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

CHAPTER 411
DIVISION 54

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0005 Definitions
(Amended 06/29/2018)

For the purpose of these rules, the following definitions apply:

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

(2) "Activities of Daily Living (ADL)" mean those personal functional activities 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.

(3) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(4) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility as described in OAR 411-054-0065.

(5) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(6) "Aging and People with Disabilities (APD)" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(7) "Applicant" means the individual, individuals, or entity, required to complete a facility application for license.

(a) Except as set forth in OAR 411-054-0013(1)(b), applicant includes a sole proprietor, each partner in a partnership, and each member with a 10 percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business; or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor, each partner in a partnership, and each member with a five percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business; or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(8) "Approved Dementia Training" means a dementia training curriculum approved by an entity selected by the Department to be an approving entity pursuant to a Request for Application (RFA) process.

(9) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to

perform specific activities in relation to residential care and assisted living facilities including:

(a) Conducting inspections and investigations regarding protective service, abuse, and neglect.

(b) Monitoring.

(c) Making recommendations to the Department regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(10) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings**.** The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(11) "Building Codes" are comprised of the set of specialty codes, including the Oregon Structural Specialty Code (OSSC), Oregon Mechanical Specialty Code (OMSC), Oregon Electrical Specialty Code (OESC), Oregon Plumbing Specialty Code (OPSC), and their reference codes and standards.

(12) "Caregiver" means a facility employee who is either direct care staff or a universal worker, who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents.

(13) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.

(14) "Change of Condition - Short-Term" means a change in the resident's health or functioning, that is expected to resolve or be reversed with

minimal intervention, or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(15) "Change of Condition - Significant" means a major deviation from the most recent evaluation, that may affect multiple areas of functioning or health, that is not expected to be short-term, and imposes significant risk to the resident. Examples of significant change of condition include, but are not limited to:

(a) Broken bones.

(b) Stroke, heart attack, or other acute illness or condition onset.

(c) Unmanaged high blood sugar levels.

(d) Uncontrolled pain.

(e) Fast decline in activities of daily living.

(f) Significant unplanned weight loss.

(g) Pattern of refusing to eat.

(h) Level of consciousness change.

(i) Pressure ulcers (stage 2 or greater).

(16) "Choice" means a resident has viable options that enable the resident to exercise greater control over their life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

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

(18) "Competency" means to possess specific knowledge, technical skill, and the ability to perform tasks related to the role and responsibilities of direct care staff.

(19) "Competency Assessment" means an evaluation of knowledge, technical skill and ability to carry out care pursuant to the requirements in OAR 411-054-0070. Evaluation shall include verification and documentation of direct care staff competency through observation, written testing or verbal testing.

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

(21) "Conversion Facility (CF)" means a nursing facility that has followed the requirements in these rules to become a residential care facility through the conversion facility process.

(22) "Department" means the Department of Human Services (DHS).

(23) "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.

(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the

agency that the designated representative is no longer authorized to act on his or her behalf.

(b) An individual or the legal representative of the individual is not required to appoint a designated representative.

(24) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.

(25) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

(a) Medication administration.

(b) Resident-focused activities.

(c) Assistance with activities of daily living.

(d) Supervision and support of residents.

(e) Serving meals, but not meal preparation.

(26) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.

(27) "Director" means the Director of the Department or that individual's designee.

(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 makes the facility uninhabitable.

(29) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(30) "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 of a state.

(31) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.

(32) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility. For purposes of HCBS, "facility" can also mean "provider".

(33) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division of the Oregon Health Authority (OHA).

(34) "HCB" means "Home and Community-Based".

(35) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. DHS, Office of Licensing and Regulatory Oversight and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.

(36) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

(37) "Immediate Jeopardy" means a situation where the failure of a residential care facility to comply with a Department rule has caused, or is likely to cause, a resident:

(a) Serious injury;

(b) Serious harm;

(c) Serious impairment; or

(d) Death.

(38) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.

(39) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(40) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(41) "Individual" means a person enrolled in or utilizing HCBS.

(42) "Individually-Based 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 individual, or as applicable the legal representative, as described in OAR 411-004-0040.

(43) "Informed Consent" means options, risks, and benefits have been explained to an individual, and, as applicable, the legal representative of the individual, in a manner that the individual, and, as applicable, the legal representative, comprehends.

(44) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(45) "Intensive Intervention Community (IIC)" means an RCF endorsed to house fewer than six socially dependent individuals or individuals with physical disabilities. The purpose of the IIC is to serve individuals with co-occurring mental, emotional, or behavioral disturbances who are more appropriately served in smaller settings.

(46) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(47) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(48) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(b) For an individual 18 years of age and 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.

(49) "Major Alteration":

(a) Means:

(A) Any structural change to the foundation, floor, roof, exterior, or load bearing wall of a building;

(B) The addition of floor area to an existing building; or

(C) The modification of an existing building that results in a change in use where such modification affects resident services or safety.

(b) Does not include, cosmetic upgrades to the interior or exterior of an existing building (for example: changes to wall finishes, floorings, or casework).

(50) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(51) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes).

(a) Modified special diets include, but are not limited to:

(A) Small frequent meals;

(B) No added salt;

(C) Reduced or no added sugar; and

(D) Simple textural modifications.

(b) Medically complex diets are not included.

(52) "New Construction" means:

(a) A new building.

(b) An existing building or part of a building that is not currently licensed.

(c) A major alteration to an existing building.

(d) Additions, conversions, renovations, or remodeling of existing buildings.

(53) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851.

(54) "OHA" means the Oregon Health Authority.

(55) "Owner" means an individual with an ownership interest.

(56) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(57) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030.

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

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

(58) "Person-Centered Service Plan Coordinator" means a:

(a) Resident's AAA or APD case manager assigned to provide case management services or person-centered service planning for and with individuals; or

(b) Person of the individual's choice for individuals who pay privately.

(59) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(60) "Pre-Service Training" means training that must be completed before direct care staff provide care to residents.

(61) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(62) "Provider" means any person or entity providing HCBS.

(63) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(64) "Psychoactive Medications" mean medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.

(65) "Quality Measurement Program" means the quality metrics program, as described in OAR 411-054-0320.

(66) "Quality Measurement Council" means a group of individuals appointed by the Governor to develop and oversee the Quality Metric Reporting Program as described in OAR 411-054-0320.

(67) "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR 333-675-0000.

(68) "Renovate" means to restore to good condition or to repair.

(69) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting.

(70) "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(71) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(72) "Restraint" means:

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

(73) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).

(74) "Risk Agreement" means a process where a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and

the resident's decision to modify behavior or accept the consequences is documented.

(75) "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(76) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident. For IICs, the term "interdisciplinary team" is synonymous with "service planning team."

(77) "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(78) "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.

(a) For the purpose of these rules, subject individual includes:

(A) All applicants, licensees, and operators of a residential care or assisted living facility.

(B) All individuals employed or receiving training in an assisted living or residential care facility.

(C) Volunteers, if allowed unsupervised access to residents.

(b) For the purpose of these rules, subject individual does not apply to:

(A) Residents and visitors of residents.

(B) Individuals that provide services to residents who are employed by a private business not regulated by the Department.

(79) "Substantial Compliance" means a level of compliance with state law and rules of the Department such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents of a facility.

(80) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(81) "These Rules" mean the rules in OAR chapter 411, division 054.

(82) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

(a) The general public.

(b) A specific population, for example, residents with dementia or traumatic brain injury.

(83) "Unit" means the personal and sleeping space of an individual receiving services in a RCF or ALF setting, as agreed to in the Residency Agreement.

(84) "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070, 443.450, 443.738

Stats. Implemented: ORS 443.400 - 443.455, 443.738, 443.991

411-054-0012 Requirements for New Construction or Initial Licensure
(Amended 06/29/2018)

(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed facility, must communicate with the Department before submitting a letter of intent as described in section (3) of this rule.

(2) Before beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must provide the following information for consideration by the Department for a potential license:

(a) Demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and

(b) Provide a letter of intent as set forth in section (3) of this rule.

(3) LETTER OF INTENT. Before applying for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to the Department a letter of intent that includes the following:

(a) Identification of the potential applicant.

(b) Identification of the city and street address of the intended facility.

(c) Intended facility type (for example, RCF, ALF, IIC, or memory care), the intended number of units, and maximum resident capacity.

(d) Statement of whether the applicant is able to provide care and services for an underserved population and a description of any underserved population the applicant is able to serve.

(e) Indication of whether the applicant is able to provide services through the state medical assistance program.

(f) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population.

(g) An independent market analysis completed by a third-party professional that meets the requirements of section (4) of this rule.

(4) Conversion Facility Letter of Intent. If a nursing facility licensee has elected to convert the license to a residential care facility through the conversion facility process, the licensee must submit a conversion facility "Letter of Intent" to the Department at least 90 days prior to the planned closure of the nursing facility. This letter must outline the:

(a) Effective date of the proposed conversion; and

(b) Licensee’s intent to follow OAR 411-085-0025(2) regarding nursing facility closure requirements.

(5) MARKET ANALYSIS. The applicant must submit a current market analysis to the Department before applying for a building permit. A market analysis is not required for CFs or change of owner applicants of existing licensed buildings. The market analysis must include:

(a) A description of the intended population to be served, including underserved populations and those eligible to receive services through the state medical assistance program, as applicable.

(b) A current demographic overview of the area to be served.

(c) A description of the area and regional economy and the effect on the market for the project.

(d) Identification of the number of individuals in the area to be served who are potential residents.

