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

CHAPTER 411
DIVISION 49

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

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411-049-0100 Purpose

(1) The purpose of the rules in OAR chapter 411, division 049, 050, 051, and 052 is to establish the minimum standards and procedures for Adult Foster Homes (AFH) that provide care and services for adults who are older or adults with physical disabilities in a homelike environment that is safe and secure.

(2) Adult foster homes:

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

(b) 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 - 443.004, 443.705 - 443.825, 443.875,

443.991

411-049-0102 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 049, 050, 051, and 052:

(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 AFHs, including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Department regarding AFH 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 described in OAR 411-015-0006 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 Day services" means care, assistance, and supervision of an individual who is older, as defined in these rules, who does not stay overnight.

(5~~4~~) "Adult Foster Home (AFH)" means any family home or other facility where residential care is provided in a 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. AFHs are home and community-based settings as defined in OAR chapter 411, division 004. For the purpose of these rules –

(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".

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(6~~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).

(7~~6~~) "Applicant" means an individual, partnership, corporation, or other entity who completes an application to own or operate ~~for~~ an AFH ~~license~~. An individual applicant may also complete an application to become a resident manager, floating resident manager, or shift caregiver. "Applicant" is synonymous with "Co-applicant".

(8~~7~~) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210. An approved "Background Check" means a final determination, made by an authorized agency or district that the subject individual is fit to:

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

(b) Obtain or retain credentials;

(c) Have direct access to; or

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

(9~~8~~) "Background Check Rules" means the rules in OAR 407-007-0200 to 407-007-0370.

(10~~9~~) "Back-Up Provider" means a licensee, approved resident manager, approved floating resident manager, ~~or management company who does~~

~~not live in the home,~~ who has agreed to oversee the operation of an AFH, of the same license classification or higher, in the event of an emergency.

(11~~0~~) "Behavioral Interventions" mean those interventions that modify a resident's behavior or a resident's environment.

(12~~1~~) "Board of Nursing Rules" means the standards and practice for licensed practical nurses and registered nurses to teach and delegate to unlicensed persons according to the statutes and rules of the Oregon State Board of Nursing (OSBN)~~,~~ ORS 678.010 to 678.445 and OAR chapter 851, division 045 and 047.

(13~~2~~) "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.

(14~~3~~) "Caregiver" means any person providing care and services to residents. (See “Qualified Caregiver”).

(15~~4~~) "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.

(16~~5~~) "CFR" or "Code of Federal Regulations" or 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.

(17~~6~~) "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.

(18~~7~~) "CMS" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(19~~8~~) "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.

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

(20~~19~~) "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 AFH.

(21~~0~~) "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.

(22~~1~~) "Consumer" means an individual eligible for Medicaid services for whom case management services are provided by the Department.

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

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

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

(25) "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 the individual's behalf.

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

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

(27) "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) "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.~~

(28~~9~~) "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~~29) "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.

(30~~1~~) "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.

(31~~2~~) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of AFHs 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.~~

(32~~3~~) "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.

(33~~4~~) "Final Point of Safety" means a designated assembly area located on a public sidewalk or street not less than 50 feet away from an AFH where occupants of the home evacuate to in the event of an emergency.

(34~~5~~) "Floating Resident Manager" means an employee of the licensee, approved by the LLA, who under the direction of the licensee, is directly responsible for the care of residents in one or more AFHs owned by that licensee. A "floating resident manager" is not required to live in any one AFH owned by his or her employer, except on a temporary basis, as directed by the licensee, when the regularly scheduled caregiver is unavailable.

(35~~6~~) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 004.

(36~~7~~) "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.

(37~~8~~) "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.

(38~~9~~) "House Policies" or the "Home's Policies" means the written and posted statements addressing house activities in an AFH identified in the Residency Agreement.

(~~40~~39) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the ~~disclosing entity~~AFH.

(40~~1~~) "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,~~.~~ including those ~~For Home and Community-Based Settings, "Resident" includes individuals~~ receiving adult day services.

(41~~2~~) "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.

(42~~3~~) "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.

(4~~3~~4) "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 AFH where occupants of the home evacuate to in the event of an emergency and for the purpose of conducting evacuation drills.

(4~~4~~5) "Investigative Authority" means the Office of Training, Investigations, and Safety or “OTIS”, 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.

(4~~5~~6) "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 their authority as designated by the court or other agreement.

(a) Legal representatives acting outside of 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.

(4~~6~~7) "Level" means the designation of ventilator-assisted care assigned to an AFH license based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(4~~7~~8) "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

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(DO), respiratory therapist (RT), physical therapist (PT), physician assistant (PA), or occupational therapist (OT).

