Adult Foster Home Provider Alert

Policy updates, rule clarifications and announcements

Date: December 27, 2017

Topic: **New APD Adult Foster Home Rules Effective January 1, 2018**

To: APD Adult Foster Home Providers

The APD Adult Foster Home Administrative Rules will be amended effective January 1, 2018. Some of the changes are a result of the 2017 Oregon legislative session, HB 3359. On the following pages you will find an abbreviated list of the changes and a copy of the rules with the specific changes identified using tracking.

The updated rules will be made available on APD Adult Foster Home Provider Information website as soon as possible and announced through an AFH Provider Alert. If you have any questions about these rules, contact your Licensor.

Oregon Administrative Rules
Chapter 411, Division 050
Adult Foster Homes – Licensure of Adult Foster Homes for Adults Who Are Older or Adults with Physical Disabilities

Effective January 1, 2018

This summary is not intended to be an all-inclusive list of the rule changes. Non-substantive changes such as grammar, punctuation, spelling, updated cross references and other minor changes may not be included. Be sure to review the updated rules in its entirety.

OAR 411-050-0602, Definitions

- Creates new definitions:
  - "QED" means a qualified entity designee as defined in OAR 407-007-0210 (Background Check Rules).
  - "Restraint" means restraint as defined in OAR 411-004-0010 (19) [HCBS rules]:
    - "Physical restraints are any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or normal access of the resident to the resident's body. Any manual method includes physically restraining a person by manually holding the person in place."
    - "Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the resident's medical or psychiatric condition."
  - "Safety, Oversight and Quality Unit" or "SOQ" is a program within the Department's Aging and People with Disabilities office.
  - "Violation" means an area of non-compliance with these rules. "Violation" is synonymous with "deficiency."
- Modifies the definition of "Primary Caregiver" to include one or any combination of licensee, resident manager or shift caregivers. Requires one, or multiple individuals meeting the definition of primary caregiver to personally provide care and services, and safeguard the health and safety of residents a

minimum of five 24-hour days per week. [No longer requires five "consecutive" days.]

- Modifies the definition of "PRN" to describe medications and treatments that have been ordered by a prescribing practitioner to be administered as needed when the resident exhibits or expresses signs or symptoms related to the reason the medication was ordered.
- "Psychoactive Medications" has been replaced by "Psychotropic Medications" for consistency among SOQ's licensed care settings. These are any drug that affects the brain activities associated with mental processes and behavior, including but not limited to: anti-psychotics, anti-depressants, anti-anxiety and hypnotics.
- Clarifies "Subject Individual" to include caregiver trainees and licensed healthcare workers when employed by or contracted with the AFH.

OAR 411-050-0610, Initial License Application and Fees

- The licensee must identify a registered nurse (RN) who has agreed to provide consultation, teaching and delegation for the care of non-Medicaid residents in the home's written operational plan. Requires the licensee to confirm with the Oregon State Board of Nursing (OSBN) that the RN has a valid, unencumbered license with no restrictions.

OAR 411-050-0615, Residency Agreements

- The home's residency agreements must:
  - Disclose refund policies for partial months, and if the room and board payment is refundable.
  - Must be consistent with Payment Limitations in Home and Community-Based Services, OAR chapter 411, division 027.
  - Disclose the home's policy on the use of any audio monitors.
  - Disclose the use of monitoring equipment may not be a condition of admission.

OAR 411-050-0620, Background Check

- States verification of background checks may include printed or electronic documentation.
- States all subject individuals must self-report to the licensee any potentially disqualifying condition in OAR 125-007-0270.

- Clarifies a licensee may continue to operate or work in the home following a denied background check pending potential appeal and final order unless there is reason to believe any resident's health, safety or welfare is at risk.

OAR 411-050-0625, Qualification and Training Requirements

- Allows for the use of shift caregivers without requiring a variance or a special resident population with intense care needs.
- Requires all caregivers – licensees, resident manager, floating resident manager, shift caregivers and substitute caregivers – to complete an approved dementia training prior to providing any direct care. Providers and caregivers already operating or working in AFHs on 1/1/18 will have until 7/1/18 to complete the training. Free online training will be available. [Required by HB 3359]
- Requires caregiver orientation to include how to administer medications properly and how to document in all resident records.
- Authorizes up to two training credits each for CPR and first aid training.

OAR 411-050-0632, Capacity

- Clarifies when a Medicaid family member requires care in a home, the family member may remain in the home as one of the residents within the home's licensed capacity. Resident records must be maintained for the family member according to OAR 411-050-0645.

OAR 411-0635, Issuance

- Removes provision that potentially allowed a provisional license to be extended 30 days. [Statutory requirement]

OAR 411-0640, Renewal Application and Fees

- Requires the local licensing authority (LLA) to send a reminder notice and application at least 90 days prior to the expiration of the provider's current license.
- Defines an application to be timely submitted once received by the LLA at least 45 days prior to the expiration of the provider's current license.
- Requires the licensee applicant to identify a registered nurse who has agreed to provide consultation, teaching and delegation for the care of non-Medicaid residents in the home's operational plan at the time of each license renewal.

Requires the licensee to confirm with the OSBN that the RN has a valid, unencumbered license with no restrictions.

- Clarifies a home shall be treated as an unlicensed home and subject to civil penalties if the renewal information and fee are not timely submitted and residents remain in the home after the date the license expires.

OAR 411-050-0645, Operational Standards

- Provides specific law and administrative rule resources about confidentiality and privacy related to resident records.
- Identifies minimum standards for the use of electronic records in an adult foster home. An electronic record system must:
  - Have the capability to print the electronic records. All caregivers must be able to print records upon request by the Department.
  - Have a back-up system to protect the electronic records in the event of power outages, system problems, or other problems.
  - Be compliant with applicable privacy and confidentiality laws.
  - Automatically identify any late entry and reflect the date and time of the late entry.
  - Prevent alteration of any entries once they are made. Changes may be documented, but the system must automatically include the date and time of the change. The reason for any modification must be documented by the caregiver.
  - Be password protected. The passwords for the electronic record system must be changed at least quarterly, and the password for the router must be changed at least every six months.

OAR 411-050-0650, Facility Standards

- Clarifies standard and enhanced precautions for infection control must be followed in resident care as directed by the Oregon Health Authority's infection control staff or the local county health department staff.
- Clarifies open bodies of water must have a safety barrier to reasonably prevent injury to current residents of the home.
- Requires any portable electric heater to be listed and labeled, according to fire code.

- Clarifies bedroom windows must have at least one window or exterior door that leads directly outside that is approved for emergency escape or rescue, and is unobstructed, according to fire code.
- Requires fire extinguishers to be inspected by the licensee or designated staff at least monthly and maintain documentation of the inspections, according to fire code.
- Allows a home with a sprinkler system throughout the facility that is maintained according to the manufacturer's instructions to have an additional two minutes of evacuation time to get all occupants to the initial point of safety in an evacuation. [Required by HB 3359.]
- Clarifies designated smoking areas prohibit smoking on any upholstered furniture with cushions or pillows, as required by fire code.

OAR 411-050-0655, Standards and Practices for Care and Services

- Requires any individually-based limitation be documented on the resident's care plan. [All limitations, if any, must be completed no later than 6/30/19.]
- Clarifies an individually-based limitation is required prior to the use of restraints, effective no later than 6/30/19.
- Clarifies the licensee is responsible for ensuring implementation of the resident's care plan and, if applicable, the behavioral support plan with suggested interventions.
- Clarifies the licensee may 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 if there have been multiple documented attempts to contact the resident's case manager and the resident has been reasonably protected from harm.
- Clarifies when registered nurse consultation is required, not limited to the following list. (The italicized text below represents new language.)
    - When a *nursing procedure* has been ordered by a health care professional *with prescribing authority for any medical treatment other than oral medications (taken by mouth).*
    - When a resident has a health concern or behavioral symptoms that are *unfamiliar to caregivers.*
    - *To clarify a prescribing practitioner's PRN order when it includes dose or frequency ranges, or when there is no information given about*

what the medication is treating, or signs and symptoms for when to give the PRN medication to the resident.

- *When there are concerns about resident behaviors that do not respond to non-medication interventions. . . .*

- Clarifies a nursing task must be delegated prior to the caregiver performing the procedure.
- Clarifies the type of medication resource material that must be readily available in the home:
  - Product information sheet;
  - Current drug manual; or
  - Internet access to a drug reference website that is readily available for all caregivers.
- Requires the licensee and all other caregivers to know and use all non-pharmacological interventions pertaining to the resident's use of psychotropic medication.
- Clarifies the resident's prescribed medications must be packaged in a manner that reduces errors, as required by HB 3359. [Bubble/blister packs are encouraged, but not required.]
- Requires resident medications to be:
  - Stored as directed and not subject to fluctuations in temperature.
  - Disposed of within 24 hours of a resident's death.
- Describes how transdermal patches and items contaminated with bodily fluids must be disposed of.
- Lists more specific documentation requirements for the disposal of drugs.
- Adds clarification to the Resident's Bill of Rights that any use of restraints requires an individually-based limitation prior to use.
- Identifies the circumstances when an individually-based limitation is required, the required elements of the limitation, and clarifies the limitation is not transferrable between care settings.

OAR 411-050-0660, Qualifications and Requirements for Ventilator-Assisted Care

- Removes the waiver that allowed registered nurses to open a Level B ventilator-assisted care home without first successfully operating a Level C home for at least one year.
- Allows a Level C ventilator-assisted care home to have only one approved caregiver on site, awake and available 24 hours per day, instead of two as required in Levels A and B ventilator-assisted care homes.

OAR 411-050-0662, Qualifications and Requirements for Limited Adult Foster Homes

- Clarifies limited adult foster homes (LAFHs) must meet all of the Home and Community-Based Setting requirements.
- Clarifies LAFH licensees must be at least 21 years of age, and exempts any currently licensed LAFH provider who is between 18 and 21 years of age on January 1, 2018 from that requirement.

OAR 411-050-0665, Abuse Reporting, Complaints, and Notification of Findings

- Clarifies a determination of substantiated abuse or a rule violation in a complaint investigation will result in a Notification of Findings or a Letter of Determination.

OAR 411-050-0685, Civil Penalties

- General rule violations: Clarifies a minimum civil penalty of $100 per violation, and a maximum civil of $250 per violation may be assessed. [Required by HB 3359]
- Carbon monoxide alarm or smoke alarm violations: Adds a mandatory civil penalty for failing to install, dismantling, or removing the battery from a required *carbon monoxide alarm* or smoke alarm, and clarifies a minimum civil penalty of $100 per violation, and a maximum civil penalty of $250 per violation may be assessed. [Required by HB 3359]
- *Substantiated abuse*: Clarifies a minimum civil penalty of $100, and a maximum civil penalty of $1,000 per occurrence of abuse. [Required by HB 3359]

DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 50

ADULT FOSTER HOMES - LICENSURE OF ADULT FOSTER HOMES FOR ADULTS WHO ARE OLDER OR ADULTS WITH PHYSICAL DISABILITIES

411-050-0600 Purpose

(1) The purpose of the rules in OAR chapter 411, division 050 is to establish the minimum standards and procedures for adult foster homes that provide care and services for adults who are older or adults with physical disabilities in a ~~home-like~~homelike environment that is safe and secure.

(2) Adult foster homes –

(a) ~~p~~Provide necessary care and services through a cooperative relationship between the resident (or court-appointed guardian) and the resident's care providers that emphasizes the resident's independence.

(b) ~~Adult foster home c~~Care and services are provided in a setting that protects and encourages resident dignity, choice, and decision-making while addressing the needs of the resident in a manner that supports and enables the residents to maximize their ability to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, ~~&~~ 443.790
Stats. Implemented: ORS 443.001 -~~to~~ 443.004, 443.705 -~~to~~ 443.825, 443.875, ~~&~~ 443.991

411-050-0602 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 050:

(1) "AAA" means an Area Agency on Aging, which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act that has responsibility for local administration of programs within the Department of Human Services. For the purpose of these rules, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes, including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Department regarding adult foster home license denial, revocation, suspension, non-renewal, and civil penalties.

(2) "Abuse" means "abuse" as defined in OAR 411-020-0002 (Adult Protective Services).

(3) "Activities of Daily Living (ADL)" mean the personal, functional activities ~~defined~~ described in OAR 411-015-0006 ~~(Long-term Care Service Priorities for Individuals Served)~~ required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing and grooming, bathing and personal hygiene, mobility, elimination, and cognition.

(4) "Adult Foster Home (AFH)" means any family home or other facility where residential care is provided in a ~~home-like~~homelike environment for compensation to five or fewer adults who are not related to the licensee, resident manager, or floating resident manager, by blood, marriage, or adoption and who are 65 years of age or older or an adult with a physical disability. Adult foster homes are home and community-based settings as defined in OAR chapter 411, division 004. For the purpose of these rules –

~~,~~(a) "~~a~~Adult foster home" does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no resident thereof requires any element of care.

(b) "Facility" and "Home" are synonymous with the term "Adult Foster Home".

(5) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions in the event the resident is no longer able to give directions regarding his or her wishes. The directive gives the resident the means to control his or her own health care in any circumstance. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).

(6) "Applicant" means a person who completes an application for an adult foster home license or who completes an application to become a resident manager, floating resident manager, or shift caregiver. "Applicant" is synonymous with "Co-applicant".

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210~~ (Criminal Records and Abuse Check for Providers)~~. An approved "Background Check" means a final determination, made by an authorized agency or district, that the subject individual is fit to ~~:~~

(a) ~~h~~Hold a position, paid or not paid;~~,~~

(b) ~~o~~Obtain or retain credentials;~~,~~

(c) ~~h~~Have direct access to;~~,~~ or

(d) ~~o~~Otherwise provide services necessary for the health, welfare, maintenance or protection of an individual.

(8) "Background Check Rules" means the rules in OAR 407-007-0200 to 407-007-0370.

(9~~8~~) "Back-Up Provider" means a licensee, approved resident manager, or approved floating resident manager who does not live in the home, who has agreed to oversee the operation of an adult foster home, of the same license classification or ~~level~~higher, in the event of an emergency.

(10~~9~~) "Behavioral Interventions" mean those interventions that modify a resident's behavior or a resident's environment.

(11~~0~~) "Board of Nursing Rules" means the standards and practice for licensed practical nurses and registered nurses to teach and delegate to

unlicensed persons ~~Registered Nurse Teaching and Delegation to Unlicensed Persons~~ according to the statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 045 and 047.

(12~~1~~) "Care" means the provision of assistance with activities of daily living to promote a resident's maximum independence and enhance the resident's quality of life. "Care" includes, but is not limited to, assistance with bathing, dressing, grooming, eating, money management, recreation, and medication management excluding assistance with self-medication.

(13~~2~~) "Caregiver" means any person providing care and services to residents. (See "Qualified Caregiver").

(14~~3~~) "Care Plan" means a licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services are to be provided.

(15~~4~~) "CMS~~Centers for Medicare and Medicaid Services (CMS)~~" means the ~~federal agency within the~~ United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. ~~responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA).~~

(16~~5~~) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

~~(17~~6) ~~"Co-Applicant" is synonymous with "Applicant" as defined in this rule.~~

(17) "Code of Federal Regulations" or "CFR" means the codification of the rules and regulations published in the Federal Register, and produced by the executive departments and agencies of the federal government of the United States.

~~(18) "Co-Licensee" is synonymous with "Licensee" as defined in this rule.~~

(18~~19~~) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care, and

services. "Compensation" does not include the voluntary sharing of expenses between or among roommates.

(19~~20~~) "Complaint" means an allegation of abuse, a violation of these rules, or an expression of dissatisfaction relating to a resident or the condition of an adult foster home.

(20~~1~~) "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~~2~~) "Consumer" means an individual eligible for Medicaid services for whom case management services are provided by the Department.

~~(23) "Criminal Records and Abuse Check Rules" refers to OAR 407-007-0200 to 407-007-0370.~~

(22~~4~~) "Day Care" means care, assistance, and supervision of an individual who is older, as defined in these rules, who does not stay overnight.

~~(23) "Deficiency" is synonymous with "Violation", as defined in this rule.~~

(23~~5~~) "Delegation" means the process where a registered nurse teaches and supervises a ~~skilled~~ nursing ~~task~~procedure to an unlicensed person. The Oregon State Board of Nursing defines an unlicensed person as any caregiver or certified nursing assistant (CNA). (See OAR chapter 851, division 047.)

(24~~6~~) "Department" means the Department of Human Services (DHS) unless otherwise specified.

(25~~7~~) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person who is:

(A) Chosen by the individual, or as applicable the legal representative;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.

(b) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(c) An individual, or as applicable the legal representative, is not required to appoint a designated representative.

(26~~8~~) "Director" means the Director of the Department of Human Services or that person's designee.

(27~~9~~) "Disability" means a physical, cognitive, or emotional impairment, which for an individual, constitutes or results in a functional limitation in one or more activities of daily living.

(28~~30~~) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made that renders the licensee unable to operate the facility or renders the facility uninhabitable on a temporary, extended, or permanent basis.

(29~~31~~) "Emergency Preparedness Plan" means a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.

(30~~2~~) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation.

(31~~3~~) "Exclusion Lists" mean the following federal lists that exclude listed individuals from receiving federal awards, not limited to Medicaid and Medicare programs:

(a) The U.S. Office of Inspector General's Exclusion List at www.exclusions.oig.hhs.gov/; and

(b) The U.S. General Services Administration's System for Award Management Exclusion List at www.sam.gov.

(3~~2~~4) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes that the Director finds are equal or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. "Exempt area" county licensing rules require review and approval by the Director before implementation.

~~(35) "Facility" is synonymous with "Adult Foster Home" as defined in this rule.~~

(3~~3~~6) "Family Member" means spouses in a legally recognized marriage or domestic partnership, natural parent, child, sibling, adopted child, adoptive parent, adoptive sibling, 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.

(3~~4~~7) "Final Point of Safety" means a designated assembly area located on a public sidewalk or street not less than 50 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency.

(3~~5~~8) "Floating Resident Manager" means an employee of the licensee, approved by the local licensing authority, who under the direction of the licensee, is directly responsible for the care of residents in one or more adult foster homes owned by that licensee. A "floating resident manager" is not required to live in any one adult foster home owned by his or her employer, except on a temporary basis, as directed by the licensee, when the regularly scheduled caregiver is unavailable.

~~(39) "Home" means the physical structure where residents live. "Home" is synonymous with "Adult Foster Home" as defined in this rule.~~

(36~~40~~) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 004.

(37~~41~~) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives Home and Community-Based Services.

(38~~42~~) "~~Home-like~~Homelike" means an environment that promotes the dignity, security, and comfort of residents through the provision of personalized care and services, and encourages independence, choice, and decision-making by the residents.

(39~~43~~) "House Policies" or the "Home's Policies" means the written and posted statements addressing house activities in an adult foster home identified in the Residency Agreement.

(40~~4~~) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

(41~~5~~) "Individual" means an adult who is at least 65 years of age, or is an adult with physical disabilities who is receiving Home and Community-Based Services. For Home and Community-Based Settings, "Resident" includes individuals receiving day care services.

(42~~6~~) "Individually-Based Limitation" or "Limitation" means~~:~~ any limitation to the qualities outlined in OAR 411-004-0020(1)(d) and (2)(d) to (2)(j) due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the resident or, as applicable, the legal representative of the resident, as described in OAR 411-004-0040.

~~(a) Any limitation to the following areas, as described~~~~qualities outlined in OAR 411-004-0020(1)(d) and (2)(d) to (2)(j) due to health and safety risks:~~~~, which includes the right to:~~

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

~~(B) Have visitors of the resident's choosing at any time;~~

~~(C) Have a lockable door in the resident's bedroom, which may be locked by the individual;~~

~~(D) Choose a roommate when sharing a bedroom;~~

~~(E) Furnish and decorate the resident's bedroom according to the Residency Agreement;~~

~~(F) The freedom and support to control the resident's schedule and activities;~~

~~(G) Privacy in the resident's bedroom;~~

~~(b) A limitation must be based on a specific assessed need, and may only be implemented with the informed consent of the resident or the resident's legal representative.~~

(43~~7~~) "Informed Consent" means:

(a) Options, risks, and benefits have been explained to the individual and, as applicable the legal representative of the individual, in a manner that the individual, and as applicable, the representative, comprehends; and

(b) The individual or, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, before implementation of the initial or updated person-centered service plan or any individually-based limitation.

(44~~8~~) "Initial Point of Safety" means a designated area that has unobstructed direct access to a public sidewalk or street located not less than 25 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency and for the purpose of conducting evacuation drills.

(45~~9~~) "Investigative Authority" means the Office of Adult Abuse Prevention and Investigation, local Department offices, and Area Agencies on Aging that contract with the Department to provide adult protective services to

adults who are older or adults with physical, mental, or developmental disabilities.

(46~~50~~) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement.

(a) Legal representatives acting outside of ~~his or her~~their authority or scope must meet the definition of designated representative.

(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, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.

(47~~51~~) "Level" means the designation of ventilator-assisted care assigned to an adult foster home license based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(48~~52~~) "Licensed Health Care Professional" means a person who possesses a professional medical license that is valid in Oregon. Examples include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT), physician assistant (PA), or occupational therapist (OT).

(49~~53~~) "Licensee" means the person who was issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The "licensee" of the adult foster home does not include the owner or lessor of the building where the adult foster home is situated unless the owner or lessor of the building is also the operator. "Licensee" is synonymous with "Co-Licensee" as defined in these rules.

(50~~4~~) "Limited Adult Foster Home" means a home that provides care and services for compensation to a specific individual who is unrelated to the

licensee but with whom the licensee has an established relationship of no less than one year.

(51~~5~~) "Liquid Resource" means cash or those assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

(52~~6~~) "Local Licensing Authority" means the local Department offices and Area Agencies on Aging that contract with the Department to perform specific functions of the adult foster home licensing process.

(53~~7~~) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of "nursing care" that are taught or delegated under specified conditions by a registered nurse to a person other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(54~~8~~) "Occupant" means any person residing in or using the facilities of an adult foster home, including residents, licensees, resident manager, friends or family members, day care individuals, and room and board tenants. A floating resident manager who resides in an adult foster home on a temporary basis is considered an "occupant".

(55~~9~~) "Older" means any person at least 65 years of age.

(56~~0~~) "Ombudsman" means the Oregon Long-Term Care Ombudsman or a designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of adult foster home residents.

(57~~61~~) "Operator" is synonymous with "Licensee" as defined in this rule.

(58~~62~~) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. Persons with an ownership or control interest mean a person or corporation that:

(a) Has an "ownership interest" totaling five percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to five percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to five percent or more in a disclosing entity;

(d) Owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(59~~63~~) "Person-Centered Service Plan" has the meaning ~~as defined~~given in OAR chapter 411, division 004.

(a) FOR ~~INDIVIDUALS RECEIVING~~ MEDICAID CONSUMERS. The person-centered service plan coordinator completes the person-centered service plan.

(b) FOR NON-MEDICAID CONSUMERS~~INDIVIDUALS~~. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.

