All toilets and shower rooms mustshallwill be ventilated by a mechanical exhaust system or operable window;

(c) ~~Fireplaces, Furnaces, Wood Stoves.~~ Design and installation of fireplaces, furnaces and wood stoves mustshallwill meet standards of the Oregon Mechanical and Residential Specialty Code and ~~will~~ have annual inspections to assure no safety hazard exists;

(d) ~~Water Temperature in IndividualresidentAreas.~~ Hot water temperatures mustshallwill be maintained within a range of 110¼ to 120 degrees Fahrenheit.

Hot water temperatures for washing machines and dishwashers mustshallwill be at least 140 degrees Fahrenheit.

(14) ~~Electrical~~. All electrical systems mustshallwill meet the standards of the Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices mustshallwill be properly wired and in good repair:

(a) When not fully grounded, GFI-type receptacles or circuit breakers as an acceptable alternative may protect circuits in individualresident areas;

(b) Circuit breakers or non-interchangeable circuit-breaker-type fuses in fuse boxes mustshallwill be used to protect all electrical circuits;

(c) A sufficient supply of electrical outlets mustshallwill be provided to meet individualresident and staff needs without the use of extension cords or outlet expander devices;

(d) A functioning light mustshallwill be provided in each room, stairway, and exit way. Lighting Fixtures will must shall be provided in each individualresident bedroom and bathroom, with a light switch near the entry door, and in other areas as required to meet task illumination needs;

(e) Incandescent light bulbs mustshallwill be protected with appropriate covers.

(15) ~~Plumbing~~. All plumbing mustshallwill meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures mustshallwill be properly installed and in good repair.

(16) ~~Pool, Hot Tubs and Ponds~~. Pools, hot tubs, and ponds mustshallwill be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(17) Telephones:

(a) A telephone mustshallwill be available and accessible 24 hours a day for individuals' residents' use for incoming and outgoing calls in the AFHAdult Foster Home;

(b) Emergency telephone numbers for the local CMHP, Police, Fire, Medical, Poison Control, provider, Provider and other emergencies must shallwill be posted by the individuals' residents telephone. The posting mustshallwill include the name, address, and telephone number of the AFHAdult Foster Home, telephone numbers for making complaints or a report of alleged abuse to the local CMHP, the Division, the Office of Adult-Adult Abuse Prevention and Investigations and Training, and the Oregon Advocacy Center;

~~(c) Limitations on the use of the telephone by residents are to be specified in the written house rules. Individual restrictions must be specified in the individual residents PCP. In all cases, a telephone will be accessible to residents for outgoing calls (emergencies) 24 hours a day;~~

(cd) AFH telephone numbers ~~must~~ shall be listed in the local telephone directory;

(de) The ~~provider~~ home may establish reasonable rules governing telephone use to ensure equal access by all ~~individuals~~ residents. Each ~~individual~~ resident or guardian (as applicable) ~~will~~ shall be responsible for payment of long distance phone bills where calls were initiated by the ~~individual~~ resident, unless otherwise mutually agreed arrangements have been made.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0370

Safety

(1) ~~Training on Safety Procedures. The provider must~~ shall train all program ~~All~~ staff ~~will be trained~~ in staff safety procedures prior to beginning their first regular shift. All ~~individuals~~ must ~~residents will~~ be trained in ~~individual~~ resident safety procedures as soon as possible during their first 72 hours of residency.

(2) Emergency Procedures;

(a) An emergency evacuation procedure ~~must~~ shall ~~will~~ be developed, posted, and rehearsed with occupants. A record ~~must~~ shall ~~will~~ be maintained of evacuation drills. Drills ~~must~~ shall ~~will~~ be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes;

(A) Drills ~~must~~ shall ~~will~~ be held at least once every 30 days;

(B) One drill practice ~~must~~ shall ~~will~~ be held at least once every 90 days during ~~individual's~~ resident's nighttime sleeping hours between 10 p.m. and 6 a.m. Fire drill records shall be maintained for three years and ~~will~~ include date, time for full evacuation, safety equipment checked (to include fire extinguishers, smoke detectors, secondary egress points, flashlights, and furnace filters), comments on the drill results, and names of ~~individuals~~ residents requiring assistance for evacuation;

(b) The ~~Personal Care Plan~~ residential care plan must document that, within 24 hours of arrival, each new ~~individual~~ resident has received an orientation to basic

safety and has been shown how to respond to a fire alarm, and how to exit from the ~~AFH~~Adult Foster Home in an emergency;

(c) The provider ~~must~~shall~~will~~ demonstrate the ability to evacuate all ~~individuals~~residents from the ~~facility~~Adult Foster Home within three minutes. If there are problems in demonstrating this evacuation time, the Division~~licensing authority~~ may apply conditions to the license ~~which~~that include, but may not be limited to, reduction of ~~individuals~~residents under care, additional staffing, increased fire protection, or revocation of the license;

(d) The provider ~~must~~shall~~will~~ provide to the Division, maintain as current, and post a floor plan on each floor containing room sizes, location of each ~~individual's~~resident's bed, fire exits, resident manager or provider's sleeping room, smoke detectors, fire extinguishers and escape routes. A copy of this drawing ~~must~~shall~~will~~ be submitted with the application and updated to reflect any change;

(e) There ~~will~~must~~shall~~ be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including a basement.

(3) ~~Disaster Plan~~. A written disaster plan ~~must~~shall~~will~~ be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, and floods. The plan ~~will~~must~~shall~~ be posted by the phone and immediately available to the employees. The plan ~~will~~ shall specify temporary and long-range habitable shelter where staff and ~~individuals~~residents ~~will~~shall ~~reside~~go if the ~~AFH facility~~home becomes uninhabitable.

(4) ~~Poisonous and Other Toxic Materials~~. Non-toxic cleaning supplies ~~must~~shall~~will~~ be used whenever available. Poisonous and other toxic materials ~~must~~shall~~will~~ be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) ~~Evacuation Capability~~. Evacuation capability categories are based upon the ability of the ~~individuals~~residents and staff as a group to evacuate the ~~facility~~home or relocate from a point of occupancy to a point of safety:-

(a) Documentation of ~~an individual's~~a resident's ability to safely evacuate from the ~~facility~~must~~shall~~Adult Foster Home ~~will~~ be maintained in the ~~individual's~~individual resident's personal care plan:-

(b) ~~Individuals~~Persons experiencing difficulty with evacuating in a timely manner ~~must~~shall~~will~~ be provided assistance from staff and offered environmental and other accommodations, as practical. Under ~~these~~such circumstances, the ~~provider~~must~~shall~~Adult Foster Home ~~will~~ consider increasing staff levels, changing staff assignments, offering to change the ~~individual's~~resident's room

assignment, arranging for special equipment, and taking other actions that may assist the ~~individual~~resident;

(c) ~~Individuals~~Residents who still cannot evacuate the home safely in the allowable period of time ~~of (three3 minutes)~~ must mustshallwill be assisted with transferring to another program with an evacuation capability designation consistent with the individual's documented evacuation capability;

(d) Written evacuation records mustshallwill be retained for at least three years. Records mustshallwill include documentation, made at the time of the drill, specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(6) ~~Unobstructed Egress~~. All stairways, halls, doorways, passageways, and exits from rooms and from the home mustshallwill be unobstructed.

(7) ~~Portable Firefighting Equipment~~. At least one 2A-10BC rated fire extinguisher mustshallwill be in a visible and readily accessible location on each floor, including basements, and mustshallwill be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing mustshallwill be completed by a qualified agency properly trained and equipped for this purpose;

(8) ~~Smoke Alarms~~. Approved smoke detector systems or smoke alarms mustshallwill be installed according to Oregon Residential Specialty Code and Oregon Fire Code requirements. These alarms ~~will must shall~~ be tested during each evacuation drill. The ~~provider mustshall~~Adult Foster Home will provide approved signal devices for ~~individuals persons~~ with disabilities who do not respond to the standard auditory alarms. All of these devices mustshallwill be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction. Ceiling placement of smoke alarms or detectors is recommended. Alarms mustshallwill be equipped with a device that warns of low battery when battery operated. All smoke detectors and alarms mustshallare to be maintained in functional condition;

(9) Special hazards:

(a) Flammable and combustible liquids and hazardous materials mustshallwill be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by ~~residents individuals~~ and vandals. Firearms on the premises of an ~~AFHAdult Foster Home~~ must be stored in a locked cabinet. The firearms cabinet must shall be located in an area of the home that is not readily accessible to clients, and all ammunition must be stored in a separate, locked location;

(b) Smoking regulations ~~mustshallwill~~ be adopted to allow smoking only in designated areas. Smoking ~~mustshallwill~~ be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design ~~mustshallwill~~ be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons, and insecticides ~~mustshallwill~~ be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.

(10) ~~Sprinkler Systems~~. Sprinkler systems, if used, ~~mustshallwill~~ be installed in compliance with the Oregon Structural Specialty Code and Oregon Fire Code and maintained in accordance with rules adopted by the State Fire Marshal.

(11) ~~First Aid Supplies~~. First aid supplies ~~mustshallwill~~ be readily accessible to staff. All supplies ~~will mustshall~~ be properly labeled.

(12) ~~Portable Heaters~~. Portable heaters are a recognized safety hazard and ~~will may~~ not be used, except as approved by the State Fire Marshal, or authorized representative.

(13) ~~Safety Program~~. A safety plan ~~mustshallwill~~ be developed and implemented to identify and prevent the occurrence of hazards. Hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0375

Sanitation

(1) ~~Water Supply~~. The water supply in the home shall ~~will~~ meet the requirements of the current Authority rules ~~of the Authority~~ governing domestic water supplies:

(a) A municipal water supply shall ~~will~~ be utilized if available;

(b) When the home is not served by an approved municipal water system, and the home qualifies as a public water system according to OAR 333-061-0020(94) Authority rules for public water systems, then the ~~provider mustshallhome will~~ comply with the OAR chapter 333 ~~rules of the Authority pertaining to public water systems~~. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly, and nitrate at least annually, and reported to

the ~~Authority~~Division. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards. ~~That~~ public notice mustshall be given whenever a violation of the water quality standards occurs, and ~~that~~ records of water testing shall be retained according to ~~the~~AuthorityDivision requirements.

(2) ~~Surfaces~~. All floors, walls, ceilings, windows, furniture, and equipment mustshallwill be kept in good repair, clean, neat, and orderly.

