ADULT FOSTER HOME RULES

Index

Effective November 1, 1988

ORS 443.705 to 443.825
Administrative Rules for
Licensure of Adult Foster Homes

Purpose

The purpose of these rules is to establish standards for adult foster homes which provide care for elderly and disabled persons in a home-like environment. The services are individualized to the resident's needs and encourage the resident's right to independence, choice and decision-making while providing a safe and secure environment. Resident needs will be addressed in a manner which supports and enables the individuals to maximize abilities to function at the highest level of independence possible.

411-50-400 Definitions

For the purpose of these rules, authorized under ORS 443.705 to 443.825, the following definitions apply:

(1) "AAA" means a Type B Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of Division programs. For the purpose of this rule, AAAs contract with the Division to perform specific activities in relation to licensing AFHs including processing applications, conducting inspections and investigations, issuing licenses, establishing conditions on licenses, and making recommendations to Program Assistance, Senior Services Division, regarding AFH license denial, revocation, suspension, non-renewal and civil penalties.

(2) "Abuse" means any act or absence of action inconsistent with prescribed resident care. This includes but is not limited to:

(a) Physical assault such as hitting, kicking, scratching, pinching, choking or pushing;

(b) Neglect of care, including improper administration of medication(s), failure to seek appropriate medical care, inadequate changing of beds or clothes, and failure to help with personal grooming;

(c) Denying meals, clothes, or aids to physical functioning;

(d) Use of derogatory or inappropriate names, phrases, or profanity; ridicule; harassment; coercion; threats; cursing; or intimidation;

(e) Sexual exploitation of residents including inappropriate physical contact between staff and residents, or failure of staff to discourage sexual advances of residents toward staff or other residents;

(f) Placing unreasonable restrictions on residents which violates the resident Bill of Rights in OAR 411-50-447;

(g) Using restraints, except with written physician order or when a resident's actions present an imminent danger to self or others, and only until appropriate action is taken by medical, emergency, or police personnel;

(h) Financial exploitation which includes, but is not limited to, unreasonable rate increases, borrowing from or loaning money to residents, witnessing wills in which provider is beneficiary, adding provider's name to resident bank accounts or other personal property without approval of family or case manager, inappropriately expending residents' personal funds, co-mingling residents' funds with provider or other residents' funds, or becoming guardian or conservator.

(3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well-being including eating/nutrition, dressing, personal hygiene, mobility, toileting and behavior management.

(a) "Independent" means the resident can perform the ADL without help;

(b) "Assistance" means the resident is able to help with some part of an activity, but cannot do it entirely alone;

(c) "Dependence" means the resident is unable to do any part of an activity; it must be done entirely by someone else.

(4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided for compensation to five or fewer elderly or disabled adults who are not related to the provider by blood or marriage. For the purpose of this rule, adult foster home does not include:

(a) Any house, institution, hotel or other similar living situation that supplies room and board only, or room only, or board only, if no resident thereof requires any element of care; or

(b) Any specialized living facility for physically handicapped persons where the Senior Services Division provides payment for personal care services other than to an adult foster home provider.

(5) "Applicant" means any person who completes an application for a license who is also the owner of the business.

(6) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of

the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR 851-45-011, et seq. (Ed. Note: See Appendix A).

(7) "Care" means Residential Care.

(8) "Caregiver" means any person responsible for providing care and services to residents, including the provider; the resident manager; and any temporary, substitute or supplemental staff or other person designated to provide care and services to residents.

(9) "Care Plan" means the provider's written description of a resident's needs and capabilities, including by whom, when, and how often care and services will be provided. The care plan is developed at the time of admission and is reviewed and updated at least semi-annually and when the condition of the resident changes.

(10) "Classification" means a designation of license assigned to a provider based on the provider's qualifications.

(11) "Client" means a resident in an adult foster home for whom the Division pays for care or for whom case management services are provided.

(12) "Compensation" means payments by or on behalf of a resident to a provider in exchange for room and board, care and services. 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 which limits or restricts the scope of the license or imposes additional requirements on the licensee.

(14) "Day Care" means care and supervision of a person who does not stay overnight.

(15) "Department" means the Department of Human Resources.

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

(17) "Disabled" or "Handicapped" means a physical impairment which, for the individual, constitutes or results in a functional limitation in one or more activities of daily living or personal care activities.

(18) "Division" means the Senior Services Division (SSD) of the Department of Human Resources. Division also includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.

(19) "Elderly" or "Aged" means any person age 60 or older who is in need of care.

(20) "Exempt Area" means a county where there is a county agency which provides similar programs for licensing and inspection of adult foster homes which

the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and which the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825.

(21) "Exception" means a variance from a regulation or provision of these rules, granted by the Division, upon application by the provider.

(22) "Home" means the facility in which residents live, synonymous with adult foster home.

(23) "Homelike" means an environment which promotes the dignity, security and comfort of residents through the provision of personalized care and services to encourage independence, choice, and decision-making by the residents.

(24) "House Rules" mean written and posted rules governing house activities in an AFH which are developed by the provider and approved by the Division.

(25) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.

(26) "Neglect" (whether intentional, careless, or due to inadequate experience, training, or skill) means failure to provide care necessary to insure the health, safety, and well-being of a resident; or failure to make a reasonable effort to discover what care is necessary for the well-being of a resident; or failure to provide a safe and sanitary environment.

(27) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, which is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(28) "Ombudsman" means the State Long Term Care Ombudsman or an individual designee appointed by the Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the AFH residents.

(29) "Provider" means the person licensed to operate an adult foster home. The provider is responsible for the provision of room, board, care and services in the daily operation of the home. Applicant, provider, owner, licensee, and operator are all synonymous terms.

(30) "Relative Foster Home" means a home which provides care and services to only a relative, by blood or marriage, who is eligible for financial assistance from the Division. In order to qualify for compensation from the Division, the home must be in substantial compliance with these rules. A spouse is not eligible for compensation as an adult foster care provider. If services are provided to a relative without compensation from the Division, the home is not required to be licensed.

(31) "Resident" means any person who is receiving room, board, care, and services in an adult foster home for compensation on a 24-hour basis.

(32) "Residential Care" means the provision of room, board, care, and services that assist the resident in activities of daily living. Residential care includes 24-hour supervision; being aware of the residents' general whereabouts; monitoring the activities of the residents while on the premises of the AFH to ensure their health, safety, and welfare; providing social and recreational activities; and assistance with money management as needed.

(33) "Resident Manager" means an employe of the provider who lives in the home and is directly responsible for the care of residents on a day-to-day basis.

(34) "Respite Resident" means a person who receives residential care for a period of 14 days or less or who only stays overnight.

(35) "Restraints" means any physical device or chemical substance prescribed by a physician which restricts movement of a resident.

(36) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping.

(37) "Services" means activities which help the residents develop appropriate skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living. Services which may be available in the community to meet the residents' needs include mental health services, habilitation services, rehabilitation services, social services, medical, dental, and other health care services, educational services, financial management services, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet a resident's needs.

411-50-405 <u>License Required</u>

(1) Any facility which meets the definition of an adult foster home must be licensed by the Division.

(2) No adult foster home shall accept placement of a person without first being licensed.

(3) No person shall be placed in an adult foster home that is not licensed.

