

**TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION**

For internal agency use only.

Department of Human Services, Developmental Disabilities

411

Agency and Division Name

Administrative Rules Chapter Number

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FILING CAPTION

(15 words or less)

ODDS: COVID-19 and Civil Penalties for Agencies, Child Foster Homes, and Adult Foster Homes

Agency Approved Date: [July 22, 2020]

Effective Date: [July 23, 2020] through [January 18, 2021]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

ADOPT:

411-323-0075

AMEND:

411-346-0190, 411-346-0220, 411-360-0140

RULE SUMMARY:

Include a summary for each rule included in this filing.

Due to the Coronavirus (COVID-19) state of emergency, the Department of Human Services, Office of Developmental Disabilities Services (ODDS) is immediately implementing the following temporary rule changes:

- OAR 411-323-0075 about Agency Civil Penalties is being adopted to allow ODDS to impose a civil penalty according to ORS 427.900 on an agency for a violation of OAR 411-323-0050(9) which requires the agency to implement all directives related to staffing and operation of the agency to reduce the spread of COVID-19.
- OAR 411-346-0190 about Child Foster Home Standards and Practices for Care and Services is being amended to require a foster provider to implement all directives related to a child foster home to reduce the spread of COVID-19.
- OAR 411-346-0220 about Child Foster Home Conditions, Denial, Suspension, Revocation, Refusal to Renew, and Civil Penalties is being amended to allow

ODDS to impose a civil penalty according to ORS 427.900 on a foster provider for a violation of OAR 411-346-0190(19) which requires the foster provider to implement all directives related to a child foster home to reduce the spread of COVID-19.

- OAR 411-360-0140 about Adult Foster Home Standards and Practices for Health Care is being amended to require a provider to implement all directives related to an adult foster home to reduce the spread of COVID-19. ODDS may impose a civil penalty according to OAR 411-360-0260 for a violation of OAR 411-360-0140.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

ODDS needs to immediately update OARs 411-323-0075, 411-346-0190, 411-346-0220, and 411-360-0140 to:

- Require an agency, child foster home, and adult foster home to implement all directives to reduce the spread of COVID-19.
- Allow ODDS to impose a civil penalty if an agency, child foster home, or adult foster home does not implement all directives to reduce the spread of COVID-19.

ODDS needs to proceed by filing temporary rule changes to provide immediate protection to individuals receiving services during the COVID-19 state of emergency.

Justification of Temporary Filing:

Failure to act promptly and immediately update OARs 411-323-0075, 411-346-0190, 411-346-0220, and 411-360-0140 will result in serious prejudice to the public interest, ODDS, agencies, foster providers, and individuals receiving developmental disabilities services.

Failure to act promptly and immediately update OARs 411-323-0075, 411-346-0190, 411-346-0220, and 411-360-0140 will prevent ODDS from providing immediate protection to individuals receiving services during the COVID-19 state of emergency.

OARs 411-323-0075, 411-346-0190, 411-346-0220, and 411-360-0140 need to be immediately updated to:

- Require an agency, child foster home, and adult foster home to implement all directives to reduce the spread of COVID-19.
- Allow ODDS to impose a civil penalty if an agency, child foster home, or adult foster home does not implement all directives to reduce the spread of COVID-19.

Documents Relied Upon, and where they are available:

1. Governor's Executive Order 20-03, Declaration of Emergency Due to Coronavirus

Available at: https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf

2. ORS 427.900

Available at: https://www.oregonlegislature.gov/bills_laws/ors/ors427.html

3. OAR 411-360-0260

Available at: <https://www.oregon.gov/dhs/SENIORS-DISABILITIES/DD/ODDSRules/411-360.pdf>

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

**CHAPTER 411
DIVISION 323**

**AGENCY CERTIFICATION AND ENDORSEMENT TO
DELIVER DEVELOPMENTAL DISABILITIES SERVICES
IN COMMUNITY-BASED SETTINGS**

411-323-0075 Civil Penalties

(Temporary Effective 07/23/2020 - 01/18/2021)

(1) The Department may impose a civil penalty under ORS 427.900 on an agency for a violation of OAR 411-323-0050(9).

(2) In considering whether to impose a civil penalty and the size of the civil penalty, the Department shall consider all of the following:

(a) The past history of the agency incurring a civil penalty in taking all reasonable steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes or rules pertaining to the agency's program.

(c) The economic and financial conditions of the agency incurring the civil penalty.

(d) The immediacy and extent to which a violation threatens or threatened the health, safety, and welfare of individuals.

(3) Unless otherwise specified in rule, the amount of a civil penalty may not exceed \$500 for each violation.

(4) When an agency receives notification from the Department of a violation for which a civil penalty or other liability may be imposed, the agency must take action to immediately eliminate the violation.

(5) The Department shall provide the Executive Director of the agency written notice of the imposition of a civil penalty consistent with ORS 183.415 including all of the following:

(a) A statement of the agency's right to a hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A reference to the specific sections of the statutes and rules involved.

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

(e) A statement indicating whether and under what circumstances an order by default may be entered.

(f) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

(6) The Executive Director or their designee has 20 calendar days from the date of service of the notice in which to make a written application for a hearing before the Department.

