

**DEPARTMENT OF HUMAN SERVICES  
DEVELOPMENTAL DISABILITIES  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411  
DIVISION 360**

**ADULT FOSTER HOMES FOR INDIVIDUALS WITH INTELLECTUAL OR  
DEVELOPMENTAL DISABILITIES**

**EFFECTIVE AUGUST 10, 2018**

**411-360-0010 Statement of Purpose**

*(Amended 6/29/2016)*

(1) The rules in OAR chapter 411, division 360 prescribe the standards and procedures for the licensure of adult foster homes for individuals with intellectual or developmental disabilities (AFH-DD).

(2) These rules incorporate the provisions for home and community-based services (HCBS) and settings set forth in OAR chapter 411, division 004 to ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS.

(a) An AFH-DD provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed.

(b) An AFH-DD provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

(3) An AFH-DD facilitates individual choice regarding services and supports, and who provides the services and supports, through a cooperative relationship between the AFH-DD provider, the individual, the legal or designated representative of the individual (if applicable), and the Community Developmental Disability Program.

(4) An AFH-DD protects and encourages the independence, dignity, choice, and decision making of the individual while addressing the needs of the individual in a manner that supports and enables the individual to achieve optimum physical, mental, and social well-being and independence.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-443.825

### **411-360-0020 Definitions and Acronyms**

*(Amended 2/28/2017)*

OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 360. In addition to the definitions in OAR 411-317-0000, the following definitions apply specifically to the rules in OAR chapter 411, division 360. If the same word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "Adult Foster Home (AFH)" means any home in which residential care and services are provided in a home-like environment for compensation to five or fewer adults who are not related to the provider by blood, marriage, or adoption. An adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no individual thereof requires any element of care.

(2) "Adult Foster Home for Individuals with Intellectual or Developmental Disabilities (AFH-DD)" means an adult foster home in which residential care and services are provided to support individuals with intellectual or developmental disabilities.

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

(4) "AFH-DD" means an "adult foster home for individuals with intellectual or developmental disabilities" as defined in this rule.

(5) "Applicant" means a person who completes an application for an adult foster home license who is also the owner of the business or a person who completes an application to become a resident manager. The term applicant includes a co-applicant (if applicable).

(6) "Bill of Rights" means the civil, legal, or human rights afforded to individuals in an adult foster home in accordance with those rights afforded to all other U.S. citizens including, but not limited to, those rights delineated in the Adult Foster Home Bill of Rights for individuals with intellectual or developmental disabilities described in OAR 411-360-0170.

(7) "Care" means supportive services that encourage maximum individual independence and enhance the quality of life for an individual including, but not limited to, the following:

(a) Provision of 24-hour supervision, being aware of the whereabouts of the individual, and ensuring the health, safety, and welfare of the individual.

(b) Assistance with activities of daily living and instrumental activities of daily living as defined in OAR 411-317-0000.

(c) Assistance with quality of life activities, such as socialization and recreation.

(d) Monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(8) "Caregiver" means any person responsible for delivering care and services to support individuals. A caregiver includes a provider, resident manager, and any temporary, substitute, or supplemental caregiver or other person designated to provide care and service to support individuals in an AFH-DD.

(9) "CDDP" means "Community Developmental Disabilities Program".

(10) "CMS" means "Centers for Medicare and Medicaid Services".

(11) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(12) "Compensation" means monetary or in-kind payments by or on behalf of an individual to a provider in exchange for room and board, care, and services as indicated in the ISP or Service Agreement. Compensation does not include the voluntary sharing of expenses between or among roommates.

(13) "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.

(14) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(15) "Day Care" means the care, assistance, and supervision of an individual who does not stay overnight. Individuals receiving day care services are included in the licensed capacity of a home as described in OAR 411-360-0060.

(16) "Denial" means the refusal of the Department to issue a license to operate an AFH-DD because the Department has determined that an applicant or the home is not in compliance with one or more of these rules.

(17) "Disaster" means an occurrence beyond the control of a licensee, whether natural, technological, or man-made, that renders a home uninhabitable on a temporary, extended, or permanent basis.

(18) "Enjoin" means to prohibit by judicial order.

(19) "Exempt Area" means a county where the county agency provides similar programs for licensing and inspection of adult foster homes equal to, or superior to, the requirements of ORS 443.705 to 443.825 and the Director has exempted the county from the license, inspection, and fee

provisions described in ORS 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

(20) "Facility" means the physical structure of an AFH-DD.

(21) "Guardian" means the parent for an individual under the age of 18, or a person or agency appointed and authorized by a court to make decisions about services for an individual. A paid provider for an individual may not be the guardian of the individual.

(22) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a Final Order.

(23) "Home" means the physical structure of an AFH-DD.

(24) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services to support and encourage independence, choice, and decision making by the individuals.

(25) "House Rules" mean the social courtesies identified through a voluntary collaborative process by members of the household. The identified rules are non-binding and may not be solely provider driven expectations for individuals residing in the home.

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

(27) "Individual" means a young adult or adult residing in an AFH-DD, regardless of source of compensation.

(28) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, their parent or legal representative(as applicable), teacher, and a representative of the public school district.

(29) "ISP" means "Individual Support Plan".

(30) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules.

(31) "Licensee" means the person who is issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The licensee of an adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor of the building is the provider.

(32) "Limited License" means a license is issued to a licensee who intends to deliver care and services for compensation to a specific individual who is unrelated to the licensee, but with whom the licensee has an established relationship of no less than one year.

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

(34) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Legal medical marijuana" refers to the use of marijuana authorized under the Oregon Medical Marijuana Act (OMMA), ORS 475B.400 to ORS 475B.525.

(35) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing an individual and obtaining all pertinent biopsychosocial information as identified by the individual, their family, and collateral sources. A mental health assessment

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(a) Addresses the condition presented by the individual.

(b) Determines a diagnosis.

(c) Provides treatment direction and individualized services and supports.

(36) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(37) "Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse, at a home, based on the nursing process as outlined by the Oregon State Board of Nursing. Nursing services differ from administrative nursing services.

(38) "OCCS" means the "Office of Client and Community Services".

(39) "Occupant" means any person residing in, or using the facilities of, an adult foster home including the individuals, licensee, resident manager, friends, family members, a person receiving day care services, and room and board tenants.

(40) "OIS" means "Oregon Intervention System".

(41) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(42) "Over the Counter Topical" means a medication purchased without a prescription applied to the skin and not in an orifice.

(43) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. A person with an ownership or control interest means a person or corporation that --

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

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

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

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

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

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

(44) "Provider" means any person operating an adult foster home, such as a licensee or resident manager. "Provider" does not include caregivers or the owner or lessor of the building in which an adult foster home is situated unless the owner or lessor of the building is also the operator of the adult foster home.

(45) "Provider Enrollment" means an agreement between the Department and a Medicaid provider to provide room and board and deliver care and services to a Medicaid eligible individual in an adult foster home for compensation.

(46) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-360-0070 and OAR 411-360-0110.

(47) "Qualified Entity Initiator (QEI)" as defined in OAR 407-007-0210.

(48) "Qualified Mental Health Professional" means a licensed medical practitioner or any other person meeting the qualifications specified in OAR 309-019-0125.

(49) "Relief Care" means the services provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally available to provide supports to an individual. Relief care may include 24-hour relief care or hourly relief care. Individuals receiving relief care are included in the licensed capacity of a home as described in OAR 411-360-0060.

(50) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background



check, a person is considered to reside in a home if the visit of the person is for four consecutive weeks or greater.

(51) "Resident Manager" means an employee of a licensee, approved by the Department, who resides in an adult foster home, and is directly responsible for the care and services to support individuals on a day-to-day basis.

(52) "Respite" means "relief care" as defined in this rule.

(53) "Revocation" means the action taken by the Department to rescind an adult foster home license after the Department determines the provider or home is not in compliance with one or more of these rules.

(54) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping to a person that does not need assistance with activities of daily living. Room and board facilities for two or more people are required to register with the Department as described in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Room and board does not include provision of care.

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

(56) "Special Diets" means the specially prepared food or particular types of food specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples of special diets include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. Special diets do not include a diet where extra or additional food is offered without the order of a physician or licensed health care provider, but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(57) "Subject Individual" means --

(a) Any person 16 years of age or older, including the following:

(A) A licensed adult foster home provider and provider applicant.

(B) A person intending to work in, or currently working in, an adult foster home including, but not limited to, a substitute caregiver and a potential substitute caregiver in training.

(C) A volunteer if allowed unsupervised access to an individual.

(D) An occupant, excluding an individual, residing in or on the premises of a proposed or currently licensed adult foster home, including the following:

(i) A member of the household.

(ii) A room and board tenant.

(iii) A person visiting for four consecutive weeks or greater.

(b) Subject individual does not apply to the following:

(A) An individual of the adult foster home or their visitor.

(B) A person who resides or works in an adult foster home who does not have --

(i) Regular access to the home for meals;

(ii) Regular use of the appliances or facilities of the adult foster home; or

(iii) Unsupervised access to an individual or their personal property.

(C) A person providing services to an individual employed by a private business not regulated by the Department.

(58) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department

that is left in charge of the individuals for any period of time and has access to their records.

(59) "Suspension" means an immediate, temporary withdrawal of the approval to operate an adult foster home after the Department determines a provider or home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of individuals.

(60) "Tenant" means an individual who resides in an adult foster home and receives services, such as meal preparation, laundry, and housekeeping.

(61) "These Rules" mean the rules in OAR chapter 411, division 360.

(62) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in the mental or physical condition of an individual.

(63) "Variance" means the temporary exemption from a regulation or provision of these rules granted by the Department upon written application by the provider.

(64) "Young Adult" means a young individual age 18 through 20 who resides in an adult foster home under the custody of the Department, voluntarily, or under guardianship. A young adult may include an individual who is less than 18 years of age.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-443.825

### **411-360-0030 Variance**

*(Amended 12/28/2014)*

(1) A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that such a variance does not jeopardize the health, safety, or welfare of the individuals or violate state or federal laws. If the variance applies to the care and services for an individual, the provider must provide evidence that the variance is consistent with the currently approved ISP for the individual.

(2) A variance is granted in writing on a Department-approved form. A variance granted to one AFH-DD provider does not constitute a precedent for any other AFH-DD provider. A variance is specific to a licensed site.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

### **411-360-0040 License Required**

*(Amended 9/27/2013)*

(1) Any home that meets the definition of an AFH-DD as defined in OAR 411-360-0020 must first apply for and obtain a license from the Department or an exempt area county before providing care and services for compensation to an individual.

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

(3) No person, employed and requiring a background check may be a provider, resident manager, substitute caregiver, or otherwise be in training, employed by the provider, a volunteer for the AFH-DD, or reside in or on the property of an AFH-DD who --

(a) Has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(b) Has not complied with Department rules for review of background checks in accordance with OAR 407-007-0200 to 407-007-0370; or

(c) Has been disapproved to work based on current Department policy and procedures for background checks in accordance with OAR 407-007-0200 to 407-007-0370.

(4) Section (3) of this rule does not apply to individual service recipients of the AFH-DD.

(5) Section (3)(a) of this rule does not apply to employees hired prior to July 28, 2009.

(6) LIMITED LICENSE. Any home that meets the definition of a limited license AFH-DD as defined in OAR 411-360-0020 must apply for and obtain a license from the Department before providing care and services to an individual for compensation.

(a) To qualify for a limited license and for compensation from the Department, the provider must:

(A) Submit a completed provider enrollment agreement, application for a limited license, appropriate licensing fee, physician's statement, and a background check in regards to criminal records, founded abuse of children, and substantiated abuse of an adult;

(B) Demonstrate a clear understanding of the individual's care, service, and support needs;

(C) Acquire any additional training necessary to meet the specific care, service, and support needs of the individual;

(D) Meet the standards of an AFH-DD;

(E) Meet minimal fire safety compliance including the installation of smoke alarms, carbon monoxide alarms, and fire extinguishers; and

(F) Obtain any training deemed necessary by the Department to provide adequate care and services to support the individual.

(b) A limited license is limited to the care and services of the individual named on the license only and may not be transferred to another individual.

(7) PROVISIONAL LICENSE. Any AFH-DD that meets the definition of a provisional license, due to an emergency situation in which the licensed provider is no longer able to oversee the operation of the AFH-DD, must be licensed by the Department. The applicant for the provisional license must meet the standards in OAR 411-360-0070 and OAR 411-360-0110.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825

**411-360-0050 AFH-DD License Application and Fees**  
(Amended 8/10/2018)

(1) An applicant for an AFH-DD license must complete a written application on the applicable Department forms and submit the application to the Department with a non-refundable fee of \$50 per bed for each service recipient. Service recipients include private pay and publicly funded individuals. Service recipients do not include family members or recipients of day care services.

(a) An application is not complete until the Department receives the information and non-refundable fee described in this rule.

(b) An incomplete application is void 60 calendar days from the date the Department receives the application.

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

(2) An applicant applying to operate more than one AFH-DD must complete a separate application for each home.

(3) An application for an AFH-DD with a resident manager must include a completed application for the resident manager on the applicable Department forms.

(4) An application for an AFH-DD license must include the following:

(a) The applicant's mailing address, if different from the address of the AFH-DD, and a business address for electronic mail.

(b) The maximum capacity in accordance with OAR 411-360-0060.

(c) Identification of the following:

(A) Each person that resides in the home and receives care, including family members that require care and recipients of respite, relief care, or day care services; and

(B) All other occupants that reside in the home or on the property of the home, including family members, friends, and room and board tenants.

(d) The classification being requested in accordance with OAR 411-360-0070, including information and supporting documentation regarding qualifications, relevant work experience, and training of caregivers as required by the Department.

(e) The statement of a health care provider, on the applicable Department form, regarding the ability of the applicant to deliver services.

(f) Financial information, including the following:

(A) A completed Financial Information Sheet on the applicable Department form.

(i) An applicant must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of an AFH-DD for at least two months without solely relying on potential income from individuals and room and board payments.

(ii) An applicant applying to operate more than one AFH-DD must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of all the homes for at least two months without solely relying on potential income from individuals and room and board payments.

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

(B) Copies of bank statements from the last three months demonstrating banking activity in both checking and savings accounts, as applicable, or demonstration of cash on hand, if requested.

(C) Documentation of the following, if applicable:

(i) Unsatisfied judgments, liens, and pending lawsuits where a claim for money or property is made against the applicant.

(ii) Bankruptcy filings by the applicant.

(iii) Unpaid taxes due from the applicant including, but not limited to, property taxes, employment taxes, and state and federal income taxes.

(D) A copy of a complete and current credit report for the applicant, if requested.

(g) If an applicant is leasing or rents the home, a copy of the lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) Name of the owner and landlord;

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

(C) Signatures of the landlord and applicant and date signed.

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

(i) A current and accurate floor plan for the home that indicates the following:

(A) Size of each room;

(B) Size of each window;



(C) Bedrooms to be used by individuals, the provider, and as applicable, caregivers, room and board tenants, and recipients of day care, relief care, or respite services;

(D) Each exit on each level of the home, including emergency exits such as windows;

(E) Wheelchair ramps, if applicable;

(F) Each fire extinguisher, smoke alarm, carbon monoxide alarm, and sprinkler if the home has an interior sprinkler system;

(G) Planned evacuation routes; and

(H) Designated smoking areas in or on the premises of the home, if applicable.

(j) The non-refundable fee for each individual service recipient as described in section (1) of this rule.

(k) Three personal references for the applicant. The personal references may not be family members, current or potential licensees, or co-workers of current or potential licensees.

(l) If applying to operate more than one AFH-DD, a plan covering administrative responsibilities and staffing qualifications for each home.

(m) A written description of the daily operation of the AFH-DD, including the following:

(A) The use of a resident manager and substitute caregivers, as applicable.

(B) The schedule of the provider, resident manager, and substitute caregivers, as applicable.

(C) The plan for coverage in the absence of the provider, resident manager, or substitute caregivers, as applicable.

(n) Documentation of the following for each subject individual as defined in OAR 411-360-0020:

(A) Signed background check, and if needed, the mitigating information and fitness determination form;

(B) Signed consent form for a background check with regards to abuse of children; and

(C) Founded reports of child abuse or substantiated adult abuse allegations, including the dates, locations, and resolutions.

(o) A copy of the Residency Agreement for the AFH-DD.

(5) After receipt of the completed application materials, including the non-refundable fee, the Department shall investigate the information submitted and inspect the home. Compliance is determined upon submission and completion of the application and the process described in these rules.