(e) A description of available amenities (for example, transportation, hospital, shopping center, or traffic conditions).

(f) A description of the extent, types, and availability of existing and proposed facilities, as described in ORS 443.400 to 443.455, located in the area to be served.

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(6) The Department shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.

(a) If the applicant is dissatisfied with the decision of the Department, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.

(b) The contested case hearing shall be in accordance with ORS chapter 183.

(7) Before issuing a license, the Department shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules.

(8) BUILDING DRAWINGS. After the letter of intent has been submitted to the Department, one set of building drawings and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.

(a) Building drawings must be submitted to FPS:

(A) Before beginning construction of any new building;

(B) Before beginning construction of any addition to an existing building;

(C) Before beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or

(D) After application for an initial license of a facility not previously licensed under this rule.

(b) Drawings must comply with the building codes and the Oregon Fire Code (OFC) as required for the occupancy classification and construction type.

(c) Drawings submitted for a licensed assisted living or residential facility must be prepared by and bear the stamp of an Oregon licensed architect or engineer.

(9) 60 DAYS BEFORE LICENSURE OR OPENING A CONVERSION FACILITY. At least 60 days before anticipated licensure, the applicant must submit to the Department:

(a) A completed application form with the required fee.

(b) A copy of the facility's written rental agreements.

(c) Disclosure information.

(d) Facility policies and procedures to ensure the facility's administrative staff, personnel, and resident care operations are conducted in compliance with these rules.

(10) 30 DAYS BEFORE LICENSURE. 30 days before anticipated licensure the applicant must submit:

(a) To the Department, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a background check request.

(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests the scheduling of an onsite licensing inspection.

(11) TWO-DAYS BEFORE LICENSURE. At least two working days before the scheduled onsite licensing inspection of the facility, the applicant must submit, to the Department and FPS, a completed and signed Project Completion/Inspection Checklist that confirms the building project is complete and fully in compliance with these rules.

(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and the Department.

(b) The onsite licensing inspection may be rescheduled at the Department's convenience if the scheduled, onsite licensing inspection reveals the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.

(12) CERTIFICATE OF OCCUPANCY. The applicant must submit to the Department and FPS, a copy of the Certificate of Occupancy issued by the building codes agency having jurisdiction that indicates the intended occupancy classification and construction type.

(13) CONFIRMATION OF LICENSURE. The applicant, before admitting any resident into the facility, must receive a written confirmation of licensure issued by the Department.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0013 Application for Initial Licensure and License Renewal
(Amended 06/29/2018)

(1) APPLICATION. Applicants for initial licensure and license renewal must complete the Department’s application form. A licensing fee, as described in ORS 443.415, must be submitted to the Department.

(a) The application form must be signed by the applicant's legally authorized representative, dated, and contain all information requested by the Department.

(b) A licensing fee must be submitted to the Department. The initial licensing fee for a new building or recently purchased building is paid according to number of beds, as required by ORS 443.415:

(A) For 1 to 15 beds: application fee shall be $2,000 and the biennial renewal fee shall be $1,000.

(B) For 16 to 49 beds: application fee shall be $3,000 and the biennial renewal fee shall be $1,500.

(C) For 50 to 99 beds: application fee shall be $4,000 and the biennial renewal fee shall be $2,000.

(D) For 100 to 150 beds: application fee shall be $5,000 and the biennial renewal fee shall be $2,500.

(E) For 151 or more beds: application fee shall be $6,000 and the biennial renewal fee shall be $3,000.

(c) Applicants must provide all information and documentation as required by the Department including but not limited to identification of financial interest of any individual, including stockholders who have an incident of ownership in the applicant representing an interest of 10 percent or more. For purposes of rule, an individual with a 10 percent or more incident of ownership is presumed to have an effect on the operation of the facility with respect to factors affecting the care or training provided, unless the individual establishes the individual has no involvement in the operation of the facility. For those who serve the Medicaid population, the applicant must identify any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.

(d) If the owner of the facility is a different entity from the operator or management company of the facility, both the operator and the owner must complete an application for licensure. Only one license fee is required.

(e) The application shall require the identification of any individual with a 10 percent or more incident of ownership that has ever been convicted of a crime associated with the operation of a long-term, community-based, or health care facility or agency under federal law or the laws of any state. For those who serve the Medicaid population, any individual with a 5 percent or more incident of ownership must be identified, regardless of the individual's effect on the operation of the facility.

(f) The application shall require the identification of all states where the applicant, or individual having a 10 percent or more incident of ownership in the applicant, currently or previously has been licensed as owner or operator of a long-term, community-based, or health care facility or agency under the laws of any state including any facility, currently or previously owned or operated, that had its license denied or revoked or received notice of the same under the laws of any state. For those who serve the Medicaid population, all states where the applicant or any individual having a 5 percent or more incident of ownership must be identified, regardless of the individual's effect on the operation of the facility.

(g) The Department may deny, revoke, or refuse to renew the license if the applicant fails to provide complete and accurate information on the application and the Department concludes that the missing or corrected information is needed to determine if a license shall be granted.

(h) Each application for a new license must include a completed background check request form for the applicant and for each individual with 10 percent or more incident of ownership in the applicant. For those who serve the Medicaid population, a background check request form is required for the applicant and for each individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.

(i) The Department may require financial information as stated in OAR 411-054-0016 (New Applicant Qualifications), when considering an applicant's request for renewal of a license.

(j) Applicants must provide other information and documentation as the Department may reasonably require for the proper administration of these rules, including but not limited to information about incident of ownership and involvement in the operation of the facility or other business enterprises, as relevant.

(k) For facilities that serve the Medicaid population and are managed by a Board of Directors, the Centers for Medicare and Medicaid Services (CMS) require a social security number and date of birth for each board member.

(2) LICENSE RENEWAL. Application for a license renewal must be made at least 45 days prior to the expiration date of the existing license. Filing of an application for renewal and submission of the required non-refundable fee before the date of expiration extends the effective date of expiration until the Department takes action upon such application.

(a) The Department shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(b) An applicant for license renewal must provide the Department with a completed background check request form for the applicant and for each individual with incident of ownership of 10 percent or more in the applicant when required by the Department. For those who serve the Medicaid population, a background check request form is required for the applicant and each individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.

(c) A building inspection may be requested at the Department's discretion. The Department may require physical improvements if the health or safety of residents is negatively impacted.

(3) DEMONSTRATED CAPABILITY.

(a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing services in a manner consistent with the requirements of these rules.

(b) The Department may consider the background and qualifications of any individual with a 10 percent or more incident of ownership in the applicant when determining whether an applicant may be licensed. For those who serve the Medicaid population, the background and qualifications of any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.

(c) The Department may consider the applicant's history of compliance with Department rules and orders including the history of compliance of any individual with a 10 percent or more incident of ownership in the applicant. For those who serve the Medicaid population, the history of compliance of the applicant and any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0016 New Applicant Qualifications
(Amended 06/29/2018)

For the purpose of this rule, "applicant" means each entity, as defined in OAR 411-054-0005, who holds 10 percent or more incident of ownership in the applicant as described in OAR 411-054-0013(1)(b). For those who serve the Medicaid population, "applicant" means each entity, as defined in OAR 411-054-0005, who holds 5 percent or more incident of ownership regardless of the individual's effect on the operation of the facility. Applicants for licensure (excluding license renewal, but including all conversion facilities, changes of ownership, management, or operator) must meet the following criteria:

(1) BACKGROUND CHECK. Each applicant may not have convictions of any of the crimes listed in OAR 407-007-0275 and must complete a background check conducted by the Department in accordance with OAR 407-007-0200 to 407-007-0370.

(2) PERFORMANCE HISTORY. The Department shall consider an applicant's performance history, including repeat sanctions or rule violations, before issuing a license.

(a) Each applicant must be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill, or individuals with disabilities that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.

(b) Applicants must be free of incident of ownership history in any facility in any state that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.

(c) Failure to provide accurate information or demonstrate required performance history may result in the Department's denial of a license.

(3) FINANCIAL HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years.

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, utilities, or other costs necessary for facility operation during the past five years.

(c) Submit proof of fiscal responsibility, including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A performance bond; or

(C) Any other method satisfactory to the Department.

(d) Provide a pro forma (revenues, expenditures, and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) EXPERIENCE. If an applicant does not have experience in the management of assisted living or residential care facilities in Oregon, the applicant must employ the services of a consultant or management company with experience in the provision of assisted living or residential care for a period of at least six months of operation. The consultant, and the terms and length of employment, are subject to the approval of the Department.

(a) Conversion Facilities: Unless the applicant has a history of managing an ALF or RCF, a contracted consultant with experience providing residential care must be retained by a CF for six months of operation.

(b) Intensive Intervention Communities: IIC applicants must have history of an unencumbered license from the Department or have operated a specialized living contract with the Department.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0040 Change of Condition and Monitoring
(Amended 06/29/2018)

(1) CHANGE OF CONDITION. These rules define a resident's change of condition as either short term or significant with the following meanings:

(a) Short term change of condition means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(b) Significant change of condition means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident.

(c) If a resident experiences a significant change of condition that is a major deviation in the resident's health or functional abilities, the

facility must evaluate the resident, refer to the facility nurse, document the change, and update the service plan as needed.

(d) If a resident experiences a short-term change of condition that is expected to resolve or reverse with minimal intervention, the facility must determine and document what action or intervention is needed for the resident.

(A) The determined action or intervention must be communicated to staff on each shift.

(B) The documentation of staff instructions or interventions must be resident specific and made part of the resident record with weekly progress noted until the condition resolves.