(7) If the agency fails to request a hearing within 20 calendar days, a final order may be entered by the Department assessing a civil penalty.

(8) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(9) If, after a hearing, the agency is found to be in violation of OAR 411-

323-0050(9), an order may be entered by the Department assessing a civil penalty.

(10) If the order is not appealed, the amount of the civil penalty is payable within 10 calendar days after the order is entered. If the order is appealed and is sustained, the amount of the civil penalty is payable within 10 calendar days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(11) Judicial review of civil penalties imposed under ORS 427.900 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the civil penalty.

(12) Unless otherwise directed by statute, all civil penalties recovered under ORS 427.900 are paid into the State Treasury and shall be deposited to the Department of Human Services Account established under ORS 409.060 and may be used by the division of the Department that provides developmental disabilities services for system improvements and the implementation of policies.

Stat. Auth. ORS 409.050, 427.900

Stats. Implemented: ORS 183.745, 409.010, 409.050, 427.007, 427.900, 430.215

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

**CHAPTER 411
DIVISION 346**

**FOSTER HOMES FOR CHILDREN WITH INTELLECTUAL OR
DEVELOPMENTAL DISABILITIES**

411-346-0190 Standards and Practices for Care and Services
(Temporary Effective 07/23/2020 - 01/18/2021)

(1) A foster provider is responsible for supervision and must:

(a) Provide structure and daily activities designed to promote a child's physical, social, intellectual, cultural, spiritual, and emotional development.

(b) Provide playthings and activities in the child foster home, including games, recreational and educational materials, and books, appropriate to a child's chronological age, culture, and developmental level.

(c) In accordance with a child's ISP and as defined in a DHS-CW Case Plan (if applicable), encourage the child to participate in age-appropriate and developmentally-appropriate activities including, but not limited to, extracurricular, enrichment, cultural, and social activities, and support the child's participation in such activities with the child's family, friends, and on the child's own when appropriate.

(d) Promote a child's independence and self-sufficiency by encouraging and assisting the child to develop new skills and perform age-appropriate tasks.

(e) In accordance with a child's ISP and as defined in a DHS-CW Case Plan (if applicable), ask the child to participate in household chores appropriate to the child's age and ability that are commensurate with household chores expected of the foster

provider's children.

(f) Provide a child with reasonable access to a telephone and to writing materials.

(g) In accordance with a child's ISP and as defined in a DHS-CW Case Plan (if applicable), permit and encourage the child to have visits with the child's family and friends.

(h) Allow a child regular contact and private visits or phone calls with their CDDP services coordinator and DHS-CW case worker (if applicable).

(i) Not allow a child in foster care to baby-sit in the child foster home or elsewhere without the permission of their CDDP services coordinator and guardian.

(2) RIGHTS OF A CHILD. The rights of a child are described in OAR 411-318-0010.

(3) FREEDOM FROM RESTRAINT.

(a) A foster provider may not place any limitations on a child's freedom from restraint without an individually-based limitation, except in accordance with the standards for developmental disabilities services set forth in OAR chapter 411 or the relevant Title XIX Medicaid-funding authority.

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

(c) A foster provider is responsible for all of the following:

(A) Maintaining a copy of the completed and signed form documenting informed consent to the individually-based limitation.

(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 change or removal of the individually-based limitation is needed.

(4) RELIGIOUS, ETHNIC, AND CULTURAL HERITAGE.

(a) A foster provider must recognize, encourage, and support the religious beliefs, ethnic heritage, cultural identity, and language of a child and their family.

(b) In accordance with a child's ISP and the preferences of their guardian, a foster provider must participate with the child's ISP team to arrange transportation and appropriate supervision during religious services or ethnic events for a child whose beliefs and practices are different from those of the foster provider.

(c) A foster provider may not require a child to participate in religious activities or ethnic events contrary to the child's beliefs.

(5) PUBLIC EDUCATION. A foster provider:

(a) Must enroll each school-age child in public school within five school days of their placement and arrange for the child's transportation to school.

(b) Must comply with any Alternative Educational Plan described in a child's IEP.

(c) Must be actively involved in a child's school program and must participate in the development of the child's IEP. A foster provider may apply to be a child's educational surrogate if requested by the child's parent or guardian.

(d) Must consult with school personnel when there are issues with a child in school and report to the child's guardian and CDDP services

coordinator any serious situations that may require Department involvement.

(e) Must support a child in the child's school or educational placement.

(f) Must assure a child regularly attends school or educational placement and monitor the child's educational progress.

(g) May sign consent to any of the following school-related activities:

(A) School field trips within Oregon.

(B) Routine social events.

(C) Sporting events.

(D) Cultural events.

(E) School pictures for personal use only, unless prohibited by the court or a child's guardian.

(h) Must support the involvement of a child's parent (unless limited by court order) and CDDP services coordinator in the child's public education decision-making process.

(6) ALTERNATE CAREGIVERS.

(a) A foster provider must arrange for safe and responsible alternate care.

(b) A child care plan for a child in foster care must be approved by the Department, the CDDP, or DHS-CW, before the child care plan may be implemented. When a child is cared for by a child care provider or child care center, the child care provider or child care center must be certified as required by the State Child Care Division (ORS 329A.280) or be a certified foster provider.