(a) An applicant shall receive a copy of the Department's inspection form citing any deficiencies and specifying a time frame for correction, no later than 60 calendar days from the date of inspection.

(b) Deficiencies noted during an inspection of the home must be corrected in the time frame specified by the Department.

(6) An applicant must comply with these rules before the Department issues a license. An application is denied if cited deficiencies are not corrected within the time frames specified by the Department.

(7) Prior to being licensed, an applicant must attend the orientation offered by the local CDDP.

(8) An applicant may withdraw an application at any time during the application process by notifying the Department in writing.

(9) An applicant whose application has been denied or whose license has been revoked, non-renewed, or voluntarily surrendered during a revocation

or non-renewal process, may not submit a new application for at least one year from the date the action is final, or for a longer period of time if specified in a final order.

(10) All monies collected under these rules are paid to the Quality of Care Fund.

Stat. Auth.: ORS 409.050, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

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

### **411-360-0055 Provider Enrollment Agreements, Contracts, and Residency Agreements**

*(Amended 6/29/2016)*

#### **(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.**

(a) An applicant or licensee who intends to provide care and services to support individuals who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Department, follow Department rules, and abide by the terms of the Agreement. A Medicaid Provider Enrollment Agreement is not approved unless the Department has determined that the applicant, licensee, co-licensee, or any owner or officer of the corporation, as applicable, is not listed on the Exclusion Lists for the Office of Inspector General or the U.S. General Services Administration (System for Award Management).

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

(c) An approved Medicaid Provider Enrollment Agreement is valid for the length of the license unless earlier terminated by the licensee or the Department. A Medicaid Provider Enrollment Agreement must be completed, submitted, approved, and renewed with each licensing cycle.

(d) An individual eligible for Medicaid services may not be admitted into an AFH-DD unless and until the Department has approved a Medicaid Provider Enrollment Agreement. Medicaid payment is not issued to a licensee without a current license and an approved Medicaid Provider Enrollment Agreement in place.

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

(f) The Department does not issue payment for the date of the exit of an individual or for any time period thereafter.

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

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

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

(B) The license to operate the AFH-DD has been voluntarily surrendered, revoked, or not renewed.

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

(A) The licensee fails to permit access by the Department or CMS to any AFH-DD licensed to and operated by the licensee;

(B) The licensee submits false or inaccurate information;

(C) Any person with five percent or greater direct or indirect ownership in the AFH-DD did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the

background check rules in OAR 407-007-0200 to 407-007-0370;

(D) Any person with five percent or greater direct or indirect ownership interest in the AFH-DD has been convicted of a criminal offense related to his or her involvement with Medicare, Medicaid, or Title XXI programs in the last 10 years; or

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

(j) If a licensee submits notice of termination of the Medicaid Provider Enrollment Agreement, the licensee must concurrently issue a Notice of Involuntary Move or Transfer to each individual eligible for Medicaid services residing in the AFH-DD.

(k) If either a licensee or the Department terminates the Medicaid Provider Enrollment Agreement, the licensee may not re-apply for a new Medicaid Provider Enrollment Agreement for a period of no less than 180 days from the date the licensee or the Department terminated the Agreement.

(l) A licensee must forward all of the personal incidental funds (PIF) of an individual who is a recipient of Medicaid services within 10 business days of the death of the individual to the Estate Administration Unit, PO Box 14021, Salem, Oregon 97309-5024.

(2) PRIVATE PAY CONTRACT. A licensee who provides care and services to support individuals who pay with private funds or individuals receiving only day care services must enter into a written contract with the individual or the person paying for the care and services of the individual. The written contract is the admission agreement. The written contract must be signed by all parties prior to the admission of the individual and updated as needed. A copy of the contract is subject to review by the Department prior to licensure and prior to the implementation of any changes to the contract.

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

- (A) A person-centered service plan;
- (B) A schedule of rates; and
- (C) Conditions under which the rates may be changed.

(b) The provider must give a copy of the signed contract to the individual, or as applicable the legal representative of the individual and retain the original contract in the record for the individual.

(c) The licensee must give written notice to a private pay individual, or as applicable the person paying for the care and services of the individual, 30 days prior to any general rate increases, additions, or other modifications of the rates unless the change is due to a medical emergency resulting in a greater level of care in which case the notice must be given within 10 days of the change.

### (3) RESIDENCY AGREEMENT.

(a) The licensee must enter into a written Residency Agreement with each individual specifying, at a minimum, the following:

(A) The eviction process, notice requirements, and appeal rights available to each individual;

(B) The right of the individual to furnish and decorate his or her bedroom, subject to the limitations specified herein; and

(C) Policies and conditions for the following:

(i) Designated smoking areas. Use of tobacco must be in compliance with the Oregon Indoor Clean Air Act and OAR 411-360-0130;

(ii) Use and presence of medical marijuana in compliance with the Oregon Medical Marijuana Act and OAR 411-360-0140. The Residency Agreement expectations for medical marijuana must be reviewed and approved by the Department. If an individual intends to use medical marijuana in the AFH-DD, the Residency Agreement

including guidelines for medical marijuana must be signed and dated by the individual or the legal representative of the individual and included in the record for the individual;

(iii) Restriction related to pets, if any;

(iv) Monthly charges and services to be provided; and

(v) Refunds in case of departure or death.

(b) The Residency Agreement may not violate the rights of an individual as stated in ORS 430.210, ORS 443.739, OAR 411-360-0170, and OAR 411-318-0010.

(c) The Residency Agreement may not be in conflict with any of these rules or the rules in OAR chapter 411, division 004 for home and community-based services and settings.

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement may be subject to review by the Department or the designee of the Department.

(e) The provider must review and provide a copy of the Residency Agreement to each individual, and as applicable the legal representative of the individual, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or as applicable the legal representative of the individual, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the record for the individual.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-443.825

**411-360-0060 Capacity**  
(Amended 6/29/2016)

(1) The maximum capacity of an AFH-DD is limited to five individuals who require care and services who are unrelated to the provider by blood, marriage, or adoption.

(2) The number of individuals permitted to reside in an AFH-DD is determined by the ability of the caregiver to meet the care, service, and support needs of the individuals, fire safety standards, physical structure standards, and the standards of these rules.

(a) Determination of maximum capacity includes consideration of total household composition including all children, adult relatives, and older adults.

(b) In determining maximum capacity, consideration is given to whether children over the age of 5 have a bedroom separate from their parents and the number and age of children or others that reside in the AFH-DD requiring care.

(3) Children under the age of 10 living in the AFH-DD and individuals requiring relief care, attendant care, or skills training services are included in the licensed capacity of the AFH-DD.

(4) A provider may only exceed the licensed capacity of the AFH-DD by one or more individuals if:

(a) Approved by the Department;

(b) There is adequate bedroom and living space available in the AFH-DD for the individuals receiving services; and

(c) The total capacity does not exceed five.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-443.825

**411-360-0070 Classification**  
(Amended 9/27/2013)



A provisional, limited, level 1, level 2B, or level 2M license may be issued by the Department only if the qualifications of the applicant, resident manager (if applicable), and substitute caregiver fulfills the requirements of these rules.

(1) PROVISIONAL LICENSE.

(a) A provisional license may be issued by the Department if --

(A) There is an emergency situation where the current licensed provider is no longer overseeing the operation of the AFH-DD;  
and

(B) An applicant meets the qualifications described in OAR 411-360-0110(1)(a-f)(h-m).

(b) A provisional license is valid for 60 days from the date of issue and is not renewable.

(2) LIMITED LICENSE.

(a) A limited license may be issued by the Department if --

(A) An applicant intends to provide care and services to a specific individual who is unrelated to the applicant but with whom the applicant has an established relationship of no less than one year;

(B) The applicant meets the qualifications described in OAR 411-360-0110(1);

(C) The home meets the facility standards described in OAR 411-360-0130; and

(D) The applicant acquires any additional training necessary to meet the specific needs of the individual.

(b) The license is limited to only the care of the individual named on the license.

(3) LEVEL 1 LICENSE. A Level 1 license may be issued by the Department if --

(a) The home and applicant are in compliance with OAR 411-360-0080; and

(b) An applicant and resident manager (if applicable):

(A) Meets the qualifications described in OAR 411-360-0110;

(B) Complete the training requirements described in OAR 411-360-0120;

(C) Has the equivalent of one year of full-time experience in providing direct care and services to support individuals with intellectual or developmental disabilities; and

(D) Has current CPR and First Aid certification.

(i) Accepted CPR and First Aid courses must be provided or endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(ii) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(4) LEVEL 2B LICENSE.

(a) A provider must be licensed as a Level 2B AFH-DD if the provider serves or intends to serve more than one individual who exhibits behavior that poses a significant danger to the individual or others. Examples of behaviors that may pose a significant danger to the individual or others include but are not limited to:

(A) Acts or history of acts that have caused injury to self or others requiring medical treatment;

(B) Use of fire or items to threaten injury to persons or damage to property;

(C) Acts that cause significant damage to homes, vehicles, or other properties; or

(D) Actively searching for opportunities to act out thoughts that involve harm to others.

(b) A Level 2B license may be issued by the Department only if the applicant and resident manager (if applicable) has met the requirements described in section (3) of this rule for a Level 1 license and meets the following additional criteria:

(A) Has two years of full time experience providing care and services to support individuals who exhibit the behavior described in subsection (a) of this section that poses significant risk to the individual or others;

(B) Has completed OIS-G, OIS-IF, or OIS-C certification by a state approved OIS trainer; and

(C) If available from the Department, has completed additional hours of advanced behavior intervention training per year based on the support needs of the individual.

(c) A provider of a Level 2B AFH-DD must have a Transition Plan for each individual upon entry that addresses the individual's support and service needs.

(d) A Behavior Support Plan, if needed, must be implemented within 120 days of the individual's placement that --

(A) Emphasizes the development of functional, alternative, and positive approaches to behavior intervention;

(B) Uses the least intervention possible;

(C) Ensures that abusive or demeaning intervention is never used; and

(D) Is evaluated by an ISP Team through review of specific data at least every six months to assess the effectiveness of the Plan.

(e) A provider of a Level 2B AFH-DD may not employ a resident manager or substitute caregiver who does not meet or exceed the qualifications and training standards described in subsection (b) of this section.

(f) A provider of a Level 2B AFH-DD may not admit an individual whose care and service needs exceed the licensed classification of the Level 2B AFH-DD and may not admit an individual without prior approval of the CDDP.

#### (5) LEVEL 2M LICENSE.

(a) A provider must be licensed as a Level 2M AFH-DD if the provider serves or intends to serve more than one individual who has a medical condition that is serious and may be life threatening. Examples of medical conditions that are serious and may be life threatening include but are not limited to:

(A) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(B) Significant risk of choking or aspiration;

(C) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids;

(D) Mental health or alcohol or drug problems that are not responsive to treatment interventions; or

(E) A terminal illness that requires hospice care.

(b) A Level 2M license may be issued by the Department only if the applicant and resident manager (if applicable) has met the requirements described in section (3) of this rule for a Level 1 license and meets the following additional criteria:

(A) Is a licensed health care provider such as a registered nurse or licensed practical nurse or has the equivalent of two years of full-time experience providing care and services to support individuals who have a medical condition described in subsection (a) of this section that is serious and may be life-threatening;

(B) Has current satisfactory references from at least two licensed health care providers, such as a physician, physician's assistant, nurse practitioner, or registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver; and

(C) Has fulfilled a minimum 6 of the 12 hours of annual training requirements in specific medical training.

(c) A provider of a Level 2M AFH-DD must have a Transition Plan for each individual upon entry that addresses the individual's support and service needs.

(d) A provider must develop, with an individual's ISP Team, a Medical Support Plan within 30 days of the individual's placement or whenever there is a change in the individual's health status.

(e) A provider of a Level 2M AFH-DD may not employ a resident manager or substitute caregiver who does not meet or exceed the qualification and training standards described in subsection (b) of this section.

(f) A provider of a Level 2M AFH-DD may not admit an individual whose care and service needs exceed the licensed classification of the Level 2M AFH-DD and may not admit an individual without prior approval of the CDDP.

Stat. Auth.: ORS 409.050 & 410.070  
Stats. Implemented: ORS 443.705 - 443.825

**411-360-0080 Issuance of a License**  
(Amended 9/27/2013)

(1) The Department issues a license within 60 days after the Department has received the completed application materials, if the home and applicant are found to be in compliance with these rules. The license specifies the type of license and includes the name of the licensee and resident manager (if applicable), address of the premises to which the license applies, the maximum capacity, expiration date, and classification level. The licensee must visibly post the license in the AFH-DD and the license must be available for inspection at all times.

(2) LIMITED LICENSE. A limited license is issued to a provider for the care of a specific individual. A provider with a limited license may not accept other placements. A provider with a limited license must meet the standards of an AFH-DD and acquire any additional training necessary to meet the specific support needs of the individual and may be subject to the requirements of:

- (a) OAR 411-360-0140, Standards and Practices for Health Care;
- (b) OAR 411-360-0160, Behavior Supports;
- (c) OAR 411-360-0170, Documentation and Record Requirements;
- (d) OAR 411-360-0180, General Practices; and
- (e) OAR 411-360-0190, Standards for Admission, Transfers, Respite, Crisis Placements, Exits, and Closure.

(3) PROVISIONAL LICENSE.

- (a) The Department may issue a 60-day provisional license to a qualified person if the Department determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the AFH-DD. A person is considered qualified if he or she is at least 21 years of age and meets

the qualifications of a provider described in OAR 411-360-0110(1)(a-f)(h-m).

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

(4) The Department may attach conditions to a license that limit, restrict, or specify other criteria for operation of the AFH-DD. The conditions must be posted with the license in the AFH-DD and be available for inspection at all times.

(5) A condition may be attached to a license that restricts admissions to the AFH-DD.

(6) A license for an AFH-DD is not transferable or applicable to any location or persons other than those specified on the license.

(7) When an AFH-DD is to be sold or otherwise transferred, the new provider must apply for, and obtain, a license prior to the transfer of operation of the AFH-DD.

(8) A license is valid for one year unless revoked or suspended.

(9) The Department does not issue a license to operate an additional AFH-DD to a provider who has failed to achieve and maintain substantial compliance with the rules and regulations while operating any existing home or homes.

(10) The Department does not issue an initial license unless:

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

(b) The Department has completed an inspection of the home;

(c) The Department has completed a background check on the applicant, resident manager (if applicable), and any subject individual as defined in OAR 411-360-0020;

(d) The Department has determined that the applicant has the financial ability and maintains sufficient liquid resources to pay the operating costs of the home for at least two months without solely relying on potential income from individuals and room and board payments;

(e) The Department has checked the record of sanctions available from the Department's files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and

(f) The Department has conducted a background check of the provider or resident manager with regard to founded abuse of children or substantiated abuse of adults.

(11) CHANGE OF RESIDENT MANAGER. If a resident manager changes during the period of time the license covers, the provider must notify the Department within 24 hours and identify who is to be providing care.

(a) The provider must submit a request for a change of resident manager to the Department with --

(A) A completed application for the resident manager applicant on the form supplied by the Department;

(B) A background check and a current consent form to conduct a background check for child abuse for the resident manager applicant; and

(C) A non-refundable payment fee of \$10.00.

(b) A revised license with the name of the new resident manager is issued upon the Department's determination that the applicant meets the requirements of a resident manager and the applicant has received the Department's required AFH-DD training and passed the test.



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

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825

**411-360-0090 AFH-DD License Renewal**  
*(Amended 8/10/2018)*

(1) A licensee must submit a renewal application and fee prior to the expiration date of their current license to keep the license in effect until the Department renews the license or issues a final order of non-renewal. If the renewal application and fee are not submitted prior to the expiration date of the current license, the AFH-DD is unlicensed and subject to administrative sanctions.

(2) The renewal application must include the information and fee described in OAR 411-360-0050. The following information is not required if the information has not changed:

(a) Physician's statement;

(b) Financial information;

(c) Floor plan; and

(d) The plan for the daily operation of the AFH-DD, including the following:

(A) The use of a resident manager and substitute caregivers, as applicable.

(B) The schedule of the provider, resident manager, and substitute caregivers, as applicable.

(C) The plan for coverage in the absence of the provider, resident manager, or substitute caregivers, as applicable; and

(D) The plan for covering administrative responsibilities and staffing qualifications when multiple homes are operated by the same provider.

(3) The Department shall investigate the information in the renewal application and conduct an inspection of the home.