411-50-408 <u>Capacity</u>

(1) The number of residents permitted to reside in an AFH will be determined by the ability of the staff to meet the care needs of the residents, the fire safety standards for evacuation, and compliance with the physical

structure standards of these rules. Determination of maximum capacity must include consideration of total household composition including children requiring care and supervision. In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents.

(2) In addition, the following limits apply:

(a) Residents shall be limited to five;

(b) Respite residents are included in the limit of five;

(c) Day care persons will be included in the limit of five unless an exception is granted; and

(d) Relatives of the provider (or resident manager) who need care are included in the limit of five unless an exception is granted.

(3) Exceptions - An exception may be granted for relatives and day care residents if the following criteria are met:

(a) The provider can demonstrate the ability to evacuate all residents within three minutes;

(b) The provider has adequate staff and has demonstrated the ability to provide appropriate care for all residents;

(c) There is an additional 40 square feet of common living space for each person above the five residents;

(d) Bedrooms and bathrooms meet the requirements of these rules;

(e) The care needs of the additional persons are within the classification of the license and any conditions imposed on the license; and

(f) The well-being of the household including any children or other family members will not be jeopardized.

411-50-410 Application and Fees

(1) The application shall be submitted by the person responsible for the operation of the home (business) and shall be in writing on form SSD 448, Part I, provided by the Division. The application is not complete until the required application information is submitted to the Division.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) An application for a home which has a resident manager shall include information about that person on a separate form SSD 448, Part II.

(4) The application shall include:

(a) The maximum resident capacity requested including relatives needing care, respite residents and day care persons;

(b) The classification being requested with information and supporting documentation regarding qualifications and training of staff as required by the Division;

(c) A physician's statement regarding ability to provide care (form SSD 903);

(d) A completed Financial Information Sheet, form SSD 448A;

(e) A signed Criminal Record Clearance form (SSD 303);

(f) Floor plan of house showing location and size of rooms, exits, smoke detectors and extinguishers;

(g) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;

(h) A $20 per bed non-refundable fee for each non-relative resident. Day care and relatives are not subject to the fee.

(5) After receipt of the completed application materials and fee, an investigation of information submitted, an inspection of the home, and a personal interview shall be conducted by Division staff to determine compliance with these rules.

(6) The provider will be given a copy of the inspection form identifying any areas of non-compliance and specifying a time frame for correction, but no later than 60 days from date of inspection.

(7) Applicants shall be in compliance with these Administrative Rules before a license is issued. If cited deficiencies are not corrected within the time frames specified by the Division, the application shall be denied.

(8) The applicant may withdraw his/her application at any time during the application process by notifying the Division.

411-50-415 Issuance

(1) The Division shall issue a license within 60 days after the completed application materials have been received if the home and provider are in compliance with these rules. The license shall state the name of the resident manager, the name of the person who owns the home (business), the address of the premises to which the license applies, the classification for which the applicant is qualified, the maximum number of residents and

the expiration date. The license shall be posted in the home and be available for inspection at all times.

(2) The Division may attach conditions to the license (see OAR 411-50-483) which limit, restrict or specify other criteria for operation of the home.

(3) A condition may be attached to a license to limit the provider to the care of a specific person(s). No referrals will be made to a provider with this limitation.

(4) If a resident manager changes during the period the license covers, the provider must submit a request for a change to the Division within 15 days along with a completed form SSD 448, Part II, and payment of a ten dollar ($10.00) fee. Upon a determination the applicant meets the requirements of a resident manager, a revised license will be issued with the name of the new resident manager. The classification of the home will be reevaluated based on the qualifications of the new resident manager and changed accordingly.

(5) No license is transferable or applicable to any location or persons other than those specified on the license.

(6) When a home is to be sold or otherwise transferred to another provider (owner), the new provider must apply for and obtain a license prior to the transfer of operation of the home.

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

411-50-420 Renewal

(1) At least 30 days prior to the expiration of a license, a reminder notice and application for renewal will be sent by the Division to the currently licensed provider. Submittal of a renewal application prior to the expiration date will keep the license in effect until the Division takes action. If the renewal application and fee are not submitted prior to the expiration date, the home will be treated as an unlicensed facility subject to Civil Penalties (OAR 411-50-487).

(2) The renewal application will include the same information as required for a new application (OAR 411-50-410), except a physician's statement, Financial Information Sheet and Criminal Record Clearance are not required if it can be reasonably assumed this information has not changed.

(3) The Division may investigate any information in the renewal application and shall conduct an inspection of the adult foster home.

(4) The provider will be given a copy of the inspection form citing any deficiencies and a time frame for correction, but no longer than 60 days from the date of inspection.

(5) The Division will require the home to correct deficiencies prior to issuing the renewal license. If cited deficiencies are not corrected within the time frame specified by the Division, the renewal application shall be denied.

411-50-430 Exceptions

(1) A provider or applicant may apply to the Division for an exception from a provision of these rules. An exception may be granted if the provider proves to the Division by clear and convincing evidence that such an exception does not jeopardize the care, health, or safety of the residents.

(2) No exception shall be granted from a regulation or provision of these rules pertaining to the standards and practices, inspections of the facility, resident rights, and inspection of the public files. Exceptions related to fire and life safety shall not be granted by the Division without prior consultation with the local fire department or its designee.

(3) Exceptions will be granted in writing and reviewed at each renewal period.

411-50-435 Rates and Contracts

(1) Providers who care for Division clients must enter into a contract with the Division and follow Division rules and contract terms.

(2) Providers who care for private paying residents must enter into a signed contract with the resident or person paying for care. This contract shall include, but not be limited to, a care plan; schedule of rates; conditions under which the rates can be changed; and the home's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) Thirty (30) days prior to any increases, additions, or other modifications of the rates, the provider shall give written notice of the proposed changes to private residents and their family or other representatives unless the change is due to a medical emergency resulting in a greater level of care.

411-50-440 Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers

(1) An adult foster home provider must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the home which is to be licensed, unless a resident manager lives in the home;

(c) Provide evidence satisfactory to the Division regarding education, experience, and training to meet requirements of the requested classification level (see OAR 411-50-443);

(d) Possess physical health, mental health, and good personal character determined necessary by the Division to provide 24-hour care for adults who are disabled or elderly. Applicants must have a statement from a physician they are physically and mentally capable of providing care to residents. Applicants with documented history or substantiated complaints of substance abuse or mental illness must provide evidence of satisfactory treatment/rehabilitation or references regarding current condition;

(e) Provide information regarding criminal history and sign a Criminal Record Release, form SSD 303. All household members age 16 and over are subject to a Criminal Record Clearance under OAR 411-09-000 through 411-09-020 and are required to sign a Criminal Record Release, form SSD 303;

(f) Be literate and capable of understanding written and oral orders and communicating in English with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times;

(g) Complete the following training requirements:

(A) Effective January 1, 1989, and until the Division-approved Basic Training Course becomes available, new applicants must complete at least 18 hours of Division-approved training relating to care of elderly and disabled persons within 90 days of being licensed. Providers licensed prior to January 1, 1989 must complete at least 6 hours of training in 1989;

(B) Effective January 1, 1990, all new applicants and providers licensed as of that date will be required to successfully complete the Basic Training Course sponsored or approved by the Division. New applicants must complete the course within 90 days of being licensed, or sooner if required as a condition of being licensed. Providers licensed prior to January 1, 1990, must complete the course within a year, but no later than December 31, 1990;

(C) Each subsequent year following the Basic Training Course, the provider is required to take at least six hours of ongoing training related to care of elderly and disabled persons;

(D) If a provider is not in compliance with one or more of these rules or the class for which they are licensed, the Division may require additional training in the deficient area, whether or not the other training requirements have been met;

(E) Documentation of training shall be kept in the AFH records including the date of training, subject matter, name of agency or organization providing training and number of classroom hours;

(h) Provide evidence of financial resources to operate an adult foster home for at least two months, unless the application is for a home that is already in operation. A credit reference check may be required.