(60~~3~~) "Person-Centered Service Plan Coordinator" means case managers, services coordinators, personal agents, and other people designated by DHS or OHA to provide case management services or person-centered service planning for and with individuals.

~~(65) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, a resident's body that the resident may not easily remove and that restricts~~

~~freedom of movement or normal access to his or her body. Physical restraints include, but are not limited to, wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.~~

(61~~6~~) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, chiropractor, dentist, ophthalmologist, or other healthcare practitioner with prescribing authority.

(62~~7~~) "Primary Caregiver" means one or any combination of a ~~qualified~~ licensee, ~~or~~ resident manager, or shift caregivers who ~~lives in the home,~~ personally provide~~s~~ care and services, and safeguards~~ensures~~ the health and safety of residents a minimum of five 24-hour ~~consecutive~~ days per week. ~~More than one person who meets this criterion may be considered a "primary caregiver" as specified below:~~

~~(a) Co-licensees working three and four consecutive days and nights per week;~~

~~(b) Two approved resident managers working three and four consecutive days and nights per week; or~~

~~(c) A licensee and an approved resident manager working three and four consecutive days and nights per week.~~

(63~~8~~) "~~P.R.N.~~PRN" is a Latin term (pro re nata), ~~" which~~ means "as needed." It describes ~~those~~ medications and treatments that have been ordered by a ~~qualified~~prescribing practitioner to be administered as needed when the resident exhibits or expresses signs or symptoms related to the reason the medication was ordered.

(64~~9~~) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager, floating resident manager, or shift caregiver). "Provider" does not include substitute caregivers or the owner or lessor of the building where the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(65~~70~~) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-050-0625 and OAR 411-050-0630, except for completing the training and testing requirements. (See OAR 411-050-0635).

(66~~71~~) "~~Psychoactive~~Psychotropic Medication~~s~~" means any drug that affects the brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories:

(a) Anti-psychotic.

(b) Anti-depressant.

(c) Anti-anxiety.

(d) Hypnotic.

~~various medications prescribed to affect or alter thought processes, mood or behaviorincluding but not limited to antipsychotic, antidepressant antianxiety medications and behavior medications. The classification of a medication depends upon its intended effect when prescribed.used to alter mood, anxiety, behavior, or cognitive processes. For the purpose of these rules, "psychoactive medications" include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.~~

(67~~2~~) "Qualified Caregiver" means an individual who has fully satisfied and maintained the requirements to be a licensee, resident manager, floating resident manager, shift caregiver or substitute caregiver. (See "Caregiver").

(68~~73~~) ~~"Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers)~~"QED" means qualified entity designee as defined in OAR 407-007-0210. A QED may be a licensee who is approved by the Department's Background Check Unit to handle background checks on behalf of the local licensing authority.

(69~~74~~) "Relative" means those persons identified as family members as defined in this rule.

(70~~5~~) "Representative" means "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.

(71~~6~~) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to "reside" in a home if the person's visit is four weeks or greater.

(72~~7~~) "Residency Agreement" or "Agreement" means the written and legally enforceable agreement between an adult foster home licensee and an individual receiving Home and Community Based Services (HCBS), or representative of the individual, in a provider owned, controlled, or operated setting. The Residency Agreement identifies the policies of the home, services to be provided, and the rights and responsibilities of the individual, and the licensee. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(73~~8~~) "Resident" means an adult who is at least 65 years of age, or an adult with a physical disability who is receiving room and board and care and services in an adult foster home on a 24-hour day basis in exchange for compensation. For the purposes of this definition, Resident includes individuals receiving day care services. (See OAR 411-050-0615).

(74~~9~~) "Resident Manager" means an employee of the licensee, approved by the local licensing authority, who lives in the adult foster home, and is directly responsible for the care of the residents.

(75~~80~~) "Resident Rights" or "Rights" means civil, legal, or human rights, including, but not limited to, those rights listed in the Adult Foster Home Resident's~~'~~ Bill of Rights and HCBS freedoms. (See ORS 443.739 and OAR 411-050-0655).

(76~~81~~) "Residential Care" means the provision of care on a 24-hour day basis.

(77) "Restraint" means restraint as defined in OAR 411-004-0010 (19):

(a) Physical restraints are any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or normal access of the resident to the resident's body. Any manual method includes physically restraining a person by manually holding the person in place.

(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the resident's medical or psychiatric condition.

(78~~2~~) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, and housekeeping to adults who are older or adults with physical disabilities and who do not need assistance with activities of daily living. Room and board facilities for two or more persons are required to register with the Department under the rules in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Adult foster homes with room and board tenants are not subject to OAR chapter 411, division 068.

(79) "Safety, Oversight and Quality Unit" or "SOQ" is a program within the Department's Aging and People with Disabilities office.

(80~~3~~) "Screening" means the evaluation process used to identify an individual's ability to perform activities of daily living and address health and safety concerns.

(81~~4~~) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

(82~~5~~) "Self-Preservation" in relation to fire and life safety means the ability of a resident to respond to an alarm without additional cues and reach a point of safety without assistance.

(83~~6~~) "Services" mean activities that help the residents develop skills to increase or maintain the resident's level of functioning or assist the

residents to perform personal care, activities of daily living, or individual social activities.

(84~~7~~) "Shift Caregivers" mean caregivers who~~, by written variance of the local licensing authority,~~ are responsible for providing care for regularly scheduled periods of time, ~~such as~~including, but not limited to, 8 or 12 hours per day or night, in homes where there is no licensee or resident manager living in the home.

(85~~8~~) "Subject Individual" has the meaning ~~means "subject individual"~~ as ~~defined~~ given in OAR 407-007-0210, and means any person 16 years of age or older, including:

(a) All licensed adult foster home providers and provider applicants;

(b) All persons intending to work in, or currently working in an adult foster home, including, but not limited to, caregivers, including trainees, and ~~individuals in training,~~ licensed healthcare workers when employed by or contracted with the licensee or facility;

(c) Volunteers on the home's premises who provide services for, or who have ~~unsupervised~~ access to, any resident, or any resident's funds, belongings, or confidential information; and

(d) Occupants, excluding residents, residing in or on the premises of a proposed or currently licensed adult foster home, including:

(A) Household members;

(B) Room and board tenants; and

(C) Persons staying in the home for a period of four weeks or more.

(e) "Subject Individual" does not apply to:

(A) Persons under 16 years of age;

(B) Residents of the adult foster home or the resident's visitors;

(C) Persons who live or work in or on the adult foster home premises who do not have:

(i) ~~Have r~~Regular access to the home for meals; or

(ii) ~~Have r~~Regular use of the adult foster home's appliances or facilities; or

(iii) ~~Have u~~Unsupervised access to the residents or the residents' personal property.

(D) A person providing services to the residents who is employed by a private business not regulated by the Department.

(86~~9~~) "Substantial Compliance" means a level of compliance with these rules where any deficiencies pose no greater risk to resident health or safety than the potential for causing minor harm.

(87~~90~~) "Substitute Caregiver" means any person other than the licensee, resident manager, floating resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of the Department.

(88~~91~~) "Tenant" means any individual who is residing in an adult foster home who receives services, such as meal preparation, laundry, and housekeeping.

(89~~92~~) "Tenancy Agreement" means a written and legally enforceable agreement between an adult foster home licensee and an adult who is older or an adult with physical disabilities who resides in the home and does not require assistance with any activity of daily living. The agreement specifies the terms and conditions of a room and board residency in the home.

(91~~3~~) "These Rules" mean the rules in OAR chapter 411, division 050.

(92~~4~~) "Variance" means an exception from a regulation or provision of these rules in accordance with OAR 411-050-0642.

(93~~5~~) "Ventilator-Assisted Care" means the provision of mechanical assistance to replace spontaneous breathing. Devices used include, but are not limited to, mechanical ventilators, manual ventilators, and positive airway pressure ventilators.

(98) "Violation" means an area of non-compliance with these rules. "Violation" is synonymous with "Deficiency".

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 106.010, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-050-0605 License Required

(1) Any facility that meets the definition of an adult foster home or limited adult foster home in OAR 411-050-0602 must ~~first~~ apply for and obtain a license from the local licensing authority ~~or an exempt area county~~ before providing care to any resident for compensation.

(2) A person or entity may not represent themselves as operating an adult foster home or accept placement of a resident without being licensed as an adult foster home.

(3) LIMITED ADULT FOSTER HOME. Any home that meets the definition of a limited adult foster home in OAR 411-050-0602 must ~~first~~ apply for and obtain a limited license from the local licensing authority before providing care. The license for a limited adult foster home is limited to the care of a specific resident and the licensee must make no other admissions. The resident receiving care is named on the license.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, ~~&~~ 443.790
Stats. Implemented: ORS 443. 001 - ~~to~~ 443.004, 443.705 - ~~to~~ 443.825, 443.875, ~~&~~ 443.991

411-050-0610 Initial License Application and Fees
(Amended 06/28/2016)

(1) The applicant must complete the Department's application form for the specific type of license requested and submit the application form to the local licensing authority with the non-refundable fee.

(a) The application is not complete until all of the required information is submitted to the local licensing authority. Incomplete applications are void after 60 calendar days from the date the local licensing authority receives the application form and non-refundable fee, and the Department may deny the application if not withdrawn.

(b) Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) The license application must include:

(a) Complete contact information for the applicant including:

(A) A mailing address if different from the proposed adult foster home; and

(B) A business address for electronic mail.

(b) Verification of attendance at a Department-approved orientation program conducted by the local licensing authority responsible for the licensing of the proposed adult foster home and successful completion of the Department's Ensuring Quality Care Course and examination. (See OAR 411-050-0625);

(c) The maximum resident capacity requested;

(d) Identification of:

(A) Any relatives needing care;

(B) The maximum number of any room and board tenants;

(C) The maximum number of day care individuals; and

(D) The names of any other occupants in the home.

(e) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Department. To request a Class 3 license, the license application must include:

(A) Proof of at least three years of full-time experience providing direct care to adults who are older or adults with physical disabilities and who required full assistance in four or more of activities of daily living; and

(B) Current contact information from at least two licensed health care professionals who have direct knowledge of the applicant's abilities and past experience as a caregiver; or

(C) A copy of the applicant's current license as a health care professional in Oregon, if applicable.

(f) A Health History and Physician or Nurse Practitioner's Statement (form SDS 903) regarding the applicant's ability to provide care;

(g) FINANCIAL INFORMATION. A completed Financial Information Sheet (form SDS 448A).

(A) An applicant must have the financial ability and maintain sufficient liquid resources to pay the operating costs of an adult foster home for at least two months without solely relying on potential resident income.

(B) Documentation of two months of liquid resources must include:

(i) The Department's current Verification of Financial Resources form (SDS 0448F) completed and stamped or notarized by the applicant's financial institution; or

(ii) Documentation on letterhead of the applicant's financial institution, which includes:

(I) The last four digits of the applicant's account number;

(II) The name of the account holder and, if the account is not in the applicant's name, verification the applicant has access to the account's funds;

(III) The highest and lowest balances for each of the most recent three full months; and

(IV) The number of any non-sufficient fund (NSF) payments in each of the last three full months, if any; or

(iii) Demonstration of cash on hand equal to a minimum of two months of operating expenses.

(C) If an applicant uses income from another adult foster home to document possession of at least two months of operating expenses, the applicant must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of each home for at least two months without solely relying on potential resident income.

(h) If the home is leased or rented, a copy of the completed lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) The owner and landlord's name;

(B) Verification that the rent is a flat rate; and

(C) The signatures of the landlord and applicant and the date signed;

(i) If the applicant is purchasing or owns the home, verification of purchase or ownership;

(j) Documentation of the initiation of a background check or a copy of an approved background check for each subject individual as defined in OAR 411-050-0602;

(k) A current and accurate floor plan that indicates:

(A) The size of rooms;

(B) Which bedrooms are to be used by residents, the licensee, caregivers, for day care, and room and board tenants, as applicable;

(C) The location of all the exits on each level of the home, including emergency exits such as windows;

(D) The location of any wheelchair ramps;

(E) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms;

(F) The planned evacuation routes, initial point of safety, and final point of safety; and

(G) Any designated smoking areas in or on the adult foster home premises.

(l) If requesting a license to operate more than one home, a plan covering administrative responsibilities and staffing qualifications for each home;

(m) A $20 per bed non-refundable fee for each non-relative resident;

(n) Three personal references for the applicant who are not family members as defined in OAR 411-050-0602. Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references;

(o) If the applicant intends to use a resident manager, floating resident manager, or shift caregivers, the Department's supplemental

application (form SDS 448B) completed by the applicant, as appropriate;

(p) Written information describing the operational plan for the adult foster home including:

(A) The use of substitute caregivers and other staff;

(B) A plan of coverage for the absence of the primary caregiver; ~~and~~

(C) The name of a qualified back-up provider, approved resident manager, or approved floating resident manager who does not live in the home but has been oriented to the home. The applicant must also submit a signed agreement with the listed back-up provider and maintain a copy in the facility records; and~~.~~

(D) The~~A~~ name and contact information for at least one registered nurse (RN) who has agreed to provide nursing consultation, teaching, delegation, and review of medication administration processes for the non-Medicaid residents. The licensee must check to confirm the RN has a valid, unencumbered Oregon license with no restrictions on the Oregon State Board of Nursing's website at: https://osbn.oregon.gov/OSBNVerification/Default.aspx.

(q) Copies of the home's Residency Agreements according to OAR 411-050-0615(2).

(4) After receipt of the completed application materials including the non-refundable fee, the local licensing authority must investigate the information submitted including pertinent information received from outside sources, inspect the home, and conduct a personal interview with the applicant.

(5) The Department shall deny the issuance of a license if cited violations from the home inspection are not corrected within the time frames specified by the local licensing authority.

(6) The applicant may withdraw his or her application at any time during the application process by written notification to the local licensing authority.

(7) An applicant whose license has been revoked, non-renewed, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied, shall not be granted a new license by the local licensing authority for a period of not less than one year from the date the action was final, or for a longer period if specified in the final order.

(8) All moneys collected under ORS 443.725 to 443.825 are paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-050-0615 Provider Enrollment Agreements, Residency Agreements, and Refunds

(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.

(a) An applicant or licensee who intends to care for residents who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Department, follow Department rules, and abide by the terms of the Medicaid Provider Enrollment Agreement. ~~T~~Prior to each enrollment, the local licensing authority shall ~~determine~~confirm that the applicant, licensee, and any owner or officer of the corporation, as applicable, is not listed on either of the Exclusion Lists before approval of a Medicaid Provider Enrollment Agreement.

(b) An approved Medicaid Provider Enrollment Agreement does not guarantee the placement of individuals eligible for Medicaid services in the adult foster home.

(c) An approved Medicaid Provider Enrollment Agreement is valid for the length of the license unless earlier terminated by the licensee or the Department. A Medicaid Provider Enrollment Agreement must be

completed, submitted, approved, and renewed with each licensing cycle.

(d) The rate of compensation established by the Department is considered payment in full. The licensee may not request or accept additional funds or in-kind payment from any source.

(e) An individual eligible for Medicaid services may not be admitted into an adult foster home unless and until:

(A) The Department has approved a Medicaid Provider Enrollment Agreement. The Department shall not issue a Medicaid payment to a licensee without a current license and an approved Medicaid Provider Enrollment Agreement in place;

(B) The individual eligible for Medicaid services has been screened according to OAR 411-050-0655; and

(C) The Department has authorized the placement. The authorization must be clearly documented in the resident's record with other required admission materials. (See OAR 411-050-0655).

(f) The Department shall not make payment for the date a resident moves from the home, or for any time period thereafter.

(g) The licensee must enter into a written agreement with a resident who receives Medicaid services if the licensee charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.

(A) The written agreement must be consistent with the licensee's policy with private-pay residents and entered into at the time of the resident's admission or at the time the resident becomes eligible for Medicaid services.

(B) The licensee must give written notice to the resident and the resident's family or other representatives 30 calendar days before any increases, additions, or other modifications to the charges for storage.

(h) A licensee who elects to provide care for individuals eligible for Medicaid services is not required to admit more than one resident eligible for Medicaid services. However, if the licensee has an approved Medicaid Provider Enrollment Agreement, private-pay residents who become eligible for Medicaid services may not be asked to leave solely on the basis of Medicaid eligibility.

(i) The licensee or the Department may terminate a Medicaid Provider Enrollment Agreement according to the terms of the Medicaid Provider Enrollment Agreement.

(j) The Department may terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to maintain substantial compliance with all related federal, state, and local laws, ordinances, and regulations; or

(B) The license to operate the adult foster home has been voluntarily surrendered, revoked, or non-renewed.

(k) The Department must terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to permit access by the Department, the local licensing authority, or the Centers for Medicare and Medicaid Services to any adult foster home licensed to and operated by the licensee;

(B) The licensee submits false or inaccurate information;

(C) Any person with five percent or greater direct or indirect ownership interest in the adult foster home did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the ~~criminal records and abuse check rules~~Background Check Rules in OAR 407-007-0200 to 407-007-0370;

(D) Any person with five percent or greater direct or indirect ownership interest in the adult foster home has been convicted of a criminal offense related to the person's involvement with Medicare, Medicaid, or Title XXI programs in the last 10 years; or

(E) Any person with an ownership or control interest, or who is an agent or managing employee of the adult foster home, fails to submit timely and accurate information on the Medicaid Provider Enrollment Agreement form.

(l) If the licensee submits notice of termination of the Medicaid Provider Enrollment Agreement, the licensee must comply with the following requirements:

(A) Simultaneously issue the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) to each resident eligible for Medicaid services in the licensee's adult foster home (See OAR 411-050-0645).

(B) Update Residency Agreement and submit to the local licensing authority for review.

(C) Obtain signatures of all current residents, or the resident's representative on the updated Residency Agreement following the local licensing authority's review.

(m) If either the licensee or the Department terminates a Medicaid Provider Enrollment Agreement, a new Medicaid Provider Enrollment Agreement shall not be approved by the local licensing authority for a period of not less than 180 days from the date the licensee or the Department terminated the Medicaid Provider Enrollment Agreement.

(n) DEATH OF RESIDENT ELIGIBLE FOR MEDICAID SERVICES WITH NO SURVIVING SPOUSE. The licensee must forward all personal incidental funds (PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of a resident eligible for Medicaid services with no surviving spouse. (See Limits on Estate Claims, OAR 461-135-0835).

(2) RESIDENCY AGREEMENT. A licensee must enter into a written Agreement with all residents or the residents' representatives, which details the care and services to be provided, and the rate to be charged. The written Agreement must be signed by all parties before the admission of the resident. A copy of the Agreement is subject to review for compliance with these rules by the local licensing authority before licensure and before the implementation of any changes to the Agreement.

(a) The Agreement must include, but not be limited to:

(A) Services to be provided and the rate to be charged. For individuals receiving Medicaid, the Residency Agreement may state the rate will be "as authorized by the Department". A payment range may not be used unless the Agreement plainly states when an increase in rate may be expected based on a resident's increased care or service needs.

(B) Conditions under which the rates may be changed.

(C) The home's refund policies~~y~~ in instances of a resident's hospitalization, temporary absence, death, transfer to another care setting, ~~nursing facility or other care facility,~~ and voluntary or involuntary move. The refund policies~~y~~ must be in compliance with section (3) of this rule. For consumers, the Agreement must:

(i) Disclose refund policies for partial months and indicate if the room and board is refundable.

(ii) Be consistent with the rules for Payment Limitations in ~~and~~ Home and Community-Based Services in~~,~~ OAR chapter 411, division 027.

(D) A statement indicating ~~that~~ the resident is not liable for damages considered normal wear and tear on the adult foster home and the adult foster home's contents.

(b) The Agreement must disclose the home's policies regarding:

(A) ~~The home's policies on m~~Moves, including:

(i) Voluntary moves and whether or not the licensee requires written notification of a non-Medicaid resident's intent to not return.

(ii) Involuntary moves and the resident's rights according to OAR 411-050-~~0445~~0645(12~~1~~) and (13~~2~~).

(B) Any charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.

(C) Any policies the adult foster home may have on the use of alcohol, tobacco, intercoms, and audio monitors.

(D) ~~The home's s~~Smoking ~~policies~~ in compliance with OAR 411-050-0650.

(E) ~~The home's policy regarding a~~Animals. Restrictions may not apply to animals that provide assistance or perform tasks for the benefit of a person with a disability. Such animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.

(F) ~~The home's policy regarding t~~The presence and use of legal medical and recreational marijuana on the premises.

(G) ~~The home's s~~Schedule of meal times with no more than a 14-hour span between the evening meal and the following morning's meal (See OAR 411-050-0645).

(H) Whether the home serves individuals eligible for Medicaid services.

(I) ~~The home's policy regarding r~~Refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board is refundable.

(J) A clear and precise statement of any limitation to the implementation of Advance Directives on the basis of conscience. This rule does not apply to medical professional or hospice orders for administration of medications. The statement must include:

(i) A description of conscientious objections as they apply to all occupants of the adult foster home.~~;~~

(ii) The legal authority permitting such objections under ORS 127.505 to 127.660~~; and~~.

(iii) Description of the range of medical conditions or procedures affected by the conscientious objection.

(c) The Agreement also must:

(A) Not conflict with the Resident's Rights, the family atmosphere of the home, or any of these rules~~; and~~.

(B) Be reviewed ~~and approved~~ by the local licensing authority to determine compliance with these rules before the issuance of a license, and before implementing any changes.

(d) ~~Providers initially licensed before January 1, 2016 have until September 1, 2018 to fully comply with this rule.~~ The Agreement must include the freedoms authorized by 42 CFR 441.301(c)(4) & 42 CFR 441.530(a)(1), which must not be limited without the informed, written consent of the resident or the resident's legal representative, and for consumers, approval~~ed~~ by the person-centered service plan coordinator.~~, which includes the right to~~ These include the right to be free from restraints according to the Resident's Bill of Rights, and the right to:

(A) ~~The f~~Freedom and support to access food at any time;

(B) ~~To h~~Have visitors of the resident's choosing at any time;

(C) Have a lockable door in the resident's bedroom, which may be locked by the resident;

(D) Choose a roommate when sharing a bedroom;

(E) Furnish and decorate the resident's bedroom according to the Residency Agreement;

(F) ~~The~~Have freedom and support to control the resident's schedule and activities; and

(G) Privacy in the resident's bedroom.

(e) Providers initially licensed before January 1, 2016 have until June 30, 2019 to fully comply with subsection (2)(d) of this section.

(f) The licensee may not impose additional fees ~~to~~on consumers, such as finder's fees or non-compete fees.

(g) The licensee may not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.

(h~~f~~) The licensee must give a copy of the signed Agreement to the resident or the resident's representative and must retain the original signed Agreement and any amendments on the premises available for review.

(i~~g~~) The licensee may not include any illegal or unenforceable provision in an Agreement with a resident and may not ask or require a resident to waive any of the resident's rights or licensee's liability for negligence.

(j) The use of any monitoring equipment may not be a condition of admission.