(48~~9~~) “Licensee” means the applicant to whom an AFH license has been issued. “Licensee” is synonymous with “Co-Licensee” in these rules.

(49~~50~~) "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.

(50~~1~~) "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.

(51~~2~~) "Local Licensing Authority" or “LLA” means the local Department offices and Area Agencies on Aging that contract with the Department to perform specific functions of the AFH licensing process.

(52~~3~~) “Management agreement” means a written, executed agreement between the licensee and another individual or entity regarding the provision of ~~certain~~operational or management -services on behalf of the licensee.

(53~~4~~) **“**Monitoring Device**”** means a device such as an intercom or other audio device that enables one-way or two-way communication between residents and caregivers for the purpose of alerting the caregiver to a resident’s needs, not limited to emergencies and night needs.

(54~~5~~) "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~~OSBN in OAR chapter 851.

(55~~6~~) "Occupant" means any person residing in or using the facilities of an AFH, including residents, licensees, resident manager, floating resident manager, friends or family members, adult day services individuals, and

room and board tenants. A floating resident manager who resides in an AFH on a temporary basis is considered an "occupant".

(56) “OHA” Means the Oregon Health Authority.

(57) "Older" means any person at least 65 years of age.

(58) "Ombudsman" means the Oregon Long-Term Care Ombudsman (LTCO) or a designee appointee d by the Long-Term Care Ombudsman to that serves as an LTCO representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of AFH residents.

(59) "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of an AFH. is synonymous with "Licensee" as defined in this rule.

(60) “Owner” is synonymous with “Licensee” as defined in this rule.

(61) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an AFH. Persons with an ownership or control interest mean a person or corporation that:

(a) Has an a direct or indirect "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;

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

(cd) 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;

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

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

(62) “Person” has the same meaning as set forth in ORS ~~183.310~~174.100(6).

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

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

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

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

(66) "Primary Caregiver" means one or any combination of a licensee, resident manager, or shift caregivers who personally provide care and services, and safeguards the health and safety of residents a minimum of five 24-hour days per week.

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(67) "PRN" is a Latin term (pro re nata), means "as needed." It describes 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.

(68) "Provider" means any person operating an AFH. ~~(i.e., licensee, resident manager, floating resident manager, or shift caregiver).~~

(69) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an AFH. A provisional license is issued to a qualified person who meets the standards of OAR 411-049-0125 and OAR 411-049-0105(9) except for completing the training and testing requirements. (See OAR 411-049-0105(6)).

(70) "Psychotropic Medication" 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.

(71) "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").

(72) “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 LLA.

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

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

(75) "Reside" means for a person to live in an AFH 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.

(76) "Residency Agreement" or "Agreement" means the written and legally enforceable agreement between an AFH 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.

(77) "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 AFH on a 24-hour day basis in exchange for compensation. ~~For the purposes of this definition, Resident includes individuals receiving adult day services. (See OAR 411-049-0145, OAR 411-050-0705, and OAR 411-50-0710).~~

(78) "Resident Manager" means an employee of the licensee, approved by the LLA, who lives in the AFH, and is directly responsible for the care of the residents.

(79) "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 411-051-0005).

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

(81) "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.

(82) "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. AFHs with room and board tenants are not subject to OAR chapter 411, division 068.

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

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

(85) "Self-Administration of Medication" means the ~~act of a resident placing a medication in or on their 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.

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

(87) "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.

(88) "Shift Caregivers" mean caregivers who are responsible for providing care for regularly scheduled periods of time, 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.

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

(a) All licensed AFH providers and provider applicants;

(b) All persons intending to work in, or currently working in an AFH, including, but not limited to, caregivers, including trainees, and 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 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 AFH, 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 AFH or the resident's visitors;

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

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

(ii) Regular use of the AFH's appliances or facilities; or

(iii) 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.

(90) "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.

(91) "Substitute Caregiver" means any person other than the licensee, resident manager, floating resident manager, or shift caregiver who provides care and services in an AFH under the jurisdiction of the Department.

(92) "Tenant" means any individual who is residing in an AFH who receives services, such as meal preparation, laundry, and housekeeping.

(93) "Tenancy Agreement" means a written and legally enforceable agreement between an AFH 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.

(94) "These Rules" mean the rules in OAR chapter 411, division 49, 50, 51, and 52.

(95) "Variance" means an exception from a regulation or provision of these rules in accordance with OAR 411-049-0160.

(96) "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.

(97) "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

411-049-0105 License

(1) REQUIRED. Any facility that meets the definition of an AFH or limited AFH in OAR 411-049-0102 must apply for and obtain a license from the LLA before providing care to any resident for compensation.