(2) MONITORING. The facility must have written policies to ensure a resident monitoring and reporting system is implemented 24-hours a day. The policies must specify staff responsibilities and identify criteria for notifying the administrator, registered nurse, or healthcare provider. The facility must:

(a) Monitor each resident consistent with his or her evaluated needs and service plan;

(b) Train staff to identify changes in the resident's physical, emotional and mental functioning and document and report on the resident's changes of condition;

(c) Have a reporting protocol with access to a designated staff person, 24-hours a day, seven days a week, who can determine if a change in the resident's condition requires further action; and

(d) Provide written communication of a resident's change of condition, and any required interventions, for direct care staff on each shift.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0045 Resident Health Services
(Amended 06/29/2018)

(1) RESIDENT HEALTH SERVICES. The facility must provide health services and have systems in place to respond to the 24-hour care needs of residents. The system must:

(a) Include written policies and procedures on medical emergency response for all shifts.

(b) Include an Oregon licensed nurses who is regularly scheduled for onsite duties at the facility and who is available for phone consultation.

(c) Assure an adequate number of nursing hours relevant to the census and acuity of the resident population. IICs must meet contract requirements concerning nursing hours.

(d) Ensure that the facility RN is notified of nursing needs as identified in OAR 411-054-0034 (Resident Move-In and Evaluation) or OAR 411-054-0036 (Service Plan – General).

(e) Define the duties, responsibilities and limitations of the facility nurse in policy and procedures, admission, and disclosure material.

(f) Licensed nurses must deliver the following nursing services:

(A) Registered nurse (RN) assessment in accordance with facility policy and resident condition. At minimum, the RN must assess all residents with a significant change of condition. The assessment may be a full or problem focused assessment as determined by the RN. A chart review or phone consultation may be performed as part of this assessment. The RN must document findings, resident status, and interventions made as a result of this assessment. The assessment must be timely, but is not required prior to emergency response in acute situations.

(B) Delegation and Teaching. Delegation and teaching must be provided and documented by a RN in accordance with the Oregon Administrative Rules adopted by the Oregon State Board of Nursing in chapter 851, division 047.

(C) Monitoring of Resident Condition. The facility must specify the role of the licensed nurse in the facility's monitoring and reporting system.

(D) Participation on Service Planning Team. If the resident experiences a significant change of condition and the service plan is updated, the licensed nurse must participate on the Service Planning Team, or must review the service plan with date and signature within 48 hours.

(E) Health Care Teaching and Counseling. A licensed nurse must provide individual and group education activities as required by individual service plans and facility policies.

(F) Intermittent Direct Nursing Services. If a resident requires nursing services that are not available through hospice, home health, a third-party referral, or the task cannot be delegated to facility staff, the facility must arrange to have such services provided on an intermittent or temporary basis. Such services may be of a temporary nature as defined in facility policy, admission agreements and disclosure information.

(2) ON-SITE AND OFF-SITE HEALTH SERVICES. The facility must assist residents in accessing health care services and benefits to which they are entitled from outside providers. When benefits are no longer available, or if the resident is not eligible for benefits, the facility must provide or coordinate the required services, as defined in facility disclosure information, for residents whose health status is stable and predictable.

(a) On-site Health Services. The facility must coordinate on-site health services with outside service providers such as hospice, home health, or other privately paid supplemental health care providers.

(A) The facility management or licensed nurse must be notified of the services provided by the outside provider to ensure that staff are informed of new interventions, and that the service plan is adjusted if necessary, and reporting protocols are in place.

(B) The facility nurse must review the resident's health related service plan changes made as a result of the provision of on-site health services noted in section (2)(a)(A) of this rule.

(C) The facility must have policies to ensure that outside service providers leave written information in the facility that addresses the on-site services being provided to the resident and any clinical information necessary for facility staff to provide supplemental care.

(b) Off-site Health Services. The facility must coordinate off-site health services for residents who cannot or choose not to self-manage their health services.

(A) The facility must assist the resident by coordinating appointments, with outside providers, that are necessary to support the resident's health needs.

(B) Transportation for medical purposes must be arranged or provided for by the facility.

(C) Following a resident's visit to an outside medical provider, if information is obtained from said provider, it must be included in the resident's record. Adjustments to the resident's services and service plan must be made as applicable.

(D) The facility must provide relevant information to the off-site provider and must have a protocol to facilitate the receipt of information from the provider.

(c) The facility is exempt from the coordination of outside health services for residents who are capable and choose to independently arrange and manage their health care needs.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0055 Medications and Treatments
(Amended 06/29/2018)

(1) MEDICATION AND TREATMENT ADMINISTRATION SYSTEMS. The facility must have safe medication and treatment administration systems in place that are approved by a pharmacist consultant, registered nurse, or physician.

(a) The administrator is responsible for ensuring adequate professional oversight of the medication and treatment administration system.

(b) Medications administered by the facility must be set-up or poured and documented by the same person who administers the medications.

(c) The staff person who administers the medication must visually observe the resident take (e.g., ingest, inhale, apply) the medication unless the prescriber's order for that specific medication states otherwise.

(d) Medications must be kept secure between set-up and administration of medications.

(e) The facility must have a system approved by a pharmacist consultant or registered nurse for tracking controlled substances and for disposal of all unused, outdated or discontinued medications administered by the facility.

(f) Medication and treatment orders must be carried out as prescribed.

(g) Written, signed physician or other legally recognized practitioner orders must be documented in the resident's facility record for all medications and treatments that the facility is responsible to administer.

(h) Only a physician or other legally recognized prescribing practitioner is authorized to make changes in a medication or treatment order.

(i) A registered pharmacist or registered nurse must review all medications and treatments administered by the facility to a resident

at least every 90 days. The facility must provide documentation related to the recommendations made by the reviewer.

(j) The resident or the person legally authorized to make health care decisions for the resident has the right to consent to, or refuse, medications and treatments.

(k) The physician or other practitioner must be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order will be reported as requested by the prescriber.

(2) MEDICATION ADMINISTRATION. An accurate Medication Administration Record (MAR) must be kept of all medications, including over-the-counter medications that are ordered by a legally recognized prescriber and are administered by the facility.

(a) Documentation of the MAR must be completed using one of the following processes. An alternative process may be used only with a written exception from the Department.

(A) The MAR may be signed as the medications are set-up or poured. Medications must not be set-up in advance for more than one administration time. If a medicine cup or other individual container is used to set-up the medications, it must be placed in a closed compartment labeled with the resident's name. Changes to the MAR that occur after the medication is delivered, must be documented by the same staff person who administered the medication.

(B) The facility may choose to sign the MAR after the medication is administered to a specific resident and prior to the next resident-specific medication or treatment.

(b) MEDICATION RECORD. At minimum, the medication record for each resident that the facility administers medications to, must include:

(A) Current month, day and year.

(B) Name of medications, reason for use, dosage, route and date and time given.

(C) Any medication specific instructions, if applicable (e.g., significant side effects, time sensitive dosage, when to call the prescriber or nurse).

(D) Resident allergies and sensitivities, if any.

(E) Resident specific parameters and instructions for p.r.n. medications.

(F) Initials of the person administering the medication.

(3) TREATMENT ADMINISTRATION.

(a) An accurate treatment record for each resident must be kept of all treatments ordered by a legally recognized practitioner and administered by the facility to that resident.

(b) The treatment record must include:

(A) Current month, day and year.

(B) Type of treatment (e.g., dressing change, ointment application), treatment instructions and if applicable, significant side effects or when to call the prescriber or nurse.

(C) Date and time administered.

(D) Resident allergies and sensitivities, applicable to treatments.

(E) Instructions for p.r.n. treatments, including resident specific parameters.

(F) Initials of person administering the treatments.

(G) Any deviation from instructions or refusal of treatment must be documented.

(4) MEDICATION AND TREATMENT – GENERAL. The facility must maintain legible signatures of staff that administer medications and treatments, either on the MAR or on a separate signature page, filed with the MAR.

(a) If the facility administers or assists a resident with medication, all medication obtained through a pharmacy must be clearly labeled with the pharmacist's label, in the original container, in accordance with the facility's established medication delivery system.

(b) The facility shall ensure that prescription drugs dispensed to residents are packaged in a manner that reduces errors in the tracking and administration of the drugs, including, but not limited to, the use of unit dose systems or blister packs.

(A) The facility shall have as its primary goal dispensing prescription drugs in unit dose systems, blister packs or similar packaging.

(B) When unit dose packaging cannot be reasonably achieved, the facility shall have a written policy describing how prescription drugs that are not prepared as unit dose or blister packs shall be dispensed. Written policies shall be in effect not later than October 1, 2018.

(C) Subsection (b) of this rule does not apply to residents receiving pharmacy benefits through the United States Department of Veterans Affairs, if the pharmacy benefits do not reimburse cost of such packaging.

(c) Over-the-counter medication or samples of medications must have the original manufacturer's labels if the facility administers or assists a resident with medication.

(d) All medications administered by the facility must be stored in locked containers in a secured environment such as a medication room or medication cart.

(e) Medications that have to be refrigerated must be stored at the appropriate temperature in a locked, secure location.

(f) Order changes obtained by telephone must be documented in the resident's record and the MAR must be updated prior to administering the new medication stated on the order. Telephone orders must be followed-up with written, signed orders.

(g) The facility must not require residents to purchase prescriptions from a pharmacy that contracts with the facility.

(5) SELF ADMINISTRATION OF MEDICATION.

(a) Residents who choose to self-administer their medications must be evaluated upon move-in and at least quarterly thereafter, to assure ability to safely self-administer medications.