(k~~h~~) The licensee must give written notice to a non-Medicaid resident and the resident's family or other representatives 30 calendar days before any general rate increases, additions, or other modifications of the rates. The licensee is not required to give 30 day written notice if the rate change is due to the resident's increased care or service needs and the agreed upon rate schedule in the resident's Agreement has specified charges for those changes.

(3) REFUNDS FOR NON-MEDICAID RESIDENTS.

(a) If a resident dies, the licensee may not retain or require payment for more than 15 calendar days after the date of the resident's death, or the time specified in the licensee's Agreement, whichever is less.

(b) If a resident leaves an adult foster home for medical reasons and the resident or the resident's representative indicates the resident's intent to not return, the licensee may not retain or require payment for more than 15 calendar days after the date the licensee receives notification from the resident, the resident's representative, or the time specified in the licensee's Agreement, whichever is less.

(c) If a resident who has paid with private funds becomes eligible for Medicaid services, the licensee must accept payment from the Department from the date of eligibility forward as payment in full. The licensee must reimburse the resident or the resident's representative within 30 calendar days after the licensee receives payment from the Department for any private payment received after the resident became eligible for Medicaid services.

(d) The licensee must act in good faith to reduce the charge to a resident who has left the home by seeking a new resident to fill the vacancy.

(e) The licensee must refund any unused advance payment to the resident, or the resident's representative as appropriate, within 30 calendar days after the resident dies or leaves the home.

(f) If the adult foster home closes or the licensee gives written notice for the resident to leave, the licensee waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

(g) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Department investigator, or due to conditions of imminent danger of life, health, or safety, the licensee may not charge the resident beyond the resident's last day in the home.

(h) The refund policies in these rules also apply to refunds for resident moves and transfers as described in OAR 411-050-0645.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.880, 443.790
Stats. Implemented: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-050-0620 Background Check

(1) All subject individuals must have an approved background check, which for non-licensees or non-licensee applicants, may include an approved preliminary fitness determination, prior to operating, working in, training in, or living in an adult foster home.

(a) Licensees must maintain ~~printed~~ documentation of preliminary and final fitness determinations with the home's facility records in accordance with these rules ~~criminal records and abuse check rules, OAR 407-007-0200 to 407-007-0370.~~and the background check rules.

(b) Verification may include printed or electronic documentation, which must be readily accessible upon request.

(2) The background check may not to be used as a screening tool for hiring. New employees may be offered a position contingent upon passing the background check.

(3) A new background check must be completed:

(a) Every two years.

(b) Prior to any subject individual's change in employment position.

(c) If the Department has reason to believe a new background check is needed.

(4) An SI may be hired on a preliminary basis following completion of a preliminary fitness determination according to the background check

~~criminal records and abuse check~~ rules.~~, OAR 407-007-0200 to 407-007-0370.~~ An SI who is hired on a preliminary basis shall be actively supervised at all times they are on duty by a qualified caregiver who has been approved without restrictions. Active supervision means a qualified caregiver must:

(a) Be within line-of-sight and within hearing of the SI both in and on the adult foster home premises.

(b) Know where the SI is and what the SI is doing.

(5) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual may be approved to work in multiple homes in Oregon only when the subject individual is working in the same employment position.

(6) On or after July 28, 2009, no licensee, licensee applicant, or employee of the licensee who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 shall be approved by the Department to provide care and services in an adult foster home. This rule does not apply to:

(a) An employee of the licensee who was hired prior to July 28, 2009, who continues employment in the same position with the same licensee; or

(b) Any subject individual who is an occupant of the home but is neither a licensee nor a caregiver.

~~(6) The licensee must have written verification that the required background checks have been completed and approved for all subject individuals. The written verification shall be readily available upon request and may include electronic correspondence.~~

(7~~8~~) All subject individuals must self-report to the licensee any~~:~~

(a) Potentially disqualifying condition ~~as~~ listed in OAR 125-007-0270.

(b) ~~and any d~~Disqualifying condition as described in OAR 407-007-0275.

(c) ~~and any p~~Potentially disqualifying condition as described in OAR 407-007-027~~980~~ and OAR 407-007-0290.

(d) The licensee must notify the Department or local licensing authority within 24 hours if any subject individual has a disqualifying or potentially disqualifying condition.

(8~~9~~) The Department must provide for the expedited completion of a background check for the state of Oregon when requested by a licensed provider because of a demonstrated immediate staffing need. When a background check requires fingerprints or a weigh test, an expedited check may not be conducted until all required information is submitted, according to the background check rules.

(9) If a licensee's background check is denied by the Department, the licensee may continue to operate and work in the home pending potential appeal and a final order except as stated in (10) of this rule.

(10) The Department may take immediate action if there is reason to believe any resident's health, safety or welfare is at risk. Such action may include, but is not limited to, condition~~(s)~~ on the license or suspension of the license. If the final order upholds the Department's decision to deny the background check, the Department ~~will~~shall pursue the denial, revocation, non-renewal, or suspension of the provider's license.

Stat. Auth.: ORS 181.537, 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 181.537, 443.001 -~~to~~ 443.004, 443.705 -443.825, 443.875, 443.991

411-050-0625 Qualification and Training Requirements

(1) APPLICANT AND LICENSEE QUALIFICATIONS. An adult foster home applicant and licensee must meet and maintain the requirements specified in this section. An adult foster home applicant and licensee must:

(a) Live in the home that is to be licensed at least five 24-hour days ~~and nights~~ per week and function as the primary caregiver as defined in OAR 411-050-0602 unless:

(A) There is, or shall be upon licensure, an approved resident manager who lives in the home and works five consecutive days and nights per week as the primary caregiver;

(B) There is, or shall be upon licensure, two approved primary caregivers who live in the home and work three and four consecutive days and nights per week respectively; or

(C) The home is staffed with approved shift caregivers for a minimum of five 24-hour days per week. (See section (6) of this rule.)~~A variance for shift caregivers has been granted according to section (6) of this rule.~~

(b) Subsections (a)(A), (B), and (C) of this section are not intended to prohibit the occasional and temporary absence of the primary caregiver~~(s)~~ from the adult foster home;

(c) Be at least 21 years of age;

(d) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Department to provide 24-hour care for adults who are older or adults with physical disabilities. An applicant and licensee must have a statement from a physician, nurse practitioner, or physician assistant indicating that the applicant or licensee is physically, cognitively, and emotionally capable of providing care to residents. An applicant or licensee with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment, rehabilitation, or references regarding current condition;

(e) Have an approved background check in accordance with OAR 411-050-0620 and maintain that approval as required;

(f) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the residents and the residents' family members or representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), licensed health care professionals,

case managers, Department and local licensing authority staff, and others involved in the care of the residents;

(g) Be able to respond appropriately to emergency situations at all times; and

(h) Have a clear understanding of his or her responsibilities, knowledge of the residents' care plans, and the ability to provide the care specified for each resident; and not be listed on either of the Exclusion Lists.

(2) APPLICANT AND LICENSEE TRAINING REQUIREMENTS.

(a) Applicants and licensees must have the education, experience, and training to meet the requirements of the requested classification of the home. (See OAR 411-050-0630)

(b) A potential applicant or applicant must complete the following training requirements prior to obtaining a license:

(A) Attend a Department-approved orientation program conducted by the local licensing authority responsible for the licensing of the proposed adult foster home;

(B) Attend the Department's Ensuring Quality Care Course and pass the examination to meet application requirements for licensure;

(i) Potential applicants and applicants who fail the first examination may take the examination a second time; however, successful completion of the examination must take place within 90 calendar days of the end of the Department's Ensuring Quality Care Course.

(ii) Potential applicants and applicants who fail a second examination must retake the Department's Ensuring Quality Care Course prior to repeating the examination.

(C) Comply with the Department's January 1, 2015, student policies for the Department's Ensuring Quality Care Course; and

(D) Have current CPR and First Aid certification.

(i) Accepted CPR and First Aid courses must be provided by or meet the standards of the American Heart Association or the American Red Cross (e.g. the American Safety and Health Institute or MEDIC First Aid).

(ii) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor meeting the standards of the American Heart Association, the American Red Cross.

(c) Except as provided in (2)(d) of this rule, all providers, including licensees, resident managers, floating resident managers, and shift caregivers, must complete dementia training approved by a private or non-profit organization that has been approved by the Department before providing direct care as mandated by Section 30 of HB 3359, 2017 legislative session. The training ~~will~~shall be based on current standards in dementia care, and ~~will~~shall include:

(A) Education on the dementia disease process, including the progression of the disease, memory loss, and psychiatric and behavioral symptoms.

(B) Techniques for understanding and managing behavioral symptoms, including, but not limited to reducing the use of antipsychotic medications for nonstandard uses.

(C) Strategies for addressing the social needs of persons with dementia and providing them with meaningful activities.

(D) Specific aspects of dementia care and ensuring the safety of residents with dementia, including, but not limited to, how to:

(i) Address pain;

(ii) Provide food and fluids;

(iii) Prevent wandering and elopement; and

(iv) Use a person-centered approach.

(d) Providers who are licensed or employed as a resident manager, floating resident manager, or shift caregiver prior to July 1, 2018 must complete the required dementia training by July 1, 2018. Training resources, including free online classes, for the approved dementia training will be made available.

(e) The licensee must maintain copies of all caregiver's certificates of completion as part of the home's facility records.

(3) FINANCIAL REQUIREMENTS. A licensee applicant and licensee must have the financial ability and maintain sufficient liquid resources to pay the operating costs of the adult foster home for at least two months without solely relying on potential resident income.

(a) If an initial license applicant is unable to demonstrate the financial ability and resources required by this section, the Department may require the applicant to furnish a financial guarantee, such as a line of credit or guaranteed loan, to fulfill the requirements of this rule.

(b) If at any time there is reason to believe an applicant or licensee may not have sufficient financial resources to operate the home in compliance with these rules, the local licensing authority may request additional documentation, which may include verification of the applicant's or licensee's ability to readily access the requested funds. Circumstances that may prompt the request of additional financial information include, but are not limited to, reports of insufficient food, inadequate heat, or failure to pay employees, utilities, rent, or mortgage. Additional documentation of financial resources may include, but are not limited to:

(A) The Department's Verification of Financial Resources form (SDS 0448F) completed and stamped or notarized by the applicant's or licensee's financial institution;

(B) Documentation on letterhead of the applicant's or licensee's financial institution that includes:

(i) The last four digits of the applicant's or licensee's account number;

(ii) The name of the account holder, and if the account is not in the applicant's or licensee's name, verification the applicant or licensee has access to the account's funds;

(iii) The highest and lowest balances for each of the most recent three full months;

(iv) The number of any non-sufficient fund (NSF) payments in each of the last three full months, if any; and

(v) Signature of the banking institution's representative completing the form and date.

(C) Demonstration of cash on hand equal to a minimum of two months of operating expenses.

(c) The local licensing authority must request the least information necessary to verify compliance with this section.

(4) RESIDENT MANAGER REQUIREMENTS. A resident manager must live in the home as specified in section (1)(a) of this rule and function as the primary caregiver under the licensee's supervision. A resident manager must meet and maintain the qualification and training requirements specified in sections (1)(a) through (2)(d)~~b)(D)~~ of this rule. The local licensing authority shall verify all the requirements of these rules have been satisfied prior to approval of a resident manager.

(5) FLOATING RESIDENT MANAGER REQUIREMENTS.

(a) A floating resident manager must meet and maintain the qualification and training requirements specified in sections (1)(c) through (2)(d)~~b)(D)~~ of this rule, except as indicated in (5)(b) of this rule.

(b) If the licensee has one or more homes within the jurisdiction of more than one local licensing authority, a currently approved floating resident manager is not required to complete the Department-approved orientation in more than one licensing authority's jurisdiction. This exception does not prohibit the local licensing authority within an exempt area from requiring the floating resident manager applicant to attend the local licensing authority's orientation.

(c) The floating resident manager must be oriented to each home prior to providing resident care in each home. Documentation of orientation to every home the floating resident manager works in must be available within each home as stated in section (7) of this rule.

(d) Facility records in each of the homes a floating resident manager is assigned to work must maintain proof the floating resident manager has a current and approved background check.

(e) A floating resident manager may not be used in lieu of a shift caregiver, except on temporary basis, when the regular shift caregiver is unavailable due to circumstances, such as illness, vacation, or termination of employment.

(6) SHIFT CAREGIVER REQUIREMENTS.

(a) Shift caregivers may be used in lieu of a resident manager. ~~if granted a written variance by the local licensing authority. Use of shift caregivers detracts from the intent of a home-likehomelike environment, but may be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs, such as those with Alzheimer's disease, AIDS, or head injuries.~~ If shift caregivers are used, each shift caregiver must meet or exceed the experience and training qualifications for the license classification requested.

(b) Shift caregivers must meet and maintain the qualification and training requirements specified in sections (1)(c) through (2)(d)~~(b)(D)~~ of this rule. The local licensing authority shall verify all the

requirements of these rules have been satisfied prior to approval of a shift caregiver.

(7) CAREGIVER ORIENTATION. Prior to providing care to any resident, a resident manager, floating resident manager, and shift caregiver must be oriented to the home and to the residents by the licensee. Orientation must be clearly documented in the facility records. Orientation includes, but is not limited to:

(a) Location of any fire extinguishers;

(b) Demonstration of evacuation procedures;

(c) Instruction of the emergency preparedness plan;

(d) Location of resident records;

(e) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;

(f) Location of medications and the key for the medication cabinet;

(g) Introduction to residents;

(h) Instructions for caring for each resident;

(i) How to administer medications properly;

(j) How to document on the resident's medication administration record and other resident records;

(k~~i~~) ~~Delegation by a~~Making arrangements with a registered nurse to delegate any nursing procedure that requires delegation prior to the caregiver performing that task;~~for nursing tasks, if applicable;~~ and

(l~~j~~) ~~P~~Understanding the home's policies and procedures related to Advance Directives. (See OAR 411-050-0645)

(8) EMPLOYMENT APPLICATION. An application for employment in any capacity in an adult foster home must include a question asking whether

the person applying for employment has been found to have committed abuse. Employment applications must be retained for at least three years.

(9) EXCLUSION VERIFICATION.

(a) A licensee must verify the resident manager, floating resident manager, and shift caregivers, as applicable, are not listed on either of the Exclusion Lists prior to employment.

(b) Verification of checking the Exclusion Lists must be clearly documented in the facility records.

(10) TRAINING WITHIN FIRST YEAR OF INITIAL LICENSING OR APPROVAL. Within the first year of obtaining an initial license or approval, the licensee, resident manager, floating resident manager, and shift caregivers must complete the Six Rights of Safe Medication Administration and a Fire and Life Safety training as available. The Department or local licensing authority and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

(11) ANNUAL TRAINING REQUIREMENTS.

(a) Each year after initial licensure, the licensee, resident manager, floating resident manager, and shift caregivers must complete at least 12 hours of Department-approved training related to the care of adults who are older or adults with physical disabilities in an adult foster home setting. Up to:~~—~~

(A) ~~Up to f~~Four ~~of those~~ hours of the required annual training may be related to the business operation of the adult foster home.

(B) Two hours of CPR training and two hours of First Aid training may count as part of the required annual training.

(b) A licensee, resident manager, floating resident manager, and shift caregivers, as applicable, must maintain approved CPR certification.

(c) Registered nurse delegation or consultation, ~~CPR certification~~ and ~~First Aid training,~~ the Ensuring Quality Care Course (not including approved EQC refresher courses), adult foster home orientation, Ventilator Assisted Care Course and skills competency checks, or consultation with an accountant do not count toward the required 12 hours of annual training.

(12) SUBSTITUTE CAREGIVER REQUIREMENTS. A substitute caregiver left in charge of the residents for any period of time, may not be a resident, and must at a minimum, meet all of the following qualifications prior to working or training in the home:

(a) Be at least 18 years of age.

(b) Have an approved background check in accordance with OAR 411-050-0620 and maintain that approval as required.

(c) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the residents and the residents' family members and representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), licensed health care professionals, case managers, Department and local licensing authority staff, and others involved in the care of the residents.

(d) Be able to respond appropriately to emergency situations at all times.

(e) Have a clear understanding of his or her responsibilities, have knowledge of the residents' care plans, and be able to provide the care specified for each resident, including appropriate delegation or consultation by a registered nurse.

(f) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Department to provide care for adults who are older or adults with physical disabilities, as determined by reference checks and other sources of information.

(g) Have current CPR and First Aid certification within 30 calendar days of the start of employment.

(A) Accepted CPR and First Aid courses must be provided by or meet the standards of the American Heart Association or the American Red Cross (e.g. the American Safety and Health Institute or MEDIC First Aid).

(B) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor meeting the standards of the American Heart Association or the American Red Cross.

(h) Not be listed on either of the Exclusion Lists.

(A) Licensees must verify the substitute caregiver is not listed on either of these Exclusion Lists; and

(B) Clearly document that verification in the facility's records.

(13) TRAINING REQUIREMENTS FOR SUBSTITUTE CAREGIVERS PRIOR TO PROVIDING DIRECT CARE.

(a) Except as provided in (13)(b) of this rule, all substitute caregivers must complete dementia training approved by a private or non-profit organization that has been approved by the Department before providing direct care as mandated by Section 30 of HB 3359, 2017 legislative session. The training must be based on current standards in dementia care, and shall include:

(A) Education on the dementia disease process, including the progression of the disease, memory loss, and psychiatric and behavioral symptoms.

(B) Techniques for understanding and managing behavioral symptoms, including, but not limited to reducing the use of antipsychotic medications for nonstandard uses.

(C) Strategies for addressing the social needs of persons with dementia and providing them with meaningful activities.

(D) Specific aspects of dementia care and ensuring the safety of residents with dementia, including, but not limited to, how to:

(i) Address pain;

(ii) Provide food and fluids;

(iii) Prevent wandering and elopement; and

(iv) Use a person-centered approach.

(b) Substitute caregivers who are employed prior to July 1, 2018, must complete the required dementia training by July 1, 2018. Training resources, including free online classes, for approved dementia training shall be made available.

(c) Copies of each caregiver's certificate of completion must be maintained with the home's facility records.

(d) A substitute caregiver must be oriented to the home and to the residents by the licensee or resident manager prior to the provision of care to any residents. Orientation includes, but is not limited to:

(A) Location of any fire extinguishers;

(B) Demonstration of evacuation procedures;

(C) Instruction of the emergency preparedness plan;

(D) Location of resident records;

(E) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;

(F) Location of medications and the key for the medication cabinet;

(G) Introduction to residents;

(H) Instructions for caring for each resident;

(I) How to administer medications properly;

(J) How to document on the resident's medication administration record and other resident records;

(K~~I~~) ~~D~~Making arrangements with a registered nurse to delegate any tasks of nursing that require delegation prior to the caregiver performing that task;
~~elegation by a registered nurse for nursing tasks if applicable; and~~

(L~~J~~) ~~Education on the~~Understanding the home's policies and procedures related to Advance Directives. (See OAR 411-050-0645)

(e~~b~~) A substitute caregiver must complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W) and receive instruction in specific care responsibilities from the licensee, resident manager, or floating resident manager prior to working or training in the home. The Workbook must be completed by the substitute caregiver without the help of any others. The Workbook is considered part of the required orientation to the home and residents.

(A) The local licensing authority may grant a variance to the Caregiver Preparatory Training Study Guide and Workbook requirement for a substitute caregiver who:

(i) Holds a current Oregon license as a health care professional, such as a physician, nurse practitioner, physician assistant, registered nurse, or licensed practical nurse; and

(ii) ~~Who d~~Demonstrates the ability to provide adequate care to residents based on similar training or at least one

year of experience providing direct care to adults who are older or adults with physical disabilities.

(B) A certified nursing assistant (CNA) or certified medical assistant (CMA) must complete the Caregiver Preparatory Training Study Guide and Workbook and have a certificate of completion signed by the licensee.

(14~~e~~) STAFFING WITH SUBSTITUTE CAREGIVERS. A substitute caregiver routinely left in charge of an adult foster home for any period that exceeds 48 continuous hours is required to meet the education, experience, and training requirements of a resident manager as specified in this rule.

(a) A licensee may not leave a substitute caregiver or concurrent substitute caregivers routinely in charge of the home for any period that exceeds 48 continuous hours within one calendar week.

(b) This requirement is not intended to prevent a qualified substitute caregiver from providing relief care in the absence of the primary caregiver, such as for a one or two week vacation. In such an event, the licensee must arrange for the qualified back-up provider to be available as needed.

(154) If a licensee has demonstrated non-compliance with one or more of these rules, the Department may require, by condition, additional training in the deficient area.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-050-0630 Classification of Adult Foster Homes

(1) The local licensing authority shall issue a Class 1, Class 2, or Class 3 adult foster home license only if the qualifications of the applicant, resident manager, floating resident manager, and shift caregivers, as applicable, fulfill the classification requirements of these rules.

(a) After receipt of the completed application materials, including the non-refundable fee, the local licensing authority must investigate the information submitted, including any pertinent information received from outside sources.

(b) The local licensing authority shall not issue a license if unsatisfactory references or a history of substantial non-compliance of the applicant within the last 24 months is verified.

(c) The local licensing authority may issue a Class 1 license if the applicant and resident manager, as applicable, complete the training requirements outlined in OAR 411-050-0625;

(d) The local licensing authority may issue a Class 2 license if the applicant, resident manager, and floating resident manager, as applicable, complete the requirements outlined in OAR 411-050-0625. In addition, these caregivers must each have the equivalent of two years of full time experience providing direct care to adults who are older or adults with physical disabilities;

(e) The local licensing authority may issue a Class 3 license if the applicant, resident manager, floating resident manager, and shift caregivers, as applicable, complete the training requirements outlined in OAR 411-050-0625 and have a current license as a health care professional in Oregon or possess the following: ~~qualifications:~~

(A) Have the equivalent of three years of full time experience providing direct care to adults who are older or adults with physical disabilities and who require full assistance in four or more activities of daily living; and

(B) Have references satisfactory to the Department. The applicant must submit current contact information from at least two licensed health care professionals who have direct knowledge of the applicant's ability and past experience as a caregiver.

(2) The Department may approve a licensee to care for residents requiring ventilator-assisted care. The licensee, resident manager, floating resident manager, or shift caregivers, as applicable, must meet the criteria for a

Class 3 home according to section (1)(e) of this rule and comply with the additional requirements for adult foster homes serving residents requiring ventilator-assisted care outlined in OAR 411-050-0660.

(3) To request a change in the classification of a licensed home, at any time other than the license renewal period, the licensee shall submit a written request to the local licensing authority, using the Department's form DHS 0748, and DHS 0748A as applicable, to amend the licensee's previous application for a license.

(a) The complete request will include all the required information and documentation, as applicable, to demonstrate the applicant meets the standards for the requested classification according to these rules.

(b) Within 60 calendar days' receipt of the complete written request, the local licensing authority will investigate the information provided and shall:

(A) Approve the applicant's request and issue an amended license with the requested classification; or

(B) ~~Deny~~ Forward a request to deny the applicant's request, to the Safety, Oversight, and Quality Unit, unless the applicant submits written notification to withdraw the requested change in classification.