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

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

(4) 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.

(5) NON-TRANSFERABLE LICENSE AND SALE, LEASE OR CHANGE OF OWNERSHIP~~(b)~~ REQUIREMENTS. A change of ownership of an AFH requires both a new license application and a new license.

~~(a) Under this section, "control of the adult foster home" means the possession, directly or indirectly, of the power to direct the management, operation or policies of the AFH, whether through ownership, voting control, by agreement, by contract or otherwise.~~

~~(b) REQUIREMENTS. A change of ownership of an AFH requires both a new license application and a new license.~~

(~~A~~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 LLA.

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(~~B~~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 AFH is not transferable and the licensee must refer them to the LLA for information about licensing.

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

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~~(c) CHANGE OF OPERATIONAL CONTROL~~

~~(A) A change of ownership occurs when there is a change in the entity that has day to day operation control.~~

~~(B) Events which constitute a change of ownership include, but are not limited to;~~

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~~(i) Legal changes to the business structure that forms the AFH, such as when an AFH:~~

~~(I) Forms a partnership.~~

~~(II) Forms a corporation.~~

~~(III) Forms a limited liability company.~~

~~(IV) Merges with another legal organization; or~~

~~(V) Changes provider tax identification number.~~

~~(ii) The AFH transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of real property, personal property, or both.~~

~~(iii) Dissolution of a business partnership that is licensed to operate the AFH.~~

~~(iv) If the AFH is a corporation and the corporation:~~

~~(I) Is dissolved;~~

~~(II) Merges with another corporation, resulting in a change in the control of the provider; or~~

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~~(III) Consolidates with one or more corporations to form a new corporation;~~

~~(IV) Whether by a single transaction or multiple transactions within a continuous twenty-four-month period, transfers 50 percent or more of its shares to one or more of the following:~~

~~(v) New or former shareholders; or~~

~~(vi) Present shareholders, each having less than five percent of the shares before the initial transaction.~~

~~(vii) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the provider's control of the AFH.~~

(d) Prior to operation the new owner:

(A) Must ~~obtain a~~have an approved license from the Department before transfer of ownership~~;~~.

(B) Must not begin operation of the AFH until the Department has ~~granted~~ issued the license.~~;~~

~~(C) Must have a plan for correction of all deficiencies that existed prior to ownership change;~~

(C) Must conduct pre-admission screenings according to 411-051-0010 (1) and (b) for residents wishing to remain in the AFH.

~~(D) Must provide the department with a copy of the written notice of the change of ownership that was given to each resident, or applicable resident representatives.~~

(e) NOTICE OF CHANGE OF OWNERSHIP

Commented [GEM1]: Lynette, we believe that we will have to create a new 901 variation to encompass this. Maybe like a 901a or update the 901 to add a change of ownership section?

(A) The licensee must promptly notify the LLA in writing about the licensee's intent to close or convey the AFH to another person. The licensee must provide written notice to the residents and the residents' representatives and case managers, as applicable, according to (X~~5~~)~~(cx~~) of this rule.

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(B) The licensee must inform a person intending to assume operation of an existing AFH 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 AFH for the purpose of conveying the home to another person.

(C) The ~~home~~ licensee must include the following information in the written notice:

(i) Names of the present owner and prospective owner;

(ii) Name and address of the AFH for which the ownership is being changed;

(iii) Date of proposed change;

(iv) Any change in the house policies or operations that could impact a resident's ability to continue to live in the home; and

(v) 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 LLA at a level appropriate to the care needs of the residents in the home.

(f) PRIORITY PROCESSING. In order to prevent disruption to residents, currently licensed providers may request in writing that the Department give priority processing to an applicant seeking to be licensed as the new provider for the AFH.

(6) CAPACITY**.** Notwithstanding limited AFHs, 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.

(a) The number of residents permitted to reside in an AFH 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.

(b) The licensee must demonstrate, to the LLA's satisfaction, the ability to meet the needs of the residents, in addition to, caring for any children or others beyond the license capacity of the AFH.

(c) The LLA's determination of maximum capacity must ensure:

(A) The ratio of at least one caregiver per five residents, including any adult day services individuals and others requiring care or supervision except as allowed under section (d) 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) When a family member who is not a consumer requires care in a home, and when 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 AFH as specified in these rules (See OAR 411-050-0725(3)).

(B) The licensee must have sufficient, qualified staff and demonstrate the ability to provide appropriate care for all residents (See OAR 411-050-0730).

(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 411-050-0715).

(D) Bathrooms and bedrooms must meet the requirements of OAR 411-050-0715.

(E) The care needs of adult day services 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.