(3) ~~Plumbing Fixtures~~. Each bathtub, shower, lavatory, and toilet mustshallwill be kept clean, in good repair, and regularly sanitized.

(4) ~~Disposal of Cleaning Waste Water. No K~~itchen sinks will may may not shall be used for the disposal of cleaning wastewater.

(5) ~~Soiled Laundry~~. Soiled linens and clothing mustshallwill be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) ~~Pest Control~~. All necessary measures mustshallwill be taken to prevent rodents and insects from entering the home. Should pests be found in the home, appropriate action mustshallwill be taken to eliminate them.

(7) ~~Grounds Maintenance~~. The grounds of the facility mustshall~~home will~~ be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) ~~Garbage Storage and Removal~~. Garbage and refuse receptacles mustshallwill be clean, durable, watertight, insect and rodent proof, and will musshall be kept covered with tight-fitting lids. All garbage and solid waste mustshallwill be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality.

(9) ~~Sewage Disposal~~. All sewage and liquid wastes mustshallwill be disposed of in accordance with the Plumbing Code to a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes mustshallwill be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines, and septic tanks or other non-municipal sewage disposal systems, where applicable, mustshallwill be maintained in good working order.

(10) ~~Biohazard Waste~~. Biohazard waste mustshallwill be disposed of in compliance with the rules of the Department of Environmental Quality.

(11) ~~Infection Control~~. Precautions mustshallwill be taken to prevent the spread of infectious and/or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards.

(a) In accordance with OAR 437-~~002-0368 through 437-002-2226, division 2, subdivision Z, section 1910.1030~~ of the Oregon Occupational Safety and Health Code, ~~program~~ staff ~~mustshallwill~~ employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other blood borne pathogens;

(b) Bathroom facilities ~~mustshallwill~~ be equipped with an adequate supply of toilet paper, soap, and towels.

(12) ~~Infection Control for Pets and Other Household Animals.~~ If pets or other household animals exist at the home, sanitation practices ~~mustshallwill~~ be implemented to prevent health hazards;

(a) ~~These Such~~ animals ~~mustshallwill~~ be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations ~~mustshallwill~~ be maintained on the premises;

(b) Animals not confined in enclosures ~~mustshallwill~~ be under control and maintained in a manner that does not adversely impact ~~individualsresidents~~ or others.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0380

IndividualResident Furnishings

(1) Bedrooms ~~and /Units~~:

(a) Bedrooms for all household occupants ~~and units for individuals~~ ~~mustshallwill~~ have been constructed as a bedroom when the home was built or remodeled under permit; be finished, with walls or partitions of standard construction ~~which that~~ go from floor to ceiling, and a door ~~which-that~~ opens directly to a hallway or common use room without passage through another bedroom ~~or /unit~~ or common bathroom; be adequately ventilated, heated and lighted with at least one operable window ~~which-that~~ meets the requirements of Section R310 of the Oregon Residential Specialty Code; have at least 70 square feet of usable floor space for each ~~individualresident~~ or 120 square feet for two ~~individualsresidents~~ and have no more than two ~~personindividuals~~ per room;

(b) Providers, resident managers, or ~~their~~ family members ~~mustmaywill~~ not sleep in areas designated as living areas, ~~nor~~ share bedrooms ~~or /units~~ with ~~individualsresidents~~;

(c) There ~~mustshallwill~~ be an individual bed for each ~~individualresident~~ consisting of a mattress in good condition and springs at least 36 inches wide. Cots, rollaway, bunks, trundles, couches, and folding beds may not be used for ~~individualsresidents~~. Each bed ~~mustshallwill~~ have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases ~~mustshallwill~~ be laundered at least weekly, and more often if necessary. Waterproof mattress covers ~~mustshallwill~~ be used for incontinent ~~individualsresidents~~. Day care ~~personindividuals~~ may not use ~~individualresident~~ beds;

(d) Each ~~unit mustshallbedroomwill~~ have sufficient separate, private dresser and closet space for each ~~individual'sresident's~~ clothing and personal effects, including hygiene and grooming supplies. ~~Individuals mustshallResidents will~~ be allowed to keep and use reasonable amounts of personal belongings, and to have private, secure storage space. Drapes or shades for windows ~~mustshallwill~~ be in good condition and ~~providerallow~~ privacy for ~~individualsresidents~~;

(e) ~~Units mustshallBedrooms will~~ be on ground level for ~~individualsresidents~~ who are non-ambulatory or have impaired mobility;

(f) ~~Units mustshallResident bedrooms will~~ be in close enough proximity to ~~the~~ provider to alert ~~the~~ provider to night time needs or emergencies, or be equipped with a call bell or intercom.

(2) ~~Personal Hygiene Items.~~ Each ~~individual mustshallresident will~~ be assisted in obtaining personal hygiene items in accordance with individual needs. ~~Items mustshallThese will~~ be stored in a clean and sanitary manner, and may be purchased with the ~~individual'sresident's~~ personal allowance. Personal hygiene items include, but are not limited to, a comb ~~and/or~~ hairbrush, a toothbrush, toothpaste, menstrual supplies (if needed), towels, and washcloths.

(3) ~~Supplies Provided by AFH. Adult Foster Home.~~ Sufficient supplies of soap, shampoo, and toilet paper for all ~~individuals mustshallresidents will~~ be provided.

(4) ~~Common Area Furniture.~~ An adequate supply of furniture for ~~individualresident~~ use in ~~the~~ living room, dining room, and other common areas ~~mustshallwill~~ be maintained in good condition.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0385

Food Services

(1) ~~Well-balanced Diet.~~ Three nutritious meals mustshallwill be served daily at times consistent with those in the community. Meals mustshallwill be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid or as directed by a prescriber. Consideration mustshallwill be given to cultural and ethnic backgrounds of individualsresidents in food preparation.

(2) ~~Modified or Special Diets.~~ An order from an LMP Licensed Medical Professional mustshallwillmust be obtained for each individualresident who, for health reasons, is on a modified or special diet. ~~These Such~~ diets mustshallwill be planned in consultation with the individualresident.

(3) ~~Menus.~~ Menus mustshallwill be prepared at least one week in advance and ~~will~~ provide a sufficient variety of foods served in adequate amounts for each individualresident at each meal and adjusted for seasonal changes. Records of menus, as served, mustshallwill be filed and maintained in the AFHAdult Foster Home for three years. IndividualResident preferences and requests mustshallwill be considered in menu planning. Religious and vegetarian preferences must mustshallwill be reasonably accommodated.

(4) ~~Meal Preparation.~~ Meals mustshallwill be prepared and served in the facilityAdult Foster Home where the individualsresidents live. Payment for meals eaten away from the AFH facility Adult Foster Home for the convenience of the provider (e.g. restaurants, senior meal sites) shall be paid for by is the responsibility of the provider. Meals and snacks as part of an individual recreational outing shall be paid for by are the responsibility of the individual. Food preparation areas mustshallwill be clean, free of obnoxious odors, and in good repair.

(5) ~~Supply of Food and Water.~~ The provider mustshall maintain Aadequate supplies of staple foods, for a minimum of one week, and perishable foods, for a minimum of two days, mustwill be maintained on the premisesat the setting. An emergency supply of potable water mustshall be available such that the provider maintains seven gallons of water per individual.

(6) ~~Adequate Storage.~~ Food mustshallwill be stored, prepared, and served in accordance with the Authority's -Food Sanitation Rules:-

(a) All working refrigerators and freezers mustshallwill have a thermometer in working order_{:-}

(b) Food storage areas and equipment mustshall be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(7) ~~Food Service Equipment.~~ Equipment ~~mustshall~~will be maintained in a safe and sanitary manner. Utensils, dishes, and glassware ~~mustshall~~will be maintained in a sufficient number to accommodate the licensed capacity of the ~~AFHs, Adult Foster Homes.~~ Utensils, dishes, and glassware ~~mustshall~~will be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanitatation cycle is recommended.

(8) The provider shall support the individual's right to access food at any time. The provider may only apply an individually-based limitation when there is a threat to the health and safety of an individual or others, the circumstances meet and the provider complies with the standards and requirements outlined inef OAR 411-050-0655 and as incorporated by OAR 309-040-03931. This subsection is effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(9) If an individual misses a meal at a scheduled time, an alternative meal mustshall be made available.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0390

Standards and Practices for Care and Services

(1) ~~Caregiver Requirements.~~ There ~~mustshall~~ be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an ~~AFH, Adult Foster Home~~ in accordance with ORS 443.725(3).

(2) Medications and Prescriber's Orders:

(a) There ~~mustshall~~ be a copy of a medication, treatment, or therapy order signed by a physician, nurse practitioner, or other licensed prescriber in the ~~individual's resident's~~ file for the use of any medications, including over the counter medications, treatments, and other therapies.

(b) A provider, resident manager, or substitute caregiver ~~mustshall~~will 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 ~~will~~ 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 ~~mustshall~~will be maintained in the ~~individual's resident's~~ record. The provider, resident manager, or substitute caregiver ~~mustshall~~will promptly notify the ~~individual's resident's~~ case manager of any request for a change in ~~individual's resident's~~ orders for medications, treatments, or therapies.

(c) Each individual's resident's medications mustshallwill be clearly labeled with the pharmacist's label or the manufacturer's originally labeled container and kept in a locked location. The provider and/or provider's family medication mustshallwill be stored in a separate locked location. All medication for pets or other animals mustshallwill be stored in a separate locked location. Unused, outdated, or recalled medications mustmaywill not be kept in the AFHAdult Foster Home and mustshallwill be disposed in a manner to prevent diversion into the possession of people other than for whom it was prescribed. The provider mustshallwill document disposal of all unused, outdated, and or recalled medication on individuals' residents' individual drug disposal forms;

(d) Medications mustmaywill not be mixed together in another container prior to administration except as packaged by the pharmacy or by physician order;

(e) A written medication administration record (MAR) for each individual mustshallresident will be kept of all medications administered by the program staffcaregiver to that individualresident, including over the counter medications. The MAR mustshallwill indicate name of medication, dosage and frequency of administration, route or method, dates and times given, and will be immediately initialed by the person-caregiver dispensing using only blue or black indelible ink. Treatments, therapies, and special diets mustshall be immediately documented on the medication administration record including times given, type of treatment or therapy, and initials of the person-caregiver giving it using only blue or black indelible ink. The medication administration record mustshallwill have a legible signature for each set of initials using only blue or black indelible ink;

(f) The MAR mustshallwill 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) Self-administration of medication. For any individualresident who is self-administering medication, the individual's record mustshall include the following documentation:

(A) Documentation that the individualresident has been trained for self-administering of prescribed medication or treatment or that the prescriber has provided documentation that training for the individualresident is unnecessary;

(B) Documentation that the individualresident is able to manage his or her own medication regimen, and the provider mustshallwill keep medications stored in an area that is inaccessible to others and locked;

(C) Documentation of retraining when there is a change in dosage, medication, and time of delivery;

(D) ~~Documentation~~ Of review of self-administration of medication as part of the ~~Personal Care Plan~~ residential care plan process; and

(E) ~~Documentation~~ Of a current prescriber order for self-administration of medication.

