

Adult Foster Home Provider Alert

Policy updates, rule clarifications and announcements

Date: March 25, 2022
To: APD Adult Foster Home Providers
From: Safety, Oversight and Quality Unit
Topic: **Free Classes from Oregon Care Partners**

To: All APD Adult Foster Homes

March 25, 2022

New Oregon Administrative Rules (OAR) have gone into effect for adult foster homes. Attached providers will find the PowerPoint used in a recent rules training. Also included are notes discussing the rule change as well as provider questions that were discussed during the training. The following notations have been made in the note of the PowerPoint:

- **Discussion** – details specific to the rule change and specific information providers need to know.
- **Question and Answer** – AFH provider questions that came up during the training as well as the response from the Safety, Oversight and Quality Unit (SOQ).

There were also many questions that were not specific to the rule changes and those are included in the following pages. If there are any questions, please contact APD.AFHteam@dhsosha.state.or.us

Thank you.

There were several questions specific to the AFH Union and their role in adult foster homes. It is best these questions be directed to Union members and representatives so you can be assured you are receiving the most recent information.

John Grimm, Union President: john.adultcare@yahoo.com

SEIU Webpage: <https://seiu503.org/>

Providers are also welcome to contact IACHA, The Independent Adult Care Home Association: <https://www.facebook.com/carehomeassociation/>

Question: Does anyone have recommendations on recruiting staff?

Answer: There is no universal caregiver database. Providers are encouraged to speak with AFH providers in their area as there may be staff looking to pick up extra hours. You may also check with Workforce Resources in your area, a Google search should help you to find the group for your region.

Question: Any suggestions with getting background checks from Orchards. They take so long; we use to be able to get them to expedite which was helpful. Now that finding an employee is difficult and then we have such a long wait time. I've lost employees by the time we get approval.

Answer: Specific questions should be brought forward to the BCU team as they are the best ones to speak to their processes.

Question: Medicaid homes received a bonus for working during COVID why wouldn't private-pay homes be as appreciated?

Answer: All our adult foster homes are appreciated, and we recognize the extraordinary amount of work that has been done to keep Oregonians safe the last two years. When we receive budget dollars from the Legislature, they are specific to the care of residents on Medicaid services, and we must spend those dollars accordingly.

Question: Are we to continue screening at the door as well?

Answer: For the time being, yes. There will be new COVID guidelines released very soon.

Question: Who can we reach out to for assistance with issues with a family member/POA who is very rude/aggressive verbally with staff? We don't want to lose care staff due to the actions of others.

Answer: The long-term care ombudsman may be able to help in situation such as these and your licenser may also be a resource.

Question: Can we still get credits on Oregon Care Partners? Or are those no longer acceptable?

Answer: Credits from Oregon Care Partners are still accepted.

Question: If my main caregiver takes the classes to be a provider, can I make her the substitute provider?

Answer: Your main caregiver could become an administrator for your AFH but that would still not make them the provider/ licensee of the home, it would simply authorize them to act on your behalf.

Question: If you have paint or propane or cleaning supplies etc. in the shed and the shed is locked, is that good enough?

Answer: Having chemicals locked is necessary however they also must be stored according to manufacturer directions which could have guidelines on changes in temperature. It is best to read the labels and ensure chemicals are stored properly and flammables are stored in a manner that minimizes fire risk.

Question: What do we know about the 6th resident we keep hearing about?

Answer: This idea was active in the Legislature previously but the bill did not pass.

Question: If a resident chooses to have plastic surgery and is leaving for 2 months, do we have to save their bed?

Answer: Regardless of the reason for their surgery or absence the AFH is their home and yes, their bed needs to be held during the time they are absent.

Question: Just to confirm, if someone is admitted to the hospital and their level of care exceeds your home now, you still must take them back, even though you gave them the less than 30 days move out notice.

Answer: This depends on the result of the assessment. A licensee can't indicate they are unable to meet someone's needs without reassessing them and determining so. Having a resident admit into the hospital is not reason enough to say their needs can't be met thus it may be possible that the resident is able to come home until the hearing is held to determine final outcomes.

Question: If a resident wants to leave the home, do they also have to give a 30-day notice?

Answer: No, a resident does not need to give 30 days' notice before leaving however once they do move out you are able to fill the empty bed.

Question: We are currently dealing with a move out. We have a resident threatening other residents, vandalizing the bathrooms, and destroying other people's property. He has also gotten physical in the past. It has become too much to handle. What are my rights to a sooner move out if his behavior escalates and continues?