(2) The resident manager shall meet the provider qualifications listed in Section (1)(a) through (g) of this rule.

(3) Substitute Caregivers or any other person left in charge of residents for any period of time shall meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be subject to a Criminal Record Clearance and sign a release form SSD 303;

(c) Be able to communicate in English, know fire safety and emergency procedures and have access to resident records;

(d) Have a clear understanding of job responsibilities, have knowledge of residents' care plans and be able to provide the care specified for each resident's needs;

(e) Be able to meet the requirements of a resident manager when left in charge of a home for 30 days or longer; and

(f) Not be a resident.

411-50-443 Classification of Adult Foster Homes

(1) A Class I, Class II, or Class III license will be issued by the Division based upon the qualifications of either the provider or the resident manager managing the home, and compliance with the requirements of OAR 411-50-400 to 411-50-490.

(a) A Class I license may be issued if the applicant or resident manager completes the training requirements outlined in Section 411-50-440(1)(g).

(b) A Class II license may be issued if the applicant or resident manager completes the training requirements outlined in Section 411-50-440(1)(g) and has two years' experience in providing direct care.

(c) A Class III license may be issued if the applicant or resident manager completes the training requirements outlined in Section 411-50-440(1)(g) and

(A) Is a health care professional such as a registered nurse, pharmacist, doctor, occupational therapist, or physical therapist; or

(B) Is a licensed practical nurse (LPN) under the supervision of a registered nurse; or

(C) Has three years' experience in providing direct care to persons who are dependent in four or more ADLs; and

(D) Can provide satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experience as a caregiver.

(2) A provider with a Class I license may only admit residents who need assistance in up to four activities of daily living (ADLs). No nursing tasks may be delegated except for routine maintenance of oral medications. The resident must be in stable medical condition.

(3) A provider with a Class II license may provide care for residents who require assistance in all activities of daily living, but are not dependent in more than three activities of daily living. Routine nursing tasks may be delegated to the provider and qualified staff under the Board of Nursing Rules.

(4) A provider with a Class III license may provide care for residents who are dependent in activities of daily living, except that no more than one bed-care or totally dependent person may be in residence at one time. Complex tasks will be performed by a registered nurse or may be delegated under the Board of Nursing Rules, with written justification by both physician and registered nurse and specific approval granted by the Division.

(5) If a resident's care needs change resulting in care requirements greater than the provider's license classification allows, the provider shall notify the Division and may request:

(a) A reclassification of the provider's license; or

(b) An exception which allows the resident to remain in the adult foster home. An exception may be granted if:

(A) The best interests of the resident are served by remaining in the facility; and

(B) The provider is able to provide appropriate care of the resident; or

(C) Additional staff is hired to meet the additional care requirements; or

(D) Outside resources are available to meet the resident's care needs.

411-50-445 Facility Standards

In order to qualify for or maintain a license, a foster home shall comply with the following provisions:

(1) General Conditions

(a) Each adult foster home shall meet any applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations;

(b) The building and furnishings shall be clean and in good repair and grounds shall be maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting. There shall be no accumulation of garbage, debris, rubbish or offensive odors;

(c) Stairways shall be provided with handrails. A functioning light shall be provided in each room, stairway, and exitway; incandescent light bulbs shall be protected with appropriate covers. Yard and exterior steps shall be accessible to residents;

(d) The heating system shall be in working order. Areas of the home used by residents shall be maintained at a comfortable temperature. Recommended minimum temperatures are no less than 68° during the day and 60° during sleeping hours. Frail elderly may require warmer temperatures or additional clothing or bedding to be comfortable. During times of extreme summer heat, the provider will make reasonable effort to make the residents comfortable using available ventilation or fans; and

(e) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space shall not be located in the basement or garage(s), unless such space was constructed for that purpose or has otherwise been legalized under permit. There shall be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space will be required for each day care person or relative who exceeds the limit of five.

(2) Sanitation

(a) A public water supply shall be utilized if available. If a non-municipal water source is used, it shall be tested for coliform bacteria yearly and records shall be retained for two years; corrective action shall be taken to ensure potability;

(b) Septic tanks or other non-municipal sewage disposal system shall be in good working order;

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

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

(e) Sanitation for household pets and other domestic animals shall be adequate to prevent health hazards. Proof of rabies or other vaccinations required by a licensed veterinarian shall be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to residents or guests; and

(f) There will be adequate control of insects and rodents.

(3) Bathrooms

Bathrooms shall:

(a) Provide individual privacy and have a finished interior, with a door which opens to a hall or common use room; a mirror; an openable window or other means of ventilation; and a window covering. No person shall walk through another person's bedroom to get to a bathroom;

(b) Be clean and free of objectional odors (including commodes used in resident rooms);

(c) Have tubs or showers, toilets and sinks in good repair. A sink shall be located near each toilet, and a toilet and sink provided on each floor with resident rooms. There shall be at least one toilet, one sink, and one tub or shower for each six household occupants (including residents, day care persons, provider and provider's family excluding children under two years old);

(d) Have hot and cold water at each tub, shower, and sink in sufficient supply to meet the needs of the residents. Hot water temperature in bathing areas shall be supervised for persons unable to regulate water temperature;

(e) Have nonporous surfaces for shower enclosures; glass shower doors shall be tempered safety glass. Shower curtains shall be clean and in good condition. Non-slip floor surfaces shall be provided in tubs and showers;

(f) Have grab bars for toilets, tubs, and/or showers for resident's safety and have barrier-free access to toilet and bathing facilities;

(g) Have adequate supplies of toilet paper and soap for each bathroom. Residents shall be provided with individual towels and wash cloths which are laundered in hot water at least weekly or more often if necessary. Residents shall have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in dispenser shall be provided for residents' use.

(4) Bedrooms

(a) Bedrooms for all household occupants shall have been constructed as a bedroom when the home was built, or remodeled under permit; be finished with walls or partitions of standard construction which go from floor to ceiling; have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom; be adequately ventilated, heated and lighted with at least one openable window which meets fire regulations (See Section (7)(d) of this rule); be at least 70 square feet of usable floor space for each resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and have no more than two persons per room;

(b) Providers, resident managers or family members shall not sleep in areas designated as living areas, nor share bedrooms with residents;

(c) There shall be an individual bed at least 36" wide for each resident consisting of a mattress and springs in good condition. Cots, rollaways, bunks, trundles, couches, and folding beds may not be used for residents. Each bed shall have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases shall be laundered at least weekly, and more often if necessary. Waterproof mattress covers will be used for incontinent residents. Day care persons may use a cot or rollaway bed if bedroom space is available which meets the requirements of Section (4)(a) of this rule. Resident beds may not be used by day care persons;

(d) Each bedroom shall have sufficient separate, private dresser and closet space for each resident's clothing and personal effects including hygiene and grooming supplies. Residents shall be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space. Drapes or shades for windows shall be in good condition and allow privacy for residents;

(e) Bedrooms shall be on ground level for residents who are non-ambulatory or have impaired mobility; and

(f) Resident bedrooms shall be in close enough proximity to provider to alert provider to night time needs or emergencies, or shall be equipped with a call bell or intercom.