(h) Injections may be self-administered by the individual resident, or administered by a relative of the individual resident, 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 ~~must shall~~ will be maintained in the individual's resident's record;

~~(3) Initial Personal Care Plan. The Initial Personal Care Plan will be developed within 24 hours of admission to the Adult Foster Home.~~

~~(4) Personal Care Plan. In accordance with Standards for Adult Mental Health Services, OAR 309-032-0535 Definitions (3) Case management (22) Personal Care Plan and 309-032-0545 Adult Mental Health Services (1)(2) the Provider will develop the PCP in collaboration with the resident and other individuals as appropriate, including the resident's case manager, and guardian as applicable. The Personal Care Plan for an individual resident will be reviewed and updated by the personal care plan team every 180 days or more frequently as necessary in accordance with 309-032-0545 Adult Mental Health Services (2)(g);~~

~~(a) The individual's case manager or other designated person will review and update the individual's personal care services prescription and status as needed;~~

~~(b) If the team agrees that interim changes in the Personal Care Plan are required, the case manager will make the changes.; and address~~

~~(B)~~

~~(35) Delegation of Nursing Care Tasks.~~ 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 [Personal Care Plan](#)[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.

~~(463) Initial Personal Care Plan~~[Residential Care Plan](#). ~~The initial Personal Care Plan~~[residential care plan must](#)shall be developed within 24 hours of admission to the AFH.

~~(74) Personal Care Plan.~~

~~This section and its parts remain in effect until July 1, 2016. On that date, new rules governing PCPs and rules concerning personcentered planning per OAR 309-040-0315(7) become effective and enforceable.~~

~~(a) In accordance with Standards for Adult Mental Health Services, OAR 309-032-0535 Definitions (3) Case management (22) Personal Care Plan and 309-032-0545 Adult Mental Health Services (1)(2) the provider will develop the PCP in collaboration with the individual and others as appropriate, including the individual's case manager, and guardian as applicable. The Personal Care Plan for an individual will be reviewed and updated by the personalcare plan team every 180 days or more frequently as necessary in accordance with 309-032-0545 Adult Mental Health Services (2)(g);~~

~~(b) The individual's case manager or other designated person will review and update the individual's personal care services prescription and status as needed;~~

~~(c) If the team agrees that interim changes in the Personal Care Plan are required, the case manager will make the changes.~~

~~(58) Personal Care Plan Residential Care Plan (RCP).~~

(5) This section ~~(Residential Care Plan)~~ and its subsections ~~parts~~ are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7):

(a) ~~Timing Requirements.~~ 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 and care plan in an ~~RCP~~ within 30 days after admission unless the individual is admitted to the AFH for crisis-respite services.;

(b) ~~Personal Care Plan Residential Care Plan Contents.~~ An ~~RCP~~ is an individualized plan intended to implement and document the provider's delivery of services as well as any individualized limitations contained within the person-centered service ~~p~~plan and identifies the goals to be accomplished through those services. The ~~RCP~~ ~~must~~shall describe the individual's needs, preferences, ~~and~~ capabilities, and what assistance the individual requires for various tasks.;

(c) ~~Development of Personal Care Plan Residential Care Plan.~~ The provider ~~must~~shall develop the ~~RCP~~ based upon the findings of the individual assessment, with participation of the individual ~~and the individual's representative(as applicable),~~ and through collaboration with the individual's primary mental health treatment provider and the person-centered ~~s~~service ~~p~~plan coordinator. With consent of the individual ~~or the individual's representative,~~ 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 ~~must~~shall have proper, prior authorization from the individual, or the individual's representative, prior to such contact;

;

(d) ~~Addressing the Person-Centered Service Plan Person-Centered Service Plan.~~ The ~~RCP~~ ~~must~~shall adequately consider and facilitate the implementation of the individual's ~~Person-centered Service Plan~~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~~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~~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;

(ee) The RPCP~~must~~ 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;

(fe) The provider ~~must~~ shall review and update each individual's RPCP every six months and when an individual's condition changes. The review ~~must~~ 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 ~~aan~~ RPCP contains many changes and becomes less legible, the provider ~~must~~ shall write a new care plan;

(ge) The provider ~~must~~ shall attach the RPCP ~~must be attached to the p~~person-centered s~~service p~~plan as an addendum.

(69) Person-Centered Service Plan~~Person-Centered Service Plan. A person-centered service plan~~person-centered service plan shall be completed in the following circumstances: is required as follows:

(a) A person-centered service plan ~~person-centered service plan coordinator,~~ under contract with the Division ~~, will~~ shall complete a Person-Centered Service Plan~~person-centered service plan~~ with each individual, pursuant to OAR 411-004-0030. The provider ~~must~~ 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~~person-centered service plan~~;

(b) The ~~person-centered service plan coordinator~~person-centered service plan coordinator documents the ~~person-centered service plan~~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 plan~~person-centered service planning process to the maximum extent possible;

(c) The person-centered service plan ~~The person-centered service plan~~ ~~must~~ shall be developed by the individual and, as applicable, the legal or designated representative of the individual, and the ~~p~~person-centered service p~~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 ~~p~~person-centered s~~service p~~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 ~~will~~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.

~~(710) Person-Centered Service Plan~~Person-Centered Service Planning Process. A person-centered service plan mustshall 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 ~~or, as applicable, the individual's representative,~~ to request updates to the ~~person-centered service plan~~ person-centered service plan for the individual, ~~as needed~~;

(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~~ person-centered service plan documented by the person-centered services plan coordinator, signed by the individual ~~or, as applicable, the individual's representative,~~ participants in the ~~person-centered service plan~~ person-centered service planning process, and all ~~individuals~~ persons responsible for the implementation of the ~~person-centered service plan~~ person-centered service plan, including the provider, as described below in section (811)(a)(O) of this rule. The ~~person-centered service plan~~ person-centered service plan is distributed to the individual, ~~and, as applicable, the individual's representative,~~ and other people involved in the ~~person-centered service plan~~ person-centered service plan as described below in section (811)(d) of this rule.

(811) Required Contents of ~~Person-Centered Service Plan~~ person-centered service plan:

(a) When the provider is required to ~~sponsible for develop~~ developing the ~~person-centered service plan~~ person-centered service plan, the provider ~~must~~ 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 ~~must~~shall be presented and documented in the ~~person-centered service plan~~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~~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. ~~and, as applicable, the individual's representative;~~

(N) The written informed consent of the individual;

~~or, as applicable, the individual's representative;~~

(O) Signatures of the individual ~~or, as applicable, the legal or designated representative of the individual~~, participants in the ~~person-centered service plan~~person-centered service planning process, and all people and providers

responsible for the implementation of the person-centered service plan ~~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 spon~~sible for the developed~~spons~~ible for the developed~~ing the
person-centered service plan~~person-centered service plan~~ but provides or will
provide~~services to the individual, the provider must~~shall provide relevant
information and provide necessary support for the person-centered service plan
person-centered service plan coordinator or other persons developing the plan to
fulfill the characteristics described in part (a) of this subsection;

(c) The individual ~~or, as applicable, the individual's representative,~~ decides on the
level of information in the person-centered service plan ~~person-centered service~~
plan that is shared with providers. To effectively provide services, providers
~~must~~shall have access to the portion of the person-centered service plan ~~person-~~
centered service plan that the provider is responsible for implementing;

(d) The person-centered service plan ~~person-centered service plan~~ is distributed
to the individual and, ~~as applicable, the individual's representative, and other~~
people involved in the person-centered service plan ~~person-centered service~~
plan as described above in subsection 9(c) of this section;

;

(e) The person-centered service plan ~~person-centered service plan~~ mustshall
justify and document any individually-based limitation to be applied as described
outlined in OAR 309-040-03934 when ~~conditions~~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 ~~person-centered service plan~~ mustshall be
reviewed and revised:

(A) At the request of the individual: ~~or, as applicable, the individual's~~
representative;

(B) When the circumstances or needs of the individual change; or

(C) Upon reassessment of functional needs as required every 12 months.

(912) Crisis Respite Individuals. Because it may not be possible to assemble
complete records and develop a person-centered service plan~~person-centered~~
service plan during the crisis-respite individual's short stay, the provider is not

required to develop a ~~person-centered service plan~~person-centered service plan under these rules, but ~~must~~shall, at a minimum, develop an initial care plan as required by ~~subsection (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 ~~must~~shall provide relevant information and provide necessary support for the ~~person-centered service plan coordinator~~person-centered service plan coordinator as described in section (11)(b) of this rule.

~~(10)36) Individual Resident Records.~~ The provider ~~must~~shall develop an ~~An~~ individual record for each individual. The provider ~~must~~shall ~~keep the individual record will be developed, kept~~ current, and available on the premises for each individual admitted to the AFH. The provider ~~must~~shall maintain an individual record consistent with the following requirements~~resident admitted to the Adult Foster Home:~~

(a) ~~General Information:~~ The record must shall include:

~~(A) The provider will maintain a record for each individual in the home. The record must include:~~

~~(Ai)~~ The ~~individual's~~resident's name, previous address, date of entry into ~~AFH~~Adult Foster Home, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid ~~and/~~and Medicare numbers where applicable, guardianship status, and;

~~(Bi)~~ The name, address, and telephone number of:

~~(ii)~~ The ~~individual's~~Resident's legal representative, designated representative, family, advocate, or other significant person;

~~(iii)~~ The ~~individual's~~resident's preferred primary health provider, designated back up health care provider, ~~and/~~and clinic;

~~(iiiH)~~ The ~~individual's~~resident's preferred dentist;

~~(iv)~~ The ~~individual's~~resident's day program or employer, if any;

~~(v)~~ The ~~individual's~~residents case manager; and

~~(vi)~~(Vi) Other agency representatives providing services to the ~~individual~~resident.