(c) A foster provider must have a Relief Care Plan approved by a

certifying agency or the Department when using alternate caregivers.

(d) A foster provider must assure alternate caregivers, consultants, and volunteers meet the following requirements:

(A) 18 years of age or older.

(B) Capable of assuming foster care responsibilities.

(C) Present in the home.

(D) Physically and mentally capable to perform the duties of the foster provider as described in these rules.

(E) Cleared by a background check as described in OAR 411-346-0150, including a DHS-CW background check.

(F) Able to communicate with the child, agencies delivering services to the child, the CDDP services coordinator, and appropriate others.

(G) Trained on fire safety and emergency procedures.

(H) Trained on the child's ISP, Positive Behavior Support Plan, and any related protocols.

(I) Able to provide the care needed for the child.

(J) Trained on the required documentation for the child's health, safety, and behavioral needs.

(K) A driver's license and vehicle insurance in compliance with the laws of the Driver and Motor Vehicle Services Division when transporting a child by motorized vehicle.

(L) Not be a person who requires care in a foster care or group home.

(M) Not be the child's parent or guardian.

(e) When a foster provider uses an alternate caregiver and a child is staying at the alternate caregiver's home, the foster provider must assure the alternate caregiver's home meets the child's necessary health, safety, and environmental needs.

(f) When a foster provider arranges for a child's social activities for less than 24 hours, including an overnight arrangement, the foster provider must assure the person is responsible and capable of assuming child care responsibilities and is present at all times. The foster provider still maintains primary responsibility for the child.

(7) FOOD AND NUTRITION.

(a) A foster provider must offer three nutritious meals daily at times consistent with those in the community.

(A) Daily meals must include food from the four basic food groups, including fresh fruits and vegetables in season, unless otherwise specified in writing by a health care provider.

(B) There must be no more than a 14-hour span between the evening meal and breakfast, unless snacks and liquids are served as supplements.

(C) Consideration must be given to cultural and ethnic background in food preparation.

(b) A child must be permitted to acquire, store, and access personal food in the child foster home in a manner consistent with age-typical practices for children living in the community and in accordance with the child's ISP.

(c) Any home canned food used must be processed according to the guidelines of Oregon State University extension services (<http://extension.oregonstate.edu/fch/food-preservation>).

(d) All food items must be used prior to their expiration date.

(e) A foster provider must implement special diets only as prescribed in writing by a health care provider.

(f) A foster provider must prepare and serve meals in the child foster home. Payment for meals eaten away from the child foster home (e.g. restaurants) for the convenience of the foster provider is the foster provider's responsibility.

(g) When serving milk, a foster provider must only use pasteurized liquid or powdered milk for consumption by a child in foster care.

(h) A child who must be bottle-fed and cannot hold the bottle, or is 11 months or younger, must be held during bottle-feeding.

(8) CLOTHING AND PERSONAL BELONGINGS.

(a) A foster provider must assure each child has their own clean, well-fitting, seasonal clothing appropriate to age, gender, culture, individual needs, and comparable to the community standards.

(b) A school-age child must participate in choosing their own clothing whenever possible.

(c) A foster provider must allow a child to bring and acquire appropriate personal belongings.

(d) A foster provider must assure when a child leaves their child foster home, the child's belongings, including all personal funds, medications, and personal items, remain with the child. This includes all items brought with the child and obtained while living in the child foster home.

(9) BEHAVIOR SUPPORT PRACTICES.

(a) A foster provider must teach and support a child with respect, kindness, and understanding, using positive behavior theory and practice. Unacceptable practices include, but are not limited to, any of the following:

- (A) Physical force, spanking, or threat of physical force inflicted in any manner upon a child.
- (B) Verbal abuse, including derogatory remarks about a child or their family that undermine the child's self-respect.
- (C) Denial of food, clothing, or shelter.
- (D) Denial of visits or contacts with family members, except when otherwise indicated in the child's ISP or the DHS-CW Case Plan (if applicable).
- (E) Assignment of extremely strenuous exercise or work.
- (F) Threatened or unauthorized use of safeguarding intervention.
- (G) Use or threatened use of mechanical restraints.
- (H) Punishment for bed-wetting or punishment related to toilet training.
- (I) Delegating or permitting punishment of a child by another child.
- (J) Threat of removal from the child foster home as a punishment
- (K) Use of shower as punishment.
- (L) Group punishment for misbehavior of one child.
- (M) Locking a child in a room or area inside or outside of the child foster home.
- (N) Involuntary isolation or seclusion of a child from others.
- (O) Punishing a child by intentionally inflicting emotional or physical pain or suffering.

(P) Use of aversive stimuli.

(b) A foster provider must set clear expectations, limits, and consequences of behavior in a non-punitive manner.

(c) A foster provider may use a time-out only for the purpose of giving a child a short break for the child to regain control. If a foster provider uses time-out, all of the following conditions apply:

(A) Use of time-out must be approved by the child's ISP team and documented in their ISP.

(B) Only common-use living areas of the home are to be used for time-out.

(C) Time-out is to be used for short duration and frequency as approved by the child's ISP team. The duration must be appropriate to the child's chronological age, emotional condition, and developmental level.