(i) If the request is denied, the Department shall provide the applicant with notice and an opportunity for a contested case hearing pursuant to ORS 183. The Notice shall state the reasons for the denial and shall be served personally upon the applicant or by certified or registered mail.

(ii) Any request for a contested case hearing must be submitted to the Department, in writing, by the applicant within 10 days of service.

(4) A licensee may only admit or continue to care for residents whose impairment levels are within the classification of the licensed home.

(a) A licensee with a Class 1 license may only admit residents who require assistance in no more than four activities of daily living.

(b) A licensee with a Class 2 license may provide care for residents who require assistance in all activities of daily living, but require full assistance in no more than three activities of daily living.

(c) A licensee with a Class 3 license may provide care for residents who require full assistance in four or more activities of daily living, but only one resident who requires bed-care or full assistance with all activities of daily living, not including cognition or behavior.

(5) A licensee must request, in writing, a variance from the local licensing authority if:

(a) A new resident wishes to be admitted whose impairment level exceeds the license classification;

(b) A current resident becomes more impaired, exceeding the license classification; or

(c) There is more than one resident in the home who requires full bed-care or full assistance with all activities of daily living, not including cognition or behavior.

(6) The local licensing authority may grant a variance that allows the resident to be admitted or remain in the adult foster home. The local licensing authority must respond in writing within 30 calendar days after receipt of the licensee's written variance request. The licensee must prove the following criteria are met by clear and convincing evidence:

(a) It is the choice of the resident to reside in the home;

(b) The licensee is able to provide appropriate care and service to the resident in addition to meeting the care and service needs of the other residents;

(c) Additional staff is hired to meet the additional care requirements of all residents in the home as necessary;

(d) Outside resources are available and obtained to meet the resident's care needs;

(e) The variance shall not jeopardize the care, health, safety, or welfare of the residents; and

(f) The licensee is able to demonstrate how all occupants shall be safely evacuated in three minutes or less.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-050-0632 Capacity

(1) Notwithstanding limited adult foster homes, ~~R~~residents must be limited to no more than five adults who require care and are unrelated to the licensee and resident manager by blood, marriage, or adoption.

(2) The number of residents permitted to reside in an adult foster home is determined by the ability of the staff to meet the care needs of the residents, the fire and life safety standards for evacuation, and compliance with the facility standards of these rules.

(3) The licensee must demonstrate, to the local licensing authority's satisfaction, the ability to meet the needs of the residents, in addition to, caring for any children or ~~relatives~~others beyond the license capacity of the adult foster home.

(4) The local licensing authority's determination of maximum capacity must ensure:

(a) The ratio of at least one caregiver per five residents, including any day care individuals and others requiring care or supervision except as allowed under section (5) of this rule.

(b) Children over the age of five have a bedroom available that is separate from the child's parents.

(c) The well-being of the household, including any children or other family members, shall not be jeopardized.

~~(d) The care needs of day care individuals shall be met.~~

(5) When a family member who is not a consumer requires care in a home, and when ~~where~~ the licensee is the primary live-in caregiver, a maximum capacity of five unrelated residents are allowed if the following criteria are met:

(a) The licensee must be able to demonstrate the ability to evacuate all occupants from the adult foster home as specified in these rules~~within three minutes or less~~ (See OAR 411-050-0650).

(b) The licensee must have sufficient, qualified staff and demonstrate the ability to provide appropriate care for all residents (See OAR 411-050-0645).

(c) There must be an additional 40 square feet of common living space for each person above the five residents as specified in these rules (See OAR 411-050-0650).

(d) Bathrooms and bedrooms must meet the requirements of OAR 411-050-0650.

(e) The care needs of day care individuals must be within the classification of the license and any conditions imposed on the license.

(f) The well-being of the household, including any children or other family members, shall not be jeopardized.

(6) When a licensee's family member is a Medicaid consumer, the family member may remain in the home as one of the residents within the home's licensed capacity. Resident records must be maintained for the family member according to OAR 411-050-0645.

(7) If day care individuals are in the home, the licensee must have arrangements for the day care individuals to sleep in areas other than a

resident's bed, a resident's room, or space designated as common use, in accordance with OAR 411-050-0650.

(8~~7~~) If room and board tenants are in the home, each tenant must have:

(a) An approved background check in accordance with the Background Check Rules.~~OAR 407-007-0200 to 407-007-0370 (Criminal Records and Abuse Check Rules).~~

(b) A tenancy agreement.

(c) A copy of the current tenancy agreement signed and dated by the tenant.

(9~~8~~) To request a change to the maximum capacity of a licensed home at any time other than the license renewal period, the licensee shall submit to the local licensing authority a written request using the Department's form, DHS 0749, to amend the licensee's previous application for a license.

(a) The complete request will include:

(A) All the required information and documentation, as applicable, to demonstrate the applicant meets the standards for the requested capacity according to these rules; and

(B) A $20 non-refundable fee for each additional resident bed requested.

(b) Within 60 calendar days' receipt of the complete written request, the local licensing authority must investigate the information provided and must:

(A) Approve the request and issue an amended license with the requested capacity; or

(B) Forward a request to ~~D~~deny the applicant's change in capacity to the Safety, Oversight, and Quality unit, ~~request,~~ unless the applicant submits written notification to withdraw the requested change in capacity~~lassification~~.

(i) If the request is denied, the Department shall provide the applicant with notice and an opportunity for a contested case hearing pursuant to ORS 183. The notice shall state the reasons for the denial and shall be served personally upon the applicant or by certified or registered mail.

(ii) Any request for a contested case hearing must be submitted to the Department, in writing, by the applicant within 10 days of service.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991

411-050-0635 Issuance
(Amended 06/28/2016)

(1) The local licensing authority must issue a license within 60 calendar days after the completed application materials have been received if the home and applicant are in compliance with these rules.

(2) The license specifies the type of license and includes:

(a) The name of the licensee and the name of the resident manager or shift caregivers as applicable, who have met the requirements to operate the adult foster home.

(b) The address of the premises to which the license applies.

(c) The license classification and level if applicable.

(d) The maximum number of residents.

(e) The expiration date.

(3) The licensee must be given a copy of the Department's inspection report forms as follows:

(a) INITIAL LICENSE. The Department's Adult Foster Home Initial Inspection Worksheet (APD 516) identifying any areas of non-compliance and a time frame for correction.

(b) RENEWAL LICENSE. The Department's Renewal Inspection Worksheet (APD 517), and the Department's Statement of Deficiencies and Plan of Correction identifying any area of non-compliance with a time frame for correction.~~Statement of Deficiencies and Plan of Correction citing any violations.~~ The Statement of Deficiencies must specify a time frame for the correction of each violation. The time frame for correction may not exceed 30 calendar days from the date of inspection.

(4) The licensee must post the most recent inspection reports in the entry of the home or an equally prominent place and must, upon request, provide a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian, or conservator of a resident.

(5) The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The conditions must be visibly posted with the license.

(6) The local licensing authority shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825;

(c) The local licensing authority has completed an inspection of the adult foster home that demonstrates the home is in compliance with these rules;

(d) The Department has completed a background check in accordance with OAR 411-050-0620;

(e) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files;

(f) The local licensing authority has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse;

(g) The local licensing authority has verified the applicant is not listed on either of the Exclusion Lists; and

(h) The applicant has demonstrated to the local licensing authority the financial ability and resources necessary to operate an adult foster home.

(7) A license is valid for one year unless revoked or suspended by the Department.

(8) When the Department reviews a license and determines that the convenience of both the licensee and the Department will be served, a license period may be changed to match the renewal schedule of another license held by the same licensee. The request for a schedule change may be made by either the Department or the licensee. No license period may extend beyond one year.

(9) In seeking an initial license, the burden of proof to establish compliance with ORS 443.705 to 443.825, and these rules, is upon the applicant of the adult foster home.

(10) The local licensing authority shall not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain substantial compliance with the rules and regulations while operating his or her existing home or homes.

(11) PROVISIONAL LICENSE. Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the local licensing authority may issue a 60-day provisional license to a qualified person.

(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 any of the following exist:

(A) An emergency situation exists after receiving notification that a licensed provider is no longer overseeing the operation of an adult foster home.

(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.

(b) A person is considered qualified for a provisional license if he or she:

(A) Is at least 21 years of age.

(B) Has the necessary experience working with adults who are older or adults with physical disabilities to potentially qualify for the license classification of the home.

(C) Fully understands and has the ability to meet the residents' care needs.

(D) Meets the requirements of a substitute caregiver as described in OAR 411-050-0625.

~~(c) A provisional license may be extended one time for a period of 30 calendar days if an applicant has demonstrated a good faith effort to complete the application process and obtain the required qualifications and trainings.~~

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991

411-050-0640 Renewal Application and Fees
(Amended 06/28/2016)

(1) At least ~~60~~90 calendar days prior to the expiration of a license, the local licensing authority must send a reminder notice and renewal application to the licensed provider. The local licensing authority must investigate any information in the renewal application and conduct an unannounced inspection of the adult foster home prior to the license renewal.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) RENEWAL APPLICATION REQUIREMENTS. To renew an adult foster home license, the licensee must complete the Department's Renewal Application form (SDS 448C) and timely submit it, with the required information and non-refundable fee, ~~the form~~ to the local licensing authority ~~with the non-refundable fee prior to the expiration date of~~ at least 45 days prior to the expiration date of the current license. Timely submission of the renewal application and non-refundable fee shall keep the license in effect until the local licensing authority or the Department takes action.

(a) The renewal application is not complete until all of the required application information is submitted to the local licensing authority.

(b) A renewal application remaining incomplete at the time of license expiration or failure to provide accurate information on the renewal application ~~shall~~ may result in the denial of the application.

(4) The license renewal application must include:

(a) Complete contact information for the licensee, including:

(A) A mailing address if different from the adult foster home; and

(B) A business address for electronic mail, if applicable.

(b) The maximum resident capacity;

(c) Identification of:

(A) Any relatives needing care;

(B) The maximum number of any room and board tenants;

(C) The maximum number of day care individuals; and

(D) The names of any other occupants in the home.

(d) A Health History and Physician or Nurse Practitioners' Statement (form SDS 0903). The Health History and Physician or Nurse Practitioners' Statement must be updated every third year or sooner if there is reasonable cause for health concerns;

(e) FINANCIAL INFORMATION FOR THE HOME'S FIRST LICENSE RENEWAL. A completed Financial Information Worksheet (form SDS 0448A) demonstrating the financial ability to maintain sufficient liquid resources to pay the home's operating costs for at least two months;

(f) If the home is leased or rented, a copy of the current signed and dated lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) The owner and landlord's name;

(B) Verification that the rent is a flat rate; and

(C) Signatures and date signed by the landlord and applicant, as applicable;

(g) Documentation of a current approved background check for each subject individual ~~as described in~~ according to OAR 411-050-0620;

(h) A $20 per bed non-refundable fee for each non-relative resident;

(i) If the licensee intends to use a resident manager, floating resident manager, or shift caregivers, the Department's supplemental application (form SDS 448B) completed by the applicant or applicants, as appropriate;

(j) Written information describing the operational plan for the adult foster home, including:

(A) The use of substitute caregivers and other staff;

(B) A plan of coverage for the absence of the resident manager or the shift caregivers, if applicable; ~~and~~

(C) The name of a qualified back-up licensee, approved resident manager, or floating resident manager who does not live in the home but has been oriented to the home. The licensee must submit a signed agreement with the listed back-up provider annually and maintain a copy in the facility records; and~~.~~

(D) ~~A~~ The name and contact information for at least one registered nurse (RN) who has agreed to provide nursing consultation, teaching, delegation, and review of medication processes for ~~the~~ non-Medicaid residents. The licensee must confirm the RN has a valid, unencumbered Oregon license with no restrictions ~~check~~on the Oregon State Board of Nursing's website at: https://osbn.oregon.gov/OSBNVerification/Default.aspx.

(k) Copies of the home's Residency Agreement forms if changes to the original forms reviewed by the Local Licensing Authority are proposed.

(l) Proof of required continuing education credits as specified in OAR 411-050-0625.

(5) LATE RENEWAL REQUIREMENTS (UNLICENSED ADULT FOSTER HOME). ~~The home shall be treated as an unlicensed facility, subject to civil penalties, i~~If the required renewal information and fee are not timely submitted to the local licensing authority as required in (3) of this rule, ~~prior to the license expiration date~~ and residents remain in the home after the date the license expires, the home shall be treated as an unlicensed facility, subject to civil penalties. (See OAR 411-050-0685)

(6) The local licensing authority shall investigate the information submitted, review the licensing records for the applicant, conduct an inspection of the home, and provide the licensee a copy of the Department's Statement of

Deficiencies and Plan of Correction form ~~citing any violations~~identifying the number of violations and specifying a time frame for correction not to exceed 30 days.

(7) The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The licensee must visibly post the conditions, if applicable, with the license according to OAR 411-050-0645.

(8) The Department may deny a renewal application if cited violations are not corrected within the time frame specified by the local licensing authority.

(9) The local licensing authority shall not renew a license unless the following requirements are met:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and these rules, including any applicable conditions and other final orders of the Department;

(b) The local licensing authority has completed an inspection of the adult foster home;

(c) The Department has completed a background check in accordance with OAR 411-050-0620;

(d) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files;

(e) The local licensing authority has determined the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the licensee or any nursing assistant employed by the licensee has been responsible for abuse; and

(f) The local licensing authority has determined the licensee is not listed on either of the Exclusion Lists.

(10) In seeking the renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof to establish

compliance with ORS 443.705 to 443.825 and these rules is upon the licensee.

(11) In seeking the renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof to establish noncompliance with ORS 443.705 to 443.825 and these rules is upon the Department.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991

411-050-0642 Variances

(1) An applicant or licensee may request a variance to the provisions of these rules. The variance request must be in writing and must include clear and convincing evidence that:

(a) The requested variance does not jeopardize the care, health, welfare, or safety of the residents;

(b) All of the residents' needs shall be met; and

(c) All residents, in addition to other occupants in the home, may be evacuated in three minutes or less.

(2) VARIANCES NOT ALLOWED. Notwithstanding section (1) of this rule, no variance shall be granted by the local licensing authority from a regulation or provision of the rules pertaining to:

(a) Resident capacity as described in OAR 411-050-0632.

(b) Minimum age of licensee and any caregivers as described in OAR 411-050-0625, except as stated in OAR 411-050-0662(3).

(c) The training requirements of a licensee and all other caregivers except as allowed for provisional licenses as described in OAR 411-050-0635, or when a substitute caregiver holds an Oregon health care professional license as described in OAR 411-050-0625.

(d) Standards and practices for care and services as described in OAR 411-050-0655).

(e) Inspections of the facility as described in OAR 411-050-0670.

(f) Background checks as described in OAR 411-050-0620.

(3) The local licensing authority shall not grant a variance request to any rule that is inconsistent with Oregon Revised Statutes or 42 CFR 441.301(c)(2)(xiii) and 42 CFR 441.530(a)(1)(vi) (See OAR 411-050-0655(4)).

(4) The local licensing authority shall not grant a variance request related to fire and life safety without prior consultation with the Department.

(5) In making a determination to grant a variance, the local licensing authority must consider the licensee's history of compliance with rules governing adult foster homes or other long-term care facilities for adults who are older or adults with physical disabilities in Oregon and any other jurisdiction, if appropriate. The local licensing authority must determine that the variance is consistent with the intent and purpose of these rules before granting the variance. (See OAR 411-050-0600). The local licensing authority must respond, in writing, within 30 days of receiving a request for a variance. The written response must include the frequency of renewal.

(6) A variance is not effective until granted in writing by the local licensing authority. Variances are reviewed pursuant to these rules. If applicable, the licensee must re-apply for a variance at the time of license renewal, or more often if determined necessary by the local licensing authority.

(7) In seeking a variance, the burden of proof that the requirements of these rules have been met is upon the applicant or licensee.

(8) If a variance to any provision of these rules is denied, the applicant or licensee may request a meeting with the local licensing authority.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001_-_443.004, 443.705_-_443.825, 443.875,

443.991

411-050-0645 Operational Standards

(1) GENERAL PRACTICES.

(a) A licensee must own, rent, or lease the home to be licensed, however, the local licensing authority may grant a variance to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building where an adult foster home is located may not allow the owner, landlord, or lessor to interfere with the admission, transfer, or voluntary or involuntary move of any resident in the adult foster home unless the owner, landlord, or lessor is named on the license.

(b) Each adult foster home must comply with:

(A) All applicable local business license, zoning, building, and housing codes.

(B) The Fair Housing Act.

(C) State and local fire and safety regulations for a single-family residence, and Oregon Fire Code, Appendix L.

(D) Federal regulations governing HCB Settings. Providers initially licensed before January 1, 2016 must fully comply with Home and Community-Based Services and Settings and Person-Centered Service Plans, OAR chapter 411, division 004, by no later than ~~September 1, 2018~~June 30, 2019.

(c) ZONING. Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.

(d) COOPERATION AND ACCESS. The licensee must cooperate with the Department, Centers for Medicare and Medicaid Services (CMS), and local licensing and investigative personnel in inspections,

complaint investigations, planning for resident care, application procedures, and other necessary activities.

(A) Department, CMS, local licensing, and investigative personnel must be provided access to all resident and facility records and may conduct private interviews with residents.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records, and with written permission from the resident or the resident's legal representative, may have access to resident records. (See OAR 114-005-0030).

(e) CONFIDENTIALITY. Licensees and adult foster home staff must keep personal and healthcare ~~I~~information related to residents ~~must be kept~~ confidential and private as required by all applicable confidentiality and privacy laws, except as may be necessary in the planning or provision of care or medical treatment, or related to an inspection, investigation, or sanction action under these rules. Applicable confidentiality and privacy laws include, but are not limited to:

(A) For medical information:

(i) Health Insurance Portability and Accountability Act (HIPAA).

(ii) ORS 192.553 to 192.581, confidentiality of protected health information.

(B) For resident records ~~more~~ generally:

(i) ORS 410.150, Use of files, confidentiality, and privileged communications.

(ii) OAR chapter 411, division 005, Privacy of protected information.

(f) TRANSPORTATION. A licensee must arrange for or provide appropriate transportation for residents when needed.

(g) STAFFING STANDARDS. The licensee must have qualified caregivers, including awake caregivers as necessary, sufficient in number to meet the 24-hour needs of each resident in addition to caring for any children or relatives beyond the license capacity of the adult foster home. In addition, the licensee must comply with the following standards:

(A) A licensee may not employ a resident manager, floating resident manager, or shift caregiver who does not meet or exceed the qualifications, training, and classification standards for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(B) A licensee may not employ or allow any caregiver to train or work in the home who is on either of the Exclusion Lists.

(h) ABSENCE OF A PRIMARY CAREGIVER. If a primary caregiver or a shift caregiver is absent from the home for 10 days or more, the licensee must notify the local licensing authority, in writing, at least seven days before the primary caregiver's absence or immediately upon knowing of the absence. Notification must state the reason for and anticipated length of the absence. The licensee must submit a staffing plan to the local licensing authority that demonstrates coverage to meet the needs of the residents during the primary caregiver's absence and is signed by the back-up provider.

(i) CHANGE OF PRIMARY CAREGIVER. If a primary caregiver or a shift caregiver changes during the period the license covers, the licensee must notify the local licensing authority within 24 hours and identify who is providing care.

(A) If a licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in primary caregiver, the licensee must submit an updated plan of 24-hour coverage to the local licensing authority within seven days.

(B) If a resident manager, floating resident manager, or shift caregiver changes, the licensee must submit a request for a change of resident manager, floating resident manager, or shift caregiver, as applicable, to the local licensing authority along with:

(i) The Department's supplemental application form (SDS 448B) completed by the resident manager applicant, floating resident manager applicant, or shift caregiver applicant;

(ii) A completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903) for the new applicant;

(iii) Documentation of the initiation of or a copy of an approved background check; and

(iv) A $10 non-refundable fee.

(C) When there is a change in primary caregiver, an approved floating resident manager may assume the responsibilities of the live-in, primary caregiver until a new primary caregiver is employed. If a new primary caregiver is not employed within 60 calendar days, the floating resident manager must be designated as the home's resident manager and the licensee must notify the local licensing authority of the change in status.

(D) The local licensing authority shall issue a revised license when there is a change in a primary caregiver who is identified on the license.

(j) UNEXPECTED AND URGENT STAFFING NEED. If the local licensing authority determines an unexpected and urgent staffing need exists, the local licensing authority may authorize a person who has not completed the Department's current Ensuring Quality Care Course and passed the current examination to act as a resident manager or shift caregiver until training and testing are completed, or for 60 calendar days, whichever period is shorter. The licensee must

notify the local licensing authority of the unexpected and urgent staffing need in writing and satisfactorily demonstrate:

(A) The licensee's inability to live in the home and act as the primary caregiver;

(B) The licensee's inability to find a qualified resident manager or shift caregiver, as applicable; and

(C) The proposed staff person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(k) RESPONSIBILITY. A licensee is responsible for the supervision, training, and overall conduct of all caregivers, family members, and friends when acting within the scope of their employment, duties, or when present in the home.

(l) SEXUAL ABUSE. Sexual abuse, as defined in OAR 411-020-0002 (Adult Protective Services), is prohibited.

(m) COMMUNICATION.

(A) Applicants for an initial license must obtain and provide to the local licensing authority a current, active business address for electronic mail before obtaining a license.

(B) A licensee must notify the local licensing authority within 24 hours upon a change in the home's business address for electronic mail.

(C) A licensee must notify the local licensing authority, the residents and the resident's family members, representatives, and case managers, as applicable, of any change in the telephone number for the licensee or the adult foster home within 24 hours of the change.

(D) A licensee must notify the local licensing authority in writing before any change of the licensee's residence or mailing address.

(2) SALE OR LEASE OF EXISTING ADULT FOSTER HOMES AND TRANSFER OF LICENSES.

(a) A license is not transferable and does not apply to any location or person other than the location and person indicated on the license obtained from the local licensing authority.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication, including advertising and disclosure statements, that the license to operate the adult foster home is not transferable and the licensee must refer them to the local licensing authority for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the local licensing authority before the transfer of operation of the home.

(d) The licensee must promptly notify the local licensing authority in writing about the licensee's intent to close or convey the adult foster home to another person. The licensee must provide written notice to the residents and the residents' representatives and case managers, as applicable, according to section (14~~3~~) of this rule.

(e) The licensee must inform a person intending to assume operation of an existing adult foster home that the residents currently residing in the home must be given at least 30 calendar days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the local licensing authority at a level appropriate to the care needs of the residents in the home.

(3) FORECLOSURE.

(a) A licensee must provide written notification to the local licensing authority within 10 calendar days after receipt of any notice of default, or any notice of potential default, with respect to a real estate contract, trust deed, mortgage, or other security interest affecting any property occupied or used by the licensee.

(b) The licensee must provide a copy of the notice of default or warning of potential default to the local licensing authority.

(c) The licensee must provide written updates to the local licensing authority at least every 30 days until the default or warning of potential default has been resolved and no additional defaults or potential defaults have been declared and no additional warnings have been issued. Written updates must include:

(A) The current status on what action has been or is about to be taken by the licensee with respect to the notice received.