Answer: An expedited move out notice can be issued if the reasons for the expedited notice meet the requirements of rule. If the resident requests a hearing, one will be scheduled as soon as possible.



ODHS 2022 AFH Rule Updates Training

Adult Foster Homes for Older Adults or Adults with Physical Disabilities



Division 49

Purpose, Definitions and Licensure

Division 49

411-049-0102 Definitions

- "Back-Up Provider Agreement" means an agreement between the licensee and another licensee, approved administrator, resident manager, or approved floating resident manager, who does not live in the home, and has agreed to oversee the operation of an AFH of the same license classification or higher in the event of an emergency. The Department's (APD 0350) form may be used in place of the succession plan. (See "Succession Plan").

Discussion 0102: Succession plan and back-up provider agreement are two different tools a provider can use in developing emergency plans for AFH coverage should the Licensee not be available in the AFH in the event of an emergency.

Succession Plan

411-049-0102 Definitions

- (91) “Succession Plan” means the licensee or administrator’s written plan addressing coverage, continuance of care and services for residents, and AFH operations should the licensee or administrator be unable to fulfill their duties due to illness, death, or other unexpected absence. The Department’s Back-up Provider Agreement form (APD 0350) may be used for this purpose. (See “Back-up Provider Agreement”)

Discussion 0102(91): Succession plan and back-up provider agreement are two different tools a provider can use in developing emergency plans for AFH coverage should the Licensee not be available in the AFH in the event of an emergency.

Division 49

411-049-0125 Caregiver Qualifications

- (2) LICENSEE AND ADMINISTRATOR TRAINING REQUIREMENTS. For licensees designated as corporate entities, at least one administrator must meet the training requirements described in (2)(a) – (2)(e) of this rule in addition to obtaining a variance as outlined in OAR 411-049-0160(2)(c)(C).
- (7) TRAINING *WITHIN* FIRST YEAR OF INITIAL LICENSURE OR APPROVAL. Within the first year of obtaining an initial license or approval, the licensee, administrator, resident manager, floating resident manager, and shift caregivers must complete the "DHS Six Rights of Safe Medication Administration" and a Fire and Life Safety training as available. The Department or LLA and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

Discussion 0125(2): Rule indicates the requirement that administrators take training on behalf of corporate licensed entities.

Discussion 0125(7): Added word *WITHIN* to specify the requirement that these trainings take place in the first year of licensure.

Division 49

411-049-0125 Caregiver Qualifications

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

- (9) 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 the following qualifications prior to working alone in the home.

- (9)(g) Substitute caregivers must complete CPR and First Aid training and certification within 30 calendar days of the start of employment. Certification must be maintained according to the standards established in (2)(b)(D) of this rule

2/24/2022

ODHS – APD Adult Foster Home

6

Discussion 0125(8)(b): Clarified rule to indicate that both CPR and First Aid must be renewed.

Discussion 0125(9): Substitute caregivers must be fully trained before being allowed to work alone in the AFH.

Discussion 0125(9)(g): Substitute caregivers must complete CPR and First Aid training within their first 30 days of employment.

Division 49

411-049-0135 License Applications

- (3) LICENSE RENEWAL. At least 90 calendar days prior to the expiration of a license, the LLA must send a reminder notice and renewal application to the licensee. License renewal inspections may be conducted with an appointment when requested by a licensee or administrator. The request must be made no less than 30 days prior to the expiration of the license and the appointment must be scheduled at a mutually agreed upon time in cooperation with the LLA. If advance notice may obstruct or diminish the effectiveness of the enforcement of these rules, the appointment request may be denied.

Discussion 0135(3): Licensee’s may request a renewal appointment with their licensor. These requests must be made no less than 30 days before the license is due to expire and the licensor may deny the request if they have reason to believe an appointment would diminish their ability to effectively perform their inspection.

Question: Can we make an appointment for renewal? If we don’t make an appointment, will they just show up? **Answer:** Yes, you may request an appointment and if one is not requested or the appointment request is denied the licensor will follow their usual renewal timeline which is based on the expiration date of your license.

Division 49

411-049-0160 (2) VARIANCES NOT ALLOWED

- (c)(C) A licensee designated as corporate entity must obtain a variance to the training requirements as described in OAR 411-049-0125(2)(a) – (2)(e).

Discussion 0160(2): Corporate entities must request a variance for the required trainings since a corporation is unable to take trainings. Instead, the administrator is taking the trainings on their behalf.