(b) Residents must have a physician's or other legally recognized practitioner's written order of approval for self-administration of prescription medications.

(c) Residents able to administer their own medication regimen may keep prescription medications in their unit.

(d) If more than one resident resides in the unit, an evaluation must be made of each person and the resident's ability to safely have medications in the unit. If safety is a factor, the medications must be kept in a locked container in the unit.

(e) Unless contraindicated by a physician or resident evaluation, residents may keep and use over-the-counter medications in their unit without a written order.

(6) PSYCHOACTIVE MEDICATION. Psychoactive medications may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.

(a) Facility administered psychoactive medications may be used only when required to treat a resident's medical symptoms or to maximize a resident's functioning.

(b) The facility must not request psychoactive medication to treat a resident's behavioral symptoms without a consultation from a physician, nurse practitioner, registered nurse, or mental health professional.

(c) Prior to administering any psychoactive medications to treat a resident's behavior, all direct care staff administering medications for the resident must know:

(A) The specific reasons for the use of the psychoactive medication for that resident.

(B) The common side effects of the medications.

(C) When to contact a health professional regarding side effects.

(d) Medications that are administered p.r.n. that are given to treat a resident's behavior must have written, resident-specific parameters.

(A) These p.r.n. medications may be used only after documented; non-pharmacological interventions have been tried with ineffective results.

(B) All direct care staff must have knowledge of non-pharmacological interventions.

(e) Psychoactive medications must not be given to discipline a resident, or for the convenience of the facility.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0060 Restraints and Supportive Devices
(Amended 06/29/2018)

Residential care and assisted living facilities are intended to be restraint free environments.

(1) Restraints are not permitted except when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) Supportive devices with restraining qualities are permitted under the following documented circumstances, the:

> (a) Resident specifically requests or approves of the device and the facility has informed the individual of the risks and benefits associated with the device;
>
> (b) Facility registered nurse, a physical therapist or occupational therapist has conducted a thorough assessment;
>
> (c) Facility has documented other less restrictive alternatives evaluated prior to the use of the device; and
>
> (d) Facility has instructed direct care staff on the correct use and precautions related to use of the device.

(3) Supportive devices with restraining qualities may be utilized for residents who are unable to evaluate the risks and benefits of the device when sections (2)(b), (2)(c) and (2)(d) have been met. As of July 1, 2018 the process as identified in 411-054-0038 for Individually-Based Limitations must be followed for anything that meets the definition of restraint, including, but not limited to, supportive devices with restraining qualities.

(4) Documentation of the use of supportive devices with restraining qualities must be included in the resident service plan and evaluated on a quarterly basis.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0070 Staffing Requirements and Training
(Amended 06/29/2018)

(1) STAFFING REQUIREMENTS. Facilities must have qualified awake direct care staff, sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident. Direct care staff provide services for

residents that include assistance with activities of daily living, medication administration, resident-focused activities, supervision, and support.

(a) If a facility employs universal workers whose duties include other tasks (e.g., housekeeping, laundry, food service), in addition to direct resident care, staffing must be increased to maintain adequate resident care and services.

(b) Prior to providing care and services to residents, direct care staff must be trained as required in sections (2) - (4) of this rule.

(c) The following facility employees are ancillary to the caregiver requirements in this section:

(A) Individuals whose duties are exclusively housekeeping, building maintenance, clerical, administrative, or food preparation.

(B) Licensed nurses who provide services as specified in OAR 411-054-0045 (Resident Health Services).

(C) Administrators.

(d) The Department retains the right to require minimum staffing standards based on acuity, complaint investigation or survey inspection.

(e) Based on resident acuity and facility structural design there must be adequate direct care staff present at all times, to meet the fire safety evacuation standards as required by the fire authority or the Department.

(f) The licensee is responsible for assuring that staffing is increased to compensate for the evaluated care and service needs of residents at move-in and for the changing physical or mental needs of the residents.

(g) A minimum of two direct care staff must be scheduled and available at all times whenever a resident requires the assistance of two direct care staff for scheduled and unscheduled needs.

(h) In facilities where residents are housed in two or more detached buildings, or if a building has distinct and segregated areas, a designated caregiver must be awake and available in each building and each segregated area at all times.

(i) Facilities must have a written, defined system to determine appropriate numbers of direct care staff and general staffing based on resident acuity and service needs. Such systems may be either manual or electronic.

(A) Guidelines for systems must also consider physical elements of a building, use of technology if applicable and staff experience.

(B) Facilities must be able to demonstrate how their staffing system works.

(2) REQUIREMENTS APPLICABLE TO ALL TRAINING. The facility shall:

(a) Have a training program that includes methods to determine competency of direct care staff through evaluation, observation, or written testing. Facility shall also maintain documentation regarding each direct care staff's demonstrated competency.

(b) Maintain written documentation of all trainings completed by each employees.

(3) PRE-SERVICE ORIENTATION FOR ALL EMPLOYEES.

(a) Prior to beginning their job responsibilities, all employees must complete an orientation that includes training regarding:

(A) Residents' rights and the values of community-based care.

(B) Abuse and reporting requirements.

(C) Standard precautions for infection control.

(D) Fire safety and emergency procedures.

(b) If the staff member's duties include preparing food, they must have a food handler's certificate.

(c) All staff must receive a written description of their job responsibilities.

(4) PRE-SERVICE TRAINING FOR ALL DIRECT CARE STAFF.

(a) Prior to providing care to residents, all direct care staff must complete an approved pre-service dementia training.

(b) Pre-service dementia care training requirements for:

(A) 2018 - Direct care staff hired on or before December 31, 2018 shall complete pre-service dementia care training outlined in OAR 411-054-0070 by December 31, 2018, regardless of when they first provide direct care to residents.

(B) 2019 and beyond - Direct care staff hired on or after January 1, 2019 shall complete required pre-service dementia training prior to providing direct care to residents.

(c) Documentation of dementia training:

(A) A certificate of completion shall be issued to direct care staff who satisfactorily complete approved dementia training. Facilities shall also maintain records of all direct care staff who have successfully completed pre-service dementia training.

(B) Each facility shall maintain written documentation of continuing education completed, including required pre-service dementia training, for all direct care staff.

(d) Portability of pre-service dementia training: After completing the pre-service training, if a direct care staff person is hired within 24 months by a different facility, the hiring facility may choose to accept the previous training or require the direct care staff to complete the hiring facility’s pre-service dementia training.

(e) A certificate of completion must be made available to the Department upon request.

(f) Pre-service dementia care training must include the following subject areas:

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

(B) Techniques for understanding, communicating, and responding to distressful behavioral symptoms, including, but not limited to, reducing the use of antipsychotic medications for non-standard uses.

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

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

(i) Identify and address pain.

(ii) Provide food and fluids.

(iii) Prevent wandering and elopement.

(iv) Use a person-centered approach.

(g) Pre-service orientation to resident:

(A) Prior to providing personal care services for a resident, direct care staff must receive an orientation to the resident, including the resident's service plan.

(B) Staff members must be directly supervised by a qualified person until they have successfully demonstrated satisfactory performance in any task assigned and the provision of individualized resident services, as applicable.

(5) TRAINING WITHIN 30 DAYS OF HIRE FOR DIRECT CARE STAFF.

(a) The facility is responsible to verify that direct care staff have demonstrated satisfactory performance in any duty they are assigned.

(b) Knowledge and performance must be demonstrated in all areas within the first 30 days of hire, including, but not limited to:

(A) The role of service plans in providing individualized resident care.

(B) Providing assistance with the activities of daily living.

(C) Changes associated with normal aging.

(D) Identification of changes in the resident's physical, emotional and mental functioning and documentation and reporting on the resident's changes of condition.

(E) Conditions that require assessment, treatment, observation and reporting.

(F) General food safety, serving and sanitation.

(G) If the direct care staff person’s duties include the administration of medication or treatments, appropriate facility staff, in accordance with OAR 411-054-0055 (Medications and Treatments) must document that they have observed and evaluated the individual's ability to perform safe medication and treatment administration unsupervised.

(6) ANNUAL IN-SERVICE TRAINING FOR DIRECT CARE STAFF.

(a) All direct care staff must complete and document a minimum of 12 hours of in-service training annually on topics related to the provision of care for persons in a community-based care setting, including training on chronic diseases in the facility population and dementia

training. Annual in-service training hours are based on the anniversary date of hire.

(b) Requirements for annual in-service dementia training:

(A) Except as provided in paragraph (B) of this section, each direct care staff must complete 6 hours of annual in-service training on dementia care.

(B) Exception: Staff hired prior to January 1, 2019 must complete 6 hours of dementia care in-service training by the anniversary of their hire date in 2020 and annually thereafter.

(C) Dementia care training may be included in the required minimum 12 hours of annual in-service training described in subsection (a) above.

(D) Dementia care training must reflect current standards for dementia care and be informed by the best evidence in the care and treatment of dementia.

(E) The facility shall determine the competency of direct care staff in dementia care in the following ways:

(i) Utilize approved dementia care training for its direct care staff, coupled with methods to perform a competency assessment as defined in OAR 411-054-0005(19).

(ii) Ensure direct care staff have demonstrated competency in any duty they are assigned. Facility staff in a supervisory role shall perform assessment of each direct care staff.

(iii) Maintain written documentation of all dementia care training completed by each direct care staff and shall maintain documentation regarding each employee's assessed competency.

(7) APPROVAL OF DEMENTIA TRAINING CURRICULUM. All dementia care training provided to direct care staff must be approved by a private or

non-profit organization that is approved by the Department through a "Request for Application" (RFA) process.