(5) Meals

(a) Three nutritious meals will be served daily at times consistent with those in the community. Each daily menu will include food from the four basic food groups and fresh fruit and vegetables in season. There shall be no more than a 14-hour span between the evening meal and breakfast. Nutritious snacks and liquids shall be offered to fulfill each resident's nutritional requirements. Consideration shall be given to residents' cultural and ethnic background in food preparation;

(b) Wild game such as deer, bear and elk may not be served unless inspected and approved by the U.S. Department of Fish and Wildlife. Home-canned foods must be processed according to the latest guidelines of the Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized;

(c) Special diets are to be followed as prescribed in writing by the resident's physician;

(d) Adequate storage shall be available to maintain food at a proper temperature, including a properly working refrigerator;

(e) Utensils, dishes, glassware and food stuffs shall not be stored in bedrooms, bathrooms, or living areas;

(f) Meals shall be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the provider (restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the resident;

(g) Utensils, dishes and glassware shall be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sanicycle is recommended; and

(h) Food preparation areas and equipment shall be clean, free of offensive odors and in good repair.

(6) Telephone

(a) A telephone available and accessible for residents' use for incoming and outgoing calls shall be provided in the home where residents live;

(b) Emergency telephone numbers shall be posted by the telephone including an emergency number to reach a provider who does not live in the home. Telephone numbers for making complaints to the Ombudsman and the local Division office must also be posted; and

(c) Limitations on the use of the telephone by residents are to be specified in the written house rules. Individual restrictions must be specified in the care plan.

(7) Safety

(a) Buildings shall meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home shall be inspected for fire safety by the local fire department or Division staff using the standards in this rule;

(b) Heating and electrical equipment, including wood stoves, shall meet all state and local codes. Such equipment shall be installed, used and maintained properly and be in good repair. Protective screens or metal curtains are required on fireplaces. Portable oil, gas or kerosene heaters are prohibited. Extension cords must not be used in place of permanent wiring;

(c) Hardware for all exit doors and interior doors shall have simple hardware which cannot be locked against exit and shall have an obvious method of operation. Hasps, bolts, hooks and eyes, and double key deadbolts are not permitted;

(d) Bedrooms shall have at least one window readily openable from the inside without special tools and which provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 24 inches in height or 20 inches in width. Sill height shall not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress which can be used by residents. Exterior sill heights shall be no greater than 72 inches from the ground, platform, deck or landing. Smoking is not permitted in bedrooms;

(e) Construction:

(A) Buildings will be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exitway is composed of readily combustible acoustical tile or wood paneling, such material must be treated with an approved intumescent surface coating.

(B) Mobile home units must have been built since 1976 and designed for use as a home rather than a travel trailer. The units shall have a manufacturer's label permanently affixed on the taillight end of the unit itself which states it meets the requirements of the Department of Housing and Urban Development (HUD). The required label shall read as follows:

"As evidence by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home

Construction and Safety Standards in effect on the date of manufacture. See data plate."

(C) If such a label is not evident and the provider believes the unit meets the required specifications, he/she must take the necessary steps to secure and provide verification of compliance from the manufacturer;

(D) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated any further.

(f) At least one fire extinguisher classed as 2A-10BC shall be in a visible and readily accessible location on each floor, including basements, and shall be checked at least once a year by a qualified representative of a company engaged in fire extinguisher maintenance;

(g) Smoke detectors shall be installed in each bedroom and in hallways that adjoin bedrooms. Ceiling placement of smoke detectors is recommended. Detectors shall be equipped with a device that warns of low battery;

(h) The provider shall maintain exits, detectors and extinguishers in functional condition. If there are more than two violations in maintaining battery operated detectors in working condition, hard-wiring of the detectors into the electrical system may be required;

(i) Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers in areas inaccessible to residents. Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not readily accessible to clients;

(j) Cleaning supplies, poisons and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food preparation and storage areas, dining areas, and medications;

(k) An emergency evacuation procedure shall be developed, posted and rehearsed with occupants. A record shall be maintained of evacuation drills. Drills will be held at least once every 90 days, with at least one drill practice per year occurring during sleeping hours. Records of drills shall be maintained for one year and include date, time for full evacuation, and names of residents requiring assistance for evacuation;

(l) Within 24 hours of arrival, any new resident shall be shown how to respond to a fire alarm, how to exit from the home in an emergency, and receive an orientation to basic fire safety;

(m) Providers shall demonstrate the ability to evacuate all residents from the dwelling within three (3) minutes. If there are problems in demonstrating this evacuation time, conditions may be applied to the

license which include reduction of residents under care, additional staffing, increased fire protection or change in classification;

(n) The provider shall provide, keep updated and post a floor plan containing room sizes, location of each resident's bed, fire exits, resident manager or provider's sleeping room, smoke detectors and fire extinguishers. A copy of this drawing shall be submitted with the application and updated to reflect any change;

(o) Residents shall not be housed on the second floor or in a basement that does not open onto ground level, unless the resident is totally ambulatory and there is a secondary means of emergency egress, the use of which is within the capability of the persons it is intended to serve. Stairs must have a maximum height of 7 1/2 inches and minimum tread of 10 1/2 inches. Stories above the second floor shall not be used for sleeping purposes. Lifts or elevators are not an acceptable substitute for resident's capability to ambulate stairs. Split level homes will be evaluated according to accessibility, second means of exit, and level of residents served;

(p) All common use areas of the house and exitways must be barrier free and there shall be wheelchair ramps from exterior doors if non-ambulatory persons are in residence;

(q) Adult foster homes located more than five miles distant from the nearest fire station or those of unusual construction characteristics may be required to have a complete fire alarm system meeting the requirements of the NFPA 72A and 72E and with approved automatic reporting to the local jurisdiction providing fire protection.

411-50-447 Standards and Practices for Care and Services

(1) Medications and Physician's Orders

(a) There must be a written physician's order for any medications, treatments, therapies and use of restraints. Orders must be carried out as prescribed by a physician. Changes will not be made without a physician's order;

(b) Each resident's medication shall be clearly labeled with the pharmacist's label or be in original labeled container and kept in a locked, central location, separate from that of the provider or the provider's family. Unused, outdated or recalled medications shall not be kept in the home and shall be disposed of according to the pharmacist's recommendations;

(c) A written medication chart for each resident shall be kept of all medications administered by the caregiver to that resident, including over the counter medications. The chart shall indicate name of medication, dosage, route and time given, and shall be immediately initialed by the person giving it. Treatments and therapies must be

immediately documented on the medication sheet showing times given, type of treatment or therapy, and initials of the person giving it;

(d) Residents must have physician's written order of approval to self-medicate. Persons able to handle their own medical regimen will keep medications in their own room in a small storage area that can be locked;

(e) Restraints may only be used under a written physician's order and delegated to a Class II or III home under procedures outlined in the Board of Nursing Rules. Hard restraints shall not be used. Residents in soft restraints or geri-chairs must be repositioned at least every two hours and released for 15 minutes, exercised, and given fluids. If residents are restrained in bed at night, the same procedure of releasing and repositioning shall be followed and documented. If restraints are necessary to protect the resident or others, they may only be used until appropriate action is taken by emergency personnel. It is the responsibility of the provider to call for emergency help immediately;

(f) Subcutaneous injections may be self-administered by the resident or administered by a relative of the resident, a currently licensed registered nurse, an LPN under registered nurse supervision, or a Class II or Class III provider who has been delegated and trained by a registered nurse under provision of the Board of Nursing rules. Intramuscular injections may not be delegated.