(e) 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 411-050-0750.

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(7) CHANGE IN CAPACITY. 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 LLA 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 LLA 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 deny the applicant's change in capacity to the Safety, Oversight, and Quality Unit, unless the applicant submits written notification to withdraw the requested change in capacity.

(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.

(8) VENTILATOR-ASSISTED CARE. The Department may approve a licensee to care for residents requiring ventilator-assisted care. The licensee, resident manager, floating resident manager, or shift caregivers,

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as applicable, must meet the criteria for a Class 3 home according to section (10) of this rule, and comply with the additional requirements for AFHs serving residents requiring ventilator-assisted care outlined in OAR 411-049-0155.

(9) CLASSIFICATION. The LLA shall issue a Class 1, Class 2, or Class 3 AFH 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 LLA must investigate the information submitted, including any pertinent information received from outside sources.

(b) The LLA 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 LLA may issue a Class 1 license if the applicant, and other ~~providers~~ caregivers as applicable, complete the training requirements outlined in OAR 411-049-0125.

(d) The LLA may issue a Class 2 license if the applicant, and other ~~providers~~ caregivers as applicable, complete the requirements outlined in OAR 411-049-0125. 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 LLA may issue a Class 3 license if the applicant, and other ~~providers~~ caregivers as applicable, complete the training requirements outlined in 411-049-0125 and have a current license as a health care professional in Oregon or possess the following:

(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; or

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

(10) CHANGE IN CLASSIFICATION. 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 LLA, 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 LLA will investigate the information provided and shall:

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

(B) 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.

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

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

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

(b) 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) 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.

(12) CLASSIFICATION VARIANCE. A licensee must request, in writing, a variance from the LLA 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.

(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.

(13) The LLA may grant a variance that allows the resident to be admitted or remain in the AFH. The LLA 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;

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(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's ability to demonstrate how all occupants shall be safely evacuated in three minutes or less.

(14) LICENSE TYPES

(a) LIMITED AFH. Any home that meets the definition of a limited AFH in OAR 411-049-0102 must apply for and obtain a limited license from the LLA before providing care. The license for a limited AFH 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.

(b) PROVISIONAL. Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the LLA may issue a 60-day provisional license to a qualified person. A provisional license may be issued if the LLA 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 AFH.

(B) A new, qualified 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

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cannot be completed before the expiration date of the current license. A person is considered qualified for a provisional license if he or she:

(i) Is at least 21 years of age.

(ii) 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.

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

(iv) Meets the requirements of a substitute caregiver as described in OAR 411-049-0125(9).

(15) DUAL LICENSES. A provider licensed under these rules may not have more than one license type at the same ~~home~~~~address~~AFH. Examples of other license types may include, but are not limited to, child care, foster care for children, and a care facility for individuals with intellectual or developmental disabilities or mental health needs.

(16) LICENSE CONTENTS. The license specifies the type of license and includes:

~~(a) The name of the licensee or operator, including the registered "Doing Business As" (DBA), or the "Assumed Business Name" (ABN), as applicable. and the name of the resident manager, floating resident manager or shift caregivers as applicable, who have met the requirements to operate the AFH.~~

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

~~(c) The license classification.~~

~~(d) The maximum number of residents.~~

~~(e) The expiration date.~~

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~~(f) The license level for ventilator-assisted foster homesAFHs.~~

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

411-049-0110 Adult Day Services

(1) An AFH licensee may request authorization to provide adult day services to a specific number of individuals. The ~~home~~ licensee may not provide adult day services without first receiving written authorization from the LLA.

(2) The care needs of adult day services individuals must be within the classification of the license and any conditions imposed.

(3) 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.

(4) The licensee must have arrangements for adult day services 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 411-050-0715.

(a) Adult day services individuals may use a cot or rollaway bed if bedroom space is available that meets the requirements of OAR 411-50-0715(10)(c) of this rule.

(b) A resident's bed may not be used by an adult day services individual.

(5) ~~AFHs~~ Licensees that provide adult day services to individuals must remain in compliance with OAR 411-049-0105(6) in addition to the other requirements in these rules including, but not limited to, Facility Standards addressing:

(a) Common use areas, OAR 411-050-0715(7).

(b) Bathrooms, OAR 411-050-0715(9).

(c) Evacuations, OAR 411-050-0725.

(6) Before the admission of each adult day services individual, the licensee must:

(a) Conduct and document a screening as described in OAR 411-051-0010.

(b) Obtain current medical professional orders as described in OAR 411-051-0030(2), 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 OAR 411-051-0030(6), if medications are to be administered.