~~(CB)~~ ~~Individual Resident~~ records ~~must~~shall be available to ~~representatives of~~ the Authority conducting ~~inspections~~inspections or investigations, as well as to ~~the individual, or the individual's residents, their authorized~~ representative ~~or other legally authorized persons;~~

~~(DC) Record Retention.~~ Original ~~individual resident~~ records ~~must shall will~~ be kept for a period of three years after discharge when ~~an individual a resident~~ no longer resides in the ~~AFH Adult Foster Home~~;

~~(ED)~~ In all other matters pertaining to confidential records and release of information, providers ~~must shall will~~ 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 ~~Hepatitis B status and~~ previous TB tests, incidents or injuries affecting the health, safety or emotional well-being of any ~~individual resident~~.

(c) ~~Individual Resident~~ Account Record:

(A) ~~Individual's Resident's~~ Income Sources;

(B) Refer to ~~individual's resident's personal care plan~~ residential care plan with supporting documentation from the income sources to be maintained in the ~~individual's resident's~~ individual record;

(C) ~~Individual's Resident's room and board and service costs. The~~ ~~Individual Resident~~ or ~~the individual's representative designated guardian will~~ shall agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy ~~must shall will~~ be given to the ~~individual, the individual's representative resident, resident's guardian~~, and the original in the ~~individual's resident's~~ individual record;

(D) ~~Individual's Resident's~~ record of discretionary funds.

(d) If ~~an individual a resident~~ maintains custody and control of ~~his or her their~~ discretionary funds, then no accounting record is required;

(e) If a designee of the ~~AFH Adult Foster Home~~ maintains custody and control of ~~an individual's a resident's~~ discretionary fund, a signed and dated account and balance sheet ~~must shall~~ be maintained with supporting documentation for expenditures \$10 and greater. The ~~AFH Adult Foster Home~~ designee ~~must shall~~

have specific written permission to manage an individual's individual resident's discretionary fund.;

(f) House Rules: The provider must shall maintain a copy of the written house rules with documentation that the provider discussed the house rules with the individual.;

~~(f) Personal Care Plan. The resident's PCP is prepared by the PCP Team. The PCP Team addresses each resident's support needs, each service provider's program plan and prepares PCP for the resident. The PCP will be developed at the time of admission, reviewed every 180 days and updated at least annually or when indicated by changing resident needs. The PCP will describe the resident's needs and capabilities including when and how often care and services will be provided and by whom. The PCP will include the provision of at least six hours of activities each week that are of interest to the resident, not including television or movies made available to the resident by the provider.~~

~~(A) Description of residents strengths and abilities;~~

~~(B) The activities of daily living where the resident requires full assistance;~~

~~(C) The activities of daily living where the resident requires partial assistance with encouragement and training;~~

~~(D) Other areas or concerns;~~

~~(E) Any mental and/or physical disabilities or impairments relevant to the service needs of the resident;~~

~~(F) The ability of the resident to exit from the Adult Foster Home in an emergency and the time required to exit;~~

~~(G) Instruction and documentation of tasks delegated to the provider by the registered nurse, with the name and license number of the delegating registered nurse; and~~

~~(H) Dates of review and signature of person preparing the PCP.~~

~~(g) House Rules: Develop 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. House rules will be discussed with residents and their families at the time of arrival and be posted in a conspicuous place in the AFH. House rules are subject to review and approval by the Authority or designee and may not violate resident's rights as stated in ORS 430.210. A copy~~

~~of the written house rules with documentation that the rules have been discussed with the resident.~~

(gh) ~~Unusual Incidents:~~ A written incident report of ~~anyall~~ unusual incidents relating to the ~~AFHAdult Foster Home~~ including but not limited to ~~individualresident~~ care. The incident report ~~mustshallwill~~ include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the ~~individualresident~~. In compliance with HIPAA rules, only ~~the~~ ~~individual'sone resident's~~ name ~~maywill~~ be used ~~in theon each~~ incident report. Separate reports ~~mustshallwill~~ be written for each ~~individualresident~~ involved in an incident. A copy of the incident report ~~mustshallwill~~ be submitted to the CMHP within five working days of the incident. The original ~~will mustshall~~ be placed in the ~~individual's individualresidents~~ record.

(hi) ~~General Information:~~ Any other information or correspondence pertaining to the ~~individualresident~~;

(ij) ~~Progress Notes:~~ Progress notes ~~mustshallwill~~ be maintained within each ~~individual'sresident's~~ record and document significant information relating to all aspects of the ~~individual'sresident's~~ functioning and progress toward desired outcomes as identified in the ~~individual's resident's individual~~ personal care plan. A progress note ~~mustshallwill~~ be entered in the ~~individual'sresident's~~ record at least once each month.

(1147) Residents' Bill of Rights:-

(a) The ~~provider mustshall~~~~Provider will~~ guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider ~~mustshallwill~~ post ~~a copy of the Individual'sResidents' Bill of Rightsthem~~ in a location that is accessible to ~~individuals, individuals' representatives, residents and~~ parents, guardians, and advocates. ~~The provider mustshall give a~~ A copy of the Residents' Bill of Rights ~~will be given~~ to each ~~individual, individual's' representativeresident~~, parent, guardian, and advocate along with a description of how to exercise these rights:-

(b) The provider ~~mustshallwill~~ explain and document in the ~~individual'sresident's~~ file that a copy of the Residents' Bill of Rights ~~wasis~~ given to each ~~individualresident~~ at admission, and is posted in a conspicuous place including the name and phone number of the office to call ~~in order~~ to report complaints.

(1258) ~~Physical Restraints. Physical Restraints are not allowed.~~ Providers, resident managers, or substitute caregivers ~~mustmaywill~~ not ~~useemploy~~ physical restraints for individuals receiving personal care services authorized or funded through the Division.

(1369) ~~General Practices:~~ The provider ~~mustshallwill~~:

(a) Conspicuously post the State license and Abuse and Complaint poster where it can be seen by individualsresidents;

(b) Cooperate with AuthorityDivision personnel or designee in complaint investigation procedures, abuse investigations, and protective services, planning for individualresident care, application procedures, and other necessary activities, and allow access of AuthorityDivision personnel to the AFH, its individualsresidents, and all records;

(c) Give care and services, as appropriate to the age and condition of the individualresident(s), and as identified on the RPCP. The provider mustshall ~~ensurewill be responsible for ensuring~~ that physicians' orders and those of other medical professionals are followed, and that the individual'sresident's physicians and other medical professionals are informed of changes in health status ~~and/or~~ if the individualresident refuses care;

(d) House Rules:-

(A) The provider mustshall 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 mustshall discuss house rules with the individual and the individual's representative and families at the time of arrival and be posted in a conspicuous place in the facility. The provider mustshall 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 mustmay not restrict or limit the ~~home-like qualities~~individual rights under ~~identified in~~ OAR 309-040-0410(2). This subsection is effective July 1, 2016, and enforceable according to 309-040-0315(7).

(ed) In the provider's absence, the provider mustshallwill have a resident manager or substitute caregiver on the premises to provide care and services to individualsthe residents. For absences greater than 72 consecutive hours, the CMHP mustshall be notified of the name(s) of the substitute caregiver ~~(s)~~for the provider or resident manager:-

(fe) A provider, resident manager, or substitute caregiver mustshallwill be present in the home at all times:-

(~~gf~~) Allow and encourage individualsresidents to exercise all civil and human rights accorded to other citizens;

(~~hg~~) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of individualsresidents;

(~~ih~~) Provide care and services as agreed to in the RPCP;

(~~ji~~) Keep information related to individualresident(s) confidential as required under ORS 179.050;

(~~kj~~) ~~EnsureAssure~~ that the number of individualsresidents requiring nursing care does not exceed the provider's capability as determined by the CMHP and/or the Division or CMHP;

(~~lk~~) Not admit individuals who are clients of Aging and People with Disabilities without the express permission of the AuthorityDivision or their designee;

(~~ml~~) Notify the AuthorityDivision prior to a closure and give individuals, the individuals' representative~~residents~~, 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 individualsresidents, providers, or caregivers. If a provider has more than one AFH, an individualresidents may not cannot be shifted from one AFH to another without the same period of notice unless prior approval is given and agreement obtained from individualsresidents, family members, and CMHP;

(~~nm~~) Exercise reasonable precautions against any conditions which that could threaten the health, safety, or welfare of individualsresidents;

(~~on~~) Immediately notify the appropriate RPCP Team members (in particular the CMHP representative and family or /guardian) if: the individualresident has a significant change in ~~their~~ medical status; the individualresident has an unexplained or unanticipated absence from the AFHAdult Foster Home; the provider becomes aware of alleged or actual abuse of the individualresident; the individualresident has a major behavioral incident, accident, illness, hospitalization; the individualresident contacts, or is contacted by, the police; or the individualresident dies, and follow-up with an incident report.

(~~1470~~) Incident Reports. The provider mustshallwill 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 mustshallwill be reported to the Office of Investigations and Training within 24 hours of occurrence.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

~~309-040-0391~~

~~Individually-Based Limitations~~

~~This rule becomes effective on July 1, 2016 and enforceable according to OAR 309-040-0315(7).~~

~~(1) When the home-like qualities described below create a threat to the health and safety of an individual or others, a provider may seek to apply individually-based limitation through the process described in this rule. A provider may not otherwise limit the following home-like qualities without a valid individually-based limitation:~~

~~(a) The freedom and support to access food at any time;~~

~~(b) Have visitors of the individual's choosing at any time;~~

~~(c) Have a unit entrance door that is lockable by the individual with only appropriate program staff having access;~~

~~(d) Choose a roommate when sharing a unit;~~

~~(e) Furnish and decorate the individual's unit as agreed to in the Residency Agreement;~~

~~(f) The freedom and support to control the individual's schedule and activities; and~~

~~(g) Privacy in the individual's unit.~~

~~(2) Minimum Requirements for Applying Individually-Based Limitation: A provider may only apply an individually-based limitation if:~~

~~(a) The quality threatens the health or safety of the individual or others;~~

~~(b) The individually-based limitation is supported by a specific assessed need;~~

~~(d) The individual or the individual's legal representative consents;~~

~~(e) The limitation is directly proportionate to the specific assessed need; and~~

~~(f) The individually-based limitation will not cause harm to the individual.~~

~~(3) The provider must demonstrate and document that the individually-based limitation meets the requirements of subsection (2) of this rule and that the conditions described below exist in the person-centered service plan. The provider must submit and sign a provider-created form that includes the following:~~

~~(a) The specific and individualized assessed need justifying the individually-based limitation;~~