(a) The licensee shall receive a copy of the Department's inspection form citing any deficiencies and specifying a time frame for correction, no later than 30 calendar days from the date of inspection.

(b) The Department may require the licensee to correct deficiencies prior to renewing a license. The Department may deny a renewal application if cited deficiencies are not corrected within the time frame specified by the Department.

(4) The Department does not renew a license unless the following conditions are met:

(a) The provider and the AFH-DD comply with ORS 443.002, ORS 443.705 through 443.825, and these rules.

(b) The Department has completed an inspection of the AFH-DD.

(c) The Department has completed a background check every two years in accordance with OAR 411-360-0110, ORS 181A.200, and ORS 443.004, on any subject individual as defined in OAR 411-360-0020.

(5) When an AFH-DD has been licensed for less than 24 months, the burden of proof to establish compliance with ORS 443.705 through 443.825 and these rules is upon the licensee.

(6) When an AFH-DD has been licensed for at least 24 continuous months, the burden of proof to establish noncompliance with ORS 443.705 through 443.825 and these rules is upon the Department.

Stat. Auth.: ORS 409.050, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

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

**411-360-0100 Contracts** *(Repealed 9/27/2013)*

**411-360-0110 Qualifications for AFH-DD Providers, Resident Managers, and Caregivers**  
*(Amended 8/10/2018)*

(1) PROVIDER QUALIFICATIONS. A provider must:

(a) Meet and maintain the level requirements of the AFH-DD license in accordance with OAR 411-360-0070.

(b) Be at least 21 years of age.

(c) Reside in the AFH-DD.

(A) A provider resides in the home when the provider sleeps in the home four nights per week.

(B) A resident manager resides in the AFH-DD when the resident manager sleeps in the same home multiple nights per week.

(d) Provide evidence satisfactory to the Department regarding experience, training, knowledge, interest, and concern in providing care and services to support individuals with intellectual or developmental disabilities. Such evidence may include, but is not limited to, the following:

(A) Certified nurse's aide training;

(B) Nursing home, hospital, or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Training approved by the Department; or

(E) Experience providing care and services and home management skills to individuals with intellectual or developmental disabilities.

(e) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Department to deliver 24-hour care and services to support individuals with intellectual or developmental disabilities.

(A) A provider must have a statement from a health care provider, on the applicable Department form, indicating the provider is physically and mentally capable of providing care and services.

(B) A provider with a documented history or substantiated complaint of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition.

(f) Have and maintain an approved background check in accordance with section (2) of this rule.

(g) Have no founded report of child abuse or a substantiated abuse allegation.

(h) Have the financial ability and maintain sufficient liquid resources to pay the operating costs of the AFH-DD for at least two months without solely relying on potential income from individuals and room and board payments. If a provider operates more than one AFH-DD, the provider must have the financial ability and maintain sufficient liquid resources to pay the operating costs of all the AFH-DDs for at least two months without solely relying on potential income from individuals and room and board payments.

(A) Upon application, documentation of the following must be provided to the Department, if applicable:

(i) Unsatisfied judgments, liens, and pending lawsuits where a claim for money or property is made against the applicant;

(ii) Bankruptcy filings by the applicant; and

(iii) Unpaid taxes due from the applicant including, but not limited to, property taxes, employment taxes, and state and federal income taxes.

(B) The Department may require or permit an applicant to provide a current credit report to satisfy the financial requirements in this rule.

(C) The Department may not issue an initial license to an applicant who has been adjudged bankrupt more than once.

(D) If an applicant has an unpaid judgment (other than a current judgment for support), pending lawsuit, lien, or unpaid taxes, proof the applicant has the amount of resources necessary to pay the claims must be provided to the Department.

(E) If an applicant is unable to demonstrate the financial ability and resources required by these rules, the Department may require the applicant to furnish a financial guarantee, such as a line of credit or guaranteed loan, as a condition of initial licensure.

(i) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with individuals, licensed health care providers, services coordinators, and others involved in the care of the individuals.

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

(k) If transporting individuals, have a valid driver's license and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(l) Annually review their responsibility as a mandatory reporter. Annual mandatory reporter notification must be documented on the applicable Department forms.

(m) Have a clear understanding of the job responsibilities, knowledge of the individuals' ISPs or Service Agreements, and the ability to provide the care and services specified for each individual.

(n) Not be listed on the Exclusion Lists of the Office of Inspector General or General Services Administration.

## (2) BACKGROUND CHECKS.

(a) Each subject individual as defined in OAR 411-360-0020 must have an approved background check in accordance with OAR 407-007-0200 through 407-007-0370 and ORS 181A.200, prior to operating, working, training, or residing in an AFH-DD. A preliminary determination may be made in accordance with subsection (b) of this section.

(A) As of September 1, 2017, a new background check must be completed every two years once a subject individual has passed an initial background check and their fitness determination has been entered into the Long-Term Background Check Registry, in accordance with OAR 407-007-0600 through 407-007-0640.

(B) A new background check must be completed prior to the following:

(i) A change in the employment or volunteer position of a subject individual (i.e. changing from a caregiver to resident manager).

(ii) A subject individual working in another AFH-DD regardless of whether the employer is the same or not, unless subsection (c) of this section applies.

## (b) PRELIMINARY DETERMINATION.

(A) A subject individual may be hired following completion of a preliminary fitness determination in accordance with OAR 407-007-0200 through 407-007-0370, unless the subject individual

is a licensee, co-licensee, or has partial ownership of the AFH-DD.

(B) A subject individual who is hired on a preliminary basis must be under the direct, on-site, supervision of another employee of the AFH-DD who has a current approved background check.

(c) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual, excluding licensees, may be approved to work in multiple homes within a county only when the subject individual is working in the same employment or volunteer position. The indication of worksite location must be included for each subject individual to show the intent of the subject individual to work at various AFH-DDs within the licensing jurisdiction of the county.

(d) Public funds may not be used to support, in whole or in part, a provider, a resident manager, employees of the provider, substitute caregivers, volunteers, or any other subject individual under OAR 407-007-0200 through 407-007-0370 who is subject to background checks, who has been convicted of any of the disqualifying crimes listed in ORS 443.004. This rule does not apply to a person hired prior to July 28, 2009.

(e) A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been convicted of any of the disqualifying crimes listed in ORS 443.004. This rule does not apply to a person hired prior to July 28, 2009.

(f) A weighing test is applied to background checks for occupants who do not provide care in the AFH-DD.

(3) RESIDENT MANAGER REQUIREMENTS. A resident manager must meet and maintain the provider qualifications listed in section (1) of this rule and the level requirements of the AFH-DD license in accordance with OAR 411-360-0070.

(4) SUBSTITUTE CAREGIVER REQUIREMENTS. A substitute caregiver must:

(a) Not be an individual service recipient of the AFH-DD.

(b) Meet and maintain the level requirements of the AFH-DD license in accordance with OAR 411-360-0070 and the training requirements in accordance with OAR 411-360-0120.

(c) Be at least 18 years of age.

(d) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Department to deliver care and services to support individuals with intellectual or developmental disabilities. A substitute caregiver with a documented history or substantiated complaint of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition.

(e) Have and maintain an approved background check in accordance with section (2) of this rule.

(f) Disclose on the application for employment if the substitute caregiver has been found to have committed abuse.

(g) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with individuals, licensed health care providers, services coordinators, and others involved in the care of the individuals.

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

(i) Know fire safety and emergency procedures.

(j) If transporting individuals, have a valid driver's license and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.

(k) Annually review their responsibility as a mandatory reporter. Annual mandatory reporter notification must be documented on the applicable Department forms.



(l) Have a clear understanding of the job responsibilities, knowledge of the individuals' ISPs or Service Agreements, and the ability to provide the care and services specified for each individual.

(m) Be able to meet the qualifications described in section (1) of this rule when left in charge of an AFH-DD for 30 calendar days or longer.

(5) A licensee may not hire or continue to employ a resident manager or substitute caregiver that does not meet the requirements stated in this rule.

(6) A licensee is responsible for the operation of the AFH-DD and the quality of care and services delivered in the AFH-DD.

(7) A licensee is responsible for the supervision and training of resident managers and substitute caregivers and their general conduct when acting within the scope of their employment or duties.

(8) A licensee, resident manager, caregiver, volunteer, or other subject individual must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department within 24 hours.

Stat. Auth.: ORS 409.050, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

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

### **411-360-0120 Training Requirements**

*(Amended 9/27/2013)*

(1) A provider must complete the Department's Basic Training Course that includes but is not limited to taking and passing an examination on course work and necessary skills. Failure to obtain a passing score on the Basic Training Examination may result in the denial or non-renewal of a license pursuant to OAR 411-360-0270. If an applicant fails the first Examination, a second Examination may be taken. If the applicant fails the second Examination, the application may be denied.

(2) All resident manager applicants must complete the Department's Basic Training Course and pass the Basic Training Examination prior to

becoming a resident manager. If the applicant fails the first Examination, a second Examination may be taken. If the applicant fails the second Examination, the application may be denied.

(3) All substitute caregivers must complete the Department's Basic Training Course and pass the Basic Training Examination prior to providing care and services. If a substitute caregiver fails the first Examination, a second Examination may be taken. If the substitute caregiver fails the second Examination, the substitute caregiver must wait 14 days to retake the Examination. Each subsequent test failure requires a 14-day waiting period until the substitute caregiver passes the Examination.

(4) The provider or resident manager must keep documentation of the completion of the Department's Basic Training Course and annual training of substitute caregivers including the date of the training, subject content, name of the agency or organization providing the training, and the number of training hours.

(5) Prior to placement of individuals in an AFH-DD, the provider must complete an AFH-DD orientation provided by the local CDDP that at a minimum covers the requirements of the rules governing AFH-DD services.

(6) Prior to providing care and services to any individual, a resident manager and substitute caregiver must be oriented to the AFH-DD and to the individuals by the provider. Orientation must be clearly documented in the AFH-DD records. Orientation includes but is not limited to:

- (a) The location of the fire extinguishers;
- (b) Demonstration of evacuation procedures;
- (c) Instruction on the emergency preparedness plan;
- (d) Location of the individuals' records;
- (e) Location of telephone numbers for the individuals' physicians, the provider, and other emergency contacts;
- (f) Location of medication and key for medication cabinet;

- (g) Introduction to individuals;
- (h) Instructions for caring for each individual;
- (i) Delegation by a registered nurse for nursing tasks if applicable;  
and
- (j) Instructions related to any Advance Directives.

(7) All provider and resident manager applicants must have current certification in first aid and CPR by a training agency approved by the Department.

(a) Accepted CPR and First Aid courses must be provided or endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(b) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(8) The Department requires at least 12 hours of Department-approved training annually for the provider, resident manager, and substitute caregivers. Training must be documented in the records of the AFH-DD.

(9) If a provider, resident manager, or substitute caregiver is not in compliance with these rules, the Department may require additional training in the deficient area, whether or not the 12-hour approved annual training requirement has already been met.

(10) Providers, resident managers, or substitute caregivers who perform tasks of care that are delegated by a registered nurse or taught by a physician must receive appropriate training and monitoring from a registered nurse or physician on performance and implementation of the task of care. The delegated tasks of care must be addressed as part of an individual's ISP.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825

**411-360-0130 AFH-DD Standards**  
(Amended 8/10/2018)

The following standards must be met to qualify for or renew an AFH-DD license:

(1) DAILY OPERATION. An up-to-date plan for the daily operation of an AFH-DD must be maintained and include the following:

- (a) The use of a resident manager and substitute caregivers, as applicable.
- (b) The schedule of the provider, resident manager, and substitute caregivers, as applicable.
- (c) The plan for coverage in the absence of the provider, resident manager, or substitute caregivers, as applicable.
- (d) The plan for covering administrative responsibilities and staffing qualifications when multiple homes are operated by the same provider.

(2) GENERAL CONDITIONS.

(a) Up-to-date documentation must be maintained verifying an AFH-DD meets the following:

- (A) Applicable local business license, zoning, building, and housing codes; and
- (B) State and local fire and safety regulations for a single-family residence.

(b) General buildings must be of sound construction and meet all applicable state and local fire and safety regulations in effect at the time of construction. It is the duty of the licensee to check with local

government to be sure all applicable local codes have been met. A current floor plan of the AFH-DD must be on file with the local CDDP.

(c) Mobile homes must have been built in 1976 or later and designed for use as a home rather than a travel trailer. The mobile home must have the label from the manufacturer permanently affixed to the home that states the mobile home meets the requirements of the Department of Housing and Urban Development (HUD) or authority having jurisdiction.

(d) INTERIOR AND EXTERIOR.

(A) The building, patios, decks, walkways, and furnishings must be clean and in good repair.

(B) The interior and exterior must be well maintained and accessible according to the needs of the individuals residing in the home.

(C) Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting, as appropriate.

(D) There must be no accumulation of garbage, debris, rubbish, or offensive odors.

(E) Interior and exterior stairways must have handrails and be adequately lighted. Yard and exterior steps must be accessible and appropriate to the needs of the individuals residing in the home.

(F) Hallways and exit ways must be at least 36 inches wide or as approved by the authority having jurisdiction. Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(e) LIGHTING. Adequate lighting must be provided in each room, interior and exterior stairways, and interior and exterior exit ways. Incandescent light bulbs and florescent tubes must be protected and installed per the directions of the manufacturer.

(f) TEMPERATURE.

(A) The heating system must be in working order. Areas of the AFH-DD used by individuals must be maintained at a comfortable temperature.

(B) Minimum temperatures during the day (when individuals are home) must be no less than 68 degrees Fahrenheit and no less than 60 degrees Fahrenheit at night when individuals are sleeping.

(C) During times of extreme summer heat, a provider must make every reasonable effort to make the individuals comfortable and safe using ventilation, fans, or air conditioners. The temperature may not exceed 85 degrees Fahrenheit in the AFH-DD.

(g) COMMON USE AREAS.

(A) There must be at least 150 square feet of common space and sufficient comfortable furniture in the AFH-DD to accommodate the recreational and socialization needs of all occupants at one time.

(i) Common space may not be in the basement or in the garage unless the space was constructed for that purpose or has otherwise been legalized under permit.

(ii) Additional space may be required if wheelchairs are to be accommodated.

(B) Individual access to, or use of, swimming or other pools, hot tubs, saunas, or spas, on the premise of the AFH-DD must be supervised. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access.

(h) Marijuana must not be grown in or on the premises of an AFH-DD. An individual with an Oregon Medical Marijuana Program (OMMP) registry card must arrange for and obtain their own supply of medical

marijuana from a designated grower as authorized by OMMP. A provider, caregiver, other employee, or any occupant in or on the premises of the AFH-DD, must not be designated as the grower for an individual and must not deliver marijuana from the supplier.

### (3) SANITATION.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, the water source must be tested annually for coliform bacteria by a certified agent and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) Septic tanks or other non-municipal sewage disposal systems must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal.

(d) Prior to laundering, soiled linens and clothing must be stored in containers in an area separate from food storage and the kitchen and dining areas. Special pre-wash attention must be given to soiled and wet bed linens.

(e) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards.

(A) Proof of current rabies or other vaccinations, as required by a licensed veterinarian, must be maintained on the premises of the AFH-DD.

(B) Pets not confined in enclosures must be under control and must not present a danger or health risk to individuals or guests.

(f) There must be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation.

(g) Universal precautions for infection control must be followed. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(h) Precautions must be taken to prevent injuries caused by needles and other sharp instruments or devices during procedures.

(A) Disposable syringes, needles, and other sharp items must be placed in a puncture-resistant container for disposal.

(B) The puncture-resistant container must be located as close as practical to the use area and disposed of according to local regulations and resources (ORS 459.386 through 459.405).

(4) BATHROOMS. Bathrooms must meet the following conditions:

(a) Provide for individual privacy and have a finished interior, a mirror, and a window capable of being opened with a window covering or other means of ventilation.

(b) No person must have to walk through the bedroom of another person to access a bathroom.

(c) Be clean and free of objectionable odors.

(d) Bathtubs, showers, toilets, and sinks must be in good repair.

(A) A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located.

(B) There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants, including the provider and their family.

(e) Hot and cold water must be in sufficient supply to meet the individuals' personal hygiene needs. Hot water temperature sources for bathing areas may not exceed 120 degrees Fahrenheit.



(f) Shower enclosures must have nonporous surfaces. Glass shower doors must be tempered safety glass. Shower curtains must be clean and in good condition.