(d) POSITIVE BEHAVIOR SUPPORT PLAN. For a child who has demonstrated a serious threat to self, others, or property and for whom it has been decided a Positive Behavior Support Plan is needed, the Positive Behavior Support Plan must be developed by a behavior professional in accordance with OAR chapter 411, division 304 with the approval of the child's ISP team.

(10) SAFEGUARDING INTERVENTIONS AND SAFEGUARDING EQUIPMENT. For the purpose of this rule, a designated person is the person implementing the behavior supports identified in a child's Positive Behavior Support Plan.

(a) A designated person must only use a safeguarding intervention or safeguarding equipment when:

(A) BEHAVIOR. Used to address a child's challenging behavior, the safeguarding intervention or safeguarding equipment is included in the child's Positive Behavior Support Plan written by

a qualified behavior professional as described in OAR 411-304-0150 and implemented consistent with the child's Positive Behavior Support Plan.

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

(b) Prior to the use of a safeguarding intervention or safeguarding equipment described in subsections (a)(A) and (a)(B) of this section, a foster provider must have a copy of a completed and signed form documenting informed consent for an individually-based limitation in accordance with OAR 411-415-0070.

(c) Prior to using 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 child'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 use any safeguarding intervention or safeguarding equipment not meeting the standards set forth in this rule even when the use is directed by the child or their parent, guardian, or representative, regardless of the child's age.

(11) EMERGENCY PHYSICAL RESTRAINTS.

(a) The use of an emergency physical restraint when not written into a Positive Behavior Support Plan, not authorized in a child's ISP, and not consented to 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 child or others or when the child'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 child or others.

(b) The use of emergency physical restraints 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.

(12) MEDICAL AND DENTAL CARE. A foster provider must:

(a) Provide care and services as appropriate to a child's chronological

age, developmental level, and condition, and as identified in the child's ISP.

(b) Assure the orders of a health care provider are implemented as written;

(c) Inform health care providers of a child's current medications, changes in health status, and if the child refuses care, treatments, or medications.

(d) Inform the guardian and CDDP services coordinator of any changes in a child's health status, except as otherwise indicated in the DHS-CW Permanent Foster Care contract agreement and as agreed upon in the child's ISP.

(e) Obtain the necessary medical, dental, therapies, and other treatments of care including, but not limited to, all of the following:

(A) Making appointments.

(B) Arranging for or providing transportation to appointments.

(C) Obtaining emergency medical care.

(f) Have prior consent from a child's guardian for medical treatment that is not routine, including surgery and anesthesia, except in cases where a DHS-CW Permanent Foster Care contract agreement exists;

(g) Keep current medical records. The records must include all of the following, when applicable:

(A) Any history of physical, emotional, and medical problems, illnesses, and mental health status.

(B) Current orders for all medications, treatments, therapies, use of safeguarding intervention, safeguarding equipment, special diets, adaptive equipment, and any known food or medication allergies.

(C) Completed medication administration record (MAR) from previous months.

(D) Pertinent medical and behavioral information, such as hospitalizations, accidents, immunization records, including Hepatitis B status and previous TB tests, and incidents or injuries affecting the child's health, safety, or emotional well-being.

(E) Documentation or other notations of guardian consent for medical treatment that is not routine, including surgery and anesthesia.

(F) Record of medical appointments.

(G) Medical appointment follow-up reports provided to the foster provider.

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

(h) Provide, when requested, copies of medical records and medication administration records to the child's guardian, CDDP services coordinator, and DHS-CW caseworker.

(i) Provide copies, as applicable, of the medical records described in subsection (g)(H) of this section to a licensed health care provider prior to a medical appointment or no later than the time of the appointment.

(j) Support the involvement of the child's parent (unless limited by court order) and CDDP services coordinator in the child's medical and dental care coordination.

(13) MEDICATIONS AND MEDICAL ORDERS.

(a) An authorization by a licensed health care provider must be in a

child's file prior to the usage of, or implementation of, any of the following:

- (A) All prescription medications.
- (B) Nonprescription medications except over the counter topicals.
- (C) Treatments other than basic first aid.
- (D) Therapies and use of safeguarding equipment as a health and safety related protection.
- (E) Modified or special diets.
- (F) Prescribed adaptive equipment.
- (G) Aids to physical functioning.

(b) A foster provider must have any of the following:

- (A) A copy of the authorization in the format of a written order signed by a licensed health care provider.
- (B) Documentation of a telephone order by a licensed health care provider with changes clearly documented on the MAR, including the name of the person giving the order, the date and time, and the name of the person receiving the telephone order.
- (C) A current prescription or label from the manufacturer as specified by the order of a licensed health care provider on file with the pharmacy.

(c) A foster provider or alternate caregiver must carry out orders as prescribed by a licensed health care provider. Changes may not be made without the authorization of a licensed health care provider.

(d) Each medication for a child, including refrigerated medication, must be clearly labeled with the label of the pharmacist or in the

originally labeled container from the manufacturer and kept in a locked location or stored in a manner that prevents access by children.