(8) ADDITIONAL REQUIREMENTS. Staff:

(a) Under 18 years of age may not perform medication administration or delegated nursing tasks. Staff under the age of 18 must be directly supervised when providing bathing, toileting, incontinence care or transferring services.

(b) Must be trained in the use of the abdominal thrust and First Aid. Cardiopulmonary resuscitation (CPR) training is recommended, but not required.

(c) Must have sufficient communication and language skills to enable them to perform their duties and communicate with residents, other staff, family members, and health care professionals, as needed.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0106 Regulatory Framework
(Adopted 06/29/2018)

(1) PURPOSE. The goal of the regulatory framework is to provide transparency, accuracy, and equity related to regulatory actions taken by the Department in response to facilities' lack of substantial compliance with Oregon Administrative Rules. The framework should include application of preventative, positive, and progressively more restrictive measures taken by the Department in response to facilities' lack of substantial compliance with Oregon Administrative Rules. Whenever possible and appropriate, the framework shall be based on a progressive method of regulation based on scope and severity, which includes positive reinforcement, as well as sanctions and penalties.

(2) PROCESS. The framework will provide information on processes related to the Department's:

(a) Accurate and equitable assessment of substantial compliance based on regulatory requirements.

(b) Employment of progressive and positive action to promote and achieve facility substantial compliance.

(c) Accurate and equitable imposition of corrective actions.

(d) Administration of Enhanced Oversight Program to focus compliance activities on facilities that consistently fail to achieve substantial compliance.

(3) TECHNIQUES. Regulatory compliance will be promoted through the use of progressive compliance techniques, as appropriate, including, but not limited to:

(a) Proactive communication.

(b) Technical support to facilities.

(c) Consultation with policy analysts to clarify regulatory requirements.

(d) Corrective action involving civil penalties.

(e) Imposition of sanctions, including, but not limited to conditions on a provider's license.

(f) Suspension, non-renewal or revocation of license.

(4) ENHANCED OVERSIGHT PROGRAM.

(a) Facilities that consistently demonstrate a lack of substantial compliance or perform substantially below statewide averages on quality metrics will be considered for the Enhanced Oversight Program.

(b) The Department shall take one or more of the following actions, the Department deems necessary, to improve the performance of a facility:

(A) Increase the frequency of surveys of the facility.

(B) Conduct surveys that focus on areas of consistent non-compliance as identified by the Department.

(c) The Department shall terminate the enhanced oversight and supervision of a facility as follows, after:

(A) Three years, if the facility has shown substantial compliance according to the Department; or

(B) One year, if the facility submits a written assertion of substantial compliance and the Department determines the facility no longer meets the criteria of the program.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0110 Conditions
(Amended 06/29/2018)

(1) The Department may impose a condition on the license of a residential care or assisted living facility in response to a substantiated finding of rule violation, including, but not limited to a substantiated finding of abuse, or in response to a finding of immediate jeopardy, whether or not the finding of immediate jeopardy is substantiated at the time the license condition is imposed.

(2) The Department shall immediately remove the license condition if the finding of immediate jeopardy is not substantiated within 30 calendar days after the imposition of the license condition.

(3) Conditions that may be imposed on a licensee include, but are not limited to:

(a) Restricting the total number of residents;

(b) Restricting the number and impairment level of residents based upon the capacity of the licensee and staff to meet the health and safety needs of all residents;

(c) Requiring additional staff or staff qualifications;

(d) Requiring additional training for staff;

(e) Requiring additional documentation; or

(f) Restriction on admissions, if the Department makes a finding of immediate jeopardy that is likely to present an immediate jeopardy to future residents upon admission.

(4) IMPENDING IMPOSITION OF LICENSE CONDITION.

(a) Except where the threat to residents is so imminent that the Department determines it is not safe or practical to give the facility advance notice, the Department shall provide the licensee with a Notice of Impending Imposition of License Condition (Notice) at least 48 hours prior to issuing an Order Imposing License Condition (Order). The Notice may be provided in writing, sent by certified or registered mail to the licensee, or provided orally in person or by telephone to the licensee or to the person represented by facility staff to be in charge at the facility. When the Notice is delivered orally, the Department must subsequently provide written notice to the licensee by registered or certified mail. The Notice must:

(A) Describe the acts or omissions of the licensee that support the imposition of the license condition and the circumstances that led to the substantiated finding of a rule violation, including, but not limited to, a:

(i) Substantiated finding of abuse.

(ii) Finding of immediate jeopardy.

(B) Describe why the acts or omissions and the circumstances create a situation for which the imposition of a condition is warranted.

(C) Provide a brief statement identifying the nature of the impending condition.

(D) Provide a brief statement describing how the license condition is designed to remediate the circumstances that lead to the condition.

(E) Provide a brief statement of the requirements for withdrawal of the condition.

(F) Identify a person at the Department whom the licensee may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order.

(G) Specify the date and time an informal conference will be held, if requested by the licensee.

(H) Specify the date and time the Order will take effect.

(b) If the threat to residents of a facility is so imminent the Department determines it is not safe or practical to give the facility advance notice of a license condition, the Department must provide the notice required under section (5)(a) within 48 hours after issuing an order imposing the license condition.

(5) INFORMAL CONFERENCE. If an informal conference is requested, the conference will be held at a location designated by the Department. If determined to be appropriate by the Department, the conference may be held by telephone.

(a) With Notice. If a Notice of Impending License Condition is issued, the licensee must be provided with an opportunity for an informal conference to object to the Department's proposed action before the license condition is scheduled to take effect. The Order Imposing License Condition may be issued at any time after the informal conference.

(b) Without Notice. If an Order Imposing License Condition is issued without a prior Notice of Impending License Condition, the licensee may request an immediate informal conference to object to the Department's action.

(6) ORDER IMPOSING LICENSE CONDITION.

(a) When an Order Imposing License Condition (Order) is issued, the Department must serve the Order to the licensee either personally or by registered or certified mail.

(b) The Order must include the following statements:

(A) The authority under which the condition is being issued.

(B) A reference to the specific sections of the statute and administrative rules involved.

(C) The effective date of the condition.

(D) A short and plain statement of the matters asserted or charged.

(E) The specific terms of the license condition.

(F) A specific description of how the scope and manner of the license condition is designed to remediate the findings that lead to the license condition.

(G) A specific description of the requirements for withdrawal of the license condition.

(H) Statement of the licensee's right to request a hearing.

(I) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee must notify the Department.

(J) That, if a request for hearing is not received by the Department within 21 calendar days from the date of the Order, the licensee has waived the right to a hearing under ORS chapter 183.

(K) Findings of specific acts or omissions of the licensee that are grounds for the license condition, and the reasons the acts or omissions create a situation for which the imposition of a license condition is warranted.

(L) That the Department may combine the hearing on the Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.

(7) A licensee who has been ordered to restrict admissions to a facility must immediately post a "Restriction of Admissions Notice" that is provided by the Department, on both the inside and outside faces of each door of the facility through which any person enters or exits a facility. The notices must not be removed, altered or obscured until the Department has lifted the restriction or the restriction is automatically removed pursuant to subsection (10)(d) of this rule.

(8) ACUITY-BASED STAFFING TOOL.

(a) The Department of Human Services shall develop or obtain, maintain, and use, in collaboration with residential care facilities, an objective, technology-based, acuity-based staffing tool. The Department may use the tool to:

(A) Evaluate whether a residential care facility has qualified awake caregivers sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident;

(B) Assess the number of direct care staff hours required by a particular residential care facility to meet each resident’s scheduled and unscheduled needs.

(b) The acuity-based staffing tool shall be made available to residential care facilities to:

(A) Enable the residential care facilities to assess their staffing needs and determine whether they have a sufficient number of qualified awake caregivers to meet the 24-hour scheduled and unscheduled needs of each resident;

(B) Communicate the required staffing needs and each residential care facility's staffing plan to residents, their family members, and other persons; and

(C) Demonstrate to the Department that the residential care facility's staffing plan meets the 24-hour scheduled and unscheduled needs of each resident.

(c) The Department is not required to use the tool described in this section in every circumstance in which residential care facility staffing is evaluated, but the Department must use the tool in collaboration with the facility if the Department is considering imposing a staffing requirement on a facility as part of a licensing condition and the Department and the facility are not in agreement about whether staffing meets the residents' scheduled and unscheduled needs or the staffing standards proposed by the Department.

(9) HEARING.

(a) Right to Hearing. If the Department imposes an Order, the licensee is entitled to a contested case hearing pursuant to ORS chapter 183.

(b) Hearing Request. The Department must receive the licensee's request for a hearing within 21 calendar days of the date of Order. If a request for hearing is not received by the Department within 21 calendar days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183.

(c) A licensee's request for a hearing does not delay enforcement.

(d) Date of Hearing. When a timely request for hearing is received, the hearing shall be held as soon as practical.

(e) Consolidation. If a request for hearing is received on an Order, and a subsequent Order is issued, the Department may consolidate the Orders into a single contested case hearing.

(10) REQUEST FOR REINSPECTION OR REEVALUATION.

(a) Assertion of substantial compliance. Following the Order on a facility, the Department shall:

(A) Within 15 business days of receiving the facility's written assertion of substantial compliance and request for reinspection, the Department shall reinspect or reevaluate the facility to determine if the facility has achieved substantial compliance.

(B) Notify the facility by telephone or electronic means of the findings of the reinspection or reevaluation within five business days after completion of the reinspection or reevaluation.