(B) The action demanded or threatened by the holder of the security interest.

(C) Any other information reasonably requested by the local licensing authority.

(d) The licensee must provide written notification within 24 hours to the local licensing authority upon final resolution of the matters leading up to or encompassed by the notice of default or the notice warning of potential default.

(e) If the subject default property is licensed as an adult foster home, the licensee must provide written notification of the following within 24 hours to the local licensing authority, and all the residents and the residents' representatives, if applicable, regarding:

(A) The filing of any litigation regarding such security interest, including the filing of a bankruptcy petition by or against the licensee or an entity owning any property occupied or used by the licensee;

(B) The entry of any judgment with respect to such litigation;

(C) The passing of the date 40 days before any sale scheduled pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee; and

(D) The sale, pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee.

(4) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA's) My Plate and include fresh fruit and vegetables when in season.

(b) Meals must reflect consideration of a resident's preferences and cultural and ethnic background. This does not mean the licensee must prepare multiple, unique meals for the residents at the same time.

(c) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families.

(A) Meal substitutions for scheduled menu items in compliance with section (4)(a) of this rule are acceptable and must be documented on, or attached to, the weekly menu.

(B) The licensee must maintain the weekly menus for a minimum of the 12 most recent months during which the home has conducted business.

(C) 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 initially

licensed before January 1, 2016 have until ~~September 1, 2018~~June 30, 2019 to fully comply with this HCB Settings requirement, OAR 411-050-0645(4)(c)(C).

(D) If a resident misses a meal at a scheduled time, an alternative meal must be made available.

(d) There must be no more than a 14-hour span between the evening and morning meals. Snacks do not substitute for a meal in determining the 14-hour span. Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(e) Food may not be used as an inducement to control the behavior of a resident.

(f) Home-canned foods must be processed according to the guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(g) Special consideration must be given to a resident with chewing difficulties or other eating limitations. Special diets must be followed, as prescribed in writing, by the resident's physician, nurse practitioner, or physician assistant.

(h) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Storage and food preparation areas must be free from food that is spoiled or expired.

(i) The household utensils, dishes, glassware, and household food may not be stored in bedrooms, bathrooms, or living areas.

(j) Meals must be prepared and served in the home where the residents live. Payment for meals eaten away from the home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibility of the licensee.

(A) Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(B) Payment for food beyond the required three meals and snacks are the responsibility of the resident.

(k) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(l) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors, and in good repair.

(5) TELEPHONE.

(a) The home must have a working landline and corded telephone with a listed number that is separate from any other number the home has, such as, but not limited to, internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If a licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as the phone line complies with the requirements of these rules. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(b) The licensee must make a telephone that is in good working order available and accessible for the residents use with reasonable accommodation for privacy during telephone conversations. A resident with a hearing impairment, to the extent the resident may not hear a normal telephone conversation, must be provided with a telephone that is amplified with a volume control or a telephone that is hearing aid compatible.

(c) Restrictions on the use of the telephone by the residents must be specified in the written Residency Agreement and may not violate the residents' rights. Individual restrictions must be well documented in the resident's care plan.

(6) ELECTRONIC RECORDS. Electronic records may be used if the system complies with these rules. At a minimum, an electronic record system must:

(a) Have the capability to print the electronic records. All caregivers must be able to print records upon request by the Department.

(b) Have a back-up system to protect the electronic records in the event of power outages, system problems, or other problems.

(c) Be compliant with applicable privacy and confidentiality laws according to Section (1)(e) of this rule.

(d) Automatically identify any late entry and reflect the date and time of the late entry.

(e) Prevent alteration of any entries once they are made. Changes may be documented, but the system must automatically include the date and time of the change. The reason for any modification must be documented by the caregiver.

(f) Be password protected. The passwords for the electronic record system must be changed at least quarterly, and the password for the router must be changed at least every six months.

(7) FACILITY RECORDS.

(a) Facility records must be kept current, maintained in the adult foster home, and made available for review upon request. Facility records include, but are not limited to:

(A) Proof the licensee and all subject individuals have a background check approved by the Department as required by OAR 411-050-0620.

(B) Proof the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0625, including:

(i) Proof of required continuing education. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of Department-approved classroom hours.

(ii) Completed certificates to document the substitute caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook and to document the resident manager, floating resident manager, and shift caregivers, as applicable, completion and passing of the Department's Ensuring Quality Care Course and examination.

(iii) Documentation of orientation to the adult foster home for the resident manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable.

(iv) Employment applications and the names, addresses, and telephone numbers of all caregivers employed or used by the licensee.

(v) Verification that all caregivers are not listed on either of the Exclusion Lists.

(C) Copies of notices sent to the local licensing authority pertaining to changes in the resident manager, floating resident manager, shift caregiver, or other primary caregiver.

(D) Proof of required vaccinations for animals on the premises.

(E) Well water tests, if required, according to OAR 411-050-0650. Test records must be retained for a minimum of three years.

(F) Residency Agreements with all residents and, if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.

(G) Records of evacuation drills according to OAR 411-050-0650, including the date, time of day, evacuation route, length

of time for evacuation of all occupants, names of all residents and occupants, and names of residents and occupants that required assistance. The records must be kept at least three years.

(H) The Department's current Adult Foster Home Back-Up Agreement form (SDS 350) completed by the current back-up provider and the licensee, as stated in OAR 411-050-0610 and 411-050-0640.

(b) REQUIRED POSTED ITEMS. The following items must be posted in one location in the entryway or other equally prominent place in the home where residents, visitors, and others may easily read them:

(A) The adult foster home license;

(B) Conditions attached to the license, if any;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0650;

(D) The Resident's~~'~~ Bill of Rights;

(E) The home's policies as stated in the current Residency Agreement that has been reviewed for compliance with these rules by the local licensing authority;

(F) The Department's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Department's inspection forms ~~(form SDS 517A and, if applicable, form SDS 517B),~~identifying the number and type of violations, if any, including how corrections were made since the last annual inspection;

(I) The Department's notice pertaining to the use of any intercoms and monitoring devices that may be used in the adult foster home; and

(J) A weekly menu according to section (4) of this rule.

(c) POST BY PHONE. Emergency telephone numbers, including the contact number for at least one back-up provider who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee must be readily visible and posted by a central telephone in the adult foster home.

(8~~7~~) RESIDENT RECORDS.

(a) An individual resident record must be developed, kept current, and readily accessible on the premises of the home for each individual admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) A complete initial screening assessment and general information form (SDS 902) as described in OAR 411-050-0655.

(B) Documentation on form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment.

(C) Documentation that the licensee has informed all residents of the right to formulate an Advance Directive.

(D) FINANCIAL INFORMATION:

(i) Detailed records and receipts, if the licensee manages or handles a resident's money. The Resident Account Record (form SDS 713) or other expenditure forms may be used if the licensee manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. Receipts must document all deposits and purchases of $5 or more made on behalf of a resident.

(ii) Residency Agreement signed and dated by the resident or the resident's representative may be kept in a separate file, but must be made available for inspection by the local licensing authority.

(E) Medical and legal information, including, but not limited to:

(i) Medical history, if available.

(ii) Current prescribing practitioner orders.

(iii) Nursing instructions, delegations, and assessments, as applicable.

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less. (Older records may be stored separately).

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.

(F) A complete, accurate, and current care plan.

(G) Effective July 1, 2018 ~~January 1, 2017~~ and no later than June 30, 2019~~February 28, 2018~~, documentation that supports or eliminates any individually-based limitation, as described in OAR 411-050-0655(4).

(H) A copy of the current house policies, as identified in the current Residency Agreement, and the current Resident's Bill of Rights, signed and dated by the resident or the resident's representative.

(I) SIGNIFICANT EVENTS. A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident, including how and when the incident occurred, who was involved, what action was taken by

the licensee and staff, as applicable, and the outcome to the resident.

(J) NARRATIVE OF RESIDENT'S PROGRESS. Narrative entries describing each resident's progress must be documented at least weekly and maintained in each resident's individual record. All entries must be signed and dated by the person writing them.

(K) Non-confidential information or correspondence pertaining to the care needs of the resident.

(b) ACCESS TO RESIDENT RECORDS.

(A) Resident records must be readily available at the adult foster home to residents, the residents' representatives or other legally authorized persons, all caregivers working in the home, and the Department, the local licensing authority, the investigative authority, case managers, and the Centers for Medicare and Medicaid Services (CMS) for the purpose of conducting inspections or investigations.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. A Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's representative. (See OAR 114-005-0030).

(c) RECORD RETENTION. Records, including any financial records for residents, must be kept for a period of three years from the date the resident left the home.

(d) CONFIDENTIALITY. The licensee must protect the residents' personal health and all other confidential information according to Section (1)(e) of this rule. ~~In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 411, division 005 (Privacy of Protected Information).~~

(9~~8~~) RESIDENCY AGREEMENT. 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 obtained and 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. (See OAR 411-050-0615).

(10~~9~~) RESIDENT MOVES AND TRANSFERS. 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 adult foster care setting due to safety and medical limitations.

(a) If a resident moves, or intends to move, out of an adult foster home for any reason, the licensee must cooperate with the potential 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 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.

(B) Documentation of actions taken by the adult foster home staff, resident, or the resident's representative pertaining to the move or transfer.

(b) A licensee must immediately document voluntary and involuntary moves or transfers from the adult foster home in the resident's record as events take place. (See sections (11~~0~~)-(14~~3~~) of this rule).

(11~~0~~) VOLUNTARY MOVES AND TRANSFERS.

(a) If a resident eligible for Medicaid services or the resident's representative gives notice of the resident's intent to leave the adult foster home, or the resident leaves the home abruptly, the licensee

must promptly notify the resident's case manager and the local licensing authority.

(b) A licensee must obtain prior authorization from the resident, the resident's representative, and case manager, as applicable, before the resident's:

(A) Voluntary move from one bedroom to another in the adult foster home;

(B) Voluntary transfer from one adult foster home to another home that has a license issued to the same person; or

(C) Voluntary move to any other location.

(c) Notifications and authorizations of voluntary moves and transfers must be documented and available in the resident's record.

(d) The licensee remains responsible for the provision of care and services until the resident has moved from the home.

(12~~1~~) INVOLUNTARY MOVES AND TRANSFERS.

(a) A resident may only be moved involuntarily to another room within the adult foster home, transferred to another adult foster home operated by the same licensee for a temporary or permanent stay, or moved from the adult foster home for the following reasons:

(A) Medical reasons. The resident has a medical or nursing condition that is complex, unstable, or unpredictable that exceeds the level of care and services the facility provides.

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0650.

(C) Welfare of the resident or other residents, including:

(i) The resident exhibits behavior that poses an imminent danger to self or others, including acts that result in the resident's arrest or detention;

(ii) The resident engages in behavior or action that repeatedly and substantially interfere with the rights, health, or safety of the residents or others; or

(iii) The resident engages in illegal drug use or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care or failure to make payment for room and board.

(E) The adult foster home has had its license revoked, not renewed, or the license was voluntarily surrendered by the licensee.

(F) The home was not notified before the resident's admission, or learns following the resident's admission, that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(G) The licensee's Medicaid Provider Enrollment Agreement or specialized contract is terminated (pertains only to residents eligible for Medicaid).

(H) The resident engages in the use of legal medical marijuana, recreational marijuana, or both, in violation of the home's written policies or contrary to Oregon Law under ORS chapter 475B, Cannabis Regulation.

(b) MANDATORY WRITTEN NOTICE. A resident may not be moved involuntarily from the adult foster home, to another room within the adult foster home, or transferred to another adult foster home for a temporary or permanent stay without a minimum of 30 calendar days' written notice. The notice must be delivered in person to the resident and must be delivered in person or sent by registered or certified mail to the resident's representative, guardian, or conservator, and a copy must be immediately submitted to the local licensing authority, and to the resident's case manager, as applicable. Where a resident lacks capacity and there is no representative, a copy of the notice must be

immediately submitted to the State Long Term Care Ombudsman. The written notice must:

(A) Be on the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901);

(B) Be completed by the licensee; and

(C) Include the following information:

(i) The resident's name;

(ii) The reason for the proposed move or transfer, including the specific reasons the facility is unable to meet the resident's needs;

(iii) The date of the proposed change;

(iv) The resident's new location, if known;

(v) A notice of the right to hold an informal conference and hearing;

(vi) The name, address, and telephone number of the person giving the notice; and

(vii) The date the notice is issued.

(c) LESS THAN 30 DAYS' WRITTEN NOTICE. A licensee may give less than 30 calendar days' written notice in specific circumstances as identified in paragraphs (A) to (C) below, but must do so as soon as possible using the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901). The notice must be given in person to the resident, the resident's representative, guardian, conservator, and a copy must be immediately submitted to the local licensing authority, and to the resident's case manager, as applicable. The reasons for the notice must be fully documented in the resident's record. The licensee remains responsible for the provision of care and services until the resident has moved from the home. A licensee may give less than 30 calendar days' notice only if:

(A) Undue delay in moving the resident would jeopardize the health, safety, or well-being of the resident, including:

(i) The resident has a medical emergency that requires the immediate care of a level or type the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home and the licensee determines he or she is no longer able to meet the needs of the resident; or

(C) The home was not notified before the resident's admission, or learns following the resident's admission, the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(i) In the event a resident is given notice of an involuntary move due to (12~~1~~)(c)(C) of this rule, the notice may be given without reasonable advance notice.

(ii) The resident shall be given the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) as stated in (12~~1~~) of this rule.

(13~~2~~) RESIDENT HEARING RIGHTS. A resident, who has been given formal notice of an involuntary move or refused the right of return or re-admission, is entitled to an informal conference and hearing before the involuntary move or transfer as follows:

(a) INFORMAL CONFERENCE. The local licensing authority must hold an informal conference as promptly as possible after the request is received. The local licensing authority must send written notice of the time and place of the conference to the licensee and all persons entitled to the notice. Participants may include the resident and at the resident's request, a family member, case manager, Ombudsman, legal representative of the resident, the licensee, and a

representative from an adult foster home association or SEIU if requested by the licensee. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the local licensing authority must document the outcome in writing and no administrative hearing is needed.

(b) ADMINISTRATIVE HEARING. If a resolution is not reached as a result of the informal conference, the resident or the resident's representative may request an administrative hearing. If the resident is being moved or transferred with less than 30 calendar days' notice according to section (12~~1~~)(c) of this rule, the hearing must be held within seven business days of the move or transfer. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

(14~~3~~) CLOSURE OF ADULT FOSTER HOMES.

(a) A licensee must notify the local licensing authority before the voluntary closure, proposed sale, or transfer of ownership of the home, and give the residents and the residents' families, representatives, and case managers, as appropriate, a minimum of 30 calendar days' written notice on the Department's form (SDS 901) according to section (12~~1~~) of this rule.

(b) In circumstances where undue delay might jeopardize the health, safety, or well-being of residents, licensees, or staff, written notice must be given as soon as possible, according to section (12~~1~~)(c).

(c) A licensee must surrender the physical license to operate an adult foster home to the local licensing authority at the time of the adult foster home's closure.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.705 - 443.795, 443.880
Stats. Implemented: ORS 197.660-197.670, 441.373, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-050-0650 Facility and Safety Standards

In order to qualify for or maintain a license, an adult foster home must comply with the following provisions:

(1) GENERAL CONDITIONS.

(a) INTERIOR AND EXTERIOR PREMISES. The building and furnishings, patios, decks, and walkways, as applicable, must be clean and in good repair. The interior and exterior premises must be well maintained and accessible according to the individual needs of the residents. There must be no accumulation of garbage, debris, rubbish, or offensive odors. Walls, ceilings, and floors must be of such character to permit washing, cleaning, or painting, as appropriate.

(b) ADDRESS. The address numbers of the adult foster home must be placed on the home in a position that is legible and clearly visible from the street or road fronting the property. If the home is so situated that the address number is not legible and clearly visible from the road fronting the property, such as when the home is accessed via 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. The address numbers must be at least four inches in height, made of reflective material, and contrast with the background.

(c) LIGHTING. Adequate lighting, based on the needs of the occupants, must be provided in each room, stairway, and exit way. Incandescent light bulbs and fluorescent tubes must be protected with appropriate covers.

(d) TEMPERATURE. The heating system must be in working order. Areas of the home used by the residents must be maintained at a comfortable temperature. Minimum temperatures during the day must be not less than 68 degrees, no greater than 85 degrees, and not less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in each resident's care plan.

(A) During times of extreme summer heat, the licensee must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.

(B) If the facility is air-conditioned, the system must be functional and the filters must be cleaned or changed as needed to ensure proper maintenance.

(C) If the licensee is unable to maintain a comfortable temperature for the residents during times of extreme summer heat, air conditioning or another cooling system may be required.

(e) COMMON USE AREAS. Common use areas for the residents must be accessible to all residents. There must be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space may not be located in an unfinished basement or garage unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space is required for each day care individual, room and board tenant, or relative receiving care for remuneration that exceeds the limit of five.

(2) SANITATION AND PRECAUTIONS.

(a) NON-MUNICIPAL WATER SOURCE. A public water supply must be utilized if available. If a non-municipal water source is used, the licensor, a sanitarian, or a technician from a certified water-testing laboratory must collect a sample annually or as required by the Department. The water sample must be tested for coliform bacteria. Water testing and any necessary corrective action to ensure water is suitable for drinking must be completed at the licensee's expense. Water testing records must be retained for three years.

(b) Septic tanks or other non-municipal sewage disposal systems must be in good working order.

(c) COMMODES AND INCONTINENCE GARMENTS. Commodes used by residents must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(d) WATER TEMPERATURE. A resident who is unable to safely regulate the water temperature must be supervised.

(e) LAUNDRY. Before laundering, soiled linens and clothing must be stored in closed containers in an area that is separate from food storage, kitchen, and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(f) Garbage and refuse must be suitably stored in readily cleanable, rodent-proof, covered containers, pending weekly removal.

(g) VENTILATION. All doors and windows that are used for ventilation must have screens in good condition.

(h) INFECTION CONTROL. Standard and enhanced precautions for infection control must be followed in resident care as directed by the:~~.~~ ~~Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.~~

(A) ~~As directed by the~~ Oregon Health ~~Division's~~Authority's infection control staff at http://www.oregon.gov/oha/PH/DISEASESCONDITIONS/COMMUNICABLEDISEASE/HAI/pages/index.aspx; or

(B) ~~The l~~Local county health department staff.

(i) DISPOSAL OF SHARPS. Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. The puncture-resistant container must be located as close as practical to the use area. Disposal must be made according to local regulations as stated in section (5) of this rule. (See 459.386 to 459.405).

(j) FIRST AID. Current, basic first-aid supplies and a first-aid manual must be readily available in the home.

(k) PESTS. Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects, and rodents).

(l) PETS OR OTHER ANIMALS. Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and not present a danger to the residents or guests.

(m) SAFETY BARRIERS. Patios, decks, walkways, swimming pools, hot tubs, spas, saunas, water features, ~~and~~ stairways, and open bodies of water, as applicable~~appropriate~~, must be equipped with safety barriers designed to reasonably prevent injury to current residents of the home. Resident access to or use of swimming or other pools, hot tubs, spas, ~~or~~ saunas, or any open bodies of water on the premises must be supervised.

(3) BATHROOMS. Bathrooms must:

(a) Provide individual privacy and have a finished interior with a door that opens to a hall or common-use room. If a resident's bedroom includes a private bathroom, the door for the private bathroom must open to the bedroom. No person must have to walk through another person's bedroom to access a bathroom.

(b) Be large enough to accommodate the individual needs of the residents and any equipment that may be necessary.

(c) Have a mirror, a window that opens or other means of ventilation, and a window covering for privacy.

(d) Be clean and free of objectionable odors.

(e) Have bathtubs, showers, toilets, and sinks in good repair. A sink must be located near each toilet and a toilet and sink must be

available for the resident's use on each floor with resident rooms. There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants (including residents, day care individuals, room and board tenants, the licensee, and the licensee's family).

(f) Have hot and cold water at each bathtub, shower, and sink in sufficient supply to meet the needs of the residents.

(g) Have nonporous surfaces for shower enclosures. Glass shower doors, if applicable, must be tempered safety glass, otherwise, shower curtains must be clean and in good condition.

(h) Have non-slip floor surfaces in bathtubs and showers.

(i) Have grab bars for each toilet, bathtub, and shower to be used by the residents for safety.

(j) Have barrier-free access to toilet and bathing facilities.

(k) Have adequate supplies of toilet paper and soap supplied by the licensee. Residents must be provided with individual towels and washcloths that are laundered in hot water at least weekly or more often if necessary. Residents must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in a dispenser must be provided for the residents' use.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must have:

(A) Been constructed as a bedroom when the home was built, or remodeled under permit.

(B) A finished interior with walls or partitions of standard construction that go from floor to ceiling.

(C) A door that opens directly to a hallway or common use room without passage through another bedroom or common

bathroom. The bedroom door must be large enough to accommodate the occupant of the room and any mobility equipment that may be needed by the resident.

(D) Adequately ventilation, heating, and lighting with at least one window that opens and meets the requirements in section (5)(e) of this rule.

(E) At least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright.

(F) No more than two occupants per room. (See also OAR 411-050-0632 pertaining to a child's bedroom). This rule is not intended to prohibit a child five years of age or younger from occupying his or her parent's bedroom.

(b) The licensee, any other caregivers, and family members may not sleep in areas designated as living areas or share a bedroom with a resident. This rule is not intended to prohibit a caregiver or other person of the resident's choosing from temporarily staying in the resident's room when required by the resident's condition.

(c) There must be a bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Waterproof mattress covers must be used for incontinent residents. Day care individuals may use a cot or rollaway bed if bedroom space is available that meets the requirements of section (4)(a) of this rule. A resident's bed may not be used by a day care individual.

(d) Each resident's bedroom must have a separate, private dresser and closet space sufficient for the resident's clothing and personal effects, including hygiene and grooming supplies. A resident must be provided a private, secure storage space to keep and use reasonable amounts of personal belongings. A licensee may not use a resident's

bedroom for storage of items, supplies, devices, or appliances that do not belong to the resident.

(e) 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)). Providers licensed before January 1, 2016 have until ~~September 1, 2018~~June 30, 2019 to fully implement this requirement.

(f) Drapes or shades for bedroom windows must be in good condition and allow privacy for the residents.

(g) A resident who is non-ambulatory, has impaired mobility, or is cognitively impaired must have a bedroom with a safe, second exit at ground level. A resident with a bedroom above or below the ground floor must demonstrate his or her capability for self-preservation.

(h) Resident bedrooms must be in close enough proximity to the licensee or caregiver in charge to alert the licensee or caregiver in charge to resident nighttime needs or emergencies, or the bedrooms must be equipped with a functional call bell or intercom within the residents' abilities to operate. Intercoms may not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request.

(i) Bedrooms used by the licensee, resident manager, shift caregiver, and substitute caregiver, as applicable, must be located in the adult foster home and must have direct access to the residents through an interior hallway or common use room.

(5) SAFETY.