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

411-049-0115 Room and Board

(1) Licensee may request authorization to provide room and board services to a specific number of tenants according to these rules prior to admission. If room and board tenants are in the home, the licensee must ensure each tenant has:

(a) An approved background check in accordance with OAR 411-049-0120.

(b) A tenancy agreement.

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

(d) A resident may choose to have a room and board tenant, such as the resident's spouse, as a roommate if the bedroom is approved for shared occupancy. In addition:

(A) Verification of sufficient square footage and w~~W~~ritten authorization from the LLA is required in advance of the tenant's admission. ~~In addition:~~
~~(A) The licensee must submit a revised floor plan, according to OAR 411-050-0720(16).~~

(B) If the tenant placement would take an approved resident's bed, the licensee must also submit a request to change the home's license capacity according to OAR 411-049-0105(6)~~, or request approval for a new resident-approved bed if available~~.

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(2) AFH licensees that provide room and board services to individuals must remain in compliance with OAR 411-050-0715 in addition to the other requirements in these rules including, but not limited to:

(a) Common use areas, OAR 411-050-0715(7).

(b) Bathrooms, OAR 411-050-0715(9).

(c) Bedrooms, OAR 411-050-0715(10).

(d) Evacuations, OAR 411-050-0725.

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

411-049-0120 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 AFH.

(a) Licensees must maintain documentation of preliminary and final fitness determinations with the home's facility records in accordance with these rules and the background check rules.

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(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~~d~~) If the subject individual ~~SI~~ is approved and in good standing on the B~~b~~ackground C~~c~~heck U~~u~~nit's registry pursuant to OAR 407-0074-0600 to 407-007-0640, ~~the licensee or designated QED may renew an SI's clearance related to~~ sections 3(a) and (b) ~~above~~ may be handled through the ~~online~~ registry.

(5~~4~~) An SI may be hired on a preliminary basis following completion of a preliminary fitness determination according to the background check rules. 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 AFH premises.

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

(6~~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.

(7~~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

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listed in OAR 407-007-0275 shall be approved by the Department to provide care and services in an AFH. 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.

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

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

(b) Disqualifying condition as described in OAR 407-007-0275.

(c) Potentially disqualifying condition as described in OAR 407-007-0279 and OAR 407-007-0290.

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

(9~~8~~) 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.

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(10~~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.

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(11~~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, conditions on the license or suspension of the license. If the final order upholds the Department's decision to deny the

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background check, the Department 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 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-049-0125 Caregiver Qualifications

(1) LICENSEE QUALIFICATIONS. An AFH licensee must:

(a) Live in the home that is to be licensed at least five 24-hour days per week and function as the primary caregiver as defined in OAR 411-049-0102 unless:

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

(C) The home is staffed 24-hours a day with a combination of approved shift caregivers. (See OAR 411-049-0125(6).)

(b) Subsections (a)(A), through (a)(C) of this section are not intended to prohibit the occasional and temporary absence of the primary caregivers from the AFH;

(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 411-049-0120 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, DHS and LLA 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 their 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) LICENSEE TRAINING REQUIREMENTS

(a) Licensees must have the education, experience, and training to meet the requirements of the requested classification of the home. (See OAR 411-049-0125.)

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

(A) Attend a DHS-approved orientation program conducted by the LLA responsible for the licensing of the proposed AFH;

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

(i) 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 student policies for the Department's Ensuring Quality Care Course.

(D) Have and maintain 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.

(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 caregivers must complete dementia training approved by the Department before providing direct care as mandated by ~~Section 30 of HB 3359, 2017 legislative session~~ORS 443.743. The training shall 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.

(d) ~~Providers~~ Licensees, ~~who are licensed or employed as a~~ resident managers, floating resident managers, or shift caregivers ~~prior to December 31st, 2018~~ must complete the required dementia training ~~by December 31st, 2018~~as mandated ORS 443.743. ~~Training resources, including free online classes, for the approved dementia training will be made available.~~

Commented [CL4]: Does this need to be here? Do we still need a date reference?

(e) CAREGIVER ORIENTATION. Prior to providing care to any resident, all caregivers must be oriented to the home and to the residents by the licensee or other qualified primary caregiver. 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) Making arrangements with a registered nurse to delegate any nursing procedure that requires delegation prior to the caregiver performing that task; and

(L) Understanding the home's policies and procedures related to Advance Directives. (See OAR 411-050-0750)

(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 AFH 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 LLA 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(s) (SDS 0448F) completed and stamped or notarized by the applicant's or licensee's financial institution(s).