(g) Bathtubs and showers must have non-slip floor surfaces.

(h) Toilets, bathtubs, and showers must have grab bars as required by the individuals' needs.

(i) The toilet, bathtub, and shower must have barrier-free access with appropriate fixtures for non-ambulatory individuals in the AFH-DD. Alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene.

(j) Adequate supplies of toilet paper for each toilet and soap for each sink must be provided.

(k) Each individual must be provided with a towel and wash cloth that is laundered in hot water at least weekly or more often if necessary.

(A) Individuals must have appropriate racks or hooks for drying bath linens.

(B) If individual hand towels are not provided, individually dispensed paper towels must be provided.

## (5) BEDROOMS.

(a) Bedrooms for all household occupants must meet the following conditions:

(A) Constructed as a bedroom when the home was built or remodeled under permit.

(B) Finished interior with walls or partitions of standard construction that go from floor to ceiling.

(C) Door opens directly to a hallway or common use room without passage through another bedroom or common bathroom.

(D) Adequate ventilation, heat, and light, with at least one window capable of being opened that meets the fire regulations described in subsection (k) of this section.

(E) At least 70 square feet of usable floor space for each occupant or 120 square feet of usable floor space for two occupants.

(F) No more than two occupants per room.

(b) A provider or their family members must not sleep in areas designated as common use living areas or share a bedroom with an individual.

(c) If an individual chooses to share a bedroom with another individual, the individuals must be afforded an opportunity to have a choice of roommates.

(d) Individuals must have the freedom to decorate and furnish his or her own bedroom as agreed to within the Residency Agreement.

(e) SINGLE ACTION LOCKS.

(A) An AFH-DD licensed on or after January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys.

(B) An AFH-DD licensed prior to January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys by September 1, 2018.

(C) Limitations may only be used when there is a health or safety risk and a written informed consent is obtained as described in OAR 411-360-0170 and OAR 411-004-0040.

(f) Each individual must have a bed. The bed must include a frame, unless otherwise documented by an ISP team decision. The bed must include a clean and comfortable mattress, a waterproof mattress cover if an individual is incontinent, and a pillow.

(g) Each individual's bedroom must have a separate, private dresser and closet space sufficient for the individual's clothing and personal effects, including hygiene and grooming supplies. An individual must be provided private and secure storage space to keep and use reasonable amounts of personal belongings.

(h) Drapes or shades for windows must be in good condition and allow privacy for individuals.

(i) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility.

(j) Individual bedrooms must be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with an intercom or audio monitor as approved by an ISP team.

(k) Each individual's bedroom must have at least one window or exterior door that readily opens from the inside without special tools and provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. If sill height is more than 44 inches from the floor level, approved steps or other aids for window egress must be provided. A grade floor window with a clear opening of not less than 720 square inches (5.0 sq. ft.) with a sill height of 48 inches may be accepted when approved by the State Fire Marshal or the authority having jurisdiction designee of the State Fire Marshal.

## (6) MEALS.

(a) A provider must support an individual's freedom to have access to his or her personal food at any time. Limitations may only be used when there is a health or safety risk and a written informed consent is

obtained as described in OAR 411-360-0170 and OAR 411-004-0040.

(b) Three nutritious meals and two snacks must be provided daily. Meals must be offered at times consistent with those in the community.

(A) Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA) and include fresh fruit and vegetables when in season, unless otherwise specified in writing by a health care provider.

(B) Food preparation must include consideration of cultural and ethnic backgrounds, as well as the food preferences of the individuals.

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

(A) Menu substitutions must comply with subsection (b) of this section.

(B) If an individual misses or plans to miss a meal at a scheduled time, or requests an alternate meal time, an alternative meal must be made available.

(C) Individuals are not restricted to specific meal times and must be encouraged to choose when, where, and with whom to eat.

(d) An individual is responsible for the provision of food beyond the required three meals and two snacks.

(e) MODIFIED OR SPECIAL DIETS. For an individual with a modified or special diet ordered by a physician or licensed health care provider, a provider must:

(A) Have menus for the current week that provide food and beverages that consider the preferences of the individual and are appropriate to the individual's modified or special diet; and

(B) Maintain documentation that identifies how modified or special diets are prepared and served.

(f) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage and preparation areas must protect food from dirt and contamination and be free from spoiled or expired food.

(g) Meals must be prepared and served in the AFH-DD.

(A) Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the responsibility of the provider.

(B) Meals and snacks as part of an individual recreational outing are the responsibility of the individual.

(h) Household utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination.

(i) Food storage, preparation areas, and equipment must be clean, free of objectionable odors, and in good repair.

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

## (7) TELEPHONE.

(a) A telephone must be provided in the AFH-DD that is available and accessible for the use of the individuals for incoming and outgoing calls. Telephone lines must be unblocked to allow for access.

(b) The following emergency telephone numbers must be posted in close proximity to each phone utilized by the provider, resident manager, individuals, and caregivers:

(A) Local CDDP;

(B) Police, fire, and medical if not served by 911;

(C) The provider if the provider does not reside in the AFH-DD;

(D) Emergency physician; and

(E) Additional persons to be contacted in the case of an emergency.

(c) Telephone numbers for making complaints or a report of alleged abuse to the Department, the local CDDP, and Disability Rights Oregon, must also be posted.

(d) A telephone must be accessible to individuals for outgoing calls 24 hours a day.

(e) The telephone number for an AFH-DD must be listed in the local telephone directory.

(f) The licensee must notify the Department, individuals, and as applicable the families, legal representatives, and service coordinators of the individuals, of any change in the AFH-DD's telephone number within 24 hours of the change.

## (8) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The AFH-DD may be inspected for fire safety by the Office of the State Fire Marshal at the request of the Department using the standards in these rules as appropriate.

(b) Only ambulatory individuals capable of self-preservation may be housed on a second floor or in a basement.

(c) Split level homes must be evaluated according to accessibility, emergency egress, and evacuation capabilities of the individuals.

(d) Ladders, rope, chain ladders, and other devices may not be used as a secondary means of egress.

(e) Heating in accordance with the specifications of the manufacturer and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes, used and maintained properly, and be in good repair.

(A) A provider who does not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member, and follow the recommended maintenance schedule.

(B) A fireplace must have a protective glass screen or metal mesh curtain attached to the top and bottom of the fireplace.

(C) The installation of a non-combustible, heat resistant, safety barrier 36 inches around wood stoves may be required to prevent individuals with ambulation or confusion problems from coming in contact with the stove.

(D) Un-vented portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction.

(f) Extension cord wiring and multi-plug adaptors must not be used in place of permanent wiring.

(A) UL-approved, re-locatable power tabs (RPTs) with circuit breaker protection are permitted for indoor use only and must be installed and used in accordance with the instructions of the manufacturer.

(B) If RPTs are used, the RPTs must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(g) Each exit door and interior door used for exit purposes must have simple hardware that cannot be locked against exit and must have an obvious method of single action operation.

(A) Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted.

(B) An AFH-DD with an individual who has impaired judgment and is known to wander away from the AFH-DD must have a functional and activated alarm system to alert a caregiver of the individual's unsupervised exit.

(h) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the instructions of the manufacturer. A carbon monoxide alarm must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(A) Carbon monoxide alarms may be hard wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with battery backup. Battery operated alarms must be equipped with a device that warns of a low battery.

(B) Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(i) SMOKE ALARMS. A smoke alarm must be installed in accordance with the instructions of the manufacturer in each bedroom, hallway or access area adjoining bedrooms, family room or main living area where occupants congregate, laundry room, office, and basement. In addition, a smoke alarm must be installed at the top of each stairway in a multi-level home.



(A) Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6 inches and 12 inches from the ceiling and not within 12 inches of a corner.

(B) Smoke alarms must be equipped with a device that warns of low battery when battery operated or with a battery backup if hard wired.

(C) When activated, smoke alarms must be audible in all bedrooms.

(D) Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(j) Each carbon monoxide alarm and smoke alarm must contain a sounding device or be interconnected to other alarms to provide, when activated, an audible alarm in each bedroom. The alarm must be loud enough to wake occupants when all bedroom doors are closed.

(k) A licensee must test each carbon monoxide alarm and smoke alarm in accordance with the instructions of the manufacturer at least monthly (per NFPA 72). Testing must be documented in the AFH-DD records.

(l) FIRE EXTINGUISHERS. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including the basement. Fire extinguishers must be inspected at least once a year by a person qualified in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose. Maintenance must be documented in the AFH-DD records.

(m) A licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in

working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(9) EMERGENCY PROCEDURES AND PLANNING.

(a) EVACUATION.

(A) A provider may have a fully operating and maintained interior sprinkler system approved by appropriate regulatory authorities allowing for evacuation of all individuals meeting applicable fire, life, and safety requirements; or

(B) A provider must demonstrate the ability to evacuate all occupants from the AFH-DD within three minutes. If the provider is not able to demonstrate the three-minute evacuation time, the Department may apply conditions to the license including, but not limited to, reducing the number of individuals receiving services, requiring additional staffing, increasing fire protection, or revoking the license.

(b) EVACUATION DRILLS.

(A) A provider must conduct unannounced evacuation drills when individuals are present, once every quarter, with at least one drill per year occurring during the hours of sleep. The availability of a fully operating interior sprinkler system does not substitute for the requirements of evacuation drills.

(i) Evacuation drills must occur at different times of the day, evening, and night, with exit routes being varied based on the location of a simulated fire.

(ii) All occupants must participate in the evacuation drills.

(B) Written documentation must be made at the time of each drill and kept by the provider for at least two years following the drill. Documentation of each evacuation drill must include the following:

(i) The date and time of the drill or simulated drill;

- (ii) The location of the simulated fire and exit route;
- (iii) The last names of each individual, provider, caregiver, and other occupants present on the premises of the AFH-DD at the time of the drill;
- (iv) The type of evacuation assistance provided to each individual;
- (v) The amount of time required by each individual to evacuate; and
- (vi) The signature of the provider or caregiver conducting the drill.

(c) A new individual must receive an orientation to basic safety and shown how to respond to a fire and carbon monoxide alarm and how to exit from the AFH-DD in an emergency within 24 hours of arriving. Documentation of orientation must be maintained in the individual's record.

(d) FLOOR PLANS. A provider must provide, post, and keep up to date, a floor plan on each floor.

(A) The floor plan must contain the following:

- (i) Size of each room;
- (ii) Size of each window;
- (iii) The location of the bed for each individual;
- (iv) Bedroom for the provider, and as applicable, caregivers, room and board tenants, and recipients of day care, relief care, or respite services;
- (v) Each exit on each level of the home, including emergency exits such as windows;

(vi) Wheelchair ramps, if applicable;

(vii) Each fire extinguisher, smoke alarm, carbon monoxide alarm, and sprinkler, if the home has an interior sprinkler system; and

(viii) Exit routes.

(B) The floor plan must be updated to reflect any change and a copy of the updated floor plan must be submitted to the Department.

(e) At least one plug-in rechargeable flashlight must be available for emergency lighting in a readily accessible area on each floor, including the basement.

(f) If an individual accesses the community independently, the provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(g) WRITTEN EMERGENCY PLAN. A provider must develop, maintain, and implement a written Emergency Plan for the protection of each individual in the event of an emergency or disaster. The Emergency Plan must:

(A) Be practiced at least annually. Practice of the Emergency Plan may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise.

(B) Consider the needs of the individuals receiving services and address all natural and human-caused events identified as a significant risk for the AFH-DD, such as a pandemic or an earthquake.

(C) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place, when unable to

relocate, for at least three calendar days under the following conditions:

- (i) Extended utility outage;
- (ii) No running water;
- (iii) Inability to replace food supplies; and
- (iv) Caregivers unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies the following:

- (i) The duties of caregivers during evacuation, transporting, and housing of individuals including instructions to caregivers to notify the Department and local CDDP of the plan to evacuate or the evacuation of the AFH-DD as soon as the emergency or disaster reasonably allows;
- (ii) The method and source of transportation;
- (iii) Planned relocation sites reasonably anticipated to meet the needs of the individuals;
- (iv) A method that provides persons unknown to an individual the ability to identify each individual by name and to identify the name of the supporting provider for the individual; and
- (v) A method for tracking and reporting to the Department and the local CDDP the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals including provisions for the following:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheet and the emergency information identified in OAR 411-360-0170, and other information necessary to obtain care, treatment, food, and fluids;

(ii) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(F) A provider must instruct and provide training to each caregiver about their duties and responsibilities for implementing the Emergency Plan.

(i) Documentation of caregiver training must be kept on record by the provider.

(ii) The provider must re-evaluate the Emergency Plan at least annually or when there is a significant change in the AFH-DD.

(G) Applicable parts of the Emergency Plan must coordinate with each applicable employment provider or day program provider to address the possibility of an emergency or disaster during day time hours.

#### (10) SPECIAL HAZARDS.

(a) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by individuals and vandals.

(b) Oxygen and other gas cylinders in service or in storage must be adequately secured to prevent cylinders from falling or being knocked over.

(A) No smoking signs must be visibly posted where oxygen or other gas cylinders are present.

(B) Oxygen and other gas cylinders may not be used or stored in rooms where a wood stove, fireplace, or open flames are located.

(c) To protect the safety of the individuals, a provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the individuals. Ammunition must be secured in a locked area separate from firearms.

(d) For an AFH-DD with one or more employees, smoking regulations in compliance with the Indoor Clean Air Act must be adopted to allow smoking only in outdoor designated areas. Signs must be posted prohibiting smoking in the workplace per OAR 333-015-0040.

(A) Designated smoking areas must be at least 10 feet from any entrance, exit, window that opens, ventilation intake, or accessibility ramp.

(B) Smoking is prohibited in bedrooms.

(C) Smoking is prohibited in vehicles when individuals or employees occupy the vehicle.

(D) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(e) Cleaning supplies, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, food preparation and storage, dining areas, and medications, and in a manner to prevent tampering by individuals.

(11) POSTED ITEMS. The following items must be posted in a conspicuous location accessible to individuals and visitors and be available for inspection:

- (a) The AFH-DD license and conditions attached to the license in accordance with OAR 411-360-0080;
- (b) Poster for the Residential Facilities Ombudsman Program in accordance with ORS 443.392;
- (c) The Bill of Rights and house rules in accordance with OAR 411-360-0170;
- (d) The Department's procedure for making complaints in accordance with OAR 411-360-0220;
- (e) A weekly menu in accordance with section (6) of this rule; and
- (f) The current floor plan in accordance with section (8) of this rule.

Stat. Auth.: ORS 409.050, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790  
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991

**411-360-0140 AFH-DD Standards and Practices for Health Care**  
*(Amended 8/10/2018)*

(1) INDIVIDUAL HEALTH CARE. An individual must receive care and services that supports and promotes their health and well-being.

- (a) A provider must ensure each individual has a primary physician or primary licensed health care provider the individual, or as applicable the legal representative of the individual, has chosen from among qualified providers.
- (b) A provider must ensure each individual receives a medical evaluation by a licensed health care provider no less than every two years or as recommended by the licensed health care provider.



(c) A provider must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(d) A written and signed order from a physician or licensed health care provider is required prior to the use or implementation of any of the following:

(A) Prescription medications;

(B) Non-prescription medications, except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Modified or special diets; and

(E) Adaptive equipment.

(e) A provider must implement the order of a physician or licensed health care provider.

(f) Injections may be:

(A) Self-administered by an individual; or

(B) Administered by the following:

(i) A relative of the individual;

(ii) A currently licensed registered nurse;

(iii) A licensed practical nurse under registered nurse supervision; or

(iv) A provider, resident manager, or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851,

divisions 045 and 047. Documentation regarding the physician training or registered nurse delegation must be maintained in the individual's record.

## (2) REQUIRED DOCUMENTATION.

(a) A provider must maintain and keep current records on each individual to aid physicians, licensed health care providers, the CDDP, and the Department in understanding the medical history of the individual. Each individual's record must include the following:

(A) A list of known health conditions, medical diagnoses, any known allergies, immunizations, Hepatitis B status, previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of the individual, and history of emotional or mental health status pertinent to the individual's current care and services.

(B) A record of visits and appointments to licensed health care providers, including documentation of the consultation, any treatment provided, and any follow-up reports provided to the provider.

(C) A record of known hospitalizations and surgeries.

(D) Current signed orders for all medications, treatments, therapies, special diets, and adaptive equipment.

(E) Medication administration records (MARs).

(F) Documentation of the consent from the individual's legal representative for non-routine medical treatment, including surgery and anesthesia.