(C) Issue a written report to the facility within 30 business days after the reinspection or reevaluation notifying the facility of the Department's determinations.

(b) If the Department finds the facility has achieved substantial compliance and that systems are in place to ensure similar deficiencies do not reoccur, the Department shall withdraw the Order.

(c) If after reinspection or reevaluation, the Department determines the violation continues to exist, the Department may not withdraw the Order and is not obligated to reinspect or reevaluate the facility again for at least 45 business days after the first reinspection or reevaluation.

(A) The Department shall provide the facility notice of the decision not to withdraw the Order in writing.

(B) The notice shall inform the facility of the right to a contested case hearing pursuant to ORS chapter 183.

(d) If the Department does not meet the requirements of this section, a license condition is automatically removed on the date the Department failed to meet the requirements of this section, unless the Director extends the applicable period for no more than 15 business days. The Director may not delegate the power to make a determination regarding an extension under this paragraph.

(e) Nothing in this section limits the Department's authority to visit or inspect the facility at any time.

(11) EXCEPTIONS TO ORDER IMPOSING LICENSE CONDITION. When a restriction of admissions is in effect pursuant to an Order, the Department, in its sole discretion, may authorize the facility to admit new residents for whom the Department determines that alternate placement is not feasible.

(12) Conditions may be imposed for the duration of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on the attachment to the license.

Stat. Auth.: ORS 183, 410.070, 443.450
Stats. Implemented: ORS 183, 443.400 - 443.455, 443.991

411-054-0120 Civil Penalties
(Amended 06/29/2018)

(1) For purposes of imposing civil penalties, facilities licensed under ORS 443.400 to 443.455 and ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) For purposes of this rule:

(a) "Person" means a licensee under ORS 443.420 or a person who the Department finds shall be so licensed, but does not include any employee of such licensee or person.

(b) "Resident rights" means that each resident must be assured the same civil and human rights accorded to other citizens as described in OAR 411-054-0027.

(c)"Monitoring" means when a residential care or assisted living facility is surveyed, inspected, or investigated by an employee or

designee of the Department or an employee or designee of the State Fire Marshal.

(d) As used in this rule:

(A) "Harm" means a measurable negative impact to a resident's physical, mental, financial, or emotional well-being.

(B) "Minor harm" means harm resulting in no more than temporary physical, mental or emotional discomfort or pain without loss of function, or in financial loss of less than $1,000.

(C) "Moderate harm" means harm resulting in temporary loss of physical, mental or emotional function, or in financial loss of $1,000 or more, but less than $5,000.

(D) "Serious harm" means harm resulting in long-term or permanent loss of physical, mental or emotional function, or in financial loss of $5,000 or more.

(E) "Financial loss" means loss of resident property or money as a result of financial exploitation, as defined in ORS 124.050. Financial loss does not include loss of resident property or money that results from action or inaction of an individual not employed or contracted with the facility, or that arises from the action or inaction of an individual employed or contracted with the facility if the action or inaction occurs while the individual is not performing employment or contractual duties.

(e) The Director shall assess the severity of a violation using the following criteria:

(A) Level 1 - is a violation that results in no actual harm or in potential for only minor harm.

(B) Level 2 - is a violation that results in minor harm or potential for moderate harm.

(C) Level 3 - is a violation that results in moderate harm or potential for serious harm.

(D) Level 4 - is a violation that results in serious harm or death.

(f) The Director shall assess the scope of a violation using the following criteria:

(A) An isolated violation occurs when one or a very limited number of residents or employees are affected or a very limited area or number of locations within a facility are affected.

(B) A pattern violation occurs when more than a very limited number of residents or employees are affected, or the situation has occurred in more than a limited number of locations but the locations are not dispersed throughout the facility.

(C) A widespread violation occurs when the problems causing the deficiency are pervasive and affect many locations throughout the facility or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees.

(3) Determining Civil Penalties.

(a) When the Director is considering imposition of a civil penalty under ORS 443.455(2)(a), ORS 441.710, or Or Laws 2017, ch 679, § 4 on a residential care or assisted living facility the Director shall comply with the requirements of this section.

(b) When imposing a civil penalty on a facility pursuant to this section, the Director shall consider:

(A) Any prior violations of laws or rules pertaining to the facility and, as a mitigating factor, whether violations were incurred under prior ownership or management of the facility.

(B) The financial benefits, if any, realized by the facility as a result of the violation.

(C) The facility’s past history of correcting violations and preventing the reoccurrence of violations.

(D) The severity and scope of the violation.

(4) Civil Penalty Amounts.

(a) The Director may impose civil penalties as follows, for a:

(A) Level 1 violation, the Director may not impose a civil penalty.

(B) Level 2 violation, the Director may impose a penalty in an amount no less than $250 per violation, not to exceed $500 per violation.

(C) Level 3 violation, the Director may impose a civil penalty in an amount no less than $500 per violation, not to exceed $1,500 per violation.

(D) Level 4 violation, the Director may impose a civil penalty in an amount no less than $1,500 per violation, not to exceed $2,500 per violation.

(E) Failure to report abuse of a resident to DHS as required by state law, the Director may impose a civil penalty in an amount of no more than $1,000 per violation.

(b) The penalties imposed under paragraph (a)(A) to (D) of this section may not exceed $20,000 in the aggregate for violations occurring in a single facility within any 90-day period.

(c) In imposing civil penalties under this section, the Director may take into account the scope of the violation.

(5) Additional Civil Penalties. The Department shall impose a civil penalty of not less than $2,500 and not more than $15,000 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed $40,000 for all violations occurring in a single facility within any 90-day period.

(a) To impose this civil penalty, the Department shall establish all of the following occurred:

(A) The abuse arose from deliberate, or other than accidental action or inaction.

(B) The conduct resulting in the abuse was likely to cause a negative outcome by a person with a duty of care toward a resident of a facility.

(C) The abuse resulted in the serious injury, rape, sexual abuse, or death of a resident.

(b) For purposes of this civil penalty, the following definitions apply:

(A) "Negative Outcome" include serious injury, rape, sexual abuse, or death.

(B) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(C) "Rape" means rape in the first degree as defined in ORS 163.375, rape in the second degree as defined in ORS 163.365, and rape in the third degree as defined in ORS 163.355.

(D) "Sexual Abuse" means any form of sexual contact between an employee of a residential care facility or a person providing services in the facility and a resident of that facility, including, but not limited to:

(i) Sodomy.

(ii) Sexual coercion.

(iii) Taking sexually explicit photographs.

(iv) Sexual harassment.

(6) A notice of a civil penalty shall be sent by registered or certified mail and shall include:

(a) A reference to the specific sections of the statute, rule, standard, or order involved.

(b) A short and plain statement of the matters asserted or charged.

(c) A statement of the amount of the penalty or penalties imposed.

(d) A statement of the party's right to request a hearing.

(e) A description of specific remediation the facility must make in order to achieve substantial compliance.

(f) A statement specifying the amount of time for the elimination of the violation.

(A) The time specified shall not exceed 30 calendar days after the first notice of a violation; or

(B) In cases where the violation requires more than 30 days to correct, a reasonable time shall be specified in a plan of correction, as found acceptable by the Director.

(7) For a level 2 or level 3 violation, the Department shall hold in abeyance the penalty proposed for the period of time specified in the Notice pursuant to subsection (6)(f) above.

(8) Hearing Requests. The person to whom the notice is addressed shall have 10 calendar days from the date specified in the Notice pursuant to subsection (6)(f) of this rule to make written application for a hearing before the Department.

(9) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(10) If the person notified fails to request a hearing within the time specified in the notice, an order may be entered by the Department assessing a civil penalty.

(11) If, after a hearing, the Department prevails, an order may be entered by the Department assessing a civil penalty.

(12) A civil penalty imposed by the Department shall be remitted or reduced in a manner consistent with the public health and safety, as follows:

> (a) The Department shall reduce the penalty by not less than 25 percent if the facility self-reports abuse that results in less than serious harm.
>
> (b) The Department shall withdraw some or all of the penalty if the facility achieves substantial compliance for a level 2 or 3 violation.

(13) If the order is not appealed, the amount of the penalty is payable within 10 calendar days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 calendar days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(14) A violation of any general order or final order pertaining to a residential care or assisted living facility issued by the Department, other than a Level 1 violation, is subject to a civil penalty.

(15) Judicial review of civil penalties imposed under ORS 441.710 shall be as provided under ORS 183.480, except the court may, in its discretion, reduce the amount of the penalty.

(16) All penalties recovered under ORS 443.455, Or Laws 2017, ch 679, § 4, and 441.710 to 441.740 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 441.705 - 441.745, 443.400 - 443.455, 443.991

411-054-0200 Residential Care Facility Building Requirements
(Amended 06/29/2018)

A residential care facility (RCF) and a conversion facility (CF), as defined by OAR 411-054-0005, shall be built to the following requirements and may have individual or shared living units, unless specifically exempted.

(1) Applicability for 411-054-0200 shall apply to the following:

(a) A RCF not licensed prior to 01/15/2015, with the exception of 411-054-0200(5)(a) related to lockable doors. This will apply to all existing and new construction on the effective date as indicated.

(b) A major alteration to a RCF for which plans were not submitted to Facilities, Planning, and Safety (FPS) prior to 01/15/2015; or

(c) OAR 411-054-0200 shall apply only to the major alteration and shall not apply to any other area of the facility.

(2) BUILDING CODES. Each RCF must meet the requirements of the facility standards set forth in these rules and with the building codes in effect at the time of original licensure.

(a) Subsequent modifications made to a RCF after original licensure, including, but not limited to demolition, remodeling, construction, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes in place at the time of the modification.