(2) Delegation of Nursing Care Tasks (Ed. Note: See Appendix B)

Nursing tasks may be delegated by an RN to providers and other caregivers within the limitations of their classification and only under the following conditions:

(a) There is a physician's order;

(b) The registered nurse has assessed the resident's condition to determine there is not a significant risk to the resident if the provider performs the task;

(c) The registered nurse has determined the provider or other caregiver is capable of performing the task;

(d) The registered nurse has taught the provider or caregiver how to do the task;

(e) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;

(f) The registered nurse provides written instructions for the provider or caregiver to use as reference;

(g) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other residents or taught to other care providers;

(h) The RN has determined the frequency for monitoring, but no less often than every 60 days;

(i) The registered nurse documents a nursing plan for the resident's care plan including delegation procedures, frequency of RN follow-up visits, and signature and license number of the registered nurse doing the delegating.

(3) Resident Records

(a) An individual resident record shall be developed, kept current, and available on the premises for each person admitted to the adult foster home. The record shall contain the following information:

(A) General information - names, addresses, and telephone numbers of relatives, significant persons, case managers, medical providers; Social Security number, birth date, date of admission, prior living facility and mortuary;

(B) Medical Information:

(i) History of accidents, illnesses or mental status that may be pertinent to current care;

(ii) Current orders for medications, treatments, therapies, use of restraints, and special diets;

(iii) Completed medication charts from previous months;

(C) Financial Information:

(i) Contracts with the Division, resident, relatives, or person(s) paying for care;

(ii) Division Financial Planning sheets (form SSD 512), if pertinent;

(iii) Resident Account Record (form SSD 713) or other expenditure form if the provider manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident. Purchases of $5 or more made on behalf of a resident must be documented by receipts;

(D) Resident's care plan, prepared by the provider based on information from the family, case manager, physician, and registered nurse involved, which assesses the medical, dietary, activity and social needs of the resident and describes how these

needs will be provided. The care plan shall be developed at the time of admission and updated at least semi-annually and whenever the resident's condition changes. The care plan shall describe the resident's needs and capabilities including by whom, when and how often care and services will be provided. Specific information will include:

(i) The ADLs the resident is able to do without assistance;

(ii) The ADLs the resident needs help with;

(iii) The ADLs the resident may be able to do more independently with encouragement and training;

(iv) Any medical or health problems relevant to services needed by the resident;

(v) Any mental or physical disabilities or impairments relevant to services needed by the resident;

(vi) Other problems or needs requiring services;

(vii) The ability of the resident to exit from the facility in an emergency and the time required to exit;

(viii) Instruction and documentation of tasks delegated to the provider by the registered nurse, with the name and license number of the delegating registered nurse; and

(ix) Date of review and signature of person preparing the plan;

(E) A copy of the written house rules with documentation that the rules have been discussed with the resident;

(F) A written report of all significant incidents relating to a resident including how and when the incident occurred, who was involved, what action was taken by staff and the outcome to the resident. If no significant event occurs, a narrative entry describing the resident's progress shall be made no less often than every 30 days;

(G) Any other information or correspondence pertaining to the resident;

(b) Resident records maintained by the provider shall be available to representatives of the Division conducting inspections or investigations, as well as to residents, their authorized representative or other legally authorized persons;

(c) If the provider manages or handles a resident's money, a separate account record shall be maintained in the resident's name. The provider shall not comingle, borrow from, or pledge any funds of a

resident. Personal Incidental Funds (PIF) for Division clients are to be used at the discretion of the client for such things as clothing, tobacco, and snacks (not part of daily diet);

(d) Records shall be kept for a period of three years. If a resident moves or the adult foster home closes, copies of pertinent information shall be transferred to the resident's new place of residence; and

(e) In all other matters pertaining to confidential records and release of information, providers shall be guided by the principles and definitions described in OAR 411-05-000 to 411-05-065. A copy of these rules will be made available by the Senior Services Division upon request.

(4) Residents' Bill of Rights

The Residents' Bill of Rights provided by the Division shall be explained and a copy given to residents at admission. The Bill of Rights states each resident has the right to:

(a) Be treated as an adult with respect and dignity;

(b) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;

(c) Receive appropriate care and services and prompt medical care as needed;

(d) Associate and communicate privately with any person of choice and send and receive personal mail unopened;

(e) Have access to and participate in activities of social, religious, and community groups;

(f) Be able to keep and use personal clothing and possessions as space permits;

(g) Be free from chemical and physical restraints except as ordered by a physician;

(h) Be free of discrimination in regard to race, color, national origin, sex, or religion;

(i) Manage own financial affairs unless legally restricted;

(j) A safe and secure environment;

(k) Written notices prior to rate increases and evictions;

(l) A written agreement regarding services to be provided and agreed upon rates; and

(m) Voice grievances without fear of retaliation.

(5) House Rules

A copy of the house rules and monthly charges shall be given to and discussed with residents and their families at the time of admission. House rules shall include any restrictions or limitations on use of tobacco or alcohol, use of telephones, meal schedules and visitations, and must not be so restrictive as to be in conflict with the residents' rights or the family atmosphere of the home. House rules are subject to review and approval by Division staff. The house rules shall be posted.

(6) Resident Care

(a) Care and supervision of residents shall be in a homelike atmosphere and shall be appropriate to the age and condition of the individual resident and the training of the provider or staff. Providers will be required to meet the requirements for training according to the class for which they are licensed. Additional staff may be required if day care or respite residents are in the home;

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider shall cooperate with the plan and ensure that it is implemented as instructed. The provider is responsible for informing the resident's physician of changes in the health status of the resident;

(c) Providers shall not inflict, or tolerate to be inflicted, physical, sexual or emotional abuse or punishment; exploitation; or neglect of resident(s); and

(d) Providers shall exercise reasonable precautions against any conditions which could threaten the health, safety or welfare of residents.

(7) Moves or Transfers

(a) A resident may not be moved or transferred without 14 days' written notice stating reasons for the move or transfer and the resident's right to object to the move or transfer, except where undue delay might jeopardize the health, safety or well-being of the resident or others. Residents may only be moved or transferred for the following reasons:

(A) Behavior which poses an imminent danger to self or others;

(B) Behavior which substantially interferes with the orderly operation of the home;

(C) Failure to make payment for care;

(D) The home has had its license revoked, not renewed, or voluntarily surrendered; or

(E) The resident's care needs exceed the ability or classification of the provider;

(b) Residents who object to the move shall be given the opportunity of an informal conference if requested within ten days of receipt of notice. Participants may include the resident, and at the resident's request, a family member, case manager, legal representative of resident; the provider, and a representative from the provider association if the provider requests it. The purpose of the conference is to determine if a satisfactory resolution can be reached. This is not to be considered an administrative hearing.