(e) Unused, outdated, or recalled medications may not be kept in the child foster home and must be disposed of in a manner that prevents illegal diversion into the possession of people other than for which the medication was prescribed.

(f) A foster provider must keep a MAR for each child. The MAR must be kept for all medications administered by the foster provider or alternate caregiver to that child, including over the counter medications and medications ordered by licensed health care providers and administered as needed (PRN) for the child.

(g) The MAR must include all of the following:

(A) The name of the child in foster care.

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

(C) A transcription of the printed instructions from the package for topical medications and treatments without an order from a licensed health care provider.

(D) Times and dates 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 medication was administered.

(H) Documented effectiveness of any PRN medication

administration.

(I) An explanation of all medication administration or documentation irregularities.

(J) Any known allergy or adverse drug reactions and procedures that maintain and protect the child's physical health.

(h) Any errors in the MAR must be corrected by circling the error and then writing on the back of the MAR what the error was and why.

(i) Treatments, medication, therapies, and special diets must be documented on the MAR when not used or applied according to the order of licensed health care provider.

(j) SELF-ADMINISTRATION OF MEDICATION. For any child who is self-administering medication, a foster provider must:

(A) Have documentation that a training program was initiated with approval of the child's ISP team or that training for the child was unnecessary;

(B) Have a training program that provides for retraining when there is a change in dosage, medication, and time of delivery;

(C) Provide for an annual review, at least as part of the ISP process, upon completion of the training program;

(D) Assure the child is able to handle the child's own medication regime;

(E) Keep medications stored in a locked area inaccessible to others; and

(F) Maintain written documentation of all training in the child's medical record.

(k) A foster provider 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 licensed health care provider.

(l) Any medication used with the intent to alter a child's behavior must be documented in the child's ISP.

(m) **BALANCING TEST.** When a psychotropic medication is first prescribed and annually thereafter, a foster provider must obtain a signed balancing test from the prescribing health care provider using the Balancing Test Form (form 4110). A foster provider must present the 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.

(n) PRN prescribed psychotropic medication is prohibited.

(o) A mental health assessment by a qualified mental health professional or licensed medical practitioner must be completed, except as noted in subparagraph (A) of this subsection, prior to the administration of a new medication for more than one psychotropic or any antipsychotic medication to a child in foster care.

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

(i) In a case of urgent medical need.

(ii) For a substitution of a current medication within the same class.

(iii) A medication order given prior to a medical procedure.

(B) When a mental health assessment is required, a foster provider:

(i) Must notify the DHS-CW caseworker when a child is in legal custody of DHS-CW; or

(ii) Must arrange for a mental health assessment when a

child is a voluntary care placement.

(C) The mental health assessment:

(i) Must have been completed within three months prior to the prescription; or

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

(D) Whenever possible, information from the mental health assessment must be communicated to the licensed health care provider prior to the issuance of a prescription for psychotropic medication.

(p) Within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for a child in foster care, a foster provider must notify:

(A) The CDDP services coordinator; and

(B) The child's parent when the parent retains legal guardianship or the child's guardian; or

(C) DHS-CW when DHS-CW is the child's guardian.

(q) A foster provider's notification to a child's parent or guardian and their CDDP services coordinator must contain all of the following:

(A) Name of the prescribing licensed health care provider.

(B) Name of the medication.

(C) Dosage, any change of dosage, suspension, or discontinuation of the current psychotropic medication.

(D) Dosage administration schedule prescribed.

(E) Reason the medication was prescribed.

(r) A foster provider must get a written informed consent prior to filling a prescription for any new psychotropic medication except in a case of urgent medical need from DHS-CW when DHS-CW is a child's guardian.

(s) A foster provider must cooperate as requested when a review of psychotropic medications is indicated.

(14) NURSING SERVICES. When nursing services are provided to a child, a foster provider must:

(a) Coordinate with a registered nurse and the child's ISP team to ensure the nursing services being delivered are sufficient to meet the child's health needs; and

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

(15) COMMUNITY NURSING SERVICES.

(a) Community nursing services include all of the following:

(A) Nursing assessments, including medication reviews.

(B) Care coordination.

(C) Monitoring.

(D) Development of a Nursing Service Plan.

(E) Delegation and training of nursing tasks to a foster provider or alternate caregiver.

(F) Teaching and education of a foster provider and identifying supports that minimize health risks while promoting a child's autonomy and self-management of healthcare.

(G) Collateral contact with a CDDP services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the child's ISP.

(b) Community nursing services exclude direct nursing services.

(c) When Department funds are used for community nursing services, prior authorization for community nursing services must be in accordance with OAR 411-048-0180.

(d) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in medical condition requires an update to a Nursing Service Plan.

(e) When community nursing services are provided to a child, a foster provider must:

(A) Coordinate with a registered nurse and the child's ISP team to ensure the nursing services being delivered are sufficient to meet the child's health needs; and

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

(f) A registered nurse providing community nursing services must:

(A) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048;

(B) Meet the qualifications described in OAR 411-048-0210; and

(C) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(g) A registered nurse providing community nursing services must comply with:

(A) Provider record and documentation requirements referenced in OAR 407-120-0100 through 407-120-1505 for financial, clinical, and other records including the Provider Enrollment Agreement and electronic billing procedures;

(B) Department direct contracts (if applicable); and

(C) Service record requirements outlined in this rule.