(b) If a change in use and building code occupancy classification occurs, license approval shall be contingent on meeting the requirements of the building codes.

(c) A RCF must comply with FPS program requirements for submission of building drawings and specifications as described in OAR 333-675-0000 through 333-675-0050.

(3) GENERAL BUILDING EXTERIOR.

(a) All exterior pathways and accesses to the RCF common-use areas, entrance, and exit ways must be made of hard, smooth material, be accessible, and maintained in good repair.

(b) A RCF must take measures to prevent the entry of rodents, flies, mosquitoes, and other insects. There must be locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials must be properly labeled.

(c) RCF grounds must be kept orderly and free of litter and refuse. Garbage must be stored in covered refuse containers.

(d) As described in OAR 411, division 057, memory care communities licensed as a RCF must be located on the ground floor. A CF cannot be endorsed as a memory care community.

(e) A RCF must provide storage for all maintenance equipment, including yard maintenance tools, if not provided by a third-party contract.

(f) A RCF must provide an accessible outdoor recreation area. The outdoor recreation area must be available to all residents. Lighting must be equal to a minimum of five foot candles. Memory Care Communities must provide residents with direct access to a secure outdoor recreation area as described in OAR chapter 411, division 057.

(g) Outdoor perimeter fencing may not be secured to prevent exit unless the RCF has written approval from the Department for an exception or the RCF is in compliance with OAR chapter 411, division 057 (Memory Care Communities) or OAR 309-019-0100 through 309-019-0220.

(h) A RCF must have an entry and exit drive to and from the main building entrance that allows for a vehicle to pick up and drop off residents and mail deliveries without the need for vehicles to back up.

(4) GENERAL BUILDING INTERIOR. The design of a RCF must emphasize a residential appearance while retaining the features required to support special resident needs as outlined in this rule.

(a) RECEPTION AREA. A reception area must be visible and accessible to residents and visitors when entering the doors of the main entrance to the RCF.

(b) CORRIDORS. Resident-use areas and units must be connected through temperature controlled common corridors.

(A) Resident-use corridors exceeding 20 feet in length to an exit or common-use area, must have a minimum width of 72 inches. A CF may request an exception to this requirement, which shall be reviewed and decided on a case-by-case basis.

(B) Corridors shall not exceed 150 feet in length from any resident unit to a seating or other common-use area. A CF may request an exception to this requirement, which shall be reviewed and decided on a case-by-case basis.

(C) Handrails must be installed at one or both sides of resident-use corridors.

(c) FLOORS.

(A) Hard surface floors and base must be free from cracks and breaks.

(B) Carpeting and other floor materials must be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids.

(C) Thresholds and floor junctures must be maintained to allow for the passage of wheelchairs and to prevent a tripping hazard.

(d) INTERIOR DOORS. Lever-type door handles must be provided on all doors used by residents.

(e) EXIT DOORS. Exit doors may not include locks that delay evacuation except as specified by the building codes. Such locks may not be installed except with written approval of the Department.

(A) Exit doors may not include locks that prevent evacuation.

(B) If an electronic code must be entered to use an exit door that code must be clearly posted for residents, visitors, and staff use.

(f) WALLS AND CEILINGS. Walls and ceilings must be cleanable in kitchen, laundry, and bathing areas. Kitchen walls must be finished smooth per OAR 333-150-0000 (Food Sanitation Rules).

(g) ELEVATORS. A RCF with residents on more than one floor must provide at least one elevator that meets Oregon Elevator Specialty Code (OESC) requirements.

(h) The interior of the facility must be free from unpleasant odors.

(i) All interior and exterior materials and surfaces (e.g., floors, walls, roofs, ceilings, windows, and furniture) and all equipment necessary for the health, safety, and comfort of the resident will be kept clean and in good repair.

(5) RESIDENT UNITS. Resident units may be limited to a bedroom only, with bathroom facilities centrally located off common corridors. Each resident unit shall be limited to not more than two residents.

(a) Resident units must have a lockable door with lever type handles, effective 01/15/2017. This applies to all existing and new construction.

(b) For bedroom units, the door must open to an indoor, temperature controlled common-use area or common corridor. Residents may not enter a room through another resident's bedroom.

(c) Resident units must include a minimum of 80 square feet per resident, exclusive of closets, vestibules, and bathroom facilities and allow for a minimum of three feet between beds;

(d) All resident bedrooms must be accessible for individuals with disabilities and meet the requirements of the building codes. Adaptable units are not acceptable.

(e) A lockable storage space (e.g., drawer, cabinet, or closet) must be provided for the safekeeping of a resident's small valuable items and funds. Both the administrator and resident may have keys.

(f) WARDROBE CLOSET. A separate wardrobe closet must be provided for each resident's clothing and personal belongings. Resident wardrobe and storage space must total a minimum volume of 64 cubic feet for each resident. The rod must be adjustable for height or fixed for reach ranges per building codes. In calculating useable space closet height may not exceed eight feet and a depth of two feet.

(g) WINDOWS.

(A) Each sleeping and living unit must have an exterior window that has an area at least one-tenth of the floor area of the room. A CF must have at least one exterior window with a minimum size of 8 square feet per resident.

(B) Unit windows must be equipped with curtains or blinds for privacy and control of sunlight.

(C) Operable windows must be designed to prevent accidental falls when sill heights are lower than 36 inches and above the first floor.

(h) RESIDENT UNIT BATHROOMS. If resident bathrooms are provided within a resident unit, the bathroom must be a separate room and include a toilet, hand wash sink, mirror, towel bar, and storage for toiletry items. The bathrooms must be accessible for individuals who use wheelchairs.

(i) UNIT KITCHENS. If cooking facilities are provided in resident units, cooking appliances must be readily removable or disconnectable and the RCF must have and carry out a written safety policy regarding resident-use and nonuse. A microwave is considered a cooking appliance.

(6) COMMON-USE AREAS.

(a) BATHING FACILITIES. Centralized bathing fixtures must be provided at a minimum ratio of one tub or shower for each ten residents not served by fixtures within their own unit.

(A) At least one centralized shower or tub must be designed for disabled access without substantial lifting by staff.

(B) Bathing facilities must be located or screened to allow for resident privacy while bathing and provide adequate space for an attendant.

(C) A slip-resistant floor surface in bathing areas is required.

(D) Grab bars must be provided in all resident showers.

(E) Showers must be equipped with a hand-held showerhead and a cleanable shower curtain.

(b) TOILET FACILITIES. Toilet facilities must be located for resident-use at a minimum ratio of one to six residents for all residents not served by toilet facilities within their own unit. Toilet facilities must include a toilet, hand wash sink, and mirror.

(A) Toilet facilities for all of the licensed resident capacity must be accessible to individuals with disabilities in accordance with the building codes.

(B) A RCF licensed for more than 16 residents must provide at least one separate toilet and hand wash lavatory for staff and visitor use.

(c) DINING AREA. The dining area must be provided with the capacity to seat 100 percent of the residents. The dining area must provide a minimum of 22 square feet per resident for seating, exclusive of serving carts and other equipment or items that take up space in the dining area. A RCF must have policies and equipment to assure food is served fresh and at proper temperatures. If a CF provides a minimum of 30 square feet per resident for a combined

dining, activities, and living area, the CF may apply for an exception to this subsection.

(d) SOCIAL AND RECREATION AREAS. A RCF must include lounge and activity areas for social and recreational use totaling a minimum of 15 square feet per resident. If a CF provides a minimum of 30 square feet per resident for a combined dining, activities, and living area, the CF may apply for an exception to this subsection.

(e) COOKING STOVE. If a stove is provided in the activities or common-use area, and is available for resident-use, a keyed, remote switch, or other safety device must be provided to ensure staff control.

(7) SUPPORT SERVICE AREAS.

(a) MEDICATION STORAGE. A RCF must have a locked and separate closed storage area for medications, supportive of the distribution system utilized including:

(A) A method for refrigeration of perishable medications that provides for locked separation from stored food items;

(B) Medications must be stored in an area that is separate from any poisons, hazardous material, or toxic substance; and

(C) A RCF licensed for more than 16 residents must provide a medication sink.

(b) HOUSEKEEPING AND SANITATION.

(A) A RCF must have a secured janitor closet for storing supplies and equipment, with a floor or service sink.

(B) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(c) LAUNDRY FACILITIES. Laundry facilities may be located to allow for both resident and staff use, when a time schedule for resident-use

is provided and equipment is of residential type. When the primary laundry is not in the building or suitable for resident-use, a RCF must provide separate resident-use laundry facilities. A CF is not required to provide resident-use laundry services.

(A) Laundry facilities must be operable and at no additional cost to the resident.

(B) Laundry facilities must have space and equipment to handle laundry-processing needs. Laundry facilities must be separate from food preparation and other resident-use areas.

(C) On-site laundry facilities, used by staff for facility and resident laundry, must have capacity for locked storage of chemicals and equipment.

(D) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(d) SOILED LINEN PROCESSING. For the purpose of this rule, "soiled linens and soiled clothing," means linens or clothing contaminated by an individual's bodily fluids (for example, urine, feces, or blood).

(A) There must be a separate area with closed containers that ensure the separate storage and handling of soiled linens and soiled clothing. There must be space and equipment to handle soiled linen and soiled clothing processing needs that is separate from regular linens and clothing.

(B) Arrangement must provide a one-way flow of soiled linens and soiled clothing from the soiled area to the clean area and preclude potential for contamination of clean linens and clothing.