(G) Copies of previous mental health assessments and assessment updates, including multi-axial DSM diagnosis, treatment recommendations, and progress records for mental health treatment services.

(b) When requested, copies of medical records and MARs must be provided to the legal representative, Department case manager, or services coordinator.

(3) MEDICATION PROCUREMENT AND STORAGE A provider must ensure prescription drugs dispensed to individuals are packaged in a manner that reduces errors in the tracking and administration of drugs including, but not limited to, the use of unit dose systems or blister packs. All medications must be:

(a) Kept in the original containers or unit dosage packs;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified by the written order of a physician or licensed health care provider; and

(c) Kept in a secured, locked container and stored as indicated by the product manufacturer.

(4) MEDICATION ADMINISTRATION.

(a) All medications and treatments must be recorded on an individualized MAR. The MAR must include the following:

(A) The name of the individual.

(B) A transcription of the written order of the physician or licensed health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration.

(C) For an over the counter topical medication without a written order from a physician or licensed health care provider, a transcription of the printed instructions from the topical medication package.

(D) The time and date of administration or self-administration of the medication.

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication.

(F) Method of administration.

(G) An explanation of why a PRN (as needed) medication was administered.

(H) Documented effectiveness of any PRN (as needed) medication administration.

(I) An explanation of all medication administration or documentation errors, including identifying information for the person making the correction.

(J) Documentation of any known allergy or adverse drug reaction.

(b) Any errors on a paper MAR must be corrected with a circle of the error and the initials of the person making the correction.

#### (5) SELF-ADMINISTRATION OF MEDICATION.

(a) For an individual who independently self-administers medication, the individual's ISP team must determine a plan for the periodic monitoring and review of the self-administration of medications.

(b) A provider must ensure individuals able to self-administer medications keep the medications in a place unavailable to other individuals and store the medications as recommended by the product manufacturer.

#### (6) USE OF MEDICAL MARIJUANA.

(a) Prior to using medical marijuana in an AFH-DD, an individual must:

(A) Possess a valid OMMP registry card. A copy of the current OMMP registry card for the individual must be made available to the provider and maintained in the record for the individual;

(B) Provide a copy of the written statement by the physician that indicates medical marijuana may mitigate the symptoms of the qualifying condition of the individual and includes instructions for the use of medical marijuana;

(C) Be responsible for obtaining the marijuana from an OMMP approved third party grower who is not the provider, caregiver, resident manager, or any other occupant in or on the premises of the AFH-DD; and

(D) Sign an agreement that the individual understands the following:

(i) Marijuana is not allowed to be grown by any person in or on the premises of the AFH-DD;

(ii) A participant in the OMMP may not possess more than one ounce of marijuana at any one time while in or on the premises of the AFH-DD;

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual must agree to arrange for a "designated primary caregiver". The designated primary caregiver must be authorized by the OMMP and identified on the OMMP registry card for the individual;

(iv) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot be designated as the OMMP-approved designated primary caregiver of the individual and identified on the OMMP registry card for the individual;

(v) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot assist with the preparation, administration, or delivery of medical marijuana;

(vi) The individual must maintain any equipment used to administer marijuana;

(vii) Marijuana must be kept in locked storage in the bedroom of the individual when not being administered;

(viii) The individual must immediately notify the OMMP of any change in status, such as a change in address, designated primary caregiver, or person responsible for the marijuana grow site. A copy of the updated OMMP registry card for the individual must be made available to the provider for the record of the individual; and

(ix) Failure to comply with Oregon laws, Oregon rules, or the Residency Agreement of the AFH-DD may result in additional action.

(b) An individual must comply with the Oregon Medical Marijuana Act, the rules for the OMMP in OAR chapter 333, division 008, these rules, and any other requirements for the OMMP.

(c) An individual must self-administer medical marijuana by ingesting the marijuana or inhaling the marijuana with a vaporizer. Smoking marijuana in or on the premises of the AFH-DD is prohibited. Marijuana must be administered privately in a room that is not shared with another person. The individual may not have visitors, other individuals, or any other person in this private space while self-administering the marijuana.

(d) An individual must designate a grower to provide the marijuana as necessary. The grower must not be the provider, resident manager, caregiver, or any occupant in or on the premises of the AFH-DD. The grower designated by the individual must be authorized by OMMP and identified on the OMMP registry card for the individual.

(A) The designated grower for individuals being served in the foster care system must accommodate the specific needs related to the dispensation and tracking of the controlled substance. Not more than 28 grams at a time may be stored on the property of the AFH-DD per card holder. The remainder of

the OMMP card holder's marijuana must be stored at the site of the grower.

(B) Each 28 grams, as needed, must be packaged in an airtight container clearly dated and labeled as to the total amount in grams with the name of the OMMP card holder. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the individual's MAR as to dosage in grams as weighed on a scale, date, and time of day.

(e) A provider, caregiver, resident manager, or any other occupants in or on the premises of the AFH-DD must not prepare or in any way assist with the administration or procurement of an individual's marijuana. The provider must monitor the individual's usage of medical marijuana to ensure safety and to document that the individual's use of medical marijuana is in compliance with the physician's instructions for using marijuana as documented in the ISP or Service Agreement.

(f) If a provider, resident manager, or caregiver also has an OMMP card for medical purposes, a substitute caregiver must be available to support the individuals when the provider, resident manager, or caregiver is under the influence of the medical marijuana. Any OMMP card holder in or on the premises of the AFH-DD must not smoke marijuana in or on the premises of the AFH-DD but may ingest the marijuana or inhale the marijuana with a vaporizer.

## (7) PSYCHOTROPIC MEDICATIONS.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or licensed health care provider through a written order; and

(B) Monitored by the prescribing physician or licensed health care provider, ISP team, and provider for desired responses and adverse consequences.

(b) A provider, resident manager, or any caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for an individual without direction from a physician or licensed health care provider.

(c) A provider, resident manager, or any caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a physician or licensed health care provider.

(d) PRN (as needed) psychotropic medication orders are not allowed.

(e) PSYCHOTROPIC MEDICATIONS FOR YOUNG ADULTS. A qualified mental health professional or a licensed health care provider must provide a mental health assessment prior to a young adult individual being prescribed one or more psychotropic medications or an antipsychotic medication.

(A) A mental health assessment is not required in the following situations:

(i) In case of urgent medical need;

(ii) For a change in the delivery system of the same medication;

(iii) For a change in medication within the same classification;

(iv) A one-time medication order given prior to a medical procedure; or

(v) An anti-epileptic medication prescribed for a seizure disorder.

(B) When a mental health assessment is required, a provider must notify and inform the following of the need for a mental health assessment:



(i) The legal guardian of the young adult, or the case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(C) The required mental health assessment:

(i) Must be completed within three months prior to the prescription of a psychotropic medication; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Information from the mental health assessment must be provided to a physician or licensed health care provider prior to the issuance of a prescription for a psychotropic medication.

(E) Within one business day after receiving a new prescription or knowledge of a new prescription for a psychotropic medication for a young adult, the provider must notify the following:

(i) The legal guardian of the young adult, or the case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(F) The notification described in subsection (E) of this section must contain the following:

(i) The name of the prescribing physician or licensed health care provider;

(ii) The name of the medication;

(iii) The dosage, any change of dosage, or suspension or discontinuation of the current psychotropic medication;

(iv) The dosage administration schedule prescribed; and

(v) The reason the medication was prescribed.

(G) A provider must get a written informed consent from one of the following prior to filling a prescription for any new psychotropic medication, except in case of urgent medical need:

(i) The legal guardian of the young adult; or

(ii) The Department when the Department is the legal guardian of the young adult.

(H) When a young adult has more than two prescriptions for psychotropic medications, an annual review of the psychotropic medications must occur by a physician, licensed health care provider, or a qualified mental health professional who has the authority to prescribe drugs, such as the Oregon Medicaid Drug Use Review Program.

(f) **BALANCING TEST.** When a psychotropic medication is first prescribed and annually thereafter, a provider must obtain a signed balancing test from the prescribing physician or licensed health care provider using the Balancing Test Form (form APD 4110), or by inserting the required form content into a form maintained by the provider.

(A) The provider must present the physician or licensed health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(B) The provider must keep signed copies of the balancing test in the individual's medical record for seven years.

## (8) MEDICATION SAFEGUARDS.

(a) A provider must use the following safeguards to prevent adverse effects or medication reactions:

(A) Whenever possible, obtain all prescription medication for an individual, except samples provided by the physician or licensed health care provider, from a single pharmacy that maintains a medication profile for the individual.

(B) Maintain information about each desired effect and side effect of the medication.

(C) Ensure medications prescribed for one individual are not administered to, or self-administered by, another individual or caregiver.

(b) If all medications for an individual are not provided through a single pharmacy, the provider must document the reason why in the individual's record.

(9) MEDICATION DISPOSAL. All unused, discontinued, outdated, recalled, or contaminated medications, including over-the-counter medications, may not be kept in the AFH-DD and must be disposed of within 10 calendar days of expiration, discontinuation, or the provider's knowledge of a recall or contamination. Prescription medications for an individual that has died must be disposed of within three calendar days.

(a) A provider must contact the local Department of Environmental Quality waste management company in the area of the AFH-DD for instructions on proper disposal of medications.

(b) Disposal of all controlled medications must be documented and witnessed by at least one other person who is 18 years of age or older.

(c) A written record of the disposal of the medication must be maintained and include documentation of the following:

(A) Date of disposal;

(B) Description of the medication, including dosage, strength, and amount being disposed;

- (C) Name of the individual for whom the medication was prescribed;
- (D) Reason for disposal;
- (E) Method of disposal;
- (F) Signature of the person disposing of the medication; and
- (G) For controlled medications, the signature of a witness to the disposal.

(10) NURSING SERVICES.

(a) When nursing services are provided to an individual a provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(b) COMMUNITY NURSING SERVICES. When community nursing services, as described in OAR chapter 411, division 048, are provided to an individual, a provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) PRIVATE DUTY NURSING. Under OAR chapter 410, division 132, young adults aged 18 through 20 who reside in a foster home and who meet the clinical criteria described in OAR 411-300-0120 are eligible for private duty nursing services.

(A) A Nursing Service Plan must be present when Department funds are used for private duty nursing services. A services coordinator must authorize the provision of private duty nursing services as identified in an individual's ISP.

(B) When private duty nursing services are provided to a young adult, a provider must:

(i) Coordinate with the registered nurse and the ISP team to ensure the private duty nursing services being delivered are sufficient to meet the health needs of the young adult; and

(ii) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(C) Under OAR 410-132-0080, a provider is not authorized to deliver private duty nursing services.

(d) DIRECT NURSING SERVICES. Direct nursing services may be provided to individuals 21 years of age and older as described in OAR chapter 411, division 380.

(A) A Nursing Service Plan must be present when Department funds are used for direct nursing services. A services coordinator must authorize the provision of direct nursing services as identified in an ISP.

(B) When direct nursing services are provided to an individual a provider must:

(i) Coordinate with the registered nurse and the ISP team to ensure the direct nursing services being provided are sufficient to meet the health needs of the individual;

(ii) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse; and

(iii) While delivering a direct nursing service exclusively to an eligible individual in the AFH-DD, ensure the needs of other individuals in the home are met, up to and including additional staffing, such as resident managers, substitute caregivers, or additional nurses in the home. Documentation must record staffing coverage.

(C) A provider licensed by the Department may provide direct nursing services to an individual in the AFH-DD under the following conditions:

(i) The provider must meet the qualifications to provide direct nursing services as described in OAR chapter 411, division 380;

(ii) More than one individual resides in the AFH-DD;

(iii) The provider is the choice of the individual or the legal representative of the individual and is not for the convenience of the provider; and

(iv) The provider meets the requirements as an enrolled Medicaid Provider as described in OAR chapter 411, division 380 and has a separate and distinct Medicaid provider number.

(11) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a provider, resident manager, and substitute caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, divisions 045 and 047.

Stat. Auth.: ORS 409.050, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

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

**411-360-0150 Personal Care Services** *(Repealed 9/27/2013)*

**411-360-0160 Behavior Supports and Physical Restraints**  
*(Amended 12/1/2017)*

For the purpose of this rule, a designated person is the person implementing the behavior supports identified in an individual's Positive Behavior Support Plan.

(1) BEHAVIOR SUPPORTS.

(a) A decision to develop a plan to alter an individual's behavior must be made by the individual or their legal or designated representative.

(b) A foster care provider must implement an individual's Positive Behavior Support Plan as developed by a qualified behavior professional in accordance with OAR chapter 411, division 304.

(c) A Positive Behavior Support Plan must only be altered by a qualified behavior professional in accordance with OAR chapter 411, division 304.

(2) SAFEGUARDING INTERVENTIONS AND SAFEGUARDING EQUIPMENT.

(a) A designated person must only utilize a safeguarding intervention or safeguarding equipment when --

(A) BEHAVIOR. Used to address an individual's challenging behavior, the safeguarding intervention or safeguarding equipment is included in the individual's Positive Behavior Support Plan written by a qualified behavior professional as described in OAR 411-304-0150 and implemented consistent with the individual's Positive Behavior Support Plan.

(B) MEDICAL. Used to address an individual's medical condition or medical support need, the safeguarding intervention or safeguarding equipment is included in a medical order written by the individual's licensed health care provider and implemented consistent with the medical order.

(b) The individual, or as applicable their legal representative, must provide consent for the safeguarding intervention or safeguarding

equipment through an individually-based limitation in accordance with OAR 411-360-0170.

(c) Prior to utilizing a safeguarding intervention or safeguarding equipment, a designated person must be trained.

(A) For a safeguarding intervention, the designated person must be trained in intervention techniques using an ODDS-approved behavior intervention curriculum and trained to the individual's specific needs. Training must be conducted by a person who is appropriately certified in an ODDS-approved behavior intervention curriculum.

(B) For safeguarding equipment, the designated person must be trained on the use of the identified safeguarding equipment.

(d) A designated person must not utilize any safeguarding intervention or safeguarding equipment not meeting the standards set forth in this rule even when the use is directed by the individual or their legal or designated representative, regardless of the individual's age.

### (3) EMERGENCY PHYSICAL RESTRAINTS.

(a) The use of an emergency physical restraint when not written into a Positive Behavior Support Plan, not authorized in an individual's ISP, and not consented to by the individual in an individually-based limitation, must only be used when all of the following conditions are met:

(A) In situations when there is imminent risk of harm to the individual or others or when the individual's behavior has a probability of leading to engagement with the legal or justice system;

(B) Only as a measure of last resort; and

(C) Only for as long as the situation presents imminent danger to the health or safety of the individual or others.



(b) The use of an emergency physical restraint must not include any of the following characteristics:

- (A) Abusive.
- (B) Aversive.
- (C) Coercive.
- (D) For convenience.
- (E) Disciplinary.
- (F) Demeaning.
- (G) Mechanical.
- (H) Prone or supine restraint.
- (I) Pain compliance.
- (J) Punishment.
- (K) Retaliatory.

(4) INCIDENT REPORTING. A foster care provider must complete an incident report to ensure the notification of the use of a safeguarding intervention, safeguarding equipment not as prescribed, or an emergency physical restraint, as described in OAR 411-360-0180.

Stat. Auth.: ORS 409.050, 427.104, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790  
Stats. Implemented: ORS 443.705-443.825

**411-360-0170 AFH-DD Documentation and Record Requirements**  
(Amended 8/10/2018)

(1) INDIVIDUAL RECORDS. A record must be developed, kept current, and available on the premises of the AFH-DD for each individual admitted to the AFH-DD.

(a) A provider must maintain a summary sheet for each individual in the AFH-DD. The summary sheet must include the following:

(A) The name of the individual, current and previous address (when current address is less than six months old), date of entry into the AFH-DD, date of birth, gender, marital status, religious preference, preferred hospital, Medicaid prime and private insurance number (if applicable), and guardianship status.

(B) The name, address, and telephone number of the following (as applicable):

(i) The individual's legal representative, family, advocate, or other significant person.

(ii) The primary physician or licensed health care provider and designated back up physician or licensed health care provider or clinic preferred by the individual.

(iii) The dentist preferred by the individual.

(iv) The individual's day program or employer.

(v) The individual's services coordinator.

(vi) Other representatives delivering care and services to the individual.

(b) EMERGENCY INFORMATION. A provider must maintain emergency information for each individual receiving care and services in the AFH-DD, in addition to the individual summary sheet identified in subsection (a) of this section. The emergency information must be kept current and must include the following:

(A) The individual's name.