(16) PRIVATE DUTY NURSING. As defined in OAR chapter 410, division 132 and the Medicaid State Plan, a child or young adult aged 0 through 20 that resides in a child foster home may receive private duty nursing services in accordance with OAR 411-300-0150.

(a) When private duty nursing services are provided, a foster provider must:

(A) Coordinate with a registered nurse and a child's ISP team to ensure the nursing services being provided are sufficient to meet the child's health needs; and

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

(b) A nurse providing private duty nursing services must be an enrolled Medicaid Provider as described in OAR 410-132-0200.

(17) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a foster provider or alternate caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

(18) CHILD RECORDS.

(a) GENERAL INFORMATION OR SUMMARY RECORD. A foster

provider must maintain a record for each child receiving foster care services in their child foster home. The record must include all of the following:

(A) Child's name, date of entry into the child foster home, date of birth, gender, religious preference, and guardianship status.

(B) Names, addresses, and telephone numbers of the child's guardian, family, or other significant person.

(C) Name, address, and telephone number of the child's preferred primary health care provider, designated back up health care provider and clinic, dentist, preferred hospital, medical card number and any private insurance information, and Oregon Health Plan choice.

(D) Name, address, and telephone number of the child's school program.

(E) Name, address, and telephone number of the child's CDDP services coordinator and representatives of other agencies providing services to the child.

(b) EMERGENCY INFORMATION. A foster provider must maintain emergency information for each child receiving foster care services in their child foster home. The emergency information must be kept current and must include all of the following:

(A) The child's name.

(B) The child's address and telephone number.

(C) The child's physical description, which may include a picture and the date it 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 child if the need arises, such as marks or scars, tattoos, or body piercing.

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

(i) How the child communicates.

(ii) The language the child uses or understands.

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

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

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

(i) Diagnosis.

(ii) Allergies or adverse drug reactions.

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

(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 child is taking that may be an aspiration risk or other risk.

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

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

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

(ix) The child'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 child.

(II) Approaches to use when supporting the child to minimize emotional and physical outbursts.

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

(xi) The child's supervision requirements and why.

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

(c) EMERGENCY PLANNING. A foster provider must post emergency telephone numbers in close proximity to all phones used by the foster provider or alternate caregivers. The posted emergency telephone numbers must include, but not be limited to, all of the following:

(A) Telephone numbers of the local fire, police department, and ambulance service if not served by 911 emergency services.

(B) The telephone number of any emergency health care providers and additional people to be contacted in the case of an emergency.

(d) WRITTEN EMERGENCY PLAN. A foster provider must:

(A) Develop, maintain, update, and implement a written Emergency Plan for the protection of all children in foster care in the event of an emergency or disaster. The Emergency Plan must:

(i) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the responsibilities of the foster provider and alternative caregiver.

(ii) Consider a child's needs and address all natural and human-caused events identified as a significant risk for the child foster home, such as a pandemic or an earthquake.

(iii) 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.

(IV) An alternate caregiver is unable to provide relief care or additional support and care.

(iv) Include provisions for evacuation and relocation that identifies all of the following:

(I) The duties during evacuation, transporting, and housing of a child, including instructions to notify the child's parent or guardian, the Department or the Department's designee, the CDDP services coordinator, and DHS-CW as applicable, of the plan to evacuate or the evacuation of the child foster

home as soon as the emergency or disaster reasonably allows.

(II) The method and source of transportation.

(III) Planned relocation sites that are reasonably anticipated to meet a child's needs.

(IV) A method that provides people unknown to the child the ability to identify each child by name and to identify the name of the child's supporting provider.

(V) A method for tracking and reporting to the Department or the Department's designee and the local CDDP, the physical location of each child in foster care until a different entity resumes responsibility for the child.

(v) Address a child's needs including provisions for all of the following:

(I) Immediate and continued access to medical treatment, information necessary to obtain care, treatment, food, and fluids for the child during and after an evacuation and relocation.

(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.

(IV) The supports needed to meet a child's life-sustaining and safety needs.

(B) Provide and document all training to alternate caregivers regarding the alternate caregiver's responsibilities for implementing the Emergency Plan.

(C) Re-evaluate and revise the Emergency Plan at least annually or when there is a significant change in the child foster home.

(D) Complete the Emergency Plan Summary, on the form supplied by the Department, and send the Emergency Plan Summary to the Department annually and upon change of foster provider or location of the child foster home.

(e) INDIVIDUAL SUPPORT PLAN (ISP). Within 60 calendar days of placement, the ISP for a child must be prepared and updated at least annually.

(A) If requested by a child or the child's guardian, a foster provider must participate with an ISP team in the development and implementation of the child's ISP to address the child's behavior, medical, social, financial, safety, and other support needs.

(B) Prior to, or upon entry to, or exit from a child foster home, a foster provider must participate in the development and implementation of a Transition Plan for the child.

(i) The Transition Plan must include a summary of the services necessary to facilitate a child's adjustment to the child foster home or after care plan; and

(ii) Identify the supports necessary to ensure the child's health, safety, and any assessments and consultations needed for ISP development.