~~(b) The positive interventions and supports used prior to consideration of any individually-based limitation;~~

~~(c) Documentation that the provider or other entities have tried other less intrusive methods but did not work;~~

~~(d) A clear description of the limitation that is directly proportionate to the specific assessed need;~~

~~(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;~~

~~(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;~~

~~(g) The informed consent of the individual or, as applicable, the individual's legal representative, including any discrepancy between the wishes of the individual and the consent of the legal representative; and~~

~~(h) An assurance that the interventions and support do not cause harm to the individual.~~

~~(4) The provider must:~~

~~(a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in subsection (3) of this rule. The form must be signed by the individual, or, if applicable, the individual's legal representative;~~

~~(b) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and~~

~~(c) Request review of the individually-based limitation by the Person-Centered Service Plan Coordinator when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed, but no less than annually.~~

~~(5) The qualities and obligations described in sections (1)(b)-(g) do not apply to an individual receiving crisis respite services and a provider is not required to seek an individually based limitation for such an individual to comply with these rules.~~

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17

309-040-0392

Residency Agreement

~~This rule become effective July 1, 2016 and is enforceable as described in OAR 309-040-0315(7).~~

~~(1) The provider must enter into a written residency agreement with each individual or the individual's representative residing at the AFH consistent with the following:~~

~~(a) The written residency agreement must be signed by the provider and the individual, or the individual's representative, prior to or at the time of admission;~~

~~(b) The provider must provide a copy of the signed agreement to the individual or the individual's representative and must retain the original signed agreement within the individual's individual record;~~

~~(c) The provider must give written notice to an individual and the individual's representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and~~

~~(d) Updates to Residency Agreements: The provider must update residency agreements at least annually and also when social security rates change or an individual's finances change such that the amount paid for room and board changes.~~

~~(2) The residency agreement must include, but is not limited to, the following terms:~~

~~(a) Room and Board. The residency agreement must include the room and board agreement including the room and board rate describing the estimated public and private pay portions of the rate.~~

~~(A) Where an individual's social security or other funding is not active at the time of admission to the program, the program must prepare the room and board agreement based upon the estimated benefit to be received by the individual; and~~

~~(B) If, when funding is later activated, actual income of the individual varies from the estimated income noted on the residency agreement, the agreement must be updated and re-signed by all the applicable parties.~~

~~(b) Services and supports to be provided in exchange for payment of the room and board rate;~~

~~(c) Conditions under which the provider may change the rates;~~

~~(d) The provider's refund policy in instances of an individual's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the home;~~

~~(e) A statement indicating that the individual is not liable for damages considered normal wear and tear;~~

~~(f) The provider's policies on voluntary moves and whether or not the provider requires written notification of a non-Medicaid individual's intent to not return;~~

~~(g) The potential reasons for involuntary termination of residency in compliance with this rule and individual's rights regarding the eviction and appeal process as described in OAR 309-040-0410;~~

~~(h) Any policies the provider may have on the use of alcohol, cannabis, and illegal drugs of abuse;~~

~~(i) Smoking policies in compliance with the Tobacco Freedom Policy established by the Division;~~

~~(j) Policy addressing pet and service animals. The provider must not restrict animals that provide assistance or perform tasks for the benefit of a individual with a disability. Such animals are often referred to as services animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.~~

~~(k) Policy regarding the presence and use of legal medical and recreational marijuana at the home;~~

~~(l) Schedule of meal times. The provider must not schedule meals with more than a fourteen (14)-hour span between the evening meal and the following morning's meal consistent OAR 411-050-0645);~~

~~(m) Policy regarding refunds for individuals eligible for Medicaid services, including pro-rating partial months and if the room and board is refundable;~~

~~(n) Any house rules or social covenants required by the provider which may be included in the agreement or as an addendum;~~

~~(o) The provider must also include the following in the residency agreement:~~

~~(A) Statement informing the individual of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), which must not be limited without the informed, written consent of the individual or the individual's representative and include the right to:~~

~~(i) Live under a legally enforceable agreement with protections substantially equivalent to landlord/tenant laws;~~

~~(ii) The freedom and support to access food at any time;~~

~~(iii) To have visitors of the individual's choosing at any time;~~

~~(iv) Have a lockable door in the individual's unit, which may be locked by the individual;~~

~~(v) Choose a roommate when sharing a unit;~~

~~(vi) Furnish and decorate the individual's unit according to the Residency Agreement;~~

~~(vii) The freedom and support to control the individual's schedule and activities; and~~

~~(viii) Privacy in the individual's unit.~~

~~(3) The provider may not propose or enter into a residency agreement that:~~

~~(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits;~~

~~(b) Includes any illegal or unenforceable provision or ask or require the individual to waive any of the individual's rights or licensee's liability for negligence; or~~

~~(c) Conflict with individual rights or these rules.~~

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 – 443.825

309-040-~~039~~31

Individually-Based Limitations

This rule becomes effective on July 1, 2016, and enforceable according to OAR 309-040-0315(7).

(1) When the home-like qualities described below create a threat to the health and safety of an individual or others, a provider may seek to apply individually-based limitation through the process described in this rule. A provider may not otherwise limit the following home-like qualities without a valid individually-based limitation:

(a) The freedom and support to access food at any time;

(b) Have visitors of the individual's choosing at any time;

(c) Have a unit entrance door that is lockable by the individual with only appropriate program staff having access;

(d) Choose a roommate when sharing a unit;

(e) Furnish and decorate the individual's unit as agreed to in the Residency Agreement;

(f) The freedom and support to control the individual's schedule and activities; and

(g) Privacy in the individual's unit.

(2) Minimum Requirements for Applying Individually-Based Limitation: A provider may only apply an individually-based limitation if:

(a) The quality threatens the health or safety of the individual or others;

(b) The individually-based limitation is supported by a specific assessed need;

(d) The individual ~~or the individual's legal representative~~ consents;

(e) The limitation is directly proportionate to the specific assessed need; and

(f) The individually-based limitation will not cause harm to the individual.

(3) The provider ~~must~~shall demonstrate and document that the individually-based limitation meets the requirements of ~~sub~~section (2) of this rule and that the conditions described below exist in the ~~person-centered service plan~~person-centered service plan. The provider ~~must~~shall submit and sign a provider-created form that includes the following:

(a) The specific and individualized assessed need justifying the individually-based limitation;

(b) The positive interventions and supports used prior to consideration of any individually-based limitation;

(c) Documentation that the provider or other entities have tried other less intrusive methods but did not work;

(d) A clear description of the limitation that is directly proportionate to the specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;

(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;

(g) The informed consent of the individual ~~or, as applicable, the individual's legal representative~~, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(h) An assurance that the interventions and support do not cause harm to the individual.

(4) The provider ~~must~~shall:

(a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in ~~subsection~~ (3) of this rule. The form ~~must~~shall be signed by the individual, ~~or, if applicable, the individual's legal representative~~;

(b) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and

(c) Request review of the individually-based limitation by the ~~Person-Centered Service Plan Coordinator~~person-centered service plan coordinator when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed, but no less than annually.

(5) The qualities and obligations described in sections (1)(b)-(g) do not apply to an individual receiving crisis-respite services, and a provider is not required to seek an individually-based limitation for such an individual to comply with these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-039~~42~~

Residency Agreement

This rule become effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).

(1) The provider ~~must~~shall enter into a written residency agreement with each individual or the individual's representative residing at the AFH consistent with the following:

(a) The written residency agreement ~~must~~shall be signed by the provider and the individual, ~~or the individual's representative~~, prior to or at the time of admission;

(b) The provider ~~must~~shall provide a copy of the signed agreement to the individual or the individual's representative and ~~must~~shall retain the original signed agreement within the individual's individual record;

(c) The provider ~~must~~shall give written notice to an individual and the individual's representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and

(d) ~~Updates to Residency Agreements:~~ The provider ~~must~~shall update residency agreements at least annually and also when social security rates change or an individual's finances change such that the amount paid for room and board changes.

(2) The residency agreement ~~must~~shall include, but is not limited to, the following terms:

(a) ~~Room and Board. The residency agreement must include t~~The room and board agreement including the room and board rate describing the estimated public and private pay portions of the rate.;

(A) Where an individual's social security or other funding is not active at the time of admission to the program, the program ~~must~~shall prepare the room and board agreement based upon the estimated benefit to be received by the individual; and

(B) If, when funding is later activated, actual income of the individual varies from the estimated income noted on the residency agreement, the agreement ~~must~~shall be updated and re-signed by all the applicable parties.

(b) Services and supports to be provided in exchange for payment of the room and board rate;

(c) Conditions under which the provider may change the rates;

(d) The provider's refund policy in instances of an individual's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the home;

(e) A statement indicating that the individual is not liable for damages considered normal wear and tear;

(f) The provider's policies on voluntary moves and whether or not the provider requires written notification of a non-Medicaid individual's intent to not return;

(g) The potential reasons for involuntary termination of residency in compliance with this rule and individual's rights regarding the eviction and appeal process as ~~described~~ outlined in OAR 309-040-0410;

(h) Any policies the provider may have on the use of alcohol, cannabis, and illegal drugs of abuse;

(i) Smoking policies in compliance with the Tobacco Freedom Policy established by the Division;

(j) Policy addressing pet and service animals. The provider ~~must~~may not restrict animals that provide assistance or perform tasks for the benefit of an individual with a disability. Such animals are often referred to as services animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.

(k) Policy regarding the presence and use of legal medical and recreational marijuana at the home;

~~(L)~~ Schedule of meal times. The provider ~~must~~may not schedule meals with more than a ~~fourteen~~ (14)-hour span between the evening meal and the following morning's meal consistent with OAR 411-050-0645);

(m) Policy regarding refunds for individuals eligible for Medicaid services, including pro-rating partial months, and if the room and board is refundable;

(n) Any house rules or social covenants required by the provider ~~which~~that may be included in the agreement or as an addendum;

~~(o) The provider must also include the following in the residency agreement:~~

~~(A)~~ Statement informing the individual of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), which ~~must~~may not be limited without the informed, written consent of the individual ~~or the individual's representative~~ and include the right to:

~~(A)~~ Live under a legally enforceable agreement with protections substantially equivalent to landlord-/tenant laws;

~~(B)~~ The freedom and support to access food at any time;

~~(C)~~ To have visitors of the individual's choosing at any time;

~~(D)~~ Have a lockable door in the individual's unit, ~~which~~that may be locked by the individual;

(Ev) Choose a roommate when sharing a unit;

(Fvi) Furnish and decorate the individual's unit according to the Residency Agreement;

(Gvii) The freedom and support to control the individual's schedule and activities; and

(Hviii) Privacy in the individual's unit.

(3) The provider may not propose or enter into a residency agreement that:

(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits;

(b) Includes any illegal or unenforceable provision or asks or requires the individual to waive any of the individual's rights or the licensee's liability for negligence; or

(c) Conflicts with individual rights or these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0395

Standards for Admission, Transfers, Respite, Discharges, and Closures

(1) Each individual referred for placement in an AFH ~~may have the right to pick select~~ and choose from available service settings.

(2) ~~Admission.~~ A provider ~~may~~ will only admit an individual ~~accept a resident into their Adult Foster Home~~ with a referral from, or the prior written approval ~~of, staff~~ of the CMHP or the Authority Division. At the time of the referral, a provider ~~will~~ shall be given complete information about the case history of the individual ~~a resident~~ as it relates to behavior, skill level, medical status, or other relevant information. The provider ~~retains~~ will retain the right to ~~may~~ deny admission of any person-individual if the provider believes they feel the person-individual cannot be managed effectively in the AFH ~~Adult Foster Home~~, or for any other reason not specifically prohibited by this rule. AFHs ~~Adult Foster Homes will~~ 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 Authority Division.

(3) Transfers:

(a) ~~An individual must~~may~~A resident may~~ not be transferred by a provider to another ~~AFHAdult Foster Home~~ or moved out of the ~~AFHAdult Foster Home~~ without 30 days advance written notice to the ~~individualresident~~, the ~~individual'sresident's legal~~ representative, guardian, or conservator, and the CMHP_;.

(b) The written notice shall state theing reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070_; and the ~~individual'sresident'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 ~~individualresident~~ or other ~~individualss~~_; ~~for a medical emergency, or to protect the welfare of the individualresident or other individuals. A provider residents. Residentsmay shall~~ only transfer an individual~~be transferred by a provider~~ for the following reasons:

(A) Behavior that poses a significant danger to the ~~individualresident~~ or others;

(B) Failure to make payment for care;

(C) The ~~AFHAdult Foster Home~~ has had its license revoked, not renewed, or voluntarily surrendered; or

(D) The ~~individual'sresident's~~ care needs exceed the ability of the provider.

(db) ~~IndividualsResidents~~ who object to the transfer ~~will~~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 ~~individualresident~~, and at the ~~individual'sresident's~~ request, the provider, a family member_; and a CMHP staff member.

(43) Respite. Providers ~~mustmaywill~~ not exceed the licensed capacity of the ~~AFHtheir Adult Foster Home~~. However, respite care of no longer than two weeks duration may be provided an personindividual if the addition of the respite ~~personindividual~~ does not cause the total number of residents to exceed five. Thus, a provider may exceed the licensed number of residents by one respite ~~individualresident~~, for two weeks or less_; if approved by the CMHP or the ~~AuthorityDivision~~, and if the total number of residents does not exceed five.

(54) Discharge:

(a) A provider may only discharge an individuala-resident for thevalid reasons ~~equivalent to those for transfers~~ stated in section paragraphs(32)(a)(A) through (D) of this rule. The provider ~~mustshallwill~~ give at least 30 days written notice to an individuala-resident and the AuthorityDivision before termination of residency,

except where undue delay might jeopardize the health, safety, or well-being of the individual resident or others;

(b) The provider ~~must~~shall~~will~~ promptly notify ~~staff of~~ the CMHP or Authority Division if ~~an individual a resident~~ gives notice or plans to leave the AFH Adult Foster Home or if ~~an individual a resident~~ abruptly leaves.

(65) ~~Closing~~. Providers ~~must~~shall~~will~~ notify the Authority Division prior to a voluntary closure of an AFH Adult Foster Home, and give individuals residents, families, and the CMHP, 30 ~~days~~days written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of an individual, provider, residents, providers or caregiver caregivers. If a provider has more than one AFH, ~~an individual Adult Foster Home, residents~~ 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 residents, family members, and the CMHP.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0400

Inspections

(1) ~~Authority Division or Designee Inspections~~. The Authority Division or ~~designee~~ shall~~will~~ conduct an inspection of an AFH Adult Foster Home:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals residents; or

(c) Anytime the Authority Division has probable cause to believe that an AFH Adult Foster Home has violated a regulation or provision of these rules or is operating without a license.

(2) ~~Authority Division Inspections~~. The Authority Division or CMHP may conduct inspections of an AFH Adult Foster Home:

(a) Anytime such inspections are authorized by these rules and any other time the CMHP or Authority Division or CMHP considers it necessary to determine if an AFH Adult Foster Home is in compliance with these rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring of the individuals'~~residents'~~ care.

(3) ~~State or Local Fire Inspectors.~~ State or local fire inspectors ~~must~~shall~~will~~ be permitted access to enter and inspect the ~~AFH Adult Foster Home~~ regarding fire safety upon request of the ~~CMHP or Authority Division~~ or CMHP.

(4) ~~Full Access by the Authority Division and/or CMHP.~~ The Authority Division and CMHP ~~shall and/or CMHP staff must~~will have full access ~~and authority division~~ to examine ~~, among other things, AFH facility and individual resident~~ records and accounts, including individual records and accounts, and to inspect the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) ~~Interviews.~~ The Authority Division or CMHP staff ~~must~~shall be permitted~~will~~ ~~have authority~~ to interview the provider, resident manager, caregiver, and ~~individuals~~residents. Interviews ~~are~~will be confidential ~~and~~ conducted in private, and ~~are~~will be confidential except as considered public record under ORS 430.763.

(6) ~~Authorized Entrance to AFH Adult Foster Home.~~ Providers ~~must~~shall authorize resident managers and substitute caregivers to permit entrance by the Authority Division or CMHP staff for the purpose of inspection and investigation.

(7) ~~Authority Division to Conduct Inspections with or without Advance Notice.~~ The Authority Division and/or CMHP staff ~~shall~~ have authority to conduct inspections with or without advance notice to the provider, staff, or ~~an individual a resident~~ of the ~~AFH Adult Foster Home~~. The Authority Division and/or CMHP ~~will~~ may not give advance notice of any inspection if ~~they believe that~~ notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) ~~Search Warrant.~~ If the Authority Division and/or CMHP staff is not permitted access or inspection, a search warrant may be obtained.

(9) ~~Respect Private Possessions.~~ The inspector ~~will~~ shall respect the private possessions and living area of individuals~~residents~~, providers, and caregivers while conducting an inspection.

(10) ~~Confidential Information.~~ Completed reports on inspections, except for confidential information, ~~will~~ shall be available to the public, upon written request to the Authority Division and/or CMHP, during business hours.

(11) ~~Investigate Allegations of Abuse.~~ For individuals receiving services authorized ~~and/or~~ funded by ~~HSD the Division the Addictions and Mental Health Services Division~~, the Authority Division ~~or its designee~~ will shall investigate allegations of abuse as defined in ORS 430.735 to 430.765.

(12) ~~Alleged Abuse.~~ When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Authority Division ~~and/or~~ its designee, has determined to initiate an investigation, the provider ~~must~~may~~will~~ not conduct an internal investigation without prior authorization from the Authority Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator, or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred; or
- (b) If the alleged victim is in danger or in need of immediate protective services; or
- (c) If there is reason to believe that a crime has been committed; or
- (d) What, if any, immediate personnel actions ~~will~~must be taken.

(13) ~~Completion of Abuse Investigation.~~ ~~The~~he Authority Division or its designee ~~will~~shall complete ~~an an a~~Abuse ~~i~~nvestigation and ~~p~~Protective ~~s~~Services ~~r~~Report ~~according to in accordance with~~ OAR ~~404-045-0300~~943-045-0250 through 0370. ~~The report will~~shall include the findings based upon the abuse investigation as defined in ~~OAR~~943-045-0260 (12) Inconclusive, (16) Not Substantiated, (22) Substantiated.

(14) ~~Provider Notified of Completion of Investigation.~~ When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without ~~further~~Authority Division approval to determine if any other personnel actions are necessary.

(15) ~~Abuse Investigation and Protective Services Report.~~ Upon completion of the investigation report according to OAR 943-045-0320, the sections of the report ~~which that~~ are public records and not exempt from disclosure under the public records law ~~will~~shall be provided to the appropriate provider. The provider ~~must~~shall~~will~~ implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(16) ~~Prohibition of Retaliation.~~ A provider ~~must~~may~~will~~ not retaliate against any person who reports in good faith suspected abuse, or against the individual resident with respect to the report.

(17) ~~Retaliatory Liability.~~ In accordance with ORS 430.755 any provider who retaliates against any person because of a report of suspected abuse or neglect may be liable according to 430.755, in a private action to that person for actual

damages and, in addition, a penalty in accordance with 443.775(10) notwithstanding any other remedy provided by law. The authority of the ~~d~~Director to impose civil penalties and the factors to be considered ~~will~~shall be in accordance with 443.790.

(18) ~~Adverse Action Creates a Presumption of Retaliation.~~ In accordance with OAR 943-045-0340 Adverse Action, any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this ~~sub~~section, "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to the following:

(a) Discharge or transfer from the ~~AFH~~Adult Foster Home, except for clinical reasons;

(b) Discharge from or termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its residents.

(19) ~~Adverse Action Limits.~~ Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0405

Procedures for Correction of Violations

(1) ~~Conference Request.~~ At any time after receipt of a notice of violations or an inspection report, the licensee or the Division may request a conference, in writing. The conference ~~will~~shall be scheduled within ten days of a request by either party. The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the rules. The written request by a licensee or the Division for a conference ~~will~~shall not extend any previously established time limit for correction.

(2) ~~Notification of Correction.~~ The licensee ~~will~~shall notify the Division of correction of violations, in writing, no later than the date specified in the notice of violation.

(3) ~~No Report of Compliance.~~ If, after inspection of the ~~AFH Adult Foster Home~~, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more of the following actions:

(a) Imposition of an administrative sanction that may include revocation, suspension, placement of conditions on the license, or non-renewal of a license as deemed appropriate by the Division;

(b) Filing of a criminal complaint.

(4) ~~Serious and Immediate Danger.~~ If ~~an individual is~~ residents are in serious and immediate danger, the license may be immediately suspended or revoked and arrangements made to move the ~~individuals~~ residents.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0410

Individual Residents' Residents's' Bill of Rights, Complaints, and Grievances

(1) Residents' Bill of Rights:

(a) The provider ~~must~~ shall ~~will~~ guarantee ~~the Residents' Individuals' Bill of Right~~ Residents' Bill of Rights as described in ORS 443.739 and help residents exercise them;

(b) The provider shall. ~~The provider must~~ shall ~~will~~ post ~~them~~ the Residents' Bill of Rights in a location that is prominent and accessible to individuals, individual's' representatives residents, parents, and ~~guardians, and~~ advocates. The posted rights shall include the telephone number of the office to call to report complaints;

(c) The provider shall give Aa copy of the Residents' Bill of Rights ~~Residents' Bill of Rights~~ must ~~will~~ be given to each individual ~~resident,~~ and individual's' representatives, ~~parents,~~ guardians, and ~~advocates~~ along with a description of how to exercise these rights;

(d) Upon admission to the AFH:

(A) ~~The provider must~~ shall ~~will~~ explain the Residents' Bill of Rights to each individual and to individual's' representatives, parents, guardians, and advocates; and

~~(B) explain and~~ The provider shall document in the ~~individual's resident's file~~ individual's Bill of Rights ~~that that~~ a copy of the ~~Resident Individual Resident's~~ Bill of Rights ~~is~~ given to each ~~individual resident~~ and to individual's representatives, parents, guardians, and advocates.

~~(e) The Residents' Bill of Rights state that each resident has the right to:~~
~~at admission, and is posted in a conspicuous place including the name and phone number of the office to call in order to report complaints. The Bill of Rights states each individual resident has the right to:~~

(A) Be treated as an adult, with respect and dignity;

(B) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote and be informed of all house rules;

(C) Receive appropriate care and services and prompt medical care as needed. Be informed of the ~~individual's resident's~~ medical condition and the right to consent to or refuse treatment;

(D) Adequate personal privacy and privacy to associate and communicate privately with any ~~person individual~~ of choice, such as family members, friends, advocates, and legal, social service, and medical professionals; send and receive personal mail unopened; and engage in telephone conversations ~~as explained in 309-040-0410~~; and have medical and personal information kept confidential;

(E) Have access to and participate in activities of social, religious, and community groups;

(F) Be able to keep and use a reasonable amount of personal clothing and belongings and to have a reasonable amount of private, secure storage space.

(G) Be free of discrimination in regard to race, color, national origin, sex, religion, sexual orientation, or disability;

(H) Manage ~~his/her~~ financial affairs unless legally restricted. Be free from financial exploitation. The provider ~~will~~ may not charge or ask for application fees or nonrefundable deposits and ~~will~~ may not solicit, accept, or receive money or property from ~~an individual a resident~~ other than the amount agreed to for services;

(I) A safe and secure environment;

(J) Written notices prior to rate increases and evictions;

(K) A written agreement regarding services to be provided and agreed upon rates;

(L) Voice suggestions, complaints, or grievances without fear of retaliation;

(M) Freedom from training, treatment, chemical or physical restraints except as agreed to, in writing, in an individual's a resident's ~~RP~~CP. Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;

(N) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to residents in an age appropriate manner;

(O) An opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(P) Freedom from punishment. Behavior intervention programs ~~must~~shall be approved in writing on the individual's resident's ~~RP~~CP;

(Q) Freedom from abuse and neglect;

(R) The opportunity to contribute to the maintenance and normal activities of the household;

(S) Access and opportunity to interact with persons with or ~~without~~ disabilities;

(T) The right not to be transferred or moved out of the ~~AFH adult foster home~~ without 30 days' advance written notice and an opportunity for a hearing as described in ORS 443.738~~(11)(b)~~ and OAR 411-088-0080. A provider may transfer or discharge an individual resident only for medical reasons including a medical emergency described in ORS 443.738~~(11)(a)~~, or for the welfare of the individual resident or other residents, or for nonpayment; and

(U) Utilize advance directives. Advance directives ~~will~~shall be explained to each individual resident upon admission. If the individual resident does not already have any advance directive or directives, he or she shall ~~will~~ be given an opportunity to complete them. If any advance directives are completed by the individual resident the provider shall document these directives in the individual's resident's record; if the individual resident declines to file any advance directives, this declination ~~will~~shall be documented in the individual's resident's record;

(V~~i~~) As used in this section, the term "advance directive" has the meaning given under ORS 127.505, and includes the "Declaration for Mental Health Treatment" under ORS 127.700 through 127.737.

(2) Additional Rights for Individuals:

(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule;

(b) Have visitors of the individual's choosing at any time and the freedom to visit with guests within the common areas of the program and the individual's sleeping room;

(c) The freedom and support to control one's own schedule and activities including but not limited to: Accessing the community without restriction;

(d) Access to community resources including recreation, religious services, agency services, employment and day programs, unless such access is legally restricted;

(e) Have a lockable door in the individual's bedroom that, which may be locked by the individual;

(f) Choose a roommate when sharing a bedroom;

(g) Furnish and decorate the individual's bedroom according to the residency agreement;

(h) The freedom and support to control the individual's schedule and activities;

(i) Privacy in the individual's bedroom;

(j) Section (2) of these rules and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(3) The qualities and obligations described in section 3-(b)-(c)-(d)-(e)-and-(h) of this rule do not apply to an individual receiving crisis-respite services, and a provider need not seek an individually-based limitation for such an individual to comply with these rules.

(4) The provider mustshall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider or an AFH caregiver, except where expressly allowed under these rules.

(5)

(2) Complaints and Grievances. Any person who believes these rules have been violated may file a complaint with the AuthorityDivision and/or CMHP. The~~the~~

Division ~~and~~/or CMHP ~~will~~may investigate any complaint or grievance regarding the AFH.

~~(63) Complaint and Grievance Notice.~~ The Division ~~and~~/or CMHP ~~will~~shall furnish each ~~AFHAdult Foster Home~~ with a Complaint and Grievance Notice, ~~which that the provider must~~shall post in a conspicuous place stating the telephone number of the Division and the CMHP and the procedure for making complaints or grievances.

~~(74) Complaint and Grievance Actions.~~ A copy of all ~~AFHAdult Foster Home~~ complaints or grievances ~~shall~~will be maintained by the Division. All complaints or grievances and actions taken on the complaint or grievance, indexed by the name of the provider, ~~shall~~will:

(a) Be placed into the public file at the Division. Information regarding the investigation of the complaint or grievance ~~will~~may not be filed in the public file until the investigation has been completed;

(b) Protect the privacy of the complainant or grievant and the ~~individual~~resident; and

(c) Treat the names of the witnesses as confidential information.

~~(85) Substantiated Complaints or Grievances.~~ Providers who acquire substantiated complaints or grievances pertaining to the health, safety, or welfare of ~~individuals~~residents may have their licenses suspended, revoked, or not renewed, or may have conditions placed on the license.

~~(96) Retaliation against an Individual a Resident.~~ The ~~AFHAdult Foster Home~~ provider, resident manager, or caregiver ~~must~~may not retaliate in any way against any ~~individual~~resident after a complaint or grievance has been filed with the ~~Authority~~Division. Retaliation may include, but is not limited to the following:

(a) Increasing charges or threatening to increase charges;

(b) Decreasing or threatening to decrease services, rights, or privileges;

(c) Threatening to increase charges or decrease services, rights, or privileges;

(d) Taking or threatening to take any action to coerce or compel the ~~individual~~resident to leave the ~~AFHAdult Foster Home~~; or

(e) Abusing, harassing, or threatening to abuse or harass ~~an individual a resident~~ in any manner.

(107) ~~Retaliation against Others.~~ A complainant, grievant, witness, or caregiver of an ~~AFH must~~may ~~Adult Foster Home will~~ not be subject to retaliation by a provider, or resident manager, or substitute caregiver for making a report or being interviewed about a complaint or being a witness. Retaliation may include, but is not limited to, caregiver dismissal or harassment, or restriction of access to either the ~~AFH~~Adult Foster Home or an individual a resident.

(118) ~~Immunity.~~ The complainant ~~has~~will have immunity from any civil or criminal liability with respect to the making or content of a complaint or grievance made in good faith.

(129) ~~Public Complaint Files.~~ Any individual may ~~person has the right to~~ inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Authority Division upon written request subject to the Authority Division's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests.

Stat. Auth.: ORS 443.735

Stats. Implemented: ORS 127.700 - 127.737 & 443.705 - 443.825

309-040-0415

Administrative Sanctions and Conditions

(1) ~~Administrative Sanctions.~~ An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

- (a) Attachment of conditions to a license;
- (b) Civil penalties;
- (c) Denial, suspension, revocation, or non-renewal of license.

(2) ~~Notice of Intent.~~ If the Division imposes an administrative sanction, it ~~will~~shall serve a Notice of Intent of the administrative sanction upon the licensee personally or by certified mail.

(3) ~~Notice of Administrative Sanction.~~ The notice of administrative sanction ~~will~~shall state the following:

- (a) Each sanction imposed;
- (b) A short and plain statement of each condition or act that constitutes a violation;

- (c) Each statute or rule allegedly violated;
- (d) A statement of the licensee's right to a contested case hearing;
- (e) A statement of the authority and jurisdiction under which the hearing is to be held;
- (f) A statement that the Division files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and
- (g) A statement that the notice becomes a final order upon default if the licensee fails to request a hearing within the specified time.

(4) ~~Hearing.~~ If an administrative sanction is imposed for reason other than abuse, neglect, or exploitation, a hearing ~~will~~ shall precede it if the licensee requests the hearing in writing within 60 days after receipt of the notice ~~pursuant or to~~ ORS Chapter 183.

(5) ~~Failure to Request a Hearing.~~ If a licensee fails to request in writing a hearing within 60 days, the Notice of Administrative Sanction ~~will~~ shall become a Final Order of the Division by default.

(6) ~~Immediate Action.~~ The Division may immediately suspend, revoke, or not renew a license for a substantiated finding of abuse, neglect, or exploitation of an individual, a resident. The licensee may submit a request, in writing, for a contested case hearing within 60 days of the notice of intent of suspension, revocation, or non-renewal.

(7) ~~Individual Resident Removal.~~ When a license is denied, suspended, revoked, or not renewed, the Division ~~will~~ shall work with the CMHP to arrange for individuals residents to move for their protection.

(8) ~~Conditions on License.~~ Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals residents, pending further action by the Division ~~or Division designee~~;

(b) There exists a threat to the health, safety, and welfare of an individual resident, pending further action by the Division or Division designee;

(c) There is reliable evidence of abuse of an adult, pending further action by the Division ~~or Division designee~~;

- (d) The ~~AFHAdult Foster Home~~ is not being operated in compliance with these rules, pending further action by the Division ~~or Division designee~~; or
- (e) The provider is licensed to care for a specific ~~person~~individual only, and further placements may not be made to the ~~AFHAdult Foster Home~~.
- (9) ~~Conditions on Licensee~~. Conditions ~~which~~ that may be imposed on a licensee include but are not limited to the following:
- (a) Restricting the maximum capacity of the ~~AFHAdult Foster Home~~;
 - (b) Restricting the number and impairment level of ~~individuals~~residents allowed based upon the capacity of the caregivers to meet the health and safety needs of all residents;
 - (c) Requiring an additional caregiver or caregiver qualifications;
 - (d) Requiring additional training of caregivers;
 - (e) Requiring additional documentation as deemed necessary by the Division;
 - (f) Restricting a provider from opening an additional ~~al~~ AFHAdult Foster Home; ~~and/or~~
 - (g) Suspending admissions to the ~~AFHAdult Foster Home~~.
- (10) ~~Notification of Conditions~~. The provider ~~must~~shall be notified, in writing, of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.
- (11) ~~Review by the Division~~. In addition to, or in lieu of, a contested case hearing, a provider may request, in writing, a review by the Division administrator or designee of conditions imposed by the ~~CMHP or~~ Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing.
- (12) ~~Length of Conditions~~. Conditions may be imposed for the extent of the license period (one year), extended to the next license period, or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions ~~will~~ shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions ~~will~~ shall be indicated on the attachment to the license.
- (13) ~~Hearing Rights~~. Hearing rights are in accordance with ORS 183.310411 to 183.550.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0420

Denial, Suspension, Revocation or Non-renewal of License

(1) Causative Action. ~~The~~ Division ~~will~~may deny, suspend, revoke, or refuse to renew a license where it finds:

(a) There has been substantial failure to comply with these rules or when ~~there~~ there is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of ~~individuals~~residents in an ~~AFH Adult Foster Home~~;

(b) The applicant or provider has been convicted of one or more crimes described in the Criminal Record Check:

(A) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked, or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation, or refusal to renew was due in any part to abuse of an adult, creating a threat to the ~~residents~~individuals, or failure to possess physical health, mental health, or good personal character;

(B) If the denial, suspension, revocation, or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Division by clear and convincing evidence his/her ability and fitness to operate an ~~AFH Adult Foster Home~~. If the applicant or provider does not meet this burden, then the Division ~~will~~may deny, suspend, revoke, or refuse to renew the license;

(C) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked, or refused to be renewed due to abuse of an adult, or failure to possess physical health, mental health, or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the ~~individuals~~residents;

(D) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the ~~AFH Adult Foster Home~~;

(iii) Receives financial backing from the person for the benefit of the ~~AFHAdult Foster Home~~;

(iv) Receives managerial assistance from the person for the benefit of the ~~AFHAdult Foster Home~~; or

(v) Allows the person to have access to the ~~AFHAdult Foster Home~~.

(E) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation₁, or refusal to renew.

(2) ~~Causative Action by Provider~~. The ~~AuthorityDivision~~ may deny, suspend, revoke, or refuse to renew an ~~AFHAdult Foster Home~~ license if the applicant or provider:

(a) Submits fraudulent or untrue information to the Division;

(b) Has a history of₇, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bill~~(s)~~;

(c) Has a prior denial, suspension, revocation₁, or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state ~~or~~ county;

(d) Has threatened the health, safety, or welfare of any ~~individualresident~~;

(e) Has a substantiated finding of abuse of an adult;

(f) Has a medical or psychiatric problem, which interferes with the ability to provide care;

(g) Refuses to allow access and inspection;

(h) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed; or

(i) Fails to comply with a final order of the Division imposing an administrative sanction₁₇;

(j) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider, resident manager, substitute caregiver, or volunteer of the ~~AFHAdult Foster Home~~.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0425

Removal of Residents

(1) ~~Order to Move.~~ The Division may order the removal of individuals residents from an AFH Adult Foster Home to an alternative placement on the following grounds:

(a) When a violation of these rules is not corrected after time limit specified in notice;

(b) There is a violation of an individual's ~~sa resident's~~ rights;

(c) The number of individuals residents currently in the AFH Adult Foster Home exceeds the maximum licensed capacity of the AFH Adult Foster Home;

(d) The AFH Adult Foster Home is operating without a license; or

(e) There is evidence of abuse of an adult that presents a serious and immediate danger to individuals residents.

(2) ~~Individual Resident Assistance.~~ The CMHP must ~~shall~~ provide the individual resident will be given assistance in locating and visiting alternative placements ~~by the CMHP~~, if needed, and has ~~will have~~ the right to contest the move as provided in ORS 443.738(11)(b) and OAR 411-088-0080.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0430

Conditions

(1) Attachment to License. Conditions may ~~will~~ be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals residents;

(b) There exists a threat to the health, safety, and welfare of an individual ~~resident~~;

(c) There is reliable evidence of abuse of an adult;

(d) The ~~AFHAdult Foster Home~~ is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific ~~personindividual(s)~~ only and further placements may not be made to the ~~AFHAdult Foster Home~~.

(2) ~~Notification of Conditions~~. The provider ~~must~~shall be notified, in writing, of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.

(3) ~~Hearing Rights~~. In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the ~~CMHP or the~~ Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing.

(4) ~~Length of Conditions~~. Conditions ~~will~~may be imposed for the extent of the license period (one year), extended to the next license period or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions ~~will~~may be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions ~~will~~shall be indicated on the attachment to the license.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0435

Criminal Penalties

(1) ~~Unlicensed~~. Operating an ~~AFHAdult Foster Home~~ without a license is punishable as a Class C misdemeanor.

(2) ~~Refusal to Comply~~. Refusing to allow any of the following is punishable as a Class B misdemeanor:

(a) ~~Authority~~Division access to the ~~AFHAdult Foster Home~~ for inspection or investigation;

(b) ~~Authority~~Division access to ~~individuals~~residents in order to interview ~~individuals~~residents privately or to review records; or

(c) State and local fire inspector access to the ~~AFHAdult Foster Home~~ regarding fire safety.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0440

Civil Penalties

(1) ~~Penalties for Other than Abuse.~~ Civil penalties, for other than substantiated allegations of abuse, ~~will~~shall not exceed \$100 per violation with a maximum of \$250 and may be assessed for violation of these rules, with the exception of substantiated abuse findings.

(2) ~~Penalties for Abuse.~~ Civil penalties of a maximum of \$1000 per occurrence may be assessed for each substantiated abuse finding.

(3) ~~Other Penalties.~~ In addition to any other liability or penalty, the Division may impose a penalty for any of the following:

(a) Operating an ~~AFHAdult Foster Home~~ without a license;

(b) Exceeding the number of residents identified on the license;

(c) The ~~p~~Provider fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance;

(d) The ~~AFHAdult Foster Home~~ is unable to provide an adequate level of care to individuals~~residents~~;

(e) There is retaliation or discrimination against an individual, the individual's representative~~a resident~~, family, employee, or any other person for making a complaint against the ~~AFHAdult Foster Home~~;

(f) The provider fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out an individual's~~a resident's~~ care plan; or

(g) Other violations are found on two consecutive inspections of an ~~AFHAdult Foster Home~~ after a reasonable amount of time has been allowed for the elimination of the violations.

(4) ~~Penalty Due.~~ Any civil penalty imposed under this section ~~will~~shall become due and payable when the provider incurring the penalty receives a notice in writing from the Division. The notice ~~will~~shall be sent by registered or certified mail and ~~will~~includes the following:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(5) ~~Application for Hearing.~~ The provider to whom the notice is addressed ~~will~~ shall have 60 days from the date of the notice of intent in which to make written application for a hearing.

(6) ~~Hearings.~~ All hearings ~~will~~ shall be conducted according to the applicable provisions of ORS Chapter 183.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0445

Public Information

(1) ~~Current Information.~~ The ~~Authority~~ Division ~~will~~ shall maintain current information on all licensed ~~AFHs~~ Adult Foster Homes and ~~will~~ make that information available to prospective individuals, individuals' representatives ~~residents~~, their families, and other interested members of the public.

(2) ~~Current Information Content.~~ The information ~~shall~~ will include the following:

(a) The location of the ~~AFH~~ Adult Foster Home;

(b) A brief description of the physical characteristics of the home;

(c) The name and mailing address of the provider;

(d) The license classification of the home and the date the provider was first licensed to operate that home;

(e) The date of the last inspection, the name and telephone number of the office that performed the inspection, and a summary of the findings;

(f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the ~~Authority~~ Division;

(g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and

(h) Whether care is provided primarily by the licensed provider, a resident manager, or other arrangement.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0450

Adjustment, Suspension, or Termination of Payment

(1) ~~Causative Actions~~. The ~~CMHP or Authority Division or CMHP~~ may adjust, suspend, or terminate payment(s) to a provider when any of the following conditions occur:

(a) The provider's ~~AFH Adult Foster Home~~ license is revoked, suspended, or terminated;

(b) Upon a finding that the provider is failing to deliver any service as agreed to in the ~~RPCP~~; or

(c) When funding, laws, regulations, ~~or the CMHP or the Authority Division or CMHP~~ priorities change such that funding is no longer available, redirected to other purposes, or reduced;

(d) The individual's service needs change;

(e) The individual is absent without providing notice to the provider for five or more consecutive days;

(f) The individual is determined to be ineligible for services;

(g) The individual moves, with or without notice, from the ~~AFH Adult Foster Home~~; the provider ~~will~~ shall be paid only through the last day of the individual's occupancy.

(2) ~~Authority Division Obligation~~. The ~~CMHP or Authority Division or CMHP~~ is under no obligation to maintain the ~~AFH Adult Foster Home~~ at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

309-040-0455

Enjoinment of ~~AFH~~Adult Foster Home (AFH) Operation

The ~~Authority~~Division may commence an action to enjoin ~~(ban)~~ the operation of an ~~AFH~~Adult Foster Home pursuant to ORS 443.775(5):

(1) ~~Unlicensed~~. When an ~~AFH~~Adult Foster Home is operated without a valid license; or

(2) ~~Unresolved Placement~~. After notice of revocation, non-renewal, or suspension has been given, a reasonable time for placement of ~~individuals~~residents in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825