(C) The soiled linen room or area, must include a flushing rim clinical sink with a handheld rinsing device and a hand wash sink or lavatory.

(D) When washing soiled linens and soiled clothing, washers must have a minimum rinse temperature of 140 degrees Fahrenheit unless a chemical disinfectant is used.

(E) Personnel handling soiled laundry must be provided with waterproof gloves.

(F) Covered or enclosed clean linen storage must be provided and may be on shelves or carts. Clean linens may be stored in closets outside the laundry area.

(G) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(e) KITCHEN AND FOOD STORAGE. Kitchen facilities and equipment in residential care facilities with a capacity of 16 or fewer may be of residential type except as required by the building codes. Residential care facilities licensed for a capacity of more than 16, must comply with OAR 333-150-0000 (Food Sanitation Rules). The following are required:

(A) Dry storage space, not subject to freezing, for a minimum one-week supply of staple foods.

(B) Refrigeration and freezer space at proper temperature to store a minimum two days' supply of perishable foods.

(C) Storage for all dishware, utensils, and cooking utensils used by residents must meet OAR 333-150-0000 (Food Sanitation Rules).

(D) In facilities licensed to serve 16 or fewer residents, a dishwasher must be provided (may be residential type) with a minimum final rinse temperature of 140 degrees Fahrenheit (160 degrees recommended), unless a chemical disinfectant is used in lieu of the otherwise required water temperature. In facilities of 17 or more capacity, a commercial dishwasher is required meeting OAR 333-150-0000 (Food Sanitation Rules).

(E) In residential care facilities with a capacity of 16 or fewer, a two compartment sink or separate food preparation sink and hand wash lavatory must be provided. In residential care facilities with 17 or more capacity, a triple pot wash sink (unless all pots are sanitized in the dishwasher), a food prep sink, and separate hand wash lavatory must be provided.

(F) Food preparation and serving areas must have smooth and cleanable counters.

(G) Stove and oven equipment for cooking and baking needs.

(H) Storage in the food preparation area for garbage must be enclosed and separate from food storage.

(I) Storage for a mop and other cleaning tools and supplies used for dietary areas must be separate from those used in toilet rooms, resident rooms, and other support areas. In residential care facilities with a capacity of 17 or more, a separate janitor closet or alcove must be provided with a floor or service sink and storage for cleaning tools and supplies.

(J) Storage must be available for cookbooks, diet planning information, and records.

(K) The wall base shall be continuous and coved with the floor, tightly sealed to the wall, and constructed without voids that can harbor insects or moisture.

(8) HEATING AND VENTILATION SYSTEMS. A RCF must have heating and ventilation systems that comply with the building codes in effect at the time of facility construction.

(a) TEMPERATURE. For all areas occupied by residents, design temperature for construction must be 75 degrees Fahrenheit.

(A) A RCF must provide heating systems capable of maintaining 70 degrees Fahrenheit in resident areas. Required minimum temperatures are no less than 70 degrees Fahrenheit

during the day and 60 degrees Fahrenheit during sleeping hours.

(B) During times of extreme summer heat, fans must be made available when air conditioning is not provided.

(b) EXHAUST SYSTEMS. All toilet and shower rooms must be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(c) FIREPLACES, FURNACES, WOODSTOVES, AND BOILERS. Where used, installation must meet standards of the building codes in effect at the time of construction. The glass and area surrounding the fireplace must not exceed 120 degrees Fahrenheit.

(d) WALL HEATERS. Covers, grates, or screens of wall heaters and associated heating elements may not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by people or with combustible material. Effective 01/15/2015, wall heaters are not acceptable in new construction or remodeling.

(9) PLUMBING SYSTEMS. Plumbing systems must conform to the building codes in effect at the time of facility construction.

(a) Hot water temperature in residents' units must be maintained within a range of 110 - 120 degrees Fahrenheit.

(b) Hot water temperatures serving dietary areas must meet OAR 333-150-0000 (Food Sanitation Rules).

(c) An outside area drain and hot and cold water hose bibs must be provided for sanitizing laundry carts, food carts, and garbage cans.

(10) ELECTRICAL REQUIREMENTS.

(a) WIRING SYSTEMS. All wiring systems must meet the building codes in effect at the date of installation and shall be maintained and in good repair.

(b) The use of extension cords and other special taps is not allowed.

(c) LIGHTING. Lighting fixtures must be provided in each resident bedroom and bathroom, and be switchable and near the entry door.

(A) Each resident bedroom must have illumination of at least 20-foot candles measured at three feet above the floor for way finding from the room entrance, to each bed, and to the adjoining toilet room, if one exists.

(B) Lighting in toilet rooms and bathing facilities used by residents must be at least 50-foot candles, measured at the hand wash sink and three feet above the shower floor with the curtain open.

(C) Corridor lighting must equal a minimum of 20-foot candles measured from the floor.

(D) Table height lighting in dining rooms must equal a minimum of 25-foot candles, without light from windows.

(11) CALL SYSTEM. A RCF must provide a call system that connects resident units to the care staff center or staff pagers. Wireless call systems are allowed.

(a) A manually operated emergency call system must be provided in each toilet and bathing facility used by residents and visitors.

(b) EXIT DOOR ALARMS. An exit door alarm or other acceptable system must be provided for security purposes and to alert staff when residents exit the RCF. The door alarm system may be integrated with the call system.

(c) Security devices intended to alert staff of an individual resident's potential elopement may include, but not be limited to, electronic pendants, bracelets, pins.

(12) TELEPHONES. Adequate telephones must be available for resident, staff, and visitor use, including those individuals who have physical disabilities. If the only telephone is located in a staff area, it must be posted

that the telephone is available for normal resident-use at any time and that staff shall ensure the resident's uninterrupted privacy. Staff may provide assistance when necessary or requested.

(13) TELEVISION ANTENNA OR CABLE SYSTEM. A RCF must provide a television antenna or cable system with an outlet in each resident unit.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0320 Quality Measurement Program and Council
(Adopted 06/29/2018)

(1) The purpose of the Quality Measurement Program is to allow facilities and the public to compare residential care and assisted living facility performance on each quality metric. The Department shall provide and maintain a web-based report based on metrics defined in Or Laws 2017, ch 679, § 15(1) and any other metrics determined by the Quality Measurement Council. The first report from this program will be published July 1, 2020.

(2) Quality Measurement Council. The Quality Measurement Council is appointed by the Governor, and consists of the following members:

(a) One individual representing the Oregon Patient Safety Commission.

(b) One individual representing residential care facilities or assisted living facilities.

(c) One consumer representative from an Alzheimer’s advocacy organization.

(d) One licensed health care practitioner with experience in geriatrics.

(e) Two individuals associated with academic institutions who have expertise in research data and analytics and community-based care and quality reporting.

(f) The Long-Term Care Ombudsman or a designee of the Long-Term Care Ombudsman.

(g) One individual representing the Department.

(3) A staff coordinator shall be assigned by the Department to support the council. The staff coordinator will assist the council as needed and ensure the annual report required by Or Laws 2017, ch 679, § 15(3) and (4) are implemented.

(4) The council shall determine the form and manner for facilities to report metrics for the prior calendar year. Data that identifies a resident is excluded from this requirement.

(a) In developing quality metrics, the council shall consider whether:

(A) Reported data reflects and promotes quality care; and

(B) Reporting the data is unnecessarily burdensome on residential care and assisted living facilities.

(b) On or after January 1, 2022, the council may update, by rule, the quality metrics to be reported by residential care and assisted living.

(5) Annual facility reports.

(a) All residential care and assisted living facilities shall report required metrics to the Department no later than January 31 of each year. The first reports are due January 31, 2020.

(b) Each facility shall report the following quality metrics for the prior calendar year:

(A) Retention of direct care staff.

(B) Falls resulting in physical injury.

(C) Use of antipsychotic medication for nonstandard purposes.

(D) Facility compliance with staff training requirements.

(E) Results of an annual resident satisfaction survey conducted by an independent entity.

(F) A metric that measures the quality of the resident experience.

(G) Any other metrics determined by the council.

(6) Annual report from the Department.

(a) The Department shall develop an annual report by July 1st that is based on the information provided by all reporting residential care and assisted living facilities. This report shall be made available online to each facility. The first report is due July 1, 2020.

(b) The report shall be in a standard format and written in plain language.

(c) The report must include data compilation, illustration, and narratives. The report also must:

(A) Describe statewide patterns and trends that emerge from the collected data.

(B) Describe compliance data maintained by the Department.

(C) Identify facilities that substantially fail to report data as required.

(D) Allow facilities and the public to compare a facility's performance on each quality metric, by demographics, geographic region, facility type, and other categories the Department believes may be useful to consumers and facilities.

(E) Show trends in performance for each quality metric.

(F) Identify patterns of performance by geographic regions, and other categories the Department believes will be useful to consumers.

(G) Identify the number, severity, and scope of regulatory violations by each geographic region.

(H) Show average timelines for surveys and investigations of abuse or regulatory noncompliance.

(d) Quality metric data reported to the Department under this section may not be used against the facility, as required under Or Laws 2017, ch 679, § 15(7). This section does not exempt a facility from complying with state law. Also, the Department may use quality metric data obtained during the normal course of business or compliance activity, as required by Or Laws 2017, ch 679, § 15(8).

(7) Online Training. The Department shall develop online training modules for facilities and the public.

(a) Training modules shall address the top two statewide issues identified by surveys or reviews of facilities during the prior year.

(b) Training modules shall be available and accessible by January 1, 2019.

(c) The Department shall post and regularly update the data used to prepare the report.

Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: Or Laws 2017, ch 679, §15