(a) FIRE AND LIFE SAFETY. Buildings must meet all applicable state and local building, fire, mechanical, and housing codes for fire and life safety. The home may be inspected for fire safety by the State Fire Marshal's Office, or the State Fire Marshal's designee, at the request of the local licensing authority or the Department using the standards in these rules, as appropriate.

(b) HEAT SOURCES. All heating equipment including, but not limited to, wood stoves, pellet stoves, and fireplaces must be installed in

accordance with all applicable state and local building and mechanical codes. Heating equipment must be in good repair, used properly, and maintained according to the manufacturer's or a qualified inspector's recommendations.

(A) A licensee who does not have a permit verifying proper installation of an existing woodstove, pellet stove, or gas fireplace must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth, Patio, and Barbeque Association member and follow the inspector's recommended maintenance schedule.

(B) Fireplaces must have approved and listed protective glass screens or metal mesh screens anchored to the top and bottom of the fireplace opening.

(C) The local licensing authority may require the installation of a non-combustible, heat-resistant, safety barrier 36 inches around a woodstove to prevent residents with ambulation or confusion problems from coming in contact with the stove.

(D) Unvented, portable oil, gas, or kerosene heaters are prohibited. Portable electric heaters shall be listed and labeled. Sealed electric transfer heaters or electric space heaters with tip-over, shut-off capability may be used when approved by the State Fire Marshal or the State Fire Marshal's designee. A heater must be directly connected to an electrical outlet and may not be connected to an extension cord.

(c) EXTENSION CORDS AND ADAPTORS. Extension cord wiring and multi-plug adaptors may not be used in place of permanent wiring. ~~UL-approved,~~Listed and labeled re-locatable power strips or taps (RPTs) with circuit breaker protection ~~and no more than six electrical sockets~~ are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPT must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(d) LOCKS AND ALARMS. Hardware for all exit doors and interior doors must be readily visible, have simple hardware that may not be locked against exit, and have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted.

(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 January 1, 2016 must be in full compliance with (A) through (C) of this rule by ~~September 1, 2018~~June 30, 2019.

(E) If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(e) WINDOWS. Bedrooms must have at least one window or exterior door that leads directly outside and is approved for emergency escape or rescue. The exit window or door must~~,~~ readily open~~s~~ from the inside without special tools, and provide~~s~~ a clear, unobstructed opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 24 inches in height or 20 inches in width. If the interior sill height of the window is more than 44 inches from the floor level, approved steps or other aids to the window exit that the occupants are capable of using must be provided. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with interior sill heights of no more than 44~~8~~ inches above the floor may be accepted when approved by the State Fire Marshal or the State Fire Marshal's designee.

(f) CONSTRUCTION. Interior and exterior doorways must be wide enough to accommodate the mobility equipment used by the

residents such as wheelchairs and walkers. All interior and exterior stairways must be unobstructed, equipped with handrails on both sides, and appropriate to the condition of the residents. (See also section (5)(q) of this rule).

(A) Buildings must be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread index of finished materials may not exceed 200 and the smoke developed index may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(i) MANUFACTURED HOMES. A manufactured home (formerly mobile homes) must have been built in 1976 or later and designed for use as a home rather than a travel trailer. The manufactured home must have a manufacturer's label permanently affixed on the unit itself that states the manufactured home meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(ii) If such a label is not evident and the licensee believes the manufactured home meets the required specifications, the licensee must take the necessary steps

to secure and provide verification of compliance from the home's manufacturer.

(iii) Manufactured homes built in 1976 or later meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(B) STRUCTURAL CHANGES. The licensee must notify the local licensing authority, in writing, at least 15 calendar days before any remodeling, renovations, or structural changes in the home that require a building permit. Such activity must comply with local building, sanitation, utility, and fire code requirements applicable to a single-family dwelling (see ORS 443.760(1)). The licensee must forward all required permits and inspections, an evacuation plan as described in section (5)(l) of this rule, and a revised floor plan as described in section (5)(o) of this rule, to the local licensing authority within 30 calendar days of completion.

(g) FIRE EXTINGUISHERS. At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be located in conspicuous locations where they ~~will be~~are readily accessible and immediately available for use ~~mounted in a location visible and readily accessible to any occupant of the home~~ on each floor, including basements.

(A) Fire extinguishers shall be inspected by the licensee or designated staff at least once per calendar month.

(B) Service personnel providing or conducting annual maintenance on portable fire extinguishers shall possess a valid certificate as outlined in the fire code.

(C) Documentation of monthly and annual inspections for each fire extinguisher shall be maintained and made available upon request. ~~Fire extinguishers must be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.~~

(h) CARBON MONOXIDE AND SMOKE ALARMS.

(A) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the manufacturer's instructions. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(i) If bedrooms are located in multi-level homes, carbon monoxide alarms must be installed on each level, including the basement.

(ii) Carbon monoxide alarms may be hard-wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with a battery back-up. Battery operated carbon monoxide alarms must be equipped with a device that warns of a low battery.

(iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(B) SMOKE ALARMS. Smoke alarms must be installed in accordance with the manufacturer's instructions in each bedroom, in hallways or access areas that adjoin bedrooms, the family room or main living area where occupants congregate, any interior designated smoking area, and in basements. In addition, smoke alarms must be installed at the top of all stairways in multi-level homes.

(i) Ceiling placement of smoke alarms is recommended.

(ii) Battery operated smoke alarms or hard-wired smoke alarms with a battery backup must be equipped with a device that warns of a low battery.

(iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular smoke alarm must be

equipped with an additional smoke alarm that has visual or vibrating capacity.

(C) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when activated an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed. Intercoms and room monitors may not be used to amplify alarms.

(D) The licensee must test all carbon monoxide alarms and smoke alarms in accordance with the manufacturer's instructions at least monthly (per NFPA 72). Testing must be documented in the facility records. The licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(i) COMBUSTIBLES AND FIREARMS. Flammables, combustible liquids, and other combustible materials must be safely and properly stored in the original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals.

(A) Oxygen and other gas cylinders in service or in storage, must be adequately secured to prevent the cylinders from falling or being knocked over.

(B) No smoking signs must be visibly posted where oxygen cylinders are present.

(C) Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not accessible to the residents.

(D) Ammunition must be secured in a locked area separate from the firearms.

(j) HAZARDOUS MATERIALS. Cleaning supplies, poisons, insecticides, and other hazardous materials must be properly stored in the original container, or in a container manufactured for the type of product. The containers must be properly labeled and kept in a safe area that is not accessible to residents, or near food preparation areas, food storage areas, dining areas, or medications.

(k) MEDICAL SHARPS. All sharps, including, but not limited to needles and lancets, must be disposed of in approved sharps containers. Sharps containers must:

(A) Be puncture-resistant.~~;~~

(B) Be leak-proof.~~;~~

(C) Be labeled or color-coded red to warn that the contents are hazardous.~~;~~

(D) Have a lid, flap, door, or other means of closing the container and inhibits the ability to remove sharps from the container.~~;~~

(E) Not be overfilled.~~;~~

(F) Be stored in an upright position in a secure location that is not accessible to residents and not close to any food preparation or food storage area~~; and~~.

(G) Must be closed immediately once full and properly disposed of within 10 days, according to the home's waste management company's or pharmacy's instructions.

(l) EVACUATION PLAN. An emergency evacuation plan must be developed and revised as necessary to reflect the current condition of the residents in the home. The evacuation plan must be rehearsed with all occupants.

(m) ORIENTATION TO EMERGENCY PROCEDURES. Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a smoke alarm, shown how to participate in an emergency

evacuation drill, and receive an orientation to basic fire safety. New caregivers must also be oriented in how to conduct an evacuation. Documentation of each orientation must be readily available.

(n) EVACUATION DRILL. An evacuation drill must be held at least once every 90 calendar days, with at least one evacuation drill per year conducted during sleeping hours. The evacuation drill must be clearly documented, signed by the caregiver conducting the drill, and maintained according to OAR 411-050-0645.

~~(A)~~ The licensee and all other caregivers must:

(A~~i~~) Be able to demonstrate the ability to evacuate all occupants from the facility to the initial point of safety within three minutes or less, and to the final point of safety within an additional two minutes or less. The initial and the final points of safety must both have direct access to a public sidewalk or street, and may not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.~~:~~

(i~~I~~) ~~B~~The initial point of safety must be exterior to and a minimum of 25 feet away from the structure.~~;~~

(ii~~II~~) The final point of safety must be a minimum of 50 feet away from the structure.~~Have direct access to a public sidewalk or street.; and~~

~~(III) Not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.~~

~~(ii) Be able to demonstrate the ability to further evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less. The final point of safety must be a minimum of 50 feet away from the structure, and:~~

~~(I) Have direct access to a public sidewalk or street; or~~

~~(II) Not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.~~

(B) SPRINKLERS. When an adult foster home has a sprinkler system throughout the home that is maintained according to the manufacturer's instructions, all occupants may have up to five minutes to evacuate to the initial point of safety, and two minutes to further evacuate occupants to the final point of safety as indicated in (A) of this ~~rule~~subsection.

(C~~B~~) Conditions may be applied to a license if the licensee or caregivers demonstrate the inability to meet the evacuation times described in this section. Conditions may include, but are not limited to, reduced capacity of residents, additional staffing, or increased fire protection. Continued problems are grounds for revocation or non-renewal of the license.

(o) FLOOR PLAN. The licensee must develop a current and accurate floor plan that indicates:

(A) The size of rooms;

(B) Which bedrooms are to be used by residents, the licensee, caregivers, and for day care and room and board tenants, as applicable;

(C) The location of all the exits on each level of the home, including emergency exits such as windows;

(D) The location of wheelchair ramps;

(E) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms;

(F) The planned evacuation routes, initial point of safety, and final point of safety; and

(G) Any designated smoking areas in or on the adult foster home's premises.

(p) RESIDENT PLACEMENT. A resident, who is unable to walk without assistance or not capable of self-preservation, may not be

placed in a bedroom on a floor without a second ground level exit. (See also section (4)(g) of this rule).

(q) STAIRS. Stairs must have a riser height of between 6 to 8 inches and tread width of between 8 to 10.5 inches. Lifts or elevators are not an acceptable substitute for a resident's capability to ambulate stairs. (See also section (5)(f) of this rule).

(r) EXIT WAYS. All exit ways must be barrier free and the corridors and hallways must be a minimum of 36 inches wide or as approved by the State Fire Marshal or the State Fire Marshal's designee. Interior doorways used by the residents must be wide enough to accommodate residents' wheelchairs and walkers, and beds that are used by residents for evacuation purposes. Any bedroom window or door identified as an exit must remain free of obstacles that would interfere with evacuation.

(s) RAMPS. There must be at least one wheelchair ramp from a minimum of one exterior door if an occupant of the home is non-ambulatory. Wheelchair ramps must comply with the U.S. Department of Justice's 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design (http://www.ada.gov/2010ADAstandards_index.htm, Chapter 4, Accessible Routes, Section 405, Ramps).

(t) EMERGENCY EXITS. There must be a second safe means of exit from all sleeping rooms. A provider whose sleeping room is above the first floor may be required to demonstrate at the time of licensure, renewal, or inspection, how the premises will be evacuated from the provider's sleeping room using the secondary exit.

(u) FLASHLIGHT. There must be at least one plug-in, rechargeable flashlight in good functional condition available on each floor of the home for emergency lighting.

(v) SMOKING. The licensee must identify the home's smoking policies in the home's Residency Agreement. If smoking is allowed in or on the premises of the home:

(A) The Residency Agreement must restrict smoking to designated areas, and prohibit smoking in:

(i) Any bedroom, including that of the residents, licensee, resident manager, any other caregiver, occupant, or visitor.~~;~~

(ii) Any upholstered furniture with cushions or pillows.

(iii) Any room where oxygen is used~~; and~~.

(iv~~ii~~) Anywhere flammable materials are stored.

(B) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(w) EMERGENCY PREPAREDNESS PLAN. A licensee must develop and maintain a written emergency preparedness plan for the protection of all occupants in the home in the event of an emergency or disaster. 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.

(A) The written emergency plan must:

(i) Include an evaluation of potential emergency hazards including, but not limited to:

(I) Prolonged power failure or water or sewer loss~~;~~.

(II) Fire, smoke, or explosion~~;~~.

(III) Structural damage~~;~~.

(IV) Hurricane, tornado, tsunami, volcanic eruption, flood, or earthquake~~;~~.

(V) Chemical spill or leak~~; and~~.

(VI) Pandemic.

(ii) Include an outline of the caregiver's duties during an evacuation.

(iii) Consider the needs of all occupants of the home including, but not limited to:

(I) Access to medical records necessary to provide services and treatment.

(II) Access to pharmaceuticals, medical supplies, and equipment during and after an evacuation.

(III) Behavioral support needs.

(iv) Include provisions and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff.

(v) Planned relocation sites.

(B) The licensee must notify the Department or the local licensing authority of the home's status in the event of an emergency that requires evacuation and during any emergent situation when requested.

(C) The licensee must re-evaluate the emergency preparedness plan at least annually and whenever there is a significant change in the home.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001_-_443.004, 443.705_-_443.825, 443.875, 443.991

411-050-0655 Standards and Practices for Care and Services

(1) PRE-ADMISSION SCREENING AND ASSESSMENT.

(a) Before admission, the licensee must conduct and document a screening using the Department's current Adult Foster Home Screening and Assessment and General Information form (SDS 0902) to determine if a prospective resident's care needs exceed the license classification of the home. The screening must:

(A) Evaluate the ability of the prospective resident to evacuate the home within three minutes along with all the occupants of the home.

(B) Determine if the licensee and caregivers are able to meet the prospective resident's needs in addition to meeting the needs of the other residents of the home.

(C) Include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information, as needed, to assure the prospective resident's care needs shall be met.

(b) The screening process must include interviews with the prospective resident and the prospective resident's family, prior care providers, and case manager, as appropriate. The licensee must also interview, as necessary, any physician, nurse practitioner, physician assistant, registered nurse, pharmacist, therapist, or mental health or other licensed health care professional involved in the care of the prospective resident. A copy of the screening document must be:

(A) Given to the prospective resident or the prospective resident's representative.

(B) Placed in the resident's record if admitted to the home; or

(C) Maintained for a minimum of three years if the prospective resident is not admitted to the home.

(c) If the Department or AAA knows a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805 is applying for admission to an adult

foster home, the Department or AAA shall notify the home of the person's status as a sex offender.

(d) The licensee may refuse to admit a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805.

(e) REQUIRED DISCLOSURES.

(A) The licensee must disclose the home's policies to a prospective resident or the prospective resident's representative, as applicable. 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. (See OAR 411-050-0615).

(B) LONG-TERM CARE ASSESSMENT. The licensee must inform a prospective private-pay resident or the prospective resident's representative, if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee must document on the Department's form (SDS 913) that the prospective private-pay resident has been advised of the right to receive a long-term care assessment. The licensee must maintain a copy of the form in the resident's record upon admission and make a copy available to the Department upon request.

(2) BEFORE ADMISSION.

(a) The licensee must obtain and document general information regarding a resident before the resident's admission. The information must include the names, addresses, and telephone numbers of the resident's relatives, significant persons, case managers, and medical or mental health providers. The information must also include the date of admission and, if available, the resident's medical insurance information, birth date, prior living facility, and mortuary.

(b) Before admission, the licensee must obtain and place in the resident's record:

(A) Prescribing practitioner's written or verbal orders for medications, treatments, therapies, and special diets, as applicable. Any verbal orders must be followed by written orders within seven calendar days of the resident's admission. Attempts to obtain written orders must be documented in the resident's record.

(B) Prescribing practitioner or pharmacist review of the resident's preferences for over-the-counter medications and home remedies.

(C) Any medical information available, including the resident's history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care.

(c) The licensee must ask for copies of the resident's Advance Directive, Physician's Order for Life Sustaining Treatment (POLST), and proof of court-appointed guardianship or conservatorship, if applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care.

(d) The licensee must review the home's current Residency Agreement with the resident and the resident's representative, as appropriate. These reviews must be documented by having the resident, or the resident's representative, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the resident's record.

(3) SCREENING BEFORE RE-ADMISSION. When a resident temporarily leaves the home including, but not limited to, a resident's hospitalization, the licensee shall conduct the necessary elements of the pre-admission and screening assessment requirements, and document those findings to:

(a) Determine whether readmission to the home is appropriate for the classification of the home.

(b) Determine whether the licensee can continue to meet the resident's care and safety needs in addition to those of the other residents.

(c) Demonstrate compliance with these rules.

(d) If applicable, demonstrate the basis for refusing the resident's re-admission to the home according to reasons identified in OAR 411-050-0645(12~~1~~).

(4) CARE PLAN.

(a) During the initial 14 calendar days following the resident's admission to the home, the licensee must continue to assess and document the resident's preferences and care needs. The assessment and care plan must be completed by the licensee and documented within the initial 14-day period. The care plan must describe the resident's needs, preferences, capabilities, what assistance the resident requires for various tasks, and must include:

(A) By whom, when, and how often care and services shall be provided;

(B) The resident's ability to perform activities of daily living (ADLs);

(C) Special equipment needs;

(D) Communication needs (examples may include, but are not limited to, hearing or vision needs, such as eraser boards or flash cards, or language barriers, such as sign language or non-English speaking);

(E) Night needs;

(F) Medical or physical health problems, including physical disabilities, relevant to care and services;

(G) Cognitive, emotional, or other impairments relevant to care and services;

(H) Treatments, procedures, or therapies;

(I) Registered nurse consultation, teaching, delegation, or assessment;

(J) Behavioral interventions;

(K) Social, spiritual, and emotional needs, including lifestyle preferences, activities, and significant others involved;

(L) The ability to exit in an emergency, including assistance and equipment needed;

(M) Any use of physical restraints or ~~psychoactive~~psychotropic medications; ~~and~~

(N) Dietary needs and preferences; and~~.~~

(O) Any individually-based limitations according to OAR 411-050-0655 (10).

(b) Effective July 1, 2018~~January 1, 2017~~ and no later than June 30, 2019~~February 28, 2018~~, the licensee must identify any individually-based limitations to the use of restraints or following freedoms on the Department's Individual Consent to HCBS Limitations form:

(A) Support to access to 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;

(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.

(c) Effective July 1, 2018~~January 1, 2017~~ and no later than June 30, 2019,~~February 28, 2018,~~ a limitation to the use of restraints or 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.

(d) 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.

(e) The licensee must:

(A) ~~r~~Review and update each resident's care plan every six months.

(B) Review and update a resident's care plan ~~and~~ when a resident's condition changes.

(C) ~~The review must be d~~Document~~ed~~ in the resident's record at the time of ~~the~~each review and include the date of the review and the licensee's signature. If a care plan contains many changes and becomes less legible, a new care plan must be written.

(f) The licensee is responsible for ensuring implementation of the resident's care plan and, if applicable, the behavioral support plan with suggested interventions.

(5) 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 may~~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 if there have been multiple documented attempts to contact the

resident's case manager and the resident has been reasonably protected from harm.

(b) Providers may assist non-Medicaid residents in developing a person-centered service plan when no alternative resources are available.

(6) REGISTERED NURSE CONSULTATION.

(a) RN CONSULTATION AND ASSESSMENT. A licensee must have an arrangement with at least one registered nurse, who has a valid, unencumbered Oregon license without restrictions for the purpose of providing obtain a medical professional consultation, and assessment, teaching, delegation, or review of medication administration processes, as needed to meet the care needs of a non-Medicaid residents as required in by these rules.

(b) An registered nurseRN consultation must be obtained when a skilled nursing care tasknursing procedure , as defined by the Oregon State Board of Nursing, has been ordered by a physician or other licensed health care professional with prescribing authority for any medical treatment other than medications that are taken by mouth.

(cb) A licensee must also request a registered nurse consultation under the following conditions:

(A) When a resident has a health concern or behavioral symptoms that is unfamiliar to caregivers.may benefit from a nursing assessment and provider education.

(B) To clarify a prescribing practitioner's PRN order when it includes dose or frequency ranges, or when there is no information given about what the medication is treating, or signs and symptoms for when to give the PRN medication to the resident.When written parameters are needed to clarify a prescribing practitioner p.r.n. order for medication and treatment (See section (7)(g) of this rule).

(C) Before the use of physical restraints when not assessed, taught, and reassessed, according to section (7)(ne) of this

rule, by a physician, nurse practitioner, physician assistant, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist.

(D) When there are concerns about resident behaviors that do not respond to non-medication interventions, ~~Before requesting psychoactivepsychotropic medications to treat behavioral symptoms~~ or the use of new ~~psychoactive~~psychotropic medications when not assessed, taught, and reassessed according to section (7)(h) of this rule, by a physician, nurse practitioner, physician assistant, or mental health practitioner.

(E) When care procedures are ordered that are new for a resident, the licensee, or other caregivers.

(d~~c~~) RN DELEGATIONS. A registered nurse may determine a nursing care ~~task~~procedure must be delegated before the caregiver can perform the procedure. The delegation of a nursing procedure must be completed prior to any caregiver performing the procedure.~~taught utilizing the delegation process.~~

(A) RN delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 851, division 047).

(B) A Long-Term Care Community Nurse (LTCCN) may be available to provide consultation, teaching, and delegation ~~as needed~~ for Medicaid consumers only.

(e~~d~~) DOCUMENTATION OF RN VISITS. Documentation of nurse consultations, teaching, and step-by-step instructions on any delegated nursing procedure or other taught procedure,~~delegations,~~ assessments, and reassessments must be maintained in the resident's record and made available to the Department upon request.

(7) STANDARDS FOR MEDICATIONS, TREATMENTS, AND THERAPIES.

(a) MEDICATIONS. The licensee and caregivers must demonstrate an understanding of each resident's medication administration

regimen, including the reason for the medication, specific instructions, the medication's actions, and common side effects. Medication resource material must be readily available at the home and include: ~~the reason a medication is used, any specific instructions, the medication's actions, and common side effects.~~

(A) The product or drug information sheet;

(B) A current drug manual; or

(C) Internet access to a drug reference website that is readily available for all caregivers.

(b) WRITTEN ORDERS. The licensee must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies that have been ordered by a prescribing practitioner. The written orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. The prescribing practitioner must be notified if the resident refuses to consent to an order.

(A) CHANGED ORDERS. Changes to a written order may not be made without a prescribing practitioner order. The prescribing practitioner must be notified if the resident refuses to consent to the change order. Changes to medical orders obtained by telephone must be followed-up with signed orders within seven calendar days. Changes in the dosage or frequency of an existing medication require a new properly labeled and dispensed medication container. If a new properly labeled and dispensed medication container is not obtained, the change must be written on an auxiliary label attached to the medication container, not to deface the existing original pharmacy label, and must match the new medication order. Attachment of the auxiliary label must be documented in the residents' record. (See section (7)(f)(D) of this rule).

(B) DOCUMENTATION OF CHANGED ORDERS. Attempts to obtain the signed written changes must be documented and readily available for review in the resident's record. The resident's medications, including medications that are

prescribed, over-the-counter medications, and home remedies, must be reviewed by the resident's prescribing practitioner or pharmacist at least annually. The review must be in writing, include the date of the review, and contain the signature of the prescribing practitioner or a pharmacist.