(8) Closing

Providers shall notify the Division prior to a voluntary closure of a home and give residents, families, and case managers for Division clients 30 days' written notice except in circumstances where undue delay might jeopardize the health, safety or well-being of residents, providers or staff. If a provider has more than one home, residents cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from residents, family members and case managers.

(9) General Practices

(a) The adult foster home license, the Residents' Bill of Rights, house rules and the procedure for making complaints shall be conspicuously posted where they can be seen by residents;

(b) The provider shall cooperate with Division personnel in inspections, complaint investigations, planning for client care, application procedures and other necessary activities; and allow access of Division personnel, Ombudsman and other authorized persons to the foster home and its residents;

(c) Information related to resident(s) shall be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation under these rules;

(d) The provider shall abide by the terms of these Administrative Rules, OAR 411-50-400 to 411-50-490.

411-50-450 Inspections

(1) The Division shall conduct an inspection of an adult foster home:

(a) Prior to issuance of a license;

(b) Prior to annual renewal of a license;

(c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or

(d) Anytime the Division has probable cause to believe a home has violated a regulation or provision of these Administrative Rules or is operating without a license.

(2) The Division <u>may</u> conduct inspections:

(a) Any time such inspections are authorized by these Administrative Rules and any other time the Division considers it necessary to determine if a home is in compliance with these Administrative Rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of routine monitoring of the residents' care.

(3) State or local fire inspectors shall be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the Division.

(4) Division staff shall have full access and authority to examine, among other things, facility and resident records and accounts, and the physical premises, including the buildings, grounds, equipment and any vehicles.

(5) Division staff shall have authority to interview the provider, resident manager, staff, and residents. Interviews shall be confidential and conducted privately.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Division staff for the purpose of inspection and investigation.

(7) The Division has authority to conduct inspections with or without advance notice to the provider, staff, or a resident of the home.
The Division shall not give advance notice of any inspection if the Division believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these Administrative Rules.

(8) If Division staff is not permitted access or inspection, a search warrant may be obtained.

(9) The inspector shall respect the private possessions of residents, providers and staff while conducting an inspection.

(10) Completed reports on inspections, except for confidential information, shall be available to the public, upon request, during business hours.

411-50-455 Complaints

(1) Any person who believes these Administrative Rules have been violated may file a complaint with the Division.

(2) The Division shall investigate any complaints regarding adult foster homes and notify the provider of the results of the investigation and any proposed action or sanction.

(3) The Division shall furnish each adult foster home with a Complaint Notice which must be posted in a conspicuous place and which states the telephone number of the Division and the Ombudsman and the procedure for making complaints.

(4) A record shall be maintained by the Division of all complaints and any action taken on the complaint, indexed by the name of the provider, and shall:

(a) Be placed into the public file. (Any information regarding the investigation of the complaint shall not be filed in the public file until the investigation has been completed);

(b) Protect the privacy of the complainant and the resident; and

(c) Treat the names of the witnesses as confidential information.

(5) Providers who acquire substantiated complaints pertaining to the health, safety or welfare of residents may have their licenses reclassified, suspended, revoked or not renewed.

(6) The adult foster home provider shall not retaliate against any resident by increasing charges; decreasing services, rights or privileges; threatening to increase charges or decrease services, rights or privileges; by taking or threatening to take any action to coerce or compel the resident to leave the facility or by abusing or threatening to harass or abuse a resident in any manner after the resident has filed a complaint with the Division.

(7) Any complainant, witness or employe of a facility shall not be subject to any retaliation by a provider for making a report or being interviewed about a complaint or being a witness, including restriction of access to the home or a resident or, if an employe, to dismissal or harassment.

(8) The complainant shall have immunity from any civil or criminal liability with respect to the making or content of a complaint made in good faith.

(9) Any person has the right to inspect and receive a photocopy of the public complaint files maintained by the Division upon requesting an appointment to do so.

411-50-460 Procedures for Correction of Violations

(1) If, as a result of an inspection or investigation, the Division determines that abuse has occurred, the provider must be notified verbally to immediately cease the abusive act. The Division will follow-up with a written confirmation of the warning to cease the abusive act and will include notification that further sanctioning may be imposed.

(2) If an inspection or investigation results in a violation of the rules other than abuse, the Division shall notify the provider in writing of violations of these rules.

(3) The notice of violation shall state the following:

(a) A description of each condition that constitutes a violation;

(b) Each regulation that has been violated;

(c) Except in cases of imminent danger, a specific time frame for correction, but no later than sixty (60) days after receipt of the notice;

(d) Sanctions that may be imposed against the home for failure to correct the violations;

(e) Right to contest the violations if an administrative sanction is imposed; and

(f) The right to request an exception as provided in OAR 411-50-430.

(4) At any time after receipt of a notice of violations or an inspection report, the licensee or the Division may request a conference. The conference shall be scheduled within ten (10) days of a request by either party.

(5) The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of these Administrative Rules.

(6) The request by a licensee or the Division for a conference shall not extend any previously established time limit for correction.

(7) The licensee shall notify the Division of correction of violations no later than the date specified in the notice of violation.

(8) The Division may conduct a reinspection of the home after the date the Division receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(9) For violations that present an imminent danger to the health, safety or welfare of residents, the notice of violation shall order the licensee to

correct the violations and abate the conditions no later than twenty-four (24) hours after receipt of the notice of violation. The Division shall inspect the home after the twenty-four (24) hour period to determine if the violations have been corrected as specified in the notice of violation.

(10) If residents are in immediate danger, the license may be suspended or revoked and arrangements made to move the residents.

(11) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division shall institute one or more administrative sanctions.

411-50-465 Administrative Sanctions

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Attachment of conditions to a license;

(b) Civil penalties;

(c) Denial, suspension, revocation, or non-renewal of license;

(d) Reclassification of a license.

(2) If the Division imposes an administrative sanction, it shall serve a notice of administrative sanction upon the licensee personally or by certified mail.

(3) The notice of administrative sanction shall state:

(a) Each sanction imposed;

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) Each statute or rule allegedly violated;

(d) A statement of the licensee's right to a contested case hearing;

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

(f) A statement that the Division'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

(g) A statement that the notice becomes a final order upon default if the licensee fails to request a hearing within the specified time.

(4) If an administrative sanction is imposed for reason other than abuse, neglect, or exploitation, it shall be preceeded by a hearing if the licensee requests the hearing in writing within sixty (60) days after receipt of the notice.

(5) If a licensee fails to request the hearing within the sixty (60) days, the notice of administrative sanction shall become a final order of the Division by default.

(6) The Division may immediately suspend, revoke, or not renew a license for reason of abuse, neglect, or exploitation of a resident. The licensee may request a review of the decision by submitting a request, in writing, within ten (10) days of the notice and order of suspension, revocation or non-renewal.

(7) Within ten (10) days of receipt of the licensee's request for a review, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, revocation or non-renewal, including any written documentation submitted by the licensee within that time frame. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension, revocation or non-renewal shall be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days.

(8) If a license is suspended, revoked, or not renewed, the Division may arrange for residents to move for their protection.