(B) Documentation on letterhead of the applicant's or licensee's financial institution(s) 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, lowest, and current balance for each of the most recent three full months;

(iv) The line of credit balance available for each of the most recent three full months, if applicable;

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

(vi) 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 LLA 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)(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)(c) through (2)(d) of this rule. The LLA 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 (1)(h) 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 LLA, 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 LLA within an exempt area from requiring the floating resident manager applicant to attend the LLA's orientation.

(c) The floating resident manager must be oriented to each home prior to providing resident care in each home.

(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 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) of this rule. The LLA shall verify all the requirements of these rules have been satisfied prior to approval of a shift caregiver.

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(7) TRAINING AFTER FIRST YEAR OF INITIAL LICENSURE 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 “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.

(8) 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 AFH setting. Up to:

(A) Four hours of the required annual training may be related to the business operation of the AFH.

(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, and the Ensuring Quality Care Course (not including approved EQC refresher courses), AFH 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.

(9) SUBSTITUTE CAREGIVER REQUIREMENTS

(a) 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:

(b) Be at least 18 years of age.

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(c) Have an approved background check in accordance with OAR 411-049-0120 and maintain that approval as required.

(d) 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 LLA staff, and others involved in the care of the residents.

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

(f) 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.

(g) 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.

(h) Substitute caregivers must have and maintain current CPR and First Aid certification within 30 calendar days of the start of employment. See OAR 411-049-0125(2)(b)(D) for the accepted First Aid and CPR course standards.

(i) 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.

(j) Except as provided in (2)(d) of this rule, all substitute caregivers must complete dementia training as stated in (2)(c).

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(k) A substitute caregiver must be oriented to the home, as stated in (2)(e) of this rule, by the licensee or other approved provider at the home, before providing direct care to any residents.

(l) 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 provider 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 LLA 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) 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.

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

411-049-0135 License Applications

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(1) MULTIPLE HOMES. An applicant may not be licensed to operate a second AFH, or any additional home, without first demonstrating substantial compliance operating ~~the previously~~all currently licensed AFH's.

(a) A separate application is required for each location where an AFH is to be operated.

(b) A written plan describing the administrative responsibilities and staffing to cover each home is required.

~~(2) If applicant proposes to obtain licenses for more than *one* two AFHs in the same general location, or near each other, the applicant must consult with the LLA before the license(s) will be approved.~~

~~(3) The Department will review licensing proposals to ensure that proposed locations will provide a home-like environment for residents in accordance with HCBS.~~

(2~~4~~) The applicant must complete the Department's application form for the specific type of license requested and submit the application form to the LLA with the non-refundable fee.

(3~~5~~) Applications are not complete until all of the required information is submitted to the LLA. Failure to provide complete and accurate information may result in the denial of the application.

(4~~6~~) The applicant may withdraw their application at any time during the application process by written notification to the LLA.

(5~~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 LLA 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.

(6~~8~~) All moneys collected under ORS 443.725 to 443.825 are paid to the Quality Care Fund.

(7~~9~~) INITIAL LICENSE APPLICATION. The initial license application (APD 0448) must include:

(a) Verification of attendance at a Department-approved orientation program conducted by the LLA responsible for the licensing of the proposed AFH and successful completion of the Department's Ensuring Quality Care Course and examination. (See OAR 411-049-0125).

(b) Three personal references for the applicant who are not family members as defined in OAR 411-049-0102. Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references.

(c) 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 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.

(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 unencumbered license as a healthcare professional in Oregon, if applicable.

(d) Documentation of the initiation of a background check or a copy of an approved background check for each subject individual as defined in OAR 411-049-0102.

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

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(f) FINANCIAL INFORMATION. A completed AFH Financial Information form (SDS 448A), and supplemental information listed in OAR 411-049-0125(3) documenting at least two months of liquid resources to pay the operating costs of the home.

(g) If an applicant uses income from another AFH 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.

(h) Copies of the home's Residency Agreements according to OAR 411-050-0750.

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

(j) 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.

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

(k) Complete contact information for the applicant including:

(A) A mailing address if different from the proposed AFH.

(B) A business address for electronic mail.

(l) The maximum resident capacity requested.

(m) Identify an Oregon-licensed registered nurse who has agreed to provide RN consultation, training and delegation to caregivers as needed.

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(n) Identification of:

(A) Any relatives needing care.

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

(C) The maximum number of adult day services individuals.

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

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

(p) 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;

(q) The current AFH Back-up Provider Agreement form (APD 0350).

(r) The current AFH Weekly Plan of Operation form (APD 0351) describing the operational plan for the AFH.

(s) 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 adult day services, 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.

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

(G) Any designated smoking areas in or on the AFH premises.

(t) A copy of the applicant's current license as a health care professional in Oregon, if applicable.