(f) FINANCIAL RECORDS.

(A) A foster provider must maintain a separate financial record for each child in foster care. Errors must be corrected with a single strike through and initialed by the person making the correction. The child's financial record must include all of the following:

(i) Date, amount, and source of all income received on the child's behalf.

(ii) Room and board fee paid to the foster provider at the beginning of each month.

(iii) Date, amount, and purpose of funds disbursed on the child's behalf.

(iv) Signature of the person making the entry.

(B) Any single transaction more than \$25 purchased with a child's personal funds, unless otherwise indicated in the child's ISP, must be documented in the child's financial record and include the receipt.

(C) A child's ISP team may address how the personal spending money of a child is managed.

(D) If a child has a separate commercial bank account, records from the account must be maintained with the child's financial record.

(E) A child's personal funds must be maintained in a safe manner and separate from the funds of other members of the household.

(F) Misuse of funds may be cause for suspension, revocation, or denial of renewal of a certificate.

(g) PERSONAL PROPERTY RECORD.

(A) A foster provider must maintain a written record of a child's property with a monetary value of more than \$25 or that has significant personal value to the child, parent, or guardian, or as determined by the ISP team. Errors must be corrected with a single strike through and initialed by the person making the correction.

(B) Personal property records are not required for a child who has a court approved DHS-CW Permanent Foster Care contract agreement, unless requested by the child's guardian.

(C) The personal property record must include all of the following:

(i) A description and identifying number, if any.

(ii) The date the personal property was brought into the child foster home or purchased.

(iii) The date and reason for the removal of a child's personal property from the record.

(iv) The signature of the person making the entry.

(h) EDUCATIONAL RECORDS. A foster provider must maintain the following educational records when available:

(A) A child's report cards.

(B) Any reports received from a child's teacher or the school.

(C) Any evaluations received as a result of educational testing or assessment.

(D) A child's disciplinary reports.

(i) Child records must be available to representatives of the Department, the certifying agency, and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the child's guardian or other legally authorized people.

(j) Child records must be kept for a period of three years. If a child moves or the child foster home closes, copies of pertinent information must be transferred to the new home of the child.

(19) COVID-19. A foster provider must implement all directives related to a child foster home to reduce the spread of the Coronavirus (COVID-19) issued by any of the following:

(a) Governor's Executive Order.

(b) Written instruction to the foster provider from the Local Public Health Authority or the Oregon Health Authority Public Health Division.

(c) Written guidance directed at the foster provider through Department policy.

Stat. Auth.: ORS 409.050, 427.104, 443.835

Stats. Implemented: ORS 409.010, 427.007, 427.104, 430.215, 443.830, 443.835

411-346-0220 Conditions, Denial, Suspension, Revocation, Refusal to Renew, and Civil Penalties

(Temporary Effective 07/23/2020 - 01/18/2021)

(1) CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for the operation of a child foster home. The type of condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to children.

(b) The Department may attach conditions to a certificate upon any of the following findings:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of children.

(B) A threat to the health, safety, or welfare of a child exists.

(C) There is evidence of abuse.

(D) The child foster home is not being operated in compliance

with these rules or the rules in OAR chapter 411, divisions 004, 304, and 318.

(c) Conditions the Department may impose on a certificate include, but are not limited to, the following:

(A) Restricting the total number of children in the child foster home based upon the ability and capacity of the foster provider to meet the health and safety needs of the children.

(B) Requiring alternate caregivers to meet the needs of the children.

(C) Requiring additional qualifications or training of the foster provider and alternate caregivers.

(D) Restricting a foster provider from allowing a person on the premises who may be a threat to the health, safety, or welfare of a child.

(E) Requiring additional documentation.

(F) Restricting a foster provider from opening an additional foster home setting.

(G) Limiting a foster provider to the care of a specific child. A foster provider with this condition does not receive referrals.

(H) Restricting entry.

(d) The Department shall impose a condition prohibiting new entry or transfer into a child foster home when there is a death of a child served by the foster provider that results in a protective services investigation and the foster provider was responsible for delivering supports to the child during the time associated with the child's death.

(A) A new entry or transfer may be accepted while the condition is in place, if the entry or transfer approval is granted by the Department and the case management entity.

(B) The condition may be terminated:

(i) Following the protective services investigation determination that abuse was not a factor in the child's death; or

(ii) At the discretion of the Department upon satisfactory demonstration by the foster provider that:

(I) There are adequate protections in place to prevent or minimize risk of harm to other children receiving the same or similar type of services; and

(II) Entry of additional children into the child foster home does not negatively impact the foster provider's ability to safely serve children.

(e) The Department issues a written notice to the foster provider when the Department imposes conditions to a certificate. 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.

(A) Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process.

(B) The conditions imposed remain in effect until the Department has sufficient cause to believe the situation which warranted the condition has been remedied.

(f) The foster provider may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of conditions. The request for a hearing must be in writing.

(A) The foster provider must request a hearing within 21 calendar days from the receipt of the written notice of

conditions.

(B) In addition to, or in lieu of a hearing, the foster provider may request an administrative review as described in subsection (g) of this section. The request for an administrative review must be in writing. The administrative review does not diminish the right of the foster provider to a hearing.