411-50-480 Denial, Suspension, Revocation or Non-renewal of License

(1) The Division shall deny, suspend, revoke, or refuse to renew a license where it finds:

(a) There has been substantial failure to comply with these rules or where 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 caring for residents in an adult foster home; or

(b) The applicant or provider has been convicted of one or more crimes described in OAR 411-09-010;

(c) (A) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked or refused to be renewed in this or any other state/county within three years preceeding the present action if the denial, suspension, revocation or refusal to renew was due in any part to abuse or neglect of the residents, creating a threat to the residents or failure to possess physical health, mental health or good personal character.

(B) If the denial, suspension, revocation or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Division by clear and convincing evidence his/her ability and fitness to operate an adult foster home. If the applicant or provider does not meet this burden, then the Division shall deny, suspend, revoke or refuse to renew the license;

(d) (A) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse or neglect of the residents, creating a threat to the residents or failure to possess physical health, mental health or good personal character within three years preceeding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents.

(B) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the foster home;

(iii) Receives financial backing from the person for the benefit of the foster home;

(iv) Receives managerial assistance from the person for the benefit of the foster home; or

(v) Allows the person to have access to the foster home.

(C) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation or refusal to renew.

(2) The Division <u>may</u> deny, suspend, revoke, or refuse to renew an adult foster home license if the applicant or provider:

(a) Submits fraudulent or untrue information to the Division;

(b) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, termination of utility services due to failure to pay bill(s);

(c) Has a prior denial, suspension, revocation or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state/county;

(d) Has threatened the health, safety, or welfare of any resident;

(e) Has abused, neglected, or exploited any resident;

(f) Has a medical or psychiatric problem which interferes with the ability to provide foster care;

(g) Refuses to allow access and inspection;

(h) Fails to comply with a final order of the Division to correct a violation of the Administrative Rules for which an administrative sanction has been imposed; or

(i) Fails to comply with a final order of the Division imposing an administrative sanction.

411-50-483 Conditions

(1) Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of residents;

(b) There exists a threat to the health, safety, and welfare of a resident;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific person(s) only and further placements will not be made into that home.

(2) Conditions which may be imposed on a licensee include:

(a) Restricting the total number of residents;

(b) Restricting the number and impairment level of residents allowed within a licensed classification level based upon the capacity of provider and staff to meet the health and safety needs of all residents;

(c) Reclassifying the level of residents that can be served;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training of provider/staff;

(f) Requiring additional documentation;

(g) Restricting a provider from opening an additional home; and

(h) Suspending admissions.

(3) The provider must be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.550.

(4) In addition to, or in-lieu of, a contested case hearing, a provider may request a review by Program Assistance, SSD, of conditions imposed by the AAAs or SSD units. The review does not diminish the provider's right to a hearing.

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

411-50-485 Criminal Penalties

(1) Operating an adult foster home without a license is punishable as a Class C misdemeanor.

(2) Refusing to allow access and inspection of a home by Division staff or state or local fire inspection is a Class B misdemeanor.

(3) The Division may commence an action to enjoin operation of an adult foster home:

(a) When an adult foster home is operated without a valid license; or

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed.

411-50-487 Civil Penalties

(1) Civil penalties, not to exceed $50 per violation to a maximum of $100, may be assessed for violation of these rules.

(2) Civil penalties of a maximum of $250 per occurrence may be assessed for substantiated abuse.

(3) In addition to any other liability or penalty, the Division may impose a penalty for any of the following:

(a) Operating the home without a license;

(b) The number of residents exceeds the licensed capacity;

(c) The operator fails to achieve satisfactory compliance with the requirements of these Administrative Rules within the time specified, or fails to maintain such compliance;

(d) The home is unable to provide adequate level of care to residents;

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home; or

(f) The provider fails to cooperate with the Division, physician, RN, or other health care professional in carrying out a resident's care plan.

(4) A civil penalty may not be imposed for violation other than those involving health, safety, or welfare of a resident and protection from retaliation of an employe who makes a complaint, unless a violation is found on two consecutive surveys of the facility; and

(a) A reasonable time has been prescribed for elimination of the violation not to exceed thirty (30) days after first notice of violation; or

(b) Where more than thirty (30) days are required to correct the violation, such time is specified in a plan of correction and found acceptable by the Division.

(c) The following rules relate to health, safety or welfare of residents and protection from retaliation for making a complaint:

411-50-440(1)(f) and (3)(c); 411-50-443 (2) through (5); 411-50-445; 411-50-447 (1), (2), (4), (6), (7), (8); and 411-50-455(7).

(5) Any civil penalty imposed under this section shall become due and payable when the person incurring the penalty receives a notice in writing from the Division. The notice shall be sent by registered or certified mail and shall include:

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

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

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

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

(6) The person to whom the notice is addressed shall have ten (10) days from the date of mailing in which to make written application for a hearing.

(7) All hearings shall be conducted according to the applicable provisions of ORS 183.310 to 183.550.

(8) In imposing a civil penalty, the administrator shall consider the following factors:

(a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(b) Any prior violations pertaining to the facility;

(c) The economic and financial conditions of the person incurring the penalty;

(d) The immediacy and extent to which the violation threatens the public health or safety.

(9) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.

(10) Unless the penalty is paid within ten (10) days after the order becomes final, the order constitutes a judgement and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person.

(11) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(12) All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund.

411-50-490 Zoning for Adult Foster Homes

Adult foster homes are subject to applicable sections of ORS 443.510 to 443.640. (Ed. Note: See Appendix C)

STANDARDS FOR REGISTERED NURSE TEACHING AND DELEGATION TO UNLICENSED PERSONS

851-45-011(1) Purpose of standards for teaching and delegation to unlicensed persons.

(a) To provide guidelines for the registered nurse who is in a position of teaching and delegating nursing tasks to unlicensed persons.

(b) To establish safeguards for such teaching and delegation.

(c) To define for other state agencies and private individuals how such teaching and delegation shall occur.

(2) Delegation of various tasks relating to administration of noninjectable medication in specific facilities.

(a) The registered nurse may delegate the administration of noninjectable medication, including controlled substances, to unlicensed persons even if they are not certified under the Board's curriculum standards for administration of noninjectable medications (OAR 851-20-123) in the following specific facilities:

(A) Local correctional facilities, lockups, and juvenile detention facilities defined by ORS 169.005;

(B) Juvenile training schools defined by ORS 420.005;

(C) Facilities operated by a public agency for detoxification of persons who use alcohol excessively;

(D) Homes or facilities licensed for adult foster care under ORS 443.705 to 443.825;

(E) Residential care, training or treatment facilities licensed under ORS 443.400 to 443.455.

(b) Delegation shall occur under the following conditions:

(A) The registered nurse shall supply procedural guidance and initial direction for the various tasks of administration of noninjectable medications.

(B) The registered nurse shall periodically inspect and evaluate the administration of medications by unlicensed persons.

(c) Definitions of terms used in this section:

(A) "Procedural Guidance" means a written plan for the administration of noninjectable medications.

(B) "Initial Direction" means explicit instructions regarding medication, dose, time, route, and method of administration, documentation, and patient observation.

(C) "Periodic Inspection and Evaluation" means the registered nurse shall, at regular intervals, assess and evaluate the condition of the client, review the procedures and directions established in the facility for the administration of noninjectable medications by unlicensed persons. The interval shall be determined by the registered nurse based on the condition of the client and the type and amount of medication administered.