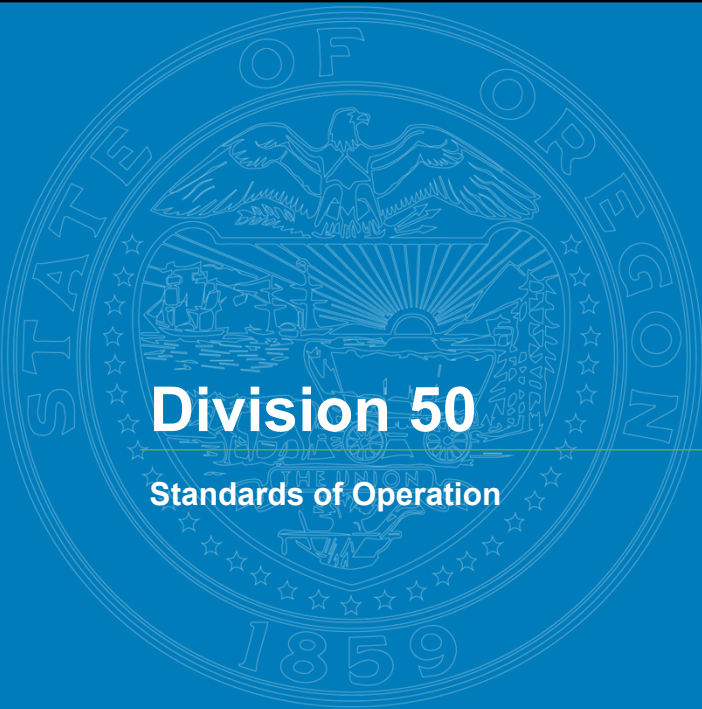
Emergency Sprinkler Rule

411-049-0135(7)

- (s) Effective beginning January 1, 2022, a copy of the Certificate of Occupancy or other documentation issued by the Building Code Division or local building officials verifying that the facility has met the Oregon Residential Specialty Code (ORSC) building requirements for usage as an AFH.
 - Within the first two years of licensure, an AFH licensee who submitted a complete initial application to the Department between April 1, 2021 and December 31, 2021 must show proof of a Certificate of Occupancy or other documentation issued by the Building Code Division or local building officials indicating the facility has met the ORSC building requirements for usage as an AFH. Failure to submit the required documentation may result in sanctions that could include non-renewal or revocation of the license.
 - (B) AFHs that were licensed prior to April 1, 2021 are exempt from the requirement to obtain a Certificate of Occupancy or other documentation.

Discussion 0135(7): Sprinkler rule was put into place per the new building codes adopted April 1, 2021. Since this rule change was made the Legislature has approved Senate Bill 1548 which indicates that no AFH licensed before July 1, 2024 will be required to have sprinklers provided they meet Department fire and safety requirements and serve five or fewer individuals. Additionally, the Department shall report the impact of sprinkler requirements on long-term care to the legislature no later than October 1, 2022.

<https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1548/enrolled>



Division 50

Standards of Operation

Division 50

411-050-0705 Residency Agreement

- (11) *Agreement by the resident or the resident's representative* to the use of any home monitoring devices may not be a condition of admission.

411-050-0735 Staffing Standards

- (9) SUCCESSION PLAN. The licensee or administrator must have a written succession plan or back-up provider agreement (APD 0350), addressing care and services for residents in the event that the licensee or administrator is unable to fulfill their duties in the AFH. The succession plan or completed (APD 0350) form must be:
 - (a) Reviewed by the LLA.
 - (b) Updated and submitted to the LLA within three business days of any changes.
 - (c) Made readily available to the Department upon request.

Discussion 0705(11): Provider's cannot make the use of listening devices a condition of move-in.

Discussion 0735(9): The succession plan must be available in the AFH and indicate the Provider's plan for care should they not be able to work in the AFH due to an emergency.

Question: If you have the back up provider form completed do you also need the succession plan? Is it one or the other? **Answer:** Providers only need to have one or the other, not both.

Division 50

411-050-0745 Records(1)

- (h) Records of monthly fire extinguisher inspection, smoke alarm and carbon monoxide alarm testing.
- (i) Succession Plan or the Department's current Adult Foster Home Back-Up Agreement form (APD 350) completed by the current back-up provider and the licensee, as stated in OAR 411-049-0135(1)(q).
- (l) Falsifying records or causing another to do so shall result in issuance of a mandatory civil penalty as described in OAR 411-052-0025(2).

Discussion 0745(h): Monthly fire extinguisher inspection must be noted – rule originally indicated testing of the fire extinguisher was required.