(B) The provider's name, address, and telephone number.

(C) The address and telephone number of the AFH-DD where the individual resides if different from the provider.

(D) The individual's physical description, which may include a picture of the individual with the date the picture was taken, and identification of the following:

(i) Race, gender, height, weight range, and color of hair and eyes.

(ii) Any other identifying characteristics that may assist in identifying the individual, such as marks or scars, tattoos, or body piercings.

(E) Information on the individual's abilities and characteristics including, but not limited to, the following:

(i) How the individual communicates.

(ii) The language the individual uses or understands.

(iii) The individual's ability to know how to take care of bodily functions.

(iv) Any additional information that may assist a person not familiar with the individual to understand what the individual can do for himself or herself.

(F) The individual's health support needs including, but not limited to, the following:

(i) Diagnosis.

(ii) Allergies or adverse drug reactions.

(iii) Health issues a person needs to know when taking care of the individual.

(iv) Special dietary or nutritional needs, such as requirements around textures or consistency of foods and fluids.

(v) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk.

(vi) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual.

(vii) Physical limitations that may affect the individual's ability to communicate, respond to instructions, or follow directions.

(viii) Specialized equipment needed for mobility, positioning, or other health-related needs.

(G) The individual's emotional and behavioral support needs including, but not limited to, the following:

(i) Mental health or behavioral diagnosis and the behaviors displayed by the individual.

(ii) Approaches to use when supporting the individual to minimize emotional and physical outbursts.

(H) Any court ordered or guardian authorized contacts or limitations.

(I) The individual's supervision requirements and why.

(J) Any additional information the provider has that may assist in the individual's care and support if a natural or man-made disaster occurs.

(c) Individual records must be made available to representatives of the Department conducting inspections or investigations as well as to

individuals to whom the information pertains, the individual's legal representative, or other legally authorized people.

(d) Individual records must be kept by a provider for a period of at least three years. When an individual moves or an AFH-DD closes, copies of the individual's records must be transferred to the individual's new residence.

(e) A provider must comply with ORS 179.505 in all other matters pertaining to confidential records and release of information.

(2) **INDIVIDUAL ACCOUNT RECORDS.** For an individual not yet capable of managing money as determined by their ISP team or legal representative, a provider must prepare, maintain, and keep current a separate and accurate written record of all money received or disbursed on behalf of or by the individual.

(a) The account record must include the following:

(A) Date, amount, and source of income received.

(B) Date, amount, and purpose of funds disbursed.

(C) Signature of the provider or caregiver making the entry.

(b) Purchases of \$10.00 or more made on an individual's behalf must be documented by receipts unless an alternate amount is otherwise specified by the individual's ISP team.

(c) An individual's Personal Incidental Funds (PIF) are to be used at the discretion of the individual for things such as clothing, video games, and snacks (not part of daily diet) as addressed in their ISP.

(d) Each account record must include the disposition of the room and board fee the individual pays to the foster care provider at the beginning of each month.

(e) **REIMBURSEMENT TO INDIVIDUAL.** A provider must reimburse an individual for any missing funds within the custody of the provider or due to theft or mismanagement on the part of the provider, resident

manager, or caregiver. Reimbursement must be made within 10 business days from the date of verification the funds are missing.

(f) Financial records must be maintained for at least seven years.

(3) **PERSONAL PROPERTY RECORD.** A provider must prepare and maintain an accurate individual written record of personal property that has significant emotional or monetary value to each individual as determined by a documented ISP team or legal representative decision. The personal property record must include the following:

(a) A description and identifying number (if any).

(b) Date of inclusion in the record.

(c) Date and reason for removal from record.

(d) Signature of person making the entry.

(e) A signed and dated annual review of the personal property record for accuracy.

(4) **INDIVIDUAL SUPPORT PLAN.**

(a) A provider must collect and summarize the following information prior to an individual's ISP meeting:

(A) One-page profile reflecting, at a minimum, information gathered by the provider;

(B) Person-centered information reflecting, at a minimum, information gathered by the provider; and

(C) Information about known, identified serious risks.

(b) The following information must be developed by a provider and shared with an individual's services coordinator and the individual, or if applicable the individual's legal or designated representative, as directed by the Services Agreement.

(A) Implementation strategies, such as action plans, for desired outcomes or goals.

(B) Necessary protocols or plans that address health, behavioral, safety, and financial supports.

(C) A summary of the provider's risk management strategies in place, including title of document, date, and where the document is located.

(D) A Nursing Service Plan, if applicable.

(E) Other documents required by the ISP team.

(c) When desired by an individual, a provider must participate in the individual's ISP team meetings.

(d) A provider must agree in writing to implement the portion of an individual's ISP for which the provider is responsible for implementing. Agreement may be recorded by the provider's signature on the individual's ISP or Service Agreement.

(e) A provider must maintain a copy of an individual's ISP or Service Agreement provided by the CDDP.

(f) A provider must maintain documentation of implementation of each support and services specified in subsection (b) of this section. The documentation must be kept current and be available for review by the individual, the individual's legal representative, CDDP, and Department representatives.

#### (5) INDIVIDUALLY-BASED LIMITATIONS.

(a) A provider may not place any limitations to the following freedoms without an individually-based limitation:

(A) Support and freedom to access the individual's personal food at any time.

(B) Visitors of the individual's choosing at any time.

(C) A lock on the individual's bedroom, lockable by the individual.

(D) Choice of a roommate, if sharing a bedroom.

(E) Freedom to furnish and decorate the individual's bedroom as the individual chooses in accordance with their Residency Agreement.

(F) Freedom and support to control the individual's schedule and activities.

(G) Freedom from restraint, except in accordance with the standards for developmental disabilities services set forth in ORS 443.739, OAR chapter 411, or the relevant Title XIX Medicaid-funding authority.

(b) When an individual's freedom in subsection (a) of this section may not be met due to a threat to the health and safety of the individual or others, an individually-based limitation must be authorized and documented in the individual's ISP in accordance with OAR 411-415-0070.

(c) A provider is responsible for the following:

(A) Maintaining a copy of the completed and signed form documenting an individual's consent to the appropriate individually-based limitation. The form must be signed by the individual or the individual's legal representative, if applicable.

(B) Regular collection and review of data to measure the ongoing effectiveness of, and the continued need for, the individually-based limitation.

(C) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.

(6) HOUSE RULES.



(a) House rules must be submitted to the Department prior to implementation and as changes occur and may be subject to review and approval by the Department.

(b) House rules must be posted in a conspicuous location in the AFH-DD accessible to individuals and visitors.

(c) House rules may not violate the rights of an individual as stated in ORS 443.739, OAR 411-318-0010, and described in section (11) of this rule.

(d) House rules may not be in conflict with these rules or the home and community-based services and settings rules in OAR chapter 411, division 004.

(e) A provider must review and provide a copy of the house rules to each individual, and as applicable the individual's legal representative, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or as applicable the individual's legal representative, sign and date a copy of the house rules. A copy of the signed and dated house rules must be maintained in the individual's record.

(7) RESIDENCY AGREEMENTS. A provider must maintain a Residency Agreement with each individual as described in OAR 411-360-0055, and if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.

(8) GENERAL INFORMATION. A provider must maintain all other information or correspondence pertaining to an individual.

(9) MONTHLY PROGRESS NOTES. A provider must maintain and keep current monthly progress notes for each individual that include, at a minimum, the progress of the supports identified in an individual's ISP or Service Agreement, any medical, behavioral, or safety issues, or any other events significant to the individual.

(10) POSITIVE BEHAVIOR SUPPORT PLAN DATA. A provider and caregivers must document, track, and maintain behavioral data specified in an approved Positive Behavior Support Plan for each individual.

(11) INDIVIDUAL'S BILL OF RIGHTS.

(a) As stated in ORS 443.739, each individual residing in an AFH-DD has the right to the following:

(A) Be treated as an adult, with respect and dignity.

(B) Be informed of all rights and all house rules.

(C) Be encouraged and assisted to exercise legal rights, including the right to vote.

(D) Be informed of his or her medical condition and the right to consent to or refuse treatment.

(E) Receive appropriate care and services, and prompt medical care as needed.

(F) A safe and secure environment.

(G) Be free from mental and physical abuse.

(H) Be free from restraints, except as described in OAR 411-360-0160.

(I) Complete privacy when receiving treatment or personal care.

(J) Associate and communicate privately with any person the individual chooses.

(K) Send and receive personal mail unopened.

(L) Participate in activities of social, religious, and community groups.

(M) Have medical and personal information kept confidential.

(N) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(O) Manage the individual's own money and financial affairs unless legally restricted.

(P) Be free from financial exploitation. A provider may not charge or ask for application fees or nonrefundable deposits and may not solicit, accept, or receive money or property from an individual other than the amount agreed to for services.

(Q) A written agreement regarding the services to be provided and the rate schedule to be charged. A provider must give written notice 30 calendar days prior to any change in the rates or the ownership of the AFH-DD.

(R) Not be transferred or moved out of the AFH-DD without written notice 30 calendar days in advance and an opportunity for a hearing. A provider may transfer or discharge an individual only for medical reasons including a medical emergency described in ORS 443.738(11)(b), or for the welfare of the individual or other individuals residing in the AFH-DD, or for nonpayment.

(S) Be free of discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, source of income, duration of Oregon residence, or other protected classes under federal and Oregon Civil Rights laws.

(T) Make suggestions and complaints without fear of retaliation.

(U) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order.

(b) A provider must guarantee these rights and help individuals exercise them.

(c) A provider must post a copy of the Bill of Rights in the entry or other equally prominent place in the AFH-DD. The Bill of Rights must include the name and phone number of the office to call to report a complaint.

(d) A provider must explain and provide a copy of the Bill of Rights along with a description of how to exercise the rights to each individual and the individual's legal representative at the time of entry and document in the individual's file that a copy of the Bill of Rights was provided.

(e) A provider must review the Bill of Rights with each individual and the individual's legal representative annually or as changes occur.

(f) In addition to the rights described in subsection (11)(a) of this section, individuals receiving home and community-based services in residential and non-residential home and community-based settings have the right to home and community-based settings with the qualities described in OAR 411-004-0020(1).

(g) In addition to the rights described in subsections (11)(a) of this section, individuals receiving home and community-based services in provider owned, controlled, or operated residential settings have the right to provider owned, controlled, or operated residential settings with the qualities described in OAR 411-004-0020(2).

(12) AFH-DD records must be kept current and maintained by the provider and be available for inspection upon request.

(13) EMPLOYMENT RECORDS. AFH-DD records must include proof the provider, resident manager, and any other caregivers have met the minimum qualifications as required by OAR 411-360-0110. The following documentation must be included in the AFH-DD record and made available for review upon request:

(a) Completed employment applications including the names, addresses, and telephone numbers of all caregivers employed by the provider. An application for employment in any capacity in an AFH-

DD must include a question asking whether the person applying for employment has ever been found to have committed abuse.

(b) Proof the provider has an approved background check from the Department in accordance with OAR 411-360-0110, for each subject individual as defined in OAR 411-360-0020.

(A) The provider must maintain documentation of preliminary and final fitness determinations in accordance with these rules and the background check rules in OAR chapter 407, division 007.

(B) Verification may include printed or electronic documentation.

(C) Verification must be readily accessible upon request.

(c) Proof of required training according to OAR 411-360-0120. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of training hours.

(d) A certificate to document completion of the Department's Basic Training Course for the provider, resident manager, and substitute caregivers, as applicable.

(e) Proof of mandatory abuse report training for the provider, resident manager, and substitute caregivers, as applicable.

(f) Proof of any additional training required for the specific classification of an AFH-DD or the provider, resident manager, and all caregivers, as applicable.

(g) Documentation of caregiver orientation to the AFH-DD, training of emergency procedures, training on the ISPs or Service Agreements for individuals, and training on behavior supports and the Nursing Service Plan (if applicable).

(h) For each person implementing the behavior supports identified in an individual's Positive Behavior Support Plan, documentation of

training on the individual's Positive Behavior Support Plan and, if applicable, certification in an ODDS-approved behavior intervention curriculum.

Stat. Auth.: ORS 409.050, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790  
Stats. Implemented: ORS 443.001-443.004, 443.705-443.825, 443.875, 443.991

**411-360-0180 General Practices**  
(Amended 12/1/2017)

A foster care provider must:

- (1) Post the license for the AFH-DD in a conspicuous location in the AFH-DD that is accessible to individuals and visitors;
- (2) Cooperate with Department personnel or designees of the Department in complaint investigation procedures, abuse investigations and protective services, planning for individual care and services, application procedures, and other necessary activities, and allow access of Department personnel to the AFH-DD, the individuals, and all records;
- (3) Give care and services as appropriate to the age and condition of the individuals and as identified in the ISP or Service Agreement. The provider must be responsible for ensuring that the orders of physicians and health care providers are followed and that the physicians and health care providers are informed of changes in health status and if the individual refuses care and services;
- (4) In the absence of the provider, have a substitute caregiver on the premises that is capable of providing care and services as required by the age and condition of the individuals. An AFH-DD service recipient may not be a substitute caregiver. For provider absences beyond 72 hours, the CDDP must be notified of the name of the substitute caregiver and the plan of operation in the absence of the provider;
- (5) A provider, resident manager, or caregiver must be present in the AFH-DD at all times individuals are present, unless specifically stated in an ISP or Service Agreement and granted as a variance by the Department;

(6) Allow individuals to exercise all civil and human rights accorded to other citizens;

(7) Not allow or tolerate physical, sexual, or emotional abuse or punishment, exploitation, or neglect of individuals;

(8) Provide care and services as agreed to in an ISP or Service Agreement;

(9) Keep information related to individuals confidential as required under ORS 179.505;

(10) Assure that the number of individuals requiring nursing care does not exceed the capability of the provider as determined by the Department;

(11) Not admit individuals without developmental or intellectual disabilities prior to the express permission of the Department. The provider must notify the CDDP prior to admitting an individual not referred for placement by the CDDP;

(12) Exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of individuals;

(13) Notify the Department within 24 hours upon a change in the business address for electronic mail and the telephone number for the provider and the AFH-DD.

(14) Immediately notify an individual's case management entity of any of the following:

(a) An incident falls within the scope of abuse as defined in OAR 411-317-0000. In addition to immediately notifying the case management entity, the foster care provider must also immediately notify local law enforcement if there is reason to suspect a crime has occurred.

(b) A serious illness, injury, accident, or death of an individual. In addition to immediately notifying the case management entity, the foster care provider must also immediately notify all of the following (as applicable):

(A) The individual's legal or designated representative, parent, next of kin, and designated contact person.

(B) Any other agency responsible for, or delivering services to, the individual.

(c) An individual is away from the home without support beyond the time frames established by their ISP team. In addition to immediately notifying the case management entity, the foster care provider must also immediately notify all of the following (as applicable):

(A) The individual's legal or designated representative and nearest responsible relative.

(B) The local police department.

(15) Complete an incident report as described in section:

(a) **TYPES OF INCIDENTS.** A foster care provider must complete an incident report for all of the following:

(A) Any allegation of abuse as defined in OAR 411-317-0000.

(B) Death or serious illness, injury, or accident, requiring inpatient or emergency hospitalization.

(C) An individual is away from the home without support beyond the time frames established by their ISP team.

(D) Use of an emergency physical restraint.

(E) Use of a safeguarding intervention or safeguarding equipment.

(F) Unusual incident as defined in OAR 411-317-0000.

(b) **INCIDENT REPORT REQUIREMENTS.** An incident report must include all of the following information:

(A) Name of the individual who is the subject of the incident.



(B) Date, time, duration, type, and location of the incident.

(C) Conditions prior to, or leading to, the incident.

(D) Detailed description of the incident, including staff response.

(E) Description of injury, if injury occurred.

(F) Name of staff, including their position title, and witnesses to the incident.

(G) Follow-up to be taken to prevent a recurrence of the incident. The use of any emergency physical restraint must be reviewed by the license within two hours of application.

(c) INCIDENT REPORTING TIMELINES.

(A) A foster care provider must place an incident report in the individual's record and provide a copy to the individual's case manager, and as applicable their legal representative, in accordance with the following timelines:

(i) ABUSE. An incident report documenting abuse must be provided within five business days from the date of the incident.

(ii) DEATH, SERIOUS ILLNESS, INJURY, OR ACCIDENT. An incident report documenting a death or a serious illness, injury, or accident, must be provided within five business days from the date of the incident.