(c) MEDICATION SUPPLIES. The licensee must have all currently prescribed medications, including PRN~~p.r.n.~~ medications, and all prescribed over-the-counter medications available in the home for administration. Refills must be obtained before depletion of current medication supplies. Attempts to order refills must be documented in the resident's record.

(d) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee who implements a hospice, home health, or other licensed medical professional-generated order must:

(A) Have a copy of the hospice, home health, or licensed medical professional document that communicates the written order.

(B) Transcribe the order onto the medication administration record (MAR).

(C) Implement the order as written.

(D) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(e) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). A licensee must allow a resident to receive hospice services. The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:

(A) Have a copy of the hospice or home health document that communicates the written order; and

(B) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(f) MEDICATION ADMINISTRATION RECORD ~~(MAR)~~. A current, written medication administration record (MAR) must be kept for each resident and must:

(A) List the name of all medications administered by a caregiver, including over-the-counter medications and prescribed dietary supplements. The MAR must identify the dosage, route, date, and time each medication and supplement is to be given.

(B) Identify any treatments and therapies administered by a caregiver. The MAR must indicate the type of treatment or therapy and the time the procedure must be performed.

(C) Be immediately initialed by the caregiver administering the medication, treatment, or therapy as it is completed. A resident's MAR must contain a legible signature that identifies each set of initials.

(D) Document changed and discontinued orders immediately showing the date of the change or discontinued order. A changed order must be written on a new line with a line drawn to the start date and time.

(E) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the caregiver administering the medication, treatment, or therapy must be circled, and a brief, but complete, explanation must be recorded on the back of the MAR.

(g) ~~P.R.N.~~PRN MEDICATIONS. Prescription medications ordered to be given "as needed" or "~~p.r.n.~~PRN" must have specific parameters indicating what the medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(A) ~~P.R.N.~~PRN DOCUMENTATION. As needed ~~(p.r.n)~~ medications must be documented on the resident's MAR with the time, dose, the reason the medication was given, and the outcome.

(B) ~~P.R.N.~~PRN ADVANCE SET-UP. As needed ~~(p.r.n.)~~ medications may not be included in any advance set-up of medication.

(h) ~~PSYCHOACTIVE~~PSYCHOTROPIC MEDICATIONS.

(A) A licensee is not required to request an evaluation of a resident's use of a ~~psychoactive~~psychotropic medication if the resident is admitted to the home and the resident has been prescribed the ~~psychoactive~~psychotropic medication for a condition that is currently monitored by a physician, nurse practitioner, physician assistant, or mental health professional and the written order for the ~~psychoactive~~psychotropic medication is in the resident's record.

(B) If a resident is admitted to a home with no documented history as to the reason for taking a ~~psychoactive~~psychotropic medication, or if the licensee requests medical professional intervention to address behavioral symptoms, the licensee must request a physician, nurse practitioner, physician assistant, or mental health professional evaluate the resident's need for the ~~psychoactive~~psychotropic medication and the intended effect of the medication, common side effects, and circumstances for reporting. The evaluation request must be documented in the resident's record and include:

(i) ~~A probable cause of~~ The unmet need resulting in the resident's behavior.

(ii) ~~Behavioral and environmental~~Non-pharmacological interventions to be used instead of or in addition to ~~psychoactive~~psychotropic medication, if applicable. Alternative interventions must be tried as instructed by a licensed medical professional and the resident's response to the alternative interventions must be documented in the

resident's record before administering a ~~psychoactive~~psychotropic medication.

(iii) A plan, which includes a specified timeframe, for reassessment by the resident's prescribing physician, nurse practitioner, physician assistant, or mental health professional.

(C) The prescription and order for a ~~psychoactive~~psychotropic medication must specify the dose, frequency of administration, and the circumstance for use (i.e., specific symptoms). The licensee and all caregivers must be aware of and comply with these parameters.

(D) The licensee and all caregivers must know the intended effect of a ~~psychoactive~~psychotropic medication for a particular resident and the common side effects, as well as the circumstances for reporting to the resident's physician, nurse practitioner, physician assistant, or mental health professional. The licensee and other caregivers must know all non-pharmacological interventions and use those interventions as directed by the prescribing practitioner or the registered nurse.

(E) The resident's care plan must identify and describe the behavioral symptoms the ~~psychoactive~~psychotropic medications are prescribed for and a list of all interventions, including ~~behavioral, environmental,~~ interventions that are non-pharmacological and ~~the~~ medications.

(F) ~~Psychoactive~~Psychotropic medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) MEDICATION CONTAINERS AND STORAGE. The licensee must ensure the resident's prescription medications are packaged in a manner that reduces errors in the tracking ~~of~~ and ~~the~~ administration of the drugs, including, but not limited to, the use of unit dose systems or blister (bubble) packs. This paragraph does not apply to residents receiving pharmacy benefits through the United States Department of Veterans Affairs if the pharmacy benefits do not reimburse the cost of such packaging.

(A) MEDICATION CONTAINERS. Each of the resident's prescribed medication containers, including bubble packs, must be clearly labeled by the pharmacy. All medications, including over-the-counter medications, must be in the original container, except as indicated in (B) of this rule. Medications stored in advanced set up containers are required to be labeled as described in these rules.

(B) ADVANCED SET-UP. The licensee may set-up each resident's medications for up to seven calendar days in advance (excluding PRN medications) by using a closed container manufactured for the advanced set-up of medications.

(i) If used, each resident must have ~~his or her~~their own container with divisions for the days of the week and times of ~~the~~ day the medications are to be given.

(ii) The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route, and description of each medication.

(iii) The container must be stored in the locked area with the residents' medications.

(C) OVER-THE-COUNTER PRODUCTS. Over-the-counter products such as medications, vitamins, and supplements purchased for a specific resident's use must be marked with the resident's name. Over-the-counter items in stock bottles (with original labels) may be used for multiple residents in the home and must be clearly marked as the house supply.

(D~~C~~) STORAGE OF RESIDENT MEDICATION. All resident medications, including over-the-counter medications, must be stored as directed by the manufacturer and kept in a locked, central location that is cool, clean, dry, not subject to direct sunlight or fluctuations in temperature.~~;~~

(i) Resident medications must be stored~~and~~ separately from medications belonging to the licensee, caregivers, and all other non-residents.

(ii) Medications requiring refrigeration must also be locked and stored separately from non-resident medications.

(E~~D~~) STORAGE OF NON-RESIDENT MEDICATION. All non-resident medications, including non-resident medications that must be refrigerated, must be kept locked and separate from resident medications. Residents shall not have access to medications belonging to the licensee, caregivers, other household members, or pets.

(j) DISPOSAL OF MEDICATION. Outdated, discontinued, recalled, or contaminated medications, including over-the-counter medications, may not be kept in the home and must be disposed of within 10 calendar days of expiration, discontinuation, or the licensee's knowledge of a recall or contamination. A licensee must contact the local DEQ waste management company in the home's area for instructions on proper disposal of unused or expired medications. Prescription medications for residents that have died must be disposed of within 24 hours according to section (k) of this rule.

(A) TRANSDERMAL PATCHES. Used transdermal patches and unused patches, such as when the order was discontinued or the patches have expired, must be disposed of by folding each patch in half with the sticky side together and ~~disposing of~~ as directed on the product information sheet or by the pharmacy.

(B) ITEMS CONTAMINATED WITH BODILY FLUIDS. Contaminated disposable supplies such as bandages, dressings, gauze, gloves, masks, and other supplies that are not sharps, but may have come into contact with body fluids, must be disposed of in a closed plastic bag, and placed out of residents' reach in the garbage bin.

(k) DOCUMENTATION OF DISPOSAL. The disposal of a resident's medication must be documented in the resident's record and the

documentation must be readily available in the resident's record. Documentation must include the name of each drug destroyed, the number of remaining pills, liquid, or patches, the date and time destroyed, and the signature of each staff that counted the medication.

(A) The disposal of a controlled substance must be ~~documented in the resident's record and the disposal must be~~ witnessed by a caregiver who is 18 years of age or older, and signed by both caregivers.

(B) Documentation regarding the disposal of medications, ~~and~~ including controlled substances, must be available in the resident's record and include:

(i) The date of disposal.

(ii) Description of the medication, (i.e., name, dosage, and amount being disposed).

(iii) Name of the resident for whom the medication was prescribed.

(iv) Reason for disposal.

(v) Method of disposal.

(vi) Signature of the person disposing of the medication.

(vii) For controlled substances, the signature of the caregiver who witnessed the disposal according to this rule.

~~(I) ADVANCED SET-UP. The licensee may set-up each resident's medications for up to seven calendar days in advance (excluding p.r.n. medications) by using a closed container manufactured for the advanced set-up of medications. If used, each resident must have his or her own container with divisions for the days of the week and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication,~~

~~time to be given, dosage, amount, route, and description of each medication. The container must be stored in the locked area with the residents' medications.~~

(l~~m~~) SELF-ADMINISTRATION OF MEDICATION. A licensee must have a prescribing practitioner written order of approval for a resident to self-medicate. A resident able to handle his or her own medical regimen may keep his or her medications in his or her own room in a lockable storage area or device. Medications must be kept locked except those medications on the residents' own person. The licensee must notify the prescriber of the medication if the resident shows signs of no longer being able to self-medicate safely.

(m~~n~~) INJECTIONS. Subcutaneous, intramuscular, and intravenous injections may be self-administered by a resident if the resident is fully independent in the task or may be administered by a relative of the resident or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (OAR 851-047-0000 to 851-047-0040) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated. (See OAR 411-050-0650(5) for storage and disposal requirements of sharps, including, but not limited to used needles and lancets).

(n~~o~~) PHYSICAL RESTRAINTS. Physical restraints may only be used when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Physical restraints may only be used after a written assessment is completed as described below and all alternatives have been exhausted. Licensees and caregivers may use physical restraints in adult foster homes only in compliance with these rules, including the Resident's Rights listed in section (9) of this rule. Before the use of any type of physical restraint, the following must be completed:

(A) INDIVIDUALLY-BASED LIMITATION. The use of any physical restraint ~~first~~ requires an individually-based limitation ~~according to~~as described in OAR 411-004-0040.

(B) ASSESSMENT. A written assessment must be obtained from the resident's physician, nurse practitioner, physician assistant, registered nurse, ~~Christian Science practitioner,~~ mental health clinician, physical therapist, or occupational therapist that includes consideration of all other alternatives.

(C~~B~~) ORDERS. If it is determined that a physical restraint is necessary following the assessment and trial of other measures, the least restrictive restraint must be used as infrequently as possible. The licensee must obtain a written order from the resident's physician, nurse practitioner, or physician assistant~~, or Christian Science practitioner~~ before the use of a physical restraint. The written order must include specific parameters, including the type of physical restraint, circumstances for use, and duration of use, including:

(i) Procedural guidance for the use of the physical restraint.

(ii) The frequency for reassessment.

(iii) The frequency and procedures for nighttime use.

(iv) Dangers and precautions for using the physical restraint.

(D~~C~~) Physical restraints may not be used on an as needed (~~p.r.n.~~PRN) basis in an adult foster home.

(E~~D~~) CONSENT. Physical restraints must not be used without first obtaining the written consent of the resident or the resident's legal representative.

(F~~E~~) DOCUMENTATION. If it is determined a physical restraint is necessary following the assessment and trial of other measures, the written order for the use of a physical restraint must be documented in the resident's care plan explaining why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment, and cautions for maintaining

the resident's safety while restrained, must also be recorded in the resident's care plan. The resident's record must include:

(i) The completed assessment as described in this rule.

(ii) The written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, or physician assistant.~~, or Christian Science practitioner.~~

(iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint.

(iv) The reassessments completed by a medical professional as described above in subsection (C~~B~~) of this rule.

(G~~F~~) DAYTIME USE. A resident physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, and provided exercise or range-of-motion exercises during this period. The use of restraints, restraint release, and activities that occurred during the release period must be documented in the resident's record.

(H~~G~~) NIGHTTIME USE. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint must be of a design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any kind must not be used to keep a resident in bed.

(I~~H~~) If any physical restraints are used in an adult foster home, the restraints must allow for quick release at all times. Use of restraints may not impede the three-minute evacuation of all occupants of the home.

(J~~I~~) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

(8) RESIDENT CARE.

(a) Care and supervision of residents must be in a ~~home-like~~homelike atmosphere. The training of the licensee and caregivers and care and supervision of residents must be appropriate to the age, care needs, and conditions of the residents in the home. Additional staff may be required if, for example, day care individuals are in the home or if necessary to safely evacuate the residents and all occupants from the home as required by OAR 411-050-0650.

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure the plan is implemented as instructed.

(c) NOTIFICATION. The licensee must notify emergency personnel, the resident's physician, nurse practitioner, physician assistant, registered nurse, family representative, and case manager, as applicable, under the following circumstances:

(A) EMERGENCIES (MEDICAL, FIRE, POLICE). In the event of an emergency, the licensee or caregiver with the resident at the time of the emergency must first call 911 or the appropriate emergency number for the home's community. This does not apply to a resident with a medical emergency who practices Christian Science.

(i) If a resident is receiving hospice services, the caregivers must follow the written instructions for medical emergencies from the hospice nurse.

(ii) If a resident has a completed Physician's Orders for Life-Sustaining Treatment (POLST) or other legal documents, such as an Advance Directive or Do Not Resuscitate (DNR) order, copies of the documents must be made available to the emergency personnel when they arrive.

(B) HOSPITALIZATION. In the event the resident is hospitalized.

(C) HEALTH STATUS CHANGE. When the resident's health status or physical condition changes.

(D) DEATH. Upon the death of the resident.

(d) The licensee shall not inflict, or tolerate to be inflicted, abuse of any resident, as defined in OAR 411-020-0002, including:

(A) ~~p~~Physical abuse;~~,~~

(B) Neglect;~~verbal, sexual, or emotional abuse;,~~

(C) Abandonment;~~neglect;,~~

(D) Verbal or emotional abuse;~~aAbandonment;,~~

(E) ~~verbal or emotional abuse, f~~Financial exploitation;~~, sexual abuse,~~

(F) Sexual abuse;~~iInvoluntary seclusion;, and~~

(G) Involuntary seclusion; and

(H) ~~w~~Wrongful use of a physical or chemical restraint.~~or punishment, financial exploitation, or neglect of the residents.~~

(e) The licensee must exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of the residents.

(f) A qualified caregiver must always be present and available at the home when a resident is in the home. A resident may not be left in charge in lieu of a caregiver.

(g) ACTIVITIES. The licensee must make available at least six hours of activities per week that are of interest to the residents, not including television and movies. Information regarding activity

resources is available from the local licensing authority. Activities must be oriented to individual preferences as indicated in the resident's care plan. (See section (4) of this rule). Documentation of the activities offered to each resident and the resident's participation in those activities must be recorded in the resident's records.

(h) DAY CARE. Before the admission of each day care individual, the licensee must:

(A) Conduct and document a screening as described in section (1) of this rule.

(B) Obtain current medical professional orders as described in section (7) of this rule, if medications are to be administered and the necessary delegations, as applicable.

(C) Develop and maintain a current, written medication administration record (MAR) as described in section (7) of this rule, if medications are to be administered.

(i) DIRECT INVOLVEMENT OF CAREGIVERS. The licensee or caregivers must be directly involved with the residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between the caregivers and residents and among residents, the licensee must demonstrate how regular positive contact occurs.

(j) RESIDENT MONEY. If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee may not under any circumstances commingle, borrow from, or pledge any of a resident's funds. The licensee may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece, or nephew. Nothing in this rule may be construed to prevent the licensee or the licensee's employee from acting as a representative payee for the resident. (See also OAR 411-020-0002 and ORS 127.520).

(A) Personal incidental funds (PIF) for individuals eligible for Medicaid services must be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet).

(B) The licensee and other caregivers may not accept gifts from the residents through undue influence or accept gifts of substantial value. Caregivers and family members of the caregivers may not accept gifts of substantial value or loans from the resident or the resident's family. The licensee or other caregivers may not influence, solicit from, or suggest to any of the residents or the residents' representatives that the residents or the residents' representatives give the caregiver or the caregiver's family money or property for any purpose.

(C) The licensee may not subject the resident or the resident's representative to unreasonable rate increases.

(k) The licensee and other caregivers may not loan money to the residents.

(9) RESIDENT'S RIGHTS.

(a) Resident's Bill of Rights. The licensee, the licensee's family, and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Resident's Bill of Rights provided by the Department must be explained and a copy given to each resident at the time of admission. The Resident's Bill of Rights states each resident has the right to:

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

(B) Be informed of all resident rights and all house policies as written in the Residency Agreement.

(C) Be encouraged and assisted to exercise constitutional and legal rights, including the right to vote.

(D) Be informed of his or her medical condition and the right to consent to or refuse treatment.

(E) Receive appropriate care, services, and prompt medical care as needed.

(F) Be free from abuse.

(G) Complete privacy when receiving treatment or personal care.

(H) Associate and communicate privately with any person of choice and send and receive personal mail unopened.

(I) Have access to, and participate in, activities of social, religious, and community groups.

(J) Have medical and personal information kept confidential.

(K) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(L) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner, and consented to by the resident or their legal ~~representative~~guardian.

(i) Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried and may not be used for discipline or convenience.

(ii) When the right to freedom from restraints must be limited due to a threat to the health and safety of an individual or others, an individually-based limitation is required according to Section (10) of this rule and OAR 411-004-0040. ~~Restraints are not to be used for discipline or convenience.~~

(M) Manage his or her own financial affairs unless legally restricted.

(N) Be free from financial exploitation. The licensee may not charge or ask for application fees or non-refundable deposits or solicit, accept, or receive money or property from a resident other than the amount agreed to for services.

(O) A written agreement regarding services to be provided and the rates to be charged. The licensee must give 30 days' written notice before any change in the rates or the ownership of the home.

(P) Not be transferred or moved out of the adult foster home without 30 calendar days' written notice and an opportunity for a hearing. A licensee may transfer a resident only for medical reasons, for the welfare of the resident or other residents, or for nonpayment.

(Q) A safe and secure environment.

(R) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

(S) Make suggestions or complaints without fear of retaliation.

(T) Be free of discrimination in regard to the execution of an Advance Directive, Physician's Order for Life-Sustaining Treatment (POLST), or Do Not Resuscitate (DNR) orders.

(b) HCBS FREEDOMS. Providers initially licensed before January 1, 2016 have until ~~September 1, 2018~~June 30, 2019 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.

(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.

(10) INDIVIDUALLY-BASED LIMITATIONS. Effective July 1, 2018 and no later than June 30, 2019, a limitation to (9)(a)(L) of this rule and any freedom in section (9)(b) of this rule must be supported by a specific assessed need due to a threat to the health and safety of the resident or others. All individually-based limitations considered must be documented on the Department-approved consent form.

(a) For Medicaid-eligible residents, the person-centered service plan coordinator must authorize the limitation and the individual must consent to the limitation.

(b) 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.

(c) Limitations are not transferable between care settings. Continued need for any limitation at ~~the~~a new care setting must comply with the requirements ~~as stated~~ in these rules.

~~(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.~~

~~(11) REQUIRED DOCUMENTATION FOR INDIVIDUALLY-BASED LIMITATIONS. 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 individually-based limitation.~~

~~(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) Informed 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.~~

~~(h) An assurance that the limitation will not be harmful to the resident.~~

Stat. Auth.: ORS 127.520, 410.070, 441.373, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991, 443.373

411-050-0660 Qualifications and Requirements for Ventilator-Assisted Care

(1) Adult foster homes that provide ventilator-assisted care for residents must meet the requirements of OAR 411-050-0660 in addition to the other requirements set forth in these rules.

(2) LICENSE REQUIRED. A person or entity may not represent themselves as operating an adult foster home that provides ventilator-assisted care or accept placement of an individual requiring ventilator-assisted care without being licensed as a ventilator-assisted care adult foster home.

(3) The licensee must comply with all HCB Settings requirements as described in these rules.~~OAR 411-050-0615(2), 411-050-0655(4(b)-(d), (5), (9)(b), (10) and (11)~~.

~~(4) APPLICATION. An applicant or licensee must meet and maintain compliance with OAR 411-050-0610.~~

(4~~a~~) To apply for an initial license to provide ventilator-assisted care, and to renew the license, an applicant ~~or licensee~~ must complete the Department's ventilator-assisted care application form (SDS 448V) and submit the application with the required information and nonrefundable fee as outlined in OAR 411-050-0610 to the local licensing authority.

Applications are processed according to OAR 411-050-0610 and 411-050-0640.

~~(b) To renew a license to provide ventilator-assisted care, a licensee must complete the Department's ventilator-assisted care application form (SDS 448V) and submit the application with the required information and nonrefundable fee as outlined in OAR 411-050-0640 to the local licensing authority.~~

~~(c) Applications are processed according to OAR 411-050-0610 and pro411-050-0640.~~

~~(d) Applications must be approved by the Department prior to the issuance of a ventilator-assisted care license.~~

(5) QUALIFICATIONS AND TRAINING. An applicant, licensee, and all other caregivers must meet and maintain compliance with OAR 411-050-0625. In addition:

(a) The applicant, licensee, resident manager, floating resident manager, or shift caregivers, as applicable, must demonstrate one year of full-time experience in providing ventilator-assisted care.

(b) The applicant or licensee, as applicable, must have experience operating a Class 3 adult foster home in substantial compliance with these rules for at least one year.

(c) An applicant for an adult foster home providing ventilator-assisted care must be the primary caregiver and live in the home where ventilator-assisted care is to be provided for a minimum of one year from the date the initial ventilator-assisted care license is issued. The licensee may employ a resident manager to be the primary live-in caregiver after providing ventilator-assisted care for the one year period. The resident manager must be approved by the local licensing authority and the Department.

(d) The applicant, licensee, and all other caregivers must successfully complete the Department's approved training pertaining to ventilator-assisted care and other training as required. Training is required on an annual basis and must be completed by the licensee, resident

manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable, prior to approval of a renewed ventilator-assisted care license.

(6) CLASSIFICATION. An applicant for a ventilator-assisted care license must possess the minimum qualifications outlined in section (5) of this rule. The applicant and licensee must meet and maintain compliance with OAR 411-050-0630. The local licensing authority shall issue a Level A, Level B, or Level C ventilator-assisted care adult foster home license to qualified applicants.

(a) A licensee with a Level C ventilator-assisted care license may admit a maximum of one resident who requires ventilator-assisted care. The local licensing authority may issue a Level C license if the applicant has:

(A) Satisfied the requirements described in section (5) above; and

(B) Successfully operated a Class 3 home in substantial compliance with these rules for a period of not less than one year.

(b) A licensee with a Level B ventilator-assisted care license may admit a maximum of three residents who require ventilator-assisted care. The local licensing authority may issue a Level B license if the licensee has:

(A) Satisfied the requirements described in section (5) above; and

(B) Successfully operated and provided ventilator-assisted care in their Level C home in substantial compliance with these rules for a period of not less than one year.~~; or~~

~~(C) The applicant or licensee, as applicable, has a current license as a health care professional in Oregon.~~

(c) A licensee with a Level A ventilator-assisted care license may admit a maximum of five residents who require ventilator-assisted

care. The local licensing authority may issue a Level A license if the licensee has:

(A) Satisfied the requirements described in section (5) above; and

(B) Successfully operated and provided ventilator-assisted care in their Level B home in substantial compliance with these rules for a period of not less than one year.