Discussion 0745(i): Either a succession plan or a back-up plan are required in the AFH as required records.

Discussion 0745(l): There has been a mandatory civil penalty related to falsification of records for some time. This language has been added to both facility and resident records as falsifying records is a serious violation.

Division 50

411-050-0745 Records - Facility

- (3) POST BY TELEPHONE. The following emergency contacts must be readily visible and posted by a central telephone in the AFH:
 - (a) The contact number for the individual named in the back-up provider agreement or succession plan, who has agreed to respond in person in the event of an emergency.

Discussion 0745(3)(a): Licensee is to post the phone number of their back-up provider, or the individual named in their succession plan by the telephone.

Division 50

411-050-0750 Records - Resident

- (2) The record must contain the following information:
 - (c) Documentation on form (SDS 0342A) that the licensee or administrator has oriented the resident to emergency evacuation procedures as described in OAR 411-050-0725(1).
 - (e) FINANCIAL INFORMATION:
 - (j) SIGNIFICANT EVENTS AND INCIDENTS. 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. A copy of the report must be sent to the resident's representative, and case manager, if applicable
 - (m) Falsifying records or causing another to do so shall result in issuance of a mandatory civil penalty as described in OAR 411-052-0025(2).

2/24/2022

ODHS – APD Adult Foster Home

14

Discussion 0750(2)(c): Provider must note that the resident has been oriented to emergency procedures.

Discussion 0750(2)(e)(j): Reports of significant events and incidents must be sent to the resident's representative or case manager, if applicable.

Discussion 0750(2)(e)(m): There has been a mandatory civil penalty related to falsification of records for some time. This language has been added to both facility and resident records as falsifying records is a serious violation.

Question: Does this now mean any incident report written a copy has to be sent to the representative and/or case worker? **Answer:** That is correct. It is best to communicate these items timely in case adjustments to the care plan need to be made and for tracking changes of resident condition.

Question: When do you not need to do an incident report after a fall?

Answer: Falls are to be taken seriously and even if a fall has not caused an injury, you should record it on an incident report. This can help you to see increases in fall patterns and ensure you have appropriate documentation in place should there be a concern with APS.



Division 51

Standards of Care

Division 51

411-051-0130 Standards for Medications, Treatments, and Therapies

- (9) MEDICATION CONTAINERS AND STORAGE
 - (a)(C) Residents shall not have access to medications belonging to other residents.

Discussion 0130(9)(a)(C): Medications need to be locked and stored in a manner that does not allow residents to have access to medications belonging to other residents in the AFH.



Division 52

Complaints, Investigations and Sanctions

Division 52

411-052-0005 Investigations and Inspections

- (1) The LLA must conduct an in person inspection of an AFH and all structures on the AFH property. The in person inspection must be conducted:
- (7) The Department, LLA, the investigative authority, OHA, and CMS has authority to conduct inspections with or without advance notice to the licensee, staff, or the residents of the home. The Department, LLA, 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. State personnel and representatives are required to show Department issued identification in compliance with the Department's October 09, 2020 policy.

2/24/2022

ODHS – APD Adult Foster Home

18

Discussion 0005(1): Licensing must conduct inspections in-person.

Discussion 0005(7): State personnel and representatives are required to show their Department identification when arriving at your AFH.

Question: What is meant by all structures? And what if the residents never enter the structures? **Answer:** Any structure or building that is on the property is subject to inspection as the licensor has a responsibility to check for chemical storage and other potential hazards.

Question: If I am renting a building for the AFH and there is an apartment attached to it that does not have to do with the business, do I need to notify the people that live there that to inspect? **Answer:** This would depend on if the apartment had its own address or not. If the apartment has the same address as the AFH then yes, it will need to be inspected. If the apartment has its own address, then no inspection

would be allowed.

Question: If a licensor suspects something, does that mean that they can come it without a warrant that would be needed otherwise? **Answer:** A licensor does not need a warrant to enter the AFH and their inspections are not related to criminal matters.

Division 52

411-052-0015 Procedures for Correction of Violations

- (4) At any time after receipt of a notice of violation or an inspection report, a meeting may be requested by the applicant, the licensee, the LLA, or the Department. The meeting must be requested within 21 calendar days and be scheduled within 10 business days of a request by any party.

Discussion 0015(4): If a licensee disagrees with a violation written by the licensor, they may request a meeting to discuss the violation with the licensing team. This meeting must be requested within 21 calendar days of the violation being written.

Questions and Discussion