(u) Incomplete initial applications are void after 60 calendar days from the date the LLA receives the application form and non-refundable fee, and the Department may deny the application if not withdrawn.

(8~~10~~) 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 licensed provider.

(a) The application (form APD 0448C) must be completed and timely submitted with the required non-refundable fee to the LLA at least 45 days prior to the expiration date of the current license. Timely submission of the renewal application and fee shall keep the license in effect until the LLA or the Department takes action. The complete application will include:

(A) The requirements listed in OAR 411-049-0135(9)(i) through (r) of this rule.

(B) A Health History and Physician or Nurse Practitioner's Statement (form APD 0903). The Health History and Physician or Nurse Practitioner's Statement must be updated every third year or sooner if there is reasonable cause for health concerns.

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

(D) Documentation of a current approved background check for each subject individual according to OAR 411-049-0120.

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(E) Copies of the home's Residency Agreement forms if changes to the original forms reviewed by the LLA are proposed.

(F) Proof of required annual training as specified in OAR 411-049-0125(8).

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

(~~11~~9) LOCAL LICENSING AUTHORITY AND DEPARTMENT ACTION. After receipt of the completed application materials, including the non-refundable fee:

(a) FOR INITIAL LICENSE APPLICATIONS:

(A) The LLA must investigate the information submitted including pertinent information received from outside sources, conduct a personal interview with the applicant, and conduct an inspection of the home identifying any deficiencies on the Department's APD 0516 form, and specify a time frame for correction not to exceed 30 days.

(B) The licensee must be given a copy of the Department's inspection form (APD 0516).

(C) The LLA 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.

(D) The Department shall deny the issuance of a license if cited are not corrected within the time frames specified by the LLA.

(b) FOR RENEWAL LICENSE APPLICATIONS:

(A) The LLA 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

identifying any violations and specifying a time frame for correction not to exceed 30 days.

(B) The Department may deny a renewal application if cited violations are not corrected within the time frame specified by the LLA.

(C) EXPIRED AND UNLICENSED ADULT FOSTER HOME. If the required renewal information and fee are not timely submitted to the LLA as required in (8) of this rule and residents remain in the home after the date the license expires, the home shall be treated as an unlicensed facility, subject to civil and criminal penalties (See OAR 411-052-0025 and OAR 411-052-0045).

(c) The licensee must post the most recent inspection reports, according to OAR 411-049-0140, and must provide upon request 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.

(d) 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.

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

411-049-0140 Local Licensing Authority Action and Inspections

(1) 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. 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.

(2) ISSUANCE

(a) The LLA must issue an initial license within 60 calendar days after the completed application materials have been received if the home is in compliance with these rules.

(b) The LLA shall not issue an initial or renewal license unless the following requirements are met:

(A) The applicant and the AFH 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 LLA has completed an inspection of the AFH;

(C) The Department has completed a background check in accordance with OAR 411-049-0120;

(D) The LLA has reviewed the record of sanctions available from the LLA's files;

(E) The LLA 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 LLA has determined the licensee is not listed on either of the Exclusion Lists.

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(G) The applicant currently operates or has operated any other facility licensed by the applicant in substantial compliance with OAR 443.705 to 443.825.

(H) The applicant has demonstrated to the LLA the financial ability and resources necessary to operate an AFH in accordance with OAR 411-049-0125(3).

(3) BURDEN OF PROOF

(a) 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 AFH applicant.

(b) In seeking the renewal of a license when an AFH 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.

(c) In seeking the renewal of a license when an AFH has been licensed for 24 or more continuous months, the burden of proof to establish non-compliance with ORS 443.705 to 443.825 and these rules is upon the Department.

(4) INSPECTION REPORTS. The licensee must:

(a) 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; and

(b) Post the most recent inspection reports in the entry of the home or an equally prominent place; or

(c) Maintain the most recent inspection reports in a binder that is readily accessible and in plain view of the posted facility records.

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

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Stats. Implemented: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-049-0145 Medicaid Provider Enrollment

(1) 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.

(2) An approved Medicaid Provider Enrollment Agreement does not guarantee the placement of individuals eligible for Medicaid services in the AFH.

(3) 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.

(4) 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.

(5) An individual eligible for Medicaid services may not be admitted into an AFH 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 411-051-0010; 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 411-050-0750).

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

(7) 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.

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

(9) 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 AFH has been voluntarily surrendered, revoked, or non-renewed.

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

(a) The licensee fails to permit access by the Department, the LLA, OHA, or CMS to any AFH 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 AFH did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the 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 AFH has been convicted of a criminal

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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 AFH, fails to submit timely and accurate information on the Medicaid Provider Enrollment Agreement form.