(iii) UNAUTHORIZED ABSENCE. An incident report documenting an individual's unauthorized absence must be provided within five business days from the date of the incident.

(iv) EMERGENCY PHYSICAL RESTRAINT. An incident report documenting the use of an emergency physical

restraint must be provided within one business day from the date of the incident.

**(v) SAFEGUARDING INTERVENTION AND SAFEGUARDING EQUIPMENT.**

(I) **TEMPORARY EMERGENCY SAFETY PLANS.** If an individual has a Temporary Emergency Safety Plan, an incident report documenting the use of a safeguarding intervention or safeguarding equipment must be completed in accordance with the requirements outlined in the individual's Temporary Emergency Safety Plan.

(II) **INJURY.** An incident report documenting the use of a safeguarding intervention or safeguarding equipment, resulting in an injury, must be provided within one business day from the date of the incident.

(III) **NO INJURY.** An incident report documenting the use of a safeguarding intervention or safeguarding equipment, not resulting in an injury, must be provided within five business days from the date of the incident.

(vi) **UNUSUAL INCIDENT.** An incident report documenting an unusual incident must be provided within five business days.

(B) An individual's case manager or a Department designee (when applicable) must receive complete copies of all incident reports.

(C) A copy of an incident report provided to an individual's legal representative or other service providers must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(D) A copy of an incident report may not be provided to an individual's legal representative when the report is part of an abuse investigation.

Stat. Auth.: ORS 409.050, 427.104, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790  
Stats. Implemented: ORS 443.705-443.825

**411-360-0190 Standards for Entry, Transfer, Community Living Supports, Exit, and Closure**  
(Amended 6/29/2016)

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters an AFH-DD is subject to eligibility as described in this section.

(a) To become a Department-funded resident of an AFH-DD, an individual must:

(A) Be an Oregon resident;

(B) Be receiving a Medicaid Title XIX (OHP) benefit package through OSIPM or OCCS medical program;

(C) Be determined eligible for developmental disabilities services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020; and

(E) Be an individual who is not receiving other Department-funded in-home or other funded comprehensive residential services.

(b) Individuals receiving Medicaid OHP under OCCS medical coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if they were requesting these services under OSIPM, including the rules regarding:

(A) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300; and

(B) The equity value of a home which exceeds the limits as set forth in OAR 461-145-0220.

(3) ENTRY. All individuals considered for entry into the AFH-DD must:

(a) Be referred by the CDDP or have prior written approval of the CDDP or Department if the services for the individual are paid for by the Department; or

(b) Be placed with the agreement of the CDDP if the individual is either private pay or not eligible for developmental disability services.

(4) ENTRY.

(a) ENTRY MEETING. A provider must participate in an entry meeting prior to the individual moving in to the home.

(b) At the time of a referral from the CDDP, a provider must demonstrate efforts to acquire the following individual information from the referring CDDP:

(A) A copy of the eligibility determination document;

(B) A statement indicating the safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

- (i) The results of the most recent physical exam;
- (ii) The results of any dental evaluation;
- (iii) A record of immunizations;
- (iv) A record of known communicable diseases and allergies; and
- (v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) Copies of documents relating to the guardianship, conservatorship, health care representation, , power of attorney, or any legal restrictions on the rights of the individual (if applicable);

(G) A copy of the most recent Behavior Support Plan and assessment, ISP or Service Agreement, Nursing Service Plan, and Individualized Education Program (if applicable); and

(H) Copies of protocols, the risk tracking record, and any support documentation (if available).

(c) If an individual is being admitted from the family home of the individual and the information required in subsection (b) of this section is not available, the provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

(5) The provider retains the right to deny the entry of any individual if the provider feels the support needs of the individual may not be met by the provider or for any other reason specifically prohibited by these rules.

(6) An AFH-DD may not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the Department.

(7) TRANSFERS.

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the AFH-DD without 30 days advance written notice to the individual, the legal representative of the individual, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the right of the individual to a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080, except for a medical emergency or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care and services;

(C) The license for the AFH-DD has been suspended, revoked, not renewed, or the provider voluntarily surrendered the license;

(D) The care and service needs of the individual exceed the ability of the provider; or

(E) There is a mutual decision made by the individual, the legal representative of the individual, and the ISP team that a transfer is in the best interest of the individual and all ISP team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider must be given the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080. Participants may include the

individual and at the request of the individual, the provider, a family member, and the CDDP. If a hearing is requested to appeal a transfer, the individual must continue to receive the same services until the appeal is resolved.

## (8) COMMUNITY LIVING SUPPORTS.

(a) Community living supports may be provided to one or more individuals if the addition of the individual receiving community living supports in the AFH-DD does not cause the capacity of the AFH-DD as determined by OAR 411-360-0060 to exceed five. Relief care may not be provided for more than 14 consecutive days to a single individual without prior approval from the Department.

(b) The provider must have information sufficient to provide for the health and safety of an individual receiving community living supports that includes the following:

(A) Medications provided in a container labeled from a pharmacy or in the original container labeled from the manufacturer;

(B) A list of medications, administration times, and self-administration information as needed. Administration of medication must be documented on a MAR;

(C) Basic summary sheet for the individual that includes the following:

(i) The name of the physician or health care provider of the individual and the phone number for the physician or health care provider;

(ii) The name of the emergency contact person of the individual and the phone number for the emergency contact;

(iii) List of supports related to food and drink (textures, special diets, allergies, preferences);

(iv) List of supports related to health supports;

(v) List of supports related to safety, including ability to adjust water temperature; and

(vi) List of supports related to challenging behaviors.

(c) On the first relief care visit of an individual, the provider must practice and document a fire drill immediately upon the arrival of the individual. For subsequent relief care visits, the provider must review the fire evacuation procedures with the individual and document the review.

(d) No use of PRN (as needed) psychotropic medications is allowed.

#### (9) IMMEDIATE EXIT.

(a) An individual who was admitted on or after July 1, 2014 may be moved without advance notice if all of the following are met:

(A) The AFH-DD provider was not notified prior to the entry of the individual to the AFH-DD that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime;

(B) The AFH-DD provider learns that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(C) The individual presents a current risk of harm to another individual, staff, or visitor in the AFH-DD as evidenced by:

(i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; or

(ii) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the Static 99 score for the individual or other



assessment indicates a probable sexual re-offense risk to others in the AFH-DD.

(b) Prior to the move, the AFH-DD provider must contact the Central Office of the Department by telephone to review the criteria in subsection (a) of this section. The Department shall respond within one business day of contact by the AFH-DD. The parole or probation officer of the Department of Corrections must be included in the review, if available. The Department shall advise the AFH-DD provider if rule criteria for immediate exit are not met. The Department shall assist in locating placement options.

(c) A written move-out notice must be completed on form number APD 0719DD. The form must be filled out in its entirety and a copy of the notice must be delivered in person to the individual or if applicable the legal representative of the individual. Where an individual lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(d) Prior to the move, the AFH-DD licensee must orally review the notice and the right to object with the individual, or as applicable the legal representative of the individual, and determine if a hearing is requested. A request for hearing does not delay the exit. The AFH-DD must immediately telephone the Central Office of the Department when a hearing is requested. The hearing must be held within five business days of the exit of the individual. An informal conference may not be held prior to the hearing.

#### (10) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers as described in section (7)(a) of this rule or for an immediate exit as described in section (9) of this rule.

(b) The provider must give at least 30 days written notice to an individual, the services coordinator, and the Department before termination of residency, unless an immediate exit as described in section (9) of this rule or where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual

requests a hearing to appeal an exit from an AFH-DD, the individual must receive the same services until the appeal is resolved. This does not apply to an immediate exit as described in section (9) of this rule.

(c) The provider must promptly notify the CDDP in writing if an individual gives notice or plans to leave the AFH-DD or if an individual abruptly leaves. An individual is not required to give notice to an AFH-DD provider if the individual chooses to exit the AFH-DD.

(11) EXIT MEETING. A provider must participate in an exit meeting before any decision to exit is made if required by the case management entity.

(12) CLOSURE. Providers must notify the Department and CDDP in writing prior to announcing a voluntary closure of the AFH-DD to individuals and the legal representatives of the individuals.

(a) The provider must give each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, except in circumstances where undue delay might jeopardize the health, safety, or welfare of the individuals, provider, or caregivers.

(b) If a provider has more than one AFH-DD, the individuals may not be shifted from one AFH-DD to another AFH-DD without providing each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, unless prior approval is given and agreement obtained from the individuals, the legal representative of the individuals, and the CDDP or when undue delay might jeopardize the health, safety, or well-being of the individuals, provider, or caregivers.

(c) A provider must return the AFH-DD license to the Department if the AFH-DD closes prior to the expiration of the license.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-443.825

## **411-360-0200 Adjustment, Suspension, or Termination of Payment**

*(Amended 6/29/2016)*

(1) The Department may adjust, suspend, or terminate payment to a provider when any of the following conditions occur:

- (a) The license for the AFH-DD is revoked, suspended, or terminated;
- (b) Upon finding that the provider is failing to deliver any care or service as agreed to in an ISP or Service Agreement;
- (c) When funding, laws, regulations, or the priorities of the Department change such that funding is no longer available, redirected to other purposes, or reduced;
- (d) The care and service needs of an individual change;
- (e) An individual is absent for five or more consecutive days without providing notice to the provider;
- (f) An individual is determined to be ineligible for services; or
- (g) An individual moves, with or without notice, from the AFH-DD. The provider is paid only through the last night the individual slept in the AFH-DD.

(2) The Department is under no obligation to maintain the AFH-DD at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790  
Stats. Implemented: ORS 443.705-443.825

### **411-360-0210 Inspections and Abuse Investigations**

*(Amended 9/27/2013)*

(1) The Department conducts an inspection of an AFH-DD --

- (a) Prior to the issuance of an AFH-DD license;
- (b) Prior to the annual renewal of an AFH-DD license;

(c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or

(d) Anytime the Department has probable cause to believe that an AFH-DD violated a regulation or provision of these rules or is operating without an AFH-DD license.

(2) The Department may conduct inspections of an AFH-DD --

(a) Anytime inspections are authorized by these rules and any other time the Department considers an inspection necessary to determine if an AFH-DD is in compliance with these rules or with conditions placed upon the license of the AFH-DD;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring an individuals' care and services.

(3) State or local fire inspectors must be permitted access to inspect an AFH-DD for fire safety upon request of the Department.

(4) Department staff must have full access and authority to --

(a) Examine the physical premises of the AFH-DD including the buildings, grounds, equipment, and any vehicles; and

(b) Examine and copy facility, individual, and account records (as applicable).

(5) Department staff has authority to interview the provider, resident manager, caregivers, and individuals. Interviews are conducted in private and are confidential except as considered public record under ORS 430.763.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Department staff for the purpose of inspection and investigation.

(7) Department staff has authority to conduct inspections with or without advance notice to the provider, substitute caregiver, or an individual of the AFH-DD. The Department may not give advance notice of any inspection if the Department believes that advance notice may obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) The inspector must respect the private possessions and living area of individuals, providers, and caregivers while conducting an inspection.

(9) A copy of the inspection report must be given to the licensee within 10 working days of completion of the final report.

(10) Completed reports on inspections, except for confidential information, are available to the public during business hours, upon request of the Department.

#### (11) ABUSE INVESTIGATIONS.

(a) The Department investigates allegations of abuse as defined in OAR 407-045-0260 for individuals receiving services authorized or funded by the Department.

(b) When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Department has determined to initiate an abuse investigation, the provider may not conduct an internal investigation without prior authorization from the Department. For the purpose of this section, an internal investigation is defined as:

(A) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(B) Reviewing evidence relevant to the abuse allegation other than the initial report; or

(C) Any other actions beyond the initial actions of determining:

(i) If there is reasonable cause to believe that abuse has occurred;

(ii) If the alleged victim is in danger or in need of immediate protective services;

(iii) If there is reason to believe that a crime has been committed; and

(iv) What, if any, immediate personnel actions must be taken.

(c) When an abuse investigation has been initiated, the Department must provide notice to the provider according to OAR 407-045-0290.

(d) The Department conducts investigations as described in OAR 407-045-0250 to 407-045-0360.

(e) When an abuse investigation has been completed, the outcome of the Abuse Investigation and Protective Services Report is provided by the Department according to OAR 407-045-0320.

(f) NOTIFICATION OF SUBSTANTIATED ABUSE.

(A) When a provider receives notification of a substantiated allegation of abuse, the provider must provide immediate written notification:

(i) To the person found to have committed abuse;

(ii) Each individual of the AFH-DD;

(iii) Each individual's services coordinator; and

(iv) Each individual's legal representative.

(B) The provider's written notification of a substantiated allegation of abuse must include:

(i) The type of abuse as defined in OAR 407-045-0260;

(ii) When the allegation was substantiated; and

(iii) How to request a copy of the Abuse Investigation and Protective Services Report.

(g) When a provider has been notified of the completion of the abuse investigation, a provider may conduct an internal investigation to determine if any other personnel actions are necessary.

(h) According to OAR 407-045-0330, the sections of the Abuse Investigation and Protective Services Report that are public records and not exempt from disclosure under the public records law must be provided to the provider upon completion of the Report. The provider must implement the actions necessary within the deadlines listed to prevent further abuse as stated in the Report.

(i) RETALIATION. A provider may not retaliate against any person who reports in good faith suspected abuse, or against the individual with respect to the report. An accused person may not self-report solely for the purpose of claiming retaliation.

(A) According to ORS 430.755, any provider who retaliates against any person because of a report of suspected abuse or neglect is liable in a private action to that person for actual damages and, in addition, is subject to a penalty up to \$1,000, not withstanding any other remedy provided by law.

(B) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For the purpose of this section, "adverse action" means any action taken by a community facility, community program, or person involved in a report of suspected abuse against the person making the report or against the individual because of the report. Adverse action may include but is not limited to:

(i) Discharge or transfer from the AFH-DD, except for clinical reasons;

(ii) Discharge from or termination of employment;

(iii) Demotion or reduction in remuneration for services; or

(iv) Restriction or prohibition of access to the AFH-DD or the individuals served by the AFH-DD.

(C) Adverse action may also be evidence of retaliation after 90 days even though the presumption of retaliation no longer applies.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

### **411-360-0220 Complaints**

*(Amended 9/27/2013)*

(1) The Department furnishes each AFH-DD with a Complaint Notice. The Complaint Notice must be posted in a conspicuous location in the AFH-DD, stating the telephone number of the Department and the CDDP, and the procedure for making complaints.

(2) Any person who believes these rules have been violated may file a complaint with the Department or CDDP.

(3) The Department investigates any complaint regarding the AFH-DD.

(4) Copies of all AFH-DD complaints are maintained by the Department. All complaints and action taken on the complaint, indexed by the name of the provider, must:

(a) Be placed into the public file at the Department. (Information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed);

(b) Protect the privacy of the complainant and the individual; and

(c) Treat the names of the witnesses as confidential information.

(5) Providers who receive substantiated complaints pertaining to the health, safety, or welfare of individuals may have their AFH-DD licenses suspended, revoked, or not renewed, or may have conditions placed on the AFH-DD license.



(6) The provider, resident manager, or caregiver must not retaliate in any way against any individual after a complaint has been filed with the Department. Retaliation may include but is not limited to:

(a) Increasing charges;

(b) Decreasing care or services, rights, or privileges;

(c) Threatening to increase charges or decrease care or services, rights, or privileges;

(d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH-DD; or

(e) Abusing, harassing, or threatening to harass or abuse an individual in any manner.

(7) A complainant, witness, or caregiver of an AFH-DD must not be subject to retaliation by a provider or resident manager for making a report, being interviewed about a complaint, or being a witness. Retaliation may include but is not limited to caregiver dismissal or harassment or restriction of access to either the AFH-DD or an individual.

(8) Any person has the right to inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Department upon request subject to the Department's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests subject to federal and state confidentiality laws.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825

### **411-360-0230 Procedures for Correction of Violations** (Amended 9/27/2013)

(1) If an inspection or investigation results in a violation of these rules other than abuse, the Department notifies the provider in writing of violations of these rules.

(2) The notice of violation includes the following:

(a) A description of each conduct or condition that constitutes a violation;

(b) Each rule that has been violated; and

(c) A specific timeframe for correction, not to exceed 30 calendar days after receipt of the notice of violations.

(A) The Department may approve a reasonable timeframe in excess of 30 calendar days if correction of the violation within that timeframe is not practical.