(C) The Department shall be allowed reasonable requests for setting or postponement of any hearing to allow for the conclusion of a protective services investigation when a condition is imposed related to the protective services investigation.

(g) ADMINISTRATIVE REVIEW.

(A) In addition to the right to a hearing, a foster provider may request an administrative review by the Director of the Department for imposition of conditions. The request for an administrative review must be in writing.

(B) The Department must receive a written request for an administrative review within 10 business days from the date of the notice of conditions. The foster provider may submit, along with the written request for an administrative review, any additional written materials the foster provider wishes to have considered during the administrative review.

(C) The determination of the administrative review is issued in writing within 10 business days from the date of the written request for an administrative review, or by a later date as agreed to by the foster provider.

(D) The foster provider may request a hearing if the decision of the Department is to affirm the condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 calendar days from the date of the original written notice of conditions.

(h) A foster provider may send a written request to the Department to remove a condition if the foster provider believes the situation that warranted the condition has been remedied.

(i) Conditions must be posted with the certificate in a prominent location and be available for inspection at all times.

(2) DENIAL, SUSPENSION, REVOCATION, REFUSAL TO RENEW.

(a) The Department shall deny, suspend, revoke, or refuse to renew a certificate where it finds there has been substantial failure to comply with these rules.

(b) Failure to disclose requested information on the application or providing falsified, incomplete, or incorrect information on the application shall constitute grounds for denial or revocation of the certificate.

(c) The Department shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider fails to submit a plan of correction, implement a plan of correction, or comply with a final order of the Department.

(d) Failure to comply with OAR 411-346-0200(5) may constitute grounds for denial, revocation, or refusal to renew.

(e) The Department may deny, suspend, revoke, or refuse to renew the child foster home certificate where imminent danger to health or safety of a child exists, including any founded report or substantiated abuse.

(f) The Department shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider has been convicted of any crime that would have resulted in an unacceptable background check as defined in OAR 407-007-0210 upon certification.

(g) Suspension shall result in the removal of a child placed in the foster home and no placements shall be made during the period of suspension.

(h) The applicant or foster provider whose certificate has been denied or revoked may not reapply for certification for five years after the date of denial or revocation.

(i) The Department shall provide the applicant or the foster provider a written notice of denial, suspension, or revocation that states the reason for such action.

(j) Such revocation, suspension, or denial shall be done in accordance with the rules of the Department and ORS chapter 183 that govern contested cases.

(3) CIVIL PENALTIES.

(a) The Department may impose a civil penalty under ORS 427.900 on a foster provider for a violation of OAR 411-346-0190(19).

(b) A civil penalty of not less than \$100 and not more than \$250 per violation, except as otherwise provided in this rule, may be imposed on a foster provider for a violation of OAR 411-346-0190(19).

(c) When a foster provider receives notification from the Department of a violation for which a civil penalty may be imposed, the foster provider must take action to immediately eliminate the violation.

(d) The Department shall give the foster provider written notice of the imposition of a civil penalty consistent with ORS 183.415 including all of the following:

(A) A statement of the foster provider's right to a hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing.

(B) A statement of the authority and jurisdiction under which the hearing is to be held.

(C) A reference to the specific sections of the statutes and rules involved.

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

(E) A statement indicating whether and under what circumstances an order by default may be entered.

(F) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

(e) The foster provider has 20 calendar days after receipt of the notice of civil penalty in which to make a written application for a hearing before the Department.

(f) If the foster provider fails to request a hearing within 20 calendar days, a final order may be entered by the Department assessing a civil penalty.

(g) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(h) If, after a hearing, the foster provider is found to be in violation of OAR 411-346-0190(19), an order may be entered by the Department assessing a civil penalty.

(i) If the order is not appealed, the amount of the civil penalty is payable within 10 calendar days after the order is entered. If the order is appealed and is sustained, the amount of the civil penalty is payable within 10 calendar days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(j) Judicial review of civil penalties imposed under ORS 427.900 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the civil penalty.

(k) Unless otherwise directed by statute, all civil penalties recovered under ORS 427.900 are paid into the State Treasury and shall be deposited to the Department of Human Services Account established under ORS 409.060 and may be used by the division of the Department that provides developmental disabilities services for system improvements and the implementation of policies.

Stat. Auth.: ORS 409.050 427.104, 427.900, 443.835

Stats. Implemented: ORS 183.745, 409.010, 409.050, 427.007, 427.104, 427.900, 430.215, 443.830, 443.835

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

**CHAPTER 411
DIVISION 360**

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

411-360-0140 AFH-DD Standards and Practices for Health Care
(Temporary Effective 07/23/2020 - 01/18/2021)

(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.

(12) COVID-19. A provider must implement all directives related to an adult foster home to reduce the spread of the Coronavirus (COVID-19) issued by any of the following:

(a) Governor's Executive Order.

(b) Written instruction to the provider from the Local Public Health Authority or the Oregon Health Authority Public Health Division.

(c) Written guidance directed at the provider through Department policy.

Stat. Auth.: ORS 409.050, 427.104, 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 409.010, 427.104, 443.001-443.004, 443.705-
443.825, 443.875, 443.991