(11) 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 AFH (See OAR 411-050-0760).

(b) Update Residency Agreement according to OAR 411-050-0705 and submit to the LLA for review.

(c) Obtain signatures of all current residents, or the resident's representative on the updated Residency Agreement following the LLA's review.

(12) 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 LLA for a period of not less than 180 days from the date the licensee or the Department terminated the Medicaid Provider Enrollment Agreement.

(13) 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).

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

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Stats. Implemented: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-049-0150 Limited Adult Foster Homes

(1) The licensee must comply with all requirements for HCB Settings as described in these rules. (See OAR chapter 411, division 004).

(2) To qualify for a limited AFH 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.

(5) The applicant or licensee must live in the home that is to be licensed.

(6) 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.

(7) 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 Rules 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.

(8) The licensee must notify the LLA 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 LLA demonstrating coverage during the absence that meets the needs of the resident.

(9) 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) 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) 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.

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(12) 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 OAR 411-050-0720(15). (See ORS 459.386-405).

(13) The licensee, the licensee's family, and employees of the home must guarantee not to violate the Resident's Rights as outlined in OAR 411-051-0005.

(14) 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) 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) 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) 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 411-051-0005. 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.

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(c) A master key to the resident's door lock must be immediately available to the licensee and all other caregivers in the home.

(18) 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) 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.

(20) Manufactured homes must be in compliance with OAR 411-050-0720(6)(b).

(21) 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.

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(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.

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(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.

(22) 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 LLA.

(23) The licensee must notify the LLA at least 30 days before any change in residential or mailing address.

(24) The Department, the LLA, 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 LLA, or CMS.

(25) 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

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411-049-0155 Ventilator-Assisted Care Requirements

(1) AFHs that provide ventilator-assisted care for residents must meet the requirements of OAR 411-049-0155 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 AFH that provides ventilator-assisted care or accept placement of an individual requiring ventilator-assisted care without being licensed as a ventilator-assisted care AFH.

(3) The licensee must comply with all HCB Settings requirements as described in these rules.

(4) To apply for an initial license to provide ventilator-assisted care, and to renew the license, an applicant 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 411-049-0105 to the LLA. Applications are processed according to OAR 411-049-0135.

(5) QUALIFICATIONS AND TRAINING. An applicant, licensee, and all other caregivers must meet and maintain compliance with OAR 411-049-0125. 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 AFH in substantial compliance with these rules for at least one year.

(c) An applicant for an AFH 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 LLA 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 411-049-0105. The LLA shall issue a Level A, Level B, or Level C ventilator-assisted care AFH 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 LLA 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 LLA 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.

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(c) A licensee with a Level A ventilator-assisted care license may admit a maximum of five residents who require ventilator-assisted care. The LLA 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 411-049-0105. The number of residents permitted to reside in a ventilator-assisted care AFH 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) 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.

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(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 LLA.

(9) FACILITY STANDARDS. An applicant and licensee must meet and maintain compliance with OAR 411-050-0715. 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 411-050-0715, 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. (See OAR 411-050-0725(3) 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 AFH.

(10) STANDARDS FOR CARE. Licensees must meet and maintain compliance with OAR 411-051-0010. In addition:

(a) Prior to admitting a resident requiring ventilator care to the AFH, the licensee must obtain preauthorization from the Department.

(b) The licensee must have a primary care physician identified for each resident being considered for admission.

(c) 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.

(d) 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.
(e) 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 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-049-0160 Variances

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(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~~ With the exception of section (1) of this rule, no variance shall be granted by the LLA from a regulation or provision of the rules pertaining to:

(a) Resident capacity as described in OAR 411-049-0105.

(b) Minimum age of licensee and any caregivers as described in OAR 411-049-0125, except as stated in OAR 411-049-0150(3).

(c) The training requirements of a licensee and all other caregivers, except as allowed for provisional licenses as described in OAR 411-049-0105(14)(b), or when a substitute caregiver holds an Oregon health care professional license as described in OAR 411-049-0125.
(d) Standards and practices for care and services as described in OAR Chapter 411, Division 51.

(e) Inspections of the facility as described in OAR 411-052-0005.

(f) Background checks as described in OAR 411-049-0120.

(g) Video monitors as described in OAR 411-050-0715(8).

(3) The LLA 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 411-049-0160(4)).

(4) The LLA 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 LLA must consider the licensee's history of compliance with rules governing AFHs 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 LLA must determine that the variance is consistent with the intent and purpose of these rules before granting the variance. (See OAR Chapter 411, Division 49, 50, 51, and 52). The LLA 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 LLA. 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 LLA.

(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 LLA.

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
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