(D) "Various Tasks for the Administration of Medication" means removal of an individual dose from a previously dispensed, properly labeled container (including a unit dose container); verifying it with the physician's order; giving the individual dose to the proper client at the proper time by the proper route and promptly recording the time and dose given.

(d) The responsibility and accountability to determine the appropriateness of the delegation of various tasks related to the administration of noninjectable medication shall remain with the registered nurse.

(3) Delegation and teaching of nursing care tasks to unlicensed persons.

(a) The registered nurse may delegate tasks of nursing care, including administration of subcutaneous injectable medications, to an unlicensed person even if the unlicensed person has not been certified under the Board's standards for curricula for nursing assistants (OAR 851-20-113 and OAR 851-20-123) under the following conditions:

(A) The setting where the task of nursing care is to be performed is one where laws or administrative rules which license the setting do not require the regularly scheduled presence of a licensed nurse.

(B) The registered nurse considers the nature of the nursing care task to be provided, its complexity, and risks involved, and the necessary skill needed.

(C) The registered nurse assesses the client's condition and determines there is not a significant risk to the client if the unlicensed person performs the task in the absence of direct registered nurse supervision.

(D) The registered nurse determines how frequently the client's condition shall be reassessed to determine the appropriateness of the continued delegation of the task to an

unlicensed person.

(E) If there is some risk involved to the client, the registered nurse determines that the unlicensed person is prepared to effectively deal with the consequences.

(F) The registered nurse assesses the ability of the unlicensed person to perform the nursing task.

(G) The registered nurse determines the frequency of supervision of the unlicensed person.

(H) The registered nurse documents the process for deciding that this task can be safely delegated for this client and to this unlicensed person.

(I) Prior to delegating the task, the registered nurse shall do the following:

(i) Teach the unlicensed person the task;

(ii) Observe the unlicensed person performing the task to assure the unlicensed person does the task safely and accurately;

(iii) Leave instructions for performance of the task for the unlicensed person to use as a reference;

(iv) Instruct the unlicensed person that the task being taught and delegated is specific to this client only and is not transferable to other clients or taught to other care providers;

(v) Document how the task was taught, the teaching outcome, the content and type of instructions left for the unlicensed person, evidence that the unlicensed person understands any risks involved in performing the task and has a plan how to deal with the consequences, evidence that the unlicensed person was instructed that the task is client-specific and not transferable to other clients or providers, how frequently the client should be reassessed by a registered nurse regarding continued delegation of the task to the unlicensed person, and how frequently the unlicensed person should be supervised.

(b) The responsibility and accountability for teaching and delegation of specific tasks of nursing care to unlicensed persons remains with the registered nurse.

Delegated Tasks of Nursing Care

These are guidelines to help understand routine and complex tasks, but are not intended to supercede the judgement of the nurse in determining whether a task is routine or complex.

Tasks ROUTINE TASKS	COMPLEX TASKS
MOBILITY: Maintenance cast or brace care Maintenance traction care Range of motion exercises, (passive/someone other than the patient and supervised by a professional)	Nonweight/partial weight bearing which is supervised on a frequent basis by a nurse or therapist Traction care requiring 24-hour observation/assessment Unstable fracture care/new cast
FEEDING: Maintenance feedings per stomach tube (gastrostomy or jejunostomy)	Nasogastric tube feedings (through nose into stomach) Nasogastric tube insertions Aspiration of stomach contents prior to feedings/medication Hickman catheter feeding (catheter in vein near neck) Other
BLADDER CONTROL: Monitoring urinary output to evaluate fluid balance because of medical condition Maintenance/Routine catheter care Maintenance bladder irrigations Intermittent catheterizations	Bladder training prior to catheter removal only when based on documented training plan Insertion of catheter due to history of difficult insertions Instillation of medication per catheter
BOWEL CONTROL: Maintenance enemas/suppositories Impaction removal Maintenance care of ileostomy or colostomy	Post-operative observation and care of new colostomy or ileostomy
SKIN AND NAILS: Care of noninfected lesions and/or wounds Nail care for individuals with diabetes circulatory problem	Care of nonhealing and/or deep wounds requiring irrigation and debridement Isolation and/or wound precautions for infected wounds
BEHAVIOR: Maintenance care related to soft restraints when used for behavior Behavior management program when based on documented plan	Professional judgment for unstable behavior problems
OXYGEN/VENTILATOR: Maintenance administration by use of prongs, mask, etc. Administration in conjunction with inhalation therapy	
TRACHEOSTOMY/SUCTIONING: Clean care of stoma, including maintenance dressings Oral suctioning	Suctioning, tracheal or nasopharyngeal Sterile care of tracheostomy stoma Tracheostomy cuff inflation
MEDICATION PROCEDURES Administration of stabilized, maintenance medication(s) Insulin injections--Maintenance dosage for stable diabetic Finger stick or other blood sugar test, clinitest, etc.	Administration of medication(s) requiring skilled observation and/or judgment for necessity, dosage and/or effect Insulin injections required dosage adjustments for unstable diabetic Drops/Ointments--Prescription preparation(s) which are instilled or applied as part of immediate post-operative regime

SITING OF RESIDENTIAL FACILITIES
(Elderly)

443.510 Definitions for ORS 443.510 to 443.550. As used in ORS 443.510 to 443.550, unless the context requires otherwise:

(1) "Elderly person" means a person who is 62 years of age or older.

(2) "Handicapped person" means an individual who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities.

(3) "Major life activity" means self-care, ambulation, communication, transportation, education, socialization, employment and the ability to acquire and maintain adequate, safe and decent shelter.

(4) "Residential facility" means a facility licensed under ORS 443.400 to 443.455 for 11 or fewer unrelated physically or mentally handicapped persons or elderly persons and not to exceed two staff persons who need not be related to each other or to any other facility resident. [1981 c.427 §1]

443.520 Policy. The Legislative Assembly finds and declares that:

(1) It is the policy of this state that physically or mentally handicapped persons and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups;

(2) There is a growing need for residential facilities to provide quality care and protection for physically or mentally handicapped persons and elderly persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is becoming increasingly difficult to site and establish residential facilities in the communities of this state; and

(4) Restrictions on the siting of such facilities have become a state-wide problem. [1981 c.427 §2]

443.530 Procedures for siting residential facilities. (1) Each city and county may adopt a procedure that provides opportunities for the siting of residential facilities within its jurisdiction including the siting of such facilities in single family residential zones. The procedure shall specify all conditions the requirements of which must be satisfied for the approval of an application for the siting of a residential facility, including any applicable zoning or land use restrictions.

(2) If a city or county denies an application for the siting of a residential facility, it must make formal findings of the reasons for the denial pursuant to the procedure adopted under subsection (1) of this section.

(3) Denial of an application for the siting of a residential facility by an agency, board or commission of a city or county may be appealed to the governing body of the city or county.

(4) Under the procedure established under this section, a city or county shall not require independent proof of conditions that have been required by the state for licensing of the residential facility, unless in the case of the particular facility, the city or county finds that:

(a) Circumstances have changed;

(b) Additional information about those conditions is necessary; or

(c) Review of the conditions is necessary to respond to the residents of the jurisdiction.

(5) