Adult Foster Home Provider Alert

Policy updates, rule clarifications and announcements

Date: July 20, 2016

Topic: **Summary of AFH Rule Changes, Effective 6/28/16**

To: APD (Older Adults and Adults with Physical Disabilities)

The following pages are a Summary of APD Adult Foster Home Rule Changes, effective June 28, 2016. This at-a-glance overview is for your convenience. Consult OAR division 411, chapter 50 for the complete text.

If you have any questions about the rules, please consult your local Licensor.

Links to the current OARs are available on the APD Adult Foster Home Provider Information website at http://www.oregon.gov/DHS/PROVIDERS-PARTNERS/LICENSING/APD-AFH/Pages/index.aspx. If you have not already subscribed to receive e-mail notification of updates, please consider doing so now by clicking on the red envelope located on that web page.

Summary of APD Adult Foster Home Rule Changes, Effective 6/28/16

This list is an overview of the significant changes to the adult foster home rules, OAR 411-050-0600 to 411-050-0690, including those changes placed into temporary rule on January 1, 2016. Refer to the administrative rules effective June 28, 2016 to see all modifications and the specific rule text.

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	Definitions			
1.	0602(17)	4	Yes	Defined "Code of Federal Regulations" or "CFR"
2.	0602(27)	5	Yes	Defined "Designated Representative"
3.	0602(40)	7	Yes	Defined "Home and Community-Based Services"
4.	0602(41)	7	Yes	Defined "Home and Community-Based Settings"
5.	0602(43)	7	Yes	Clarified definition of "House Policies" (written and posted statements addressing house activities identified in the residency agreement)
6.	0602(45)	8	Yes	Defined "Individual"
7.	0602(46)	8	Yes	Defined "Individually-Based Limitation"
8.	0602(47)	8	Yes	Defined "Informed Consent"
9.	0602(50)	9	Yes	Redefined "Legal Representative"
10.	0602(63)	11	Yes	Defined "Person-Centered Service Plan"
11.	0602(64)	12	Yes	Defined "Person-Centered Service Plan Coordinator"
12.	0602(74)	13	Yes	Defined "Representative"
13.	0602(76)	13	Yes	Defined "Residency Agreement"
	License Application			
14.	0610(3)(h)	20	Yes	Submit copies of the home's residency agreements (contracts) with the initial license application.
	Provider Enrollment, Residency Agreement			
15.	0615(1)(l)(B),(C)	26	Yes	If licensee submits notice to terminate the Medicaid Provider Enrollment Agreement, the licensee must:

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				(B) Update h/her **Residency Agreement** and submit updated copy to the local licensing authority for review. (C) Obtain signatures of current residents or representative on updated Agreement.
	Provider Enrollment, Residency Agreement			
16.	0615(2)(a)-(d)	27	Yes	Deleted "private contract" and replaced with "residency agreement"; requires residency agreement for Medicaid and non-Medicaid residents; lists required elements of the Agreements, states providers licensed before 1/1/16 have until 9/1/18 to fully implement HCBS requirements.
	Qualifications & Training			
17.	0625(2)(b)(D) 0625(12)(g)(A),(B)	35 40	No	CPR and First Aid training must be provided by or **meet the standards of** the American Heart Association or the American Red Cross.
	Classification			
18.	0630(3)(a),(b)(A),(B)	44	No	Simplified the process to request a change in classification. No longer requires an initial application.
19.	0630(4)(c)	45	No	A class 3 AFH may provide care for only 1 resident who requires bed-care or full assistance with all activities of daily living, **not including cognition or behavior.**
	Capacity			
20.	0632(8)(a),(b)(A),(B)	48	No	Simplified the process to request a change in capacity. No longer requires an initial application.
	Issuance			
21.	0635(8)	51	No	Adds a provision where a licensee with multiple AFHs may have the license renewal dates be the same. The Department must determine such a change serves both the licensee and the Department.

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22.	0635(11)(a)(A),(B)	52	No	(a) A provisional license may be issued if the local licensing authority determines **it is in the best interests of the residents currently residing in the home,** and either (A) or (B) exist: (A) An emergency situation exists after receiving notification that a licensed provider is no longer overseeing the operation of the AFH. (B) A new applicant has submitted an application and bed fee for a license to operate a currently licensed home. The applicant has demonstrated a good faith effort to submit a timely and complete application, **but the application process cannot be completed before the expiration date of the current license.**
	Renewal Application			
23.	0640(4)(k)	55	Yes	Submit copies of the home's residency agreements (contracts) if changes are proposed.
	Operational Standards			
24.	0645(1)(b)	59	Yes	Each AFH must comply with federal regulations governing HCB Settings. Providers licensed before 1/1/16 must fully comply with OAR chapter 411, division 004, by no later than 9/1/18.
25.	0645(1)(h)	60	No	If a primary caregiver or a shift caregiver is absent from the home for 10 days or more.... The licensee must submit a staffing plan to the local licensing authority that demonstrates coverage to meet the needs of the residents during the caregiver's absence **and is signed by the back-up provider.**
26.	0645(4)(c)(C)	66	Yes	The licensee must support the resident's right to access food at any time. Limitations may only be used when there is a health or safety risk, as stated in OAR 411-050-0655 and when a written informed consent is obtained. Providers licensed before 1/1/16 have until 9/1/18 to fully comply with this requirement.
27.	0645(4)(j)(B)	67	No	Payment for food beyond the required three meals and snacks are the responsibility of the resident.

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28.	0645(6)(a)(F)	69	Yes	Facility records include residency agreements (contracts) with all residents, and if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.
29.	0645(6)(a)(H)		No	Facility records include the AFH Back-Up Agreement form (SDS 350) completed by the current back-up provider and the licensee.
30.	0645(6)(b)(E)		Yes	Required posted items include the home's policies as stated in the current residency agreements.
31.	0645(7)(a)(D)(ii),(G),(H)	71	Yes	Resident records include: (D)(ii) Signed and dated residency agreements (contracts). (G) Documentation that supports or eliminates any individually-based limitation, as described in OAR 411-050-0655(4). This is effective 1/1/17 and no later than 2/28/18. (H) A copy of the current house policies **as identified in the current residency agreement**, signed and dated by the resident or the resident's representative.
32.	0645(8)	73	Yes	The current residency agreement must be given to the resident and the resident's representative, as applicable, at the time the screening and assessment is conducted. Before the resident's admission, a signed and dated copy of the residency agreement must be placed in the resident's record. The policies within the residency agreement must be consistent with the practices of the licensee, staff, occupants, and visitors of the home. *Note: This replaces the previous OAR about house policies. See OAR 411-050-0615(2) regarding the requirements for the home's policies.*
33.	0645(9)(a)(A)	73	Yes	The licensee **must** support a resident's choice to remain in his or her living environment, while recognizing that some residents may no longer be appropriate for the AFH care setting due to safety and medical limitations. (a) If a resident moves, **or intends to move,** out of an AFH for any reason, the licensee must **cooperate with the potential**

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				provider's screening and assessment activities as directed by the resident or the resident's representative, and submit copies of pertinent information from the resident's record to the resident's new place of residence at the time of the move. Pertinent information must include, at a minimum: (A) Copies of current prescribing medical practitioner's orders for medications, current medication sheets, an updated care plan, **including the elements of any person-centered service plan, and any documentation of limitations.** *Note: See OAR 411-050-0655(5)*
34.	0645(10)(a)	74	No	If a resident eligible for Medicaid services or the resident's representative give notice of the resident's intent to leave the AFH, or if the resident leaves abruptly, the licensee must notify the resident's case manager **and the local licensing authority.**
35.	0645(11)(a)(H)	75	No	A resident may be involuntarily moved if the resident engages in the use of legal medical marijuana **or recreational marijuana**, or both, in violation of the home's written policies or contrary to Oregon Law. *See ORS 475.300 to 475.346*
36.	0645(11)(b),(c)	76	No	If a Notice of Involuntary Move or Transfer of Resident form (SDS 901) is issued, a copy must be immediately submitted to the local licensing authority.
	Facility & Safety Standards			
37.	0650(1)(b)	80	No	If the AFH's address number is not clearly legible visible from the road fronting the property, such as when the home is accessed by a lengthy driveway or private access road, then the address numbers must also be posted where the driveway or private access road joins the fronting road.
38.	0650(1)(f)	[80]	No	Deleted rule about video monitors. (The deleted text remains supported by other OARs.)

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39.	0650(4)(e)	85	Yes	All resident bedroom doors must have a locking device on the inside of the door, released by a single action. *See OAR 411-050-0650(5)(d), Locks and Alarms.*
40.	0650(5)(d)(A)-(D)	87	Yes	(A) All resident bedroom doors must have a locking device on the inside of the door, released by a single action. (B) Each resident shall be provided a key that locks and unlocks only his or her bedroom door. (C) A master key to all of the residents' bedroom door locks must be immediately available to the licensee and all other caregivers in the home. (D) Providers licensed prior to 1/1/16 must be in full compliance with (A) through (C) of this rules by 9/1/18.
41.	0650(v)	95	No	Smoking policies must be identified in the home's residency agreements.
42.	0650(w)	96	No	Emergency supplies, consistent with the community standards (as indicated at: www.redcross.org/prepare/location/home-family) must be kept current and readily available in the home.
	Standards/Practices for Care & Services			
43.	0655(1)(e)(A)	99	Yes	Required disclosure: A copy of the home's current and approved residency agreement identifying the home's policies shall be provided to the prospective resident and his or her representative, as applicable.
44.	0655(4)(b)(A)-(G)	102	Yes	Effective 1/1/17 and no later than 2/28/18, the licensee must identify any individually-based limitations (IBLs) to the following freedoms on the Department's Individual Consent to HCBS Limitations form: (A) Support to access food at any time; (B) Visitors of the resident's choosing at any time; (C) A lock on the resident's bedroom, lockable by the resident; (D) Choice of a roommate, if sharing a bedroom;

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				(E) Support to furnish and decorate the resident's bedroom as the resident chooses; (F) Freedom and support to control the resident's schedule and activities; and (G) Privacy in the resident's bedroom.
45.	0655(4)(c)(A)-(H)	102	Yes	Effective 1/1/17 and no later than 2/28/18, a limitation to any freedom in (b) of this rule must be supported by a specific assessed need due to threats to the health and safety of the resident or others. For Medicaid-eligible residents, the person-centered service plan coordinator must authorize the limitation and the individual must consent to the limitation. The licensee must incorporate and document all applicable elements identified in OAR 411-004-0040, including: (A) The specific and individualized assessed need justifying the limitation. (B) The positive interventions and supports used before any limitation. (C) Less intrusive methods that have been tried, but did not work. (D) A clear description of the condition that is directly proportionate to the specific assessed need. (E) Regular reassessment and review to measure the ongoing effectiveness of the limitation. (F) Established time limits for periodic review of the limitation to determine if the limitation should be terminated or remains necessary. The limitation must be reviewed at least annually. (G) The informed consent of the resident or, as applicable, the legal representative of the resident, including any discrepancy between the wishes of the resident and the consent of the legal representative. (H) An assurance that the interventions and support do not cause harm to the individual.

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46.	0655(4)(d)	103	Yes	Limitations are not transferable between care settings. Continued need for any limitation at the new care setting must comply with the requirements as stated in OAR 411-050-0655.
47.	0655(5)(a),(b)	104	Yes	Person-Centered Service Plan. A Medicaid-eligible resident's case manager will complete a person-centered service plan, pursuant to OAR 411-004-0030. The licensee must incorporate all applicable elements identified in the person-centered service plan that the provider is responsible for implementing. (a) The licensee must notify the resident's case manager in the event a review and change or removal of an existing limitation is warranted, and when a new limitation is supported by a specific assessed need. (A) All attempts to notify the resident's case manager about a review to change, remove, or add a limitation must be documented, and available in the resident's record. (B) The licensee will not be held responsible for any failure on the case manager's part to conduct a review of current limitations or to complete the person-centered service plan. (b) Providers may assist non-Medicaid residents in developing a person-centered service plan when no alternative resources are available.
48.	0655(9)(b)	119	Yes	Providers initially licensed before January 1, 2016 have until September 1, 2018 to fully comply with this rule. Residents have the following rights and freedoms authorized by 42 CFR 441.301(c)(4) and 42 CFR 441.530(a)(1): (A) To live under a legally enforceable Residency 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 resident's choosing at any time.

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				(D) To privacy in the resident's bedroom, and to have a lockable door in the resident's bedroom, which may be locked by the resident. (E) To choose a roommate when sharing a bedroom. (F) To furnish and decorate the resident's bedroom according to the Residency Agreement. (G) The freedom and support to control the resident's schedule and activities. (H) To privacy in the resident's bedroom.
49.	0655(10)(a),(b)	120	Yes	Individually-Based Limitations. This section and (11) of this rule will become effective on 1/1/17 and must be in place no later than 2/28/18. (a) Individual limitations must be supported by a specific assessed need. A limitation may be implemented only with the informed consent of the resident, or the resident's legal representative. Limitations may only be considered to the rights identified in (9)(b)(B)-(H) of this rule. (b) Limitations are not transferable between care settings.
50.	0655(11)(a)-(h)	120	Yes	Required Documentation for Individually-Based Limitations (IBL). Each limitation under consideration must be documented on the Department-approved consent form. Documentation must include: (a) The reason the limitation is needed. (b) The positive interventions and supports used before any IBL. (c) Less intrusive methods that were tried before and did not work. (d) A clear description of how the limitation supports the assessed need of the resident. (e) A way to regularly measure if the limitation is working. (f) When the limitation will be reviewed or removed. (g) Information consent from the resident or resident's legal representative, including any discrepancy between the wishes of the individual and the consent of the legal representative.

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				(h) An assurance that the limitation will not be harmful to the resident.
	Requirements for Ventilator-Assisted Care AFHs			
51.	0660(3)	122	Yes	Ventilator-assisted care homes must comply with all HCB Settings requirements.
	Requirements for Limited AFHs			
52.	0662(1)	127	Yes	Limited AFH licensees must comply with all HCB Settings requirements.
53.	0662(16)(a)-(d)	130	Yes	The resident's bedroom must have a lockable door for the resident's privacy, as stated in OAR 411-050-0650. The locking device must release by a single-action on the inside of the room and open to a hall or common-use room.
	Civil Penalties			
54.	0685(10)	148	No	Violations requiring a mandatory civil penalty, which occurred while the licensee was operating the AFH, will be imposed by the Department, even if the licensee subsequently closes the home or voluntarily surrender the license.