(7) CAPACITY. An applicant and licensee must meet and maintain compliance with OAR 411-050-0632. The number of residents permitted to reside in a ventilator-assisted care adult foster home is determined by the level of the home, the ability of the staff to meet the care needs of the residents, the fire and life safety standards, and compliance with these rules. A licensee may only admit or continue to provide ventilator-assisted care for residents according to the level of the home's license. A licensee may admit other residents who do not require ventilator-assisted care within the approved license capacity listed on the home's license.

(8) OPERATIONAL STANDARDS. In addition to the standards set forth in these rules:~~A licensee must meet and maintain compliance with OAR 411-050-0645. In addition:~~

(a) FOR LEVEL A AND LEVEL B. A minimum of two qualified and approved caregivers must be on site and available to meet the routine and emergency care and service needs of the residents 24 hours a day. A minimum of one of the two qualified and approved caregivers must be awake during nighttime hours.

(b) FOR LEVEL C. At least one qualified and approved caregiver must be on site, available, and awake to meet the routine and emergency care and service needs of the residents 24 hours a day.

(c) All caregivers must demonstrate competency in providing ventilator-assisted care.

~~(c) All caregivers must be able to evacuate the residents and any other occupants of the home within three minutes or less~~.

(d) The applicant and licensee must have a satisfactory system in place to ensure the caregivers are alert to the 24-hour needs of residents who may be unable to independently call for assistance.

(e) All caregivers must know how to operate the back-up generator without assistance and be able to demonstrate how to operate the back-up generator upon request by the Department or local licensing authority.

(9) FACILITY STANDARDS. An applicant and licensee must meet and maintain compliance with OAR 411-050-0650. In addition:

(a) The residents' bedrooms must be a minimum of 100 square feet, or larger if necessary, to accommodate the standard requirements of OAR 411-050-0650, the needs of the resident, and the equipment and supplies necessary for the care and services needed by individuals requiring ventilator-assisted care.

(b) Homes that provide ventilator-assisted care for residents must have a functional, emergency back-up generator. The generator must be adequate to maintain electrical service for resident needs until regular service is restored. Hard wired, back-up generators must be installed by a licensed electrician. Back-up generators must be tested monthly and the test must be documented in the facility records.

(c) The home must have a functional, interconnected carbon monoxide and smoke alarm system with back-up batteries.

(d) The home must have a functional sprinkler system and maintenance of the sprinkler system must be completed as recommended by the manufacturer. A home that does not have a functional sprinkler system but was approved to provide ventilator-assisted care prior to September 1, 2013, must install a functional whole-home sprinkler system no later than July 31, 2015. (See OAR 411-050-0650 (5)(n) for evacuation requirements with sprinklers.)

(e) Each resident's bedroom must have a mechanism in place that enables the resident to summon a caregiver's assistance when needed. The mechanism must be within the abilities of the resident to

use. The summons must be audible in all areas of the adult foster home.

(10) STANDARDS AND PRACTICES FOR CARE AND SERVICES. Licensees must meet and maintain compliance with OAR 411-050-0655. In addition:

(a) The licensee must conduct and document a thorough screening of a prospective resident on the Department's form (SDS 902).

(b) Prior to admitting a resident requiring ventilator care to the adult foster home, the licensee must obtain preauthorization from the Department.

(c) The licensee must have a primary care physician identified for each resident being considered for admission.

(d) The licensee, including a licensee who is an Oregon licensed practical nurse (LPN), must retain the services of a registered nurse (RN) consultant to work in the home who is licensed by the State of Oregon and trained in the care of individuals requiring ventilator-assisted care. RN services include, but are not limited to, the provision of medical consultation and supervision of resident care, skilled nursing care as needed, and delegation of nursing care to caregivers. When the licensee is an RN, a back-up RN licensed by the State of Oregon and trained in the care of individuals requiring ventilator-assisted care must be identified and available to provide nursing services in the absence of the licensee.

(e) The licensee must develop individual care plans for each resident with the RN consultant addressing the expected frequency of nursing supervision, consultation, and direct service intervention. The RN consultation must be documented on the resident's completed care plan with the RN's signature and date signed.

(f) The licensee must have physician, RN, and respiratory therapist consultation services, all licensed by the State of Oregon and trained in the care of individuals requiring ventilator-assisted care available on a 24-hour basis and for in-home visits as appropriate. The

licensee must call the appropriate medical professional to attend to the emergent care needs of the residents.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 410.070, 443.001-443.004, 443.705-443.825, 443.875, 443.991

411-050-0662 Qualifications and Requirements for Limited Adult Foster Homes
(Amended 06/28/2016)

(1) The licensee must comply with all requirements for HCB Settings as described in these rules. ~~OAR 411-050-0615(2), 411-050-0655(4)(b)-(d), (5), (9)(b), (10) and (11)~~. (See OAR chapter 411, division 004).

(2) To qualify for a limited adult foster home license the applicant or licensee must be at least 21 years of age and submit:

(a) A completed application for initial or renewal limited licenses.

(b) The Department's Health History and Physician's or Nurse Practitioner's Statement that indicates the applicant or licensee is physically, cognitively, and emotionally capable of providing care to a specific adult who is older or who has a physical disability and with whom the applicant has an established relationship of not less than one year. The Health History and Statement must be submitted initially and every third year or sooner if there is reasonable cause for health concerns.

(c) Documentation of the initiation of a background check or copy of an approved background check for each subject individual.

(d) Completion of the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W).

(e) A $20 non-refundable fee. If the licensee requests and is granted a variance from the capacity limitation of one resident, a $20 per bed non-refundable fee for each non-relative resident is required.

(3) Licensees who are at least 18 years of age and under 21 years of age on January 1, 2018 are exempt from the minimum age requirement of 21 years.

(4)The applicant or licensee must demonstrate a clear understanding of the resident's care needs.

(54) The applicant or licensee must live in the home that is to be licensed.

(65) The applicant or licensee must own, rent, or lease the home where care is being provided. The applicant or licensee must provide verification of proof of ownership or a copy of the signed and dated rental or lease agreement as applicable.

(76) A caregiver must be available at all times, 24 hours a day, seven days a week, when the resident is in the home. The caregiver must have the knowledge and ability to meet the resident's care needs. All caregivers must:

(a) Have an approved background check according to the Background Check RulesCriminal Records and Abuse Check rules (OAR 407-007-0200 through 407-007-0370) before working in the home.

(b) Complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W).

(c) Be at least 18 years of age.

(87) The licensee must notify the local licensing authority if the licensee shall be absent from the home 10 days or more and the resident shall be remaining in the home during the absence. The licensee must also submit a staffing plan to the local licensing authority demonstrating coverage during the absence that meets the needs of the resident.

(98) The resident's bedroom must be in close enough proximity to the licensee or caregiver in charge to alert him or her to nighttime needs or emergencies, or the bedroom must be equipped with a functional call bell or intercom within the resident's abilities to operate.

(10~~9~~) The licensee and caregiver must have a complete understanding of the resident's medications. The licensee must have a copy of current prescribing practitioner orders including, if applicable, written authorization for self-administration of medications.

(11~~0~~) Medications must be stored in the original labeled container except when stored in a seven-day closed container manufactured for advanced set-up of medications.

(12~~1~~) The licensee and caregiver must place used, disposable syringes and needles, and other sharp items in a puncture-resistant, red container designed for disposal of sharp items. Disposal must be according to local regulations as stated in section 411-050-0655. (See ORS 459.386-405).

(13~~2~~) The licensee, the licensee's family, and employees of the home must guarantee not to violate the Resident's Rights as outlined in OAR 411-050-0655.

(14~~3~~) The licensee must have a copy of any applicable legal documents, such as Advance Directive, Physician Order for Life-Sustaining Treatment (POLST), and Do Not Resuscitate (DNR) orders.

(15~~4~~) The home must have a working landline and corded telephone. If the licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(16~~5~~) CONSTRUCTION. Interior and exterior doorways used by a resident must be wide enough to accommodate wheelchairs and walkers if used by the resident. Interior and exterior stairways must be unobstructed, equipped with handrails, and appropriate to the condition of the resident.

(17~~6~~) Hardware for all exit doors and interior doors must be readily visible and have simple hardware that may not be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted.

(a) 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.

(b) The resident shall be provided a key that only locks and unlocks his or her bedroom door.

(c) A master key to the resident's door lock must be immediately available to the licensee and all other caregivers in the home.

(d) Providers licensed before January 1, 2016 have until ~~September 1, 2018~~June 30, 2019 to fully implement (a) through (c) of this rule.

(18~~7~~) If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(19~~8~~) Buildings must be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials may not exceed 200 and the smoke developed index may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(a) MANUFACTURED HOMES. Manufactured home (formerly mobile homes) units must have been built in 1976 or later and designed for use as a home rather than a travel trailer. The unit must have a manufacturer's label permanently affixed on the unit itself that states the unit meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the

Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(b) If such a label is not evident and the licensee believes the unit meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the manufacturer.

(c) Mobile homes built in 1976 or later meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(20~~19~~) The applicant or licensee must meet minimal fire safety standards including:

(a) A functional smoke alarm with back-up battery must be installed in all sleeping areas and hallways or access ways that adjoin sleeping areas.

(b) A functional carbon monoxide alarm with back-up battery must be installed within 15 feet of each bedroom and at a height as recommended by the manufacturer.

(c) At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(d) The licensee must have a safe evacuation plan and may be required to demonstrate the evacuation plan. The licensee may be required to install an Americans with Disabilities Act (ADA) compliant ramp for the safety of all occupants.

(e) The licensee and all occupants must be able to evacuate within three minutes to an initial point of safety exterior to and away from the structure, with access to a public sidewalk or street. The licensee and all occupants must be able to demonstrate the ability to further

evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less.

(f) Smoking is prohibited in any bedroom, including that of the resident, the licensee, occupants, or caregivers and in any room where oxygen is used or stored.

(g) The home must be built of standard construction and must meet all applicable state and local building, mechanical, and housing codes for fire and life safety.

(h) A resident must have a bedroom that:

(A) Was constructed as a bedroom when the home was built or remodeled under permit.

(B) Is finished with walls or partitions of standard construction that go from floor to ceiling.

(C) Has a door large enough to accommodate the occupant of the room and any equipment that may be necessary such as a hospital bed or wheelchair.

(D) Has adequate ventilation, heat, and lighting with at least one operable window or exterior door that leads directly outside as a secondary egress for resident use.

(E) Has at least 70 square feet of usable floor space.

(i) All exit ways, including windows, must remain unobstructed at all times.

(j) Flammable materials must not be stored within 36 inches of open flame or heat sources.

(k) Only sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the State Fire Marshal or State Fire Marshal's designee. Heaters must be plugged directly into an outlet and may not be used with extension cords.

(l) The licensee must install or make available, any supportive device necessary to meet the resident's needs and ensure resident safety including, but not limited to, grab bars, ramps, and door alarms.

(21~~0~~) A license is not transferable and does not apply to any location or person other than the location and the person indicated on the license obtained from the local licensing authority.

(22~~1~~) The licensee must notify the local licensing authority at least 30 days before any change in residential or mailing address.

(23~~2~~) The Department, the local licensing authority, and the Centers for Medicare and Medicaid Services (CMS) have authority to conduct inspections with or without advance notice to the licensee or the resident of a home. The licensee must allow and authorize other caregivers and occupants to permit entrance and access to the home and the resident for the purpose of assessing, monitoring, inspection, investigation, and other duties within the scope of the Department, the local licensing authority, or CMS.

(24~~3~~) The applicant or licensee must obtain any training and maintain resident record documentation deemed necessary by the Department to provide adequate care for the resident.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991

411-050-0665 Abuse Reporting, Complaints, and Notification of Findings

(1) ABUSE REPORTING. Abuse is prohibited. The facility employees and licensee may not permit, aid, or engage in abuse of residents. Abuse and suspected abuse must be reported in accordance with OAR 411-020-0020.

(a) STAFF REPORTING. All facility employees are mandatory reporters and must immediately report abuse and suspected abuse to the investigative authority.

(b) LICENSEE REPORTING. The licensee must immediately notify the investigative authority of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

(c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances).

(2) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The licensee may not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner, including, but not limited to:

(A) Increasing or threatening to increase charges;

(B) Decreasing or threatening to decrease services;

(C) Withholding rights or privileges;

(D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(E) Threatening to harass or abuse a resident in any manner.

(b) The licensee must ensure any complainant, witness, or employee of a facility is not subjected to retaliation by any caregiver, (including the caregiver's family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint, or being a witness, including, but not limited to, restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(c) Anyone who, in good faith, reports abuse or suspected abuse has immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

(3) Immunity under this rule does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(4) The local licensing authority must furnish each adult foster home with a Complaint Notice that states the telephone number of the Department, the investigative authority, and the Long-Term Care Ombudsman, and the procedure for making complaints.

(5) Any person who believes these rules have been violated may file a complaint with the Department, the local licensing authority, or the investigative authority.

(6) The Department or the investigative authority shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20~~ or OAR chapter 407, division 45, as applicable~~.

(7) Immediate protection shall be provided for the residents by the Department, the local licensing authority, or the investigative authority, as necessary, regardless of whether the investigative report is completed. The licensee must immediately cease any practice that places a resident at risk of serious harm.

(~~9~~8) A copy of the entire investigation report shall be sent to the Department upon completion of the investigation report.

(~~10~~9) NOTIFICATION OF FINDINGS AND LETTER OF DETERMINATION. Upon a determination of substantiated abuse or a rule violation, the Department must provide written notification of its findings to the licensee.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation.

(B) Include the date and time of each occurrence.

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive.

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation.

(E) Include a copy of the complaint investigation report.

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 calendar days to provide additional or different information.

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Department determines there is substantiated abuse, the Department may determine the licensee, an individual, or both the licensee and an individual were responsible for abuse. In determining responsibility, the Department shall consider intent, knowledge, and ability to control, and adherence to professional standards, as applicable.

(A) LICENSEE RESPONSIBLE. Examples of when the Department shall determine the licensee is responsible for the abuse include, but are not limited to, the following:

(i) Failure to provide sufficient, qualified staffing in accordance with these rules without reasonable effort to correct.

(ii) Failure to check for or act upon relevant information available from a licensing board.

(iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff.

(iv) Failure to adequately train, orient, or provide sufficient oversight to staff.

(v) Failure to provide adequate oversight to residents.

(vi) Failure to allow sufficient time to accomplish assigned tasks.

(vii) Failure to provide adequate services.

(viii) Failure to provide adequate equipment or supplies.

(ix) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL RESPONSIBLE. Examples of when the Department determines an individual is responsible include, but is not limited to:

(i) Intentional acts against a resident, including assault, rape, kidnapping, murder, or sexual, verbal, or mental abuse.

(ii) Acts contradictory to clear instructions from the facility, such as those identified in section (9~~10~~)(b)(A) of this rule, unless the act is determined by the Department to be the responsibility of the facility.

(iii) Callous disregard for resident rights or safety.

(iv) Intentional acts against a resident's property (e.g., theft or misuse of funds).

(C) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(D) NURSING ASSISTANTS. In cases of substantiated abuse by a nursing assistant, the written notice shall explain:

(i) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140; and

(ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(c) DISTRIBUTION.

(A) The written notice shall be mailed to:

(i) The licensee;

(ii) Any person reported to have committed wrongdoing;

(iii) The complainant, if known;

(iv) The Long-term Care Ombudsman; and

(v) The local licensing authority.

(B) A copy of the written notice must be placed in the Department's facility complaint file.

(~~1~~10) Upon receipt of a notice that substantiates abuse for victims covered by ORS 430.735, the facility must provide written notice of the findings to the individual found to have committed abuse, residents of the facility, and the residents' case manager and representatives.

(11~~2~~) Licensees who acquire substantiated complaints pertaining to the health, safety, or welfare of residents may be assessed civil penalties, have conditions placed on their licenses, or have their licenses suspended, revoked, or not renewed.

(12~~3~~) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the local licensing authority. Individuals may purchase a photocopy upon requesting an appointment to do so.

(13~~4~~) The Department and the local licensing authority shall not disclose information that may be used to identify a resident in accordance with OAR 411-020-0030 (Confidentiality) and federal HIPAA Privacy Rules.

Completed reports placed in the public file must be in compliance with OAR 411-050-0670 and must:

(a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

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

(c) Clearly designate the final disposition of the complaint.

(A) PENDING COMPLAINT REPORTS. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) COMPLAINT REPORTS AND RESPONSES. The investigation reports, including copies of the responses with confidential information deleted, must be available to the public at the local licensing authority office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 124.050, 124.060, 124.075, 443.001_-_443.004, 443.705_-_443.825, 443.875, 443.991

411-050-0670 Inspections

(1) The local licensing authority must conduct an inspection of an adult foster home and all structures on the adult foster home property:

(a) Before issuance of a license;

(b) Before the annual renewal of a license. The local licensing authority must conduct this inspection unannounced;

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

(d) Anytime the Department has probable cause to believe a home has violated a regulation or provision of these rules or is operating without a license.

(2) The Department may conduct inspections:

(a) Any time such inspections are authorized by these rules and any other time the Department considers it necessary to determine if a home is in compliance with these rules or with conditions placed upon the license.

(b) To determine if cited violations have been corrected.

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

(3) State or local fire inspectors must be permitted access to enter and inspect adult foster homes regarding fire safety upon the Department's request.

(4) The Department, the local licensing authority, the investigative authority, and the Centers for Medicare and Medicaid Services (CMS) have authority and must have full access to examine and copy facility and resident records, including, but not limited to, Residency Agreements, and resident account records, as applicable.

(5) PRIVATE INTERVIEW. Department, local licensing authority, investigative authority, and CMS staff have authority to interview the licensee, resident manager, other caregivers, and the residents. Interviews must be confidential and conducted privately.

(6) Licensees must authorize all staff to permit the Department, local licensing authority, the investigative authority, and CMS staff, for the purpose of inspection, investigation, and other duties within the scope of the inspector's or investigator's authority:

(a) Entrance to the adult foster home and any other structure on the premises; and

(b) Access to resident and facility records.

(7) The Department, local licensing authority, the investigative authority, and CMS has authority to conduct inspections with or without advance notice to the licensee, staff, or the residents of the home. The Department, local licensing authority, and CMS shall not give advance notice of any inspection if it is believed that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) If Department, local licensing authority, the investigative authority, or CMS staff are not permitted access for inspection, a search warrant may be obtained.

(9) The inspector must respect the private possessions of the residents, licensee, and staff while conducting an inspection.

(10) PUBLIC FILE. The local licensing authority must maintain current information on all licensed adult foster homes and must make all non-confidential information available to prospective residents and other interested members of the public at local licensing authority offices throughout the state as authorized by law. The information includes:

(a) The location of the adult foster home and the name and mailing address of the licensee if different.

(b) A brief description of the physical characteristics of the home.

(c) A copy of the current license that indicates the current classification, level, and capacity of the home, as applicable.

(d) The date the licensee was first licensed to operate that home.

(e) The date of the last licensing inspection including any fire inspection, the name and telephone number of the office that performed the inspection, and a summary of the inspection findings.

(f) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings, actions taken by the Department, and responses from the licensee and complainant, as appropriate. All complaint terminology must be clearly defined and the final disposition clearly designated.

(g) Any license conditions, suspensions, denials, revocations, non-renewals, civil penalties, variances, or other actions taken by the Department involving the home.

(h) Whether care is provided primarily by the licensed provider, a resident manager, or shift caregivers.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-050-0685 Civil Penalties
(Amended 06/28/2016)

(1) Except as otherwise provided in this rule, civil penalties of not less than ~~to exceed~~ $100 per violation, and not more than $250 per violation ~~to a maximum of $250,~~ may be assessed for a general violation of these rules.

(2) Mandatory penalties up to $500, unless otherwise required by law, shall be assessed for falsifying resident or facility records or causing another to do so.

(3) A mandatory penalty of $250 shall be imposed for failure to have either the licensee or other qualified caregiver on duty 24 hours per day in the adult foster home.

(4) A mandatory penalty of not less than $100 and not more than $250 shall be imposed for dismantling or removing the battery from, or failing to install, any required smoke or carbon monoxide alarm. ~~or failing to install any required smoke alarm.~~

(5) The Department shall impose a civil penalty of not less than $250 and no more than $500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee and the admission places the resident or other residents at risk of harm.

(6) Civil penalties of not less than $100 and not more than $1,000 ~~up to a maximum of $1,000~~ per occurrence may be assessed for substantiated abuse.

(7) If the Department, or the Department's designee, conducts an investigation and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Department shall impose a civil penalty of not less than $2,500 for each violation.

(a) To impose this civil penalty, the Department must establish:

(A) The abuse arose from deliberate or other than accidental action or inaction.

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident.

(C) The person with the finding of abuse had a duty of care toward the resident.

(b) For the purposes of this civil penalty, the following definitions apply:

(A) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(C) "Sexual abuse" means any form of nonconsensual sexual contact including, but not limited to, unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty provided by law, the Department may impose a penalty for any of the following:

(a) Operating the home without a license.

(b) The number of residents exceeds the licensed capacity.

(c) The licensee fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance.

(d) The home is unable to provide adequate level of care to the residents.

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home.

(f) The licensee fails to cooperate with the Department or fails to cooperate with the prescribing practitioner or licensed health care professional in carrying out a resident's care plan.

(g) The licensee fails to obtain an approved background check from the Department before employing a caregiver in the home.

(9) A civil penalty may be imposed for violations other than those involving the health, safety, or welfare of a resident if the licensee fails to correct the violation as required when a reasonable time frame for correction was given.

(10) 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 surrenders the license.

(11) Any civil penalty imposed under this rule becomes due and payable 10 calendars days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person or sent by registered or certified mail and must include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved.

(b) A short and plain statement of the matters asserted or charged.

(c) A statement of the amount of the penalty or penalties imposed.

(d) A statement of the right to request a hearing.

(12) The person to whom the notice is addressed shall have 10 calendar days after receipt of the notice to make written application for a hearing. If a written request for a hearing is not timely received, the Department shall issue a final order by default.

(13) All hearings shall be conducted according to the applicable provisions of ORS 183.

(14) When imposing a civil penalty, the Department shall consider the following factors:

(a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(b) Any prior violations of statutes, rules, or orders pertaining to the facility;

(c) The economic and financial conditions of the person incurring the penalty;

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents; and

(e) The degree of harm to residents.

(15) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.

(16) Unless the penalty is paid within 10 calendar days after the order becomes final, the order constitutes a judgment and may be recorded by the county clerk, which becomes a lien upon the title to any interest in real property owned by that person. The Department may also initiate a notice of revocation for failure to comply with a final order.

(17) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(18) All penalties recovered under ORS 443.790 to 443.815 are paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991