(B) If the licensee requests more than 30 calendar days to correct the violation, such time must be specified in the licensee's plan of correction and must be found acceptable by the Department.

(3) The provider must notify the Department in writing of the correction of violations no later than the date specified in the notice of violation.

(4) The Department may conduct a re-inspection of the AFH-DD after the date the Department receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(5) For violations that present an imminent danger to the health, safety, or welfare of individuals, the licensee must correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Department inspects the AFH-DD after the 24-hour period to determine if the violations are corrected as specified in the notice of violation.

(6) If individuals are in immediate danger, the AFH-DD license may be suspended immediately and arrangements made to move the individuals.

(7) If, after inspection of the AFH-DD, the violations have not been corrected by the date specified in the notice of violation or if the

Department has not received a report of compliance, the Department may institute one or more of the following actions:

- (a) Imposition of an administrative sanction; or
- (b) Filing of a criminal complaint.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825

**411-360-0240 Administrative Sanction**  
*(Amended 9/27/2013)*

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction may include one or more of the following actions:

- (a) Attachment of conditions to an AFH-DD license;
- (b) Civil penalties;
- (c) Denial, suspension, revocation, or non-renewal of the AFH-DD license; or
- (d) Reclassification of the AFH-DD license.

(2) If the Department imposes an administrative sanction, the notice of administrative sanction is served upon the licensee either personally or by certified mail.

(3) The notice of administrative sanction includes:

- (a) Each sanction imposed;
- (b) A reference to the particular sections of the statute, rule, standard, or order involved;
- (c) A short and plain statement of each condition or act that constitutes a violation;

- (d) A statement of the administrative sanction imposed;
- (e) A statement of the licensee's right to a contested case hearing;
- (f) A statement of the authority and jurisdiction under which the contested case hearing is to be held;
- (g) A statement that the Department's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and
- (h) A statement that the Department's notice of administrative sanction serves as the final order by default if the licensee fails to request a contested case hearing within the specified time or fails to appear for a contested case hearing.

(4) The licensee must comply with the final order of the Department.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825

**411-360-0250 Conditions**  
*(Amended 12/28/2014)*

(1) The Department may attach conditions to a license that take effect immediately upon notification by the Department or the delivery of the notice of condition whichever is sooner. The type of conditions attached to an AFH-DD license must directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to a license upon a finding that:

- (a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;
- (b) A threat to the health, safety, or welfare of an individual exists;
- (c) There is evidence of abuse, neglect, or exploitation; or

(d) The AFH-DD is not being operated in compliance with these rules.

(2) Conditions that the Department may impose on a license include, but are not limited to:

(a) Restricting the total number of individuals in the AFH-DD based upon the ability of the licensee to meet the health and safety needs of the individuals;

(b) Restricting the total number and impairment level of individuals in the AFH-DD based upon the capacity of the caregivers to meet the health and safety needs of all individuals;

(c) Requiring additional caregivers to meet the needs of the individuals;

(d) Requiring additional qualifications or training of the licensee and caregivers to meet specific individual care and service needs;

(e) Requiring additional documentation;

(f) Restricting a provider from opening an additional AFH-DD;

(g) Restricting entry --

(A) When there is a threat of harm to the individuals of the AFH-DD and admitting new individuals compounds that threat; or

(B) When the Department has issued a notice of intent to revoke or not renew the license; and

(h) Restricting a licensee from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual.

(3) The Department issues a written notice to the provider when the Department imposes conditions to a license. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183.

(4) The licensee may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of the imposition of conditions.

(a) The licensee must request a hearing within 21 days from the receipt of the written notice of conditions. Conditions take effect immediately upon issuance of the written notice of conditions and are a Final Order of the Department unless later rescinded through the hearings process.

(b) In addition to, or in lieu of a hearing, a licensee may request an administrative review by the Director of the Department. The administrative review does not diminish the right of the licensee to a hearing.

(5) Conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied. The licensee may send a written request to the Department to remove a condition if the licensee believes the situation that warranted the condition has been remedied.

(6) Conditions must be posted with the AFH-DD license in a prominent location in the AFH-DD and be available for inspection at all times.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

#### **411-360-0260 Civil Penalties**

*(Amended 6/29/2016)*

(1) A civil penalty of not less than \$100 and not more than \$250 per violation, except as otherwise provided in this rule, is imposed on a licensee for a general violation of these rules.

(2) A civil penalty of up to \$500, unless otherwise required by law, is imposed for falsifying individual or AFH-DD records or causing another to falsify individual or AFH-DD records.

(3) A civil penalty of \$250 is imposed on a licensee for failure to have either the provider, resident manager, or other qualified caregiver on duty 24 hours per day in the AFH-DD per ORS 443.725(3), unless permitted under OAR 411-360-0180(7).

(4) A civil penalty of \$250 is imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) A civil penalty of not less than \$250 and not more than \$500, unless otherwise required by law, is imposed on a licensee who admits knowing that the care or service needs of an individual exceed the license classification of the AFH-DD if the admission places the individual or other individuals at grave risk of harm.

(6) Civil penalties of up to \$1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Department conducts an abuse investigation and the substantiated abuse resulted in the death, serious injury, rape, or sexual abuse of an individual, a civil penalty of not less than \$2,500 is imposed for each violation.

(a) To impose the civil penalty in section (7) of this rule, the Department must establish that:

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

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of an individual; and

(C) The person with the substantiated finding of abuse had a duty of care and services toward the individual.

(b) For the purpose of the civil penalty in section (7) of this rule, the following definitions apply:

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

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

(C) "Sexual abuse" means any form of nonconsensual sexual contact including, but not limited to, unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty, the Department may impose a civil penalty for any of the following:

(a) Operating the AFH-DD without a license;

(b) The number of individuals exceeds the licensed capacity for the AFH-DD;

(c) The licensee fails to achieve satisfactory compliance with the requirements of these rules within the time specified or fails to maintain such compliance;

(d) The AFH-DD is unable to provide an adequate level of care and services to support individuals in the AFH-DD;

(e) There is retaliation or discrimination against an individual, family member, employee, or any other person for making a complaint against the AFH-DD;



(f) The licensee fails to cooperate with the Department, physician, registered nurse, or other health care provider in carrying out the ISP or Service Agreement for an individual;

(g) The licensee fails to obtain an approved background check from the Department on a subject individual as defined in OAR 411-360-0020 prior to the subject individual operating, working, training in, or residing in an AFH-DD;

(h) Violations are found on two consecutive inspections of an AFH-DD after a reasonable amount of time prescribed for elimination of the violations has passed; or

(i) Violations other than those involving the health, safety, or welfare of an individual if the licensee fails to correct the violation as required when a reasonable timeframe for correction was given.

(9) In imposing a civil penalty pursuant to this rule, except for a civil penalty imposed pursuant to section (7) of this rule, the following factors are considered by the Department:

(a) The past history of the licensee incurring a civil penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to AFH-DD;

(c) The economic and financial conditions of the licensee incurring the civil penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, and welfare of the individuals.

(10) The notice of civil penalty is delivered in person or sent by registered or certified mail and includes:

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

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the civil penalty or penalties imposed; and

(d) A statement of the right of the licensee to request a contested case hearing.

(11) The licensee has 10 calendar days after the receipt of the notice of civil penalty in which to make a written application for a contested case hearing before the Department. A final order by default is issued by the Department if a written request for a contested case hearing is not timely received.

(12) All contested case hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(13) Except as may be prohibited by state law, a civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Director of the Department considers proper and consistent with individual health and safety.

(14) If a final order is not appealed, the amount of the civil penalty is payable within 10 days after the final order is entered. If the final order is appealed and is sustained, the amount of the civil penalty is payable within 10 days after the court decision. The final order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with provisions of ORS chapter 18. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(15) A violation of any general order or final order pertaining to an AFH-DD issued by the Department is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(16) Judicial review of civil penalties imposed under ORS 441.710 is provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(17) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are to be paid into the Quality Care Fund.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-443.825

#### **411-360-0270 Denial, Revocation, or Non-renewal of License**

*(Amended 9/27/2013)*

(1) The Department denies, revokes, or refuses to renew a license where it finds:

(a) There has been imminent danger to the health or safety of individuals or substantial failure to comply with these rules;

(b) There is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of individuals in an AFH-DD;

(c) The Department has conducted a background check and determined the applicant or licensee is not approved in accordance with OAR 411-360-0110;

(d) The applicant or licensee is listed on the Office of Inspector General's or the U.S. General Services Administration's (System for Award Management) Exclusion Lists;

(e) The licensee allows a caregiver, or any other subject individual as defined in OAR 411-360-0020, excluding individuals who are receiving care and services in the AFH-DD, to operate, work, train in, or reside in the AFH-DD that --

(A) Have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(B) Are not approved by the Department as the result of a background check; or

(C) Refused to cooperate with the Department for a background check in accordance with OAR 407-007-0200 to 407-007-0370;

(f) The applicant or licensee falsely represents that he or she has not been convicted of a crime;

(g) The licensee fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction;

(h) When a background check is required on or after July 28, 2009, a subject individual as defined in OAR 411-360-0020 has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(i) The Department of Revenue has sent the Department a notice in accordance with ORS 305.385;

(j) The applicant or licensee has had a previous certificate or license to operate a foster home, or any other setting involving residential care, denied, suspended, revoked, or not renewed within three years preceding the present action or is associated with a person whose certificate or license was denied, suspended, revoked, or not renewed within three years preceding the present action due to the abuse of an individual or failure to possess the physical or mental health, or good personal character necessary, unless the applicant or licensee demonstrates to the Department by clear and convincing evidence that the applicant or licensee, or the person associated with the applicant or licensee, does not pose a threat to the individuals.

(A) For the purpose of this subsection, an applicant or licensee is "associated with" a person as described above, if the applicant or licensee:

(i) Resides with the person;

(ii) Employs the person in the AFH-DD;

(iii) Receives financial backing from the person for the benefit of the AFH-DD;

(iv) Receives managerial assistance from the person for the benefit of the AFH-DD; or

(v) Allows the person to have access to the AFH-DD.

(B) For the purpose of this subsection only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.

(2) The Department may deny, revoke, or refuse to renew an AFH-DD license if the applicant or licensee:

(a) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or disruption of utility services due to failure to pay bills;

(b) Has threatened the health, safety, or welfare of any individual;

(c) Has a founded report of abuse of a child or has a substantiated finding of abuse of an individual;

(d) Has a medical or psychiatric problem that interferes with the applicant's or licensee's ability to provide care and services;

(e) Has had a previous certificate or license to operate a foster home, or any other setting involving residential care, denied, suspended, revoked, or not renewed more than three years from the present action or the licensee or applicant is associated with a person whose certificate or license was denied, suspended, revoked, or not renewed more than three years from the present action due to the abuse of an individual or failure to possess the physical or mental health, or good personal character necessary, unless the applicant or licensee demonstrates to the Department by clear and convincing evidence that the applicant or licensee, or the person associated with the applicant or licensee, does not pose a threat to the individuals.

(A) For the purpose of this subsection, an applicant or licensee is "associated with" a person as described above, if the applicant or licensee:

(i) Resides with the person;

(ii) Employs the person in the AFH-DD;

(iii) Receives financial backing from the person for the benefit of the AFH-DD;

(iv) Receives managerial assistance from the person for the benefit of the AFH-DD; or

(v) Allows the person to have access to the AFH-DD.

(B) For the purpose of this subsection only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.

(f) Has failed to pass the second AFH-DD Basic Training Examination;

(g) Has failed to disclose requested information on the application or submits untrue information to the Department;

(h) Has previously been cited for the operation of an unlicensed AFH;

(i) Does not possess the good judgment or character deemed necessary by the Department;

(j) Fails to correct a violation within the specified timeframe allowed;

(k) Refuses to allow access to the AFH-DD and inspection of the AFH-DD;

(l) Fails to comply with a final order of the Department to correct a violation of the rules for which an administrative sanction has been imposed, such as a license condition;

(m) Fails to obtain an approved background check for subject individuals according to OAR 411- 360-0110; or

(n) Fails to operate any AFH-DD licensed to the licensee in substantial compliance with ORS 443.705 to 443.825 and these rules.

(3) DENIAL. When the Department denies an applicant an AFH-DD license, the applicant has 60 calendar days after receipt of the notice of denial to make a written application for a contested case hearing before the Department.

(4) NON-RENEWAL. When an administrative sanction is to not renew an AFH-DD license, the licensee has 21 calendar days after the receipt of the notice of administrative sanction to make a written application for a contested case hearing before the Department.

(5) REVOCATION. When an administrative sanction is to revoke a license, the licensee has 10 calendar days after the receipt of the notice of administrative sanction to make a written application for a contested case hearing before the Department.

(6) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(7) If the applicant or licensee fails to request a contested case hearing within the timeframe specified in the notice of denial, refusal to renew, or revocation, a default order may be entered by the Department.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

### **411-360-0275 Suspension**

*(Amended 12/28/2014)*

(1) The Department may suspend a license for reasons of abuse, neglect, or exploitation of an individual if:

(a) An immediate threat to the health, safety, or welfare of any individual exists;

(b) There is evidence of abuse, neglect, or exploitation of any individual;

(c) The AFH-DD is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted there under; or

(d) The provider has been found to have been convicted of a crime that would have resulted in a denied fitness determination of a background check.

(2) The licensee may request an administrative review of the decision of the Department to suspend an AFH-DD license. The Department must receive a written request for an administrative review within 10 days from the receipt of the notice and order of suspension.

(a) Within 10 days from the receipt of the request for an administrative review from the licensee, all material relating to the allegation of abuse, neglect, or exploitation and the suspension of the AFH-DD license, including any written documentation submitted by the licensee within that timeframe, is reviewed by the Director of the Department. Based on review of the material, the Director determines whether to sustain the decision to suspend the AFH-DD license.

(b) A suspension is rescinded immediately if the Director does not sustain the decision to suspend the AFH-DD license.

(c) The decision of the Director is subject to a hearing under ORS chapter 183 if requested within 90 days from the date of the decision of the administrative review.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended, the Department withholds service payments until the license is reinstated.

(4) For the protection of the individuals, the Department arranges for the individuals in the AFH-DD to move when the AFH-DD license is suspended.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

#### **411-360-0280 Criminal Penalties**

*(Amended 9/27/2013)*



(1) Operating an AFH-DD without a license is punishable as a Class C misdemeanor pursuant to ORS 443.991(5).

(2) Refusing to allow the Department access and inspection to the AFH-DD or access to the AFH-DD regarding fire safety by state and local fire inspector, is punishable as a Class B misdemeanor pursuant ORS 443.991(6).

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

### **411-360-0290 Enjoinment of Operation**

*(Amended 9/27/2013)*

The Department may commence an action to enjoin operation of an AFH pursuant to ORS 443.775(8) --

(1) When an AFH-DD is operated without a valid license; or

(2) After notice of revocation or suspension has been given, a reasonable time for placement of individuals in other homes has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

### **411-360-0300 Zoning**

*(Amended 9/27/2013)*

An AFH-DD is a residential use of property for zoning purposes. An AFH-DD is a permitted use in any residential zone, including a residential zone that allows a single family dwelling, and in any commercial zone that allows a single-family dwelling. No city or county may impose any zoning requirement on the establishment and maintenance of an AFH-DD in these zones that is more restrictive than a single-family dwelling in the same zone.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825

**411-360-0310 Public Information**  
(Amended 9/27/2013)

(1) The Department maintains current information on all licensed AFH-DD's and makes that information available to prospective individuals, the individuals' families, and other interested members of the public.

(2) The information includes:

- (a) The location of the AFH-DD;
- (b) A brief description of the physical characteristics of the AFH-DD;
- (c) The name and mailing address of the provider;
- (d) The license classification of the AFH-DD and the date the provider was first licensed to operate the AFH-DD;
- (e) The date of the last inspection of the AFH-DD, the name and telephone number of the office that performed the inspection, and a summary of the findings of the inspection;
- (f) Copies of all complaint investigations involving the AFH-DD, together with the findings of and actions taken by the Department;
- (g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions, or other actions taken by the Department involving the AFH-DD; and
- (h) Whether care and services are provided primarily by the provider, a resident manager, or other arrangement.

(3) Any list of adult foster homes maintained or distributed by the Department includes notification to the reader of the availability of public records concerning the AFH-DD's.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738,  
443.742, 443.760, 443.765, 443.767, 443.775, & 443.790  
Stats. Implemented: ORS 443.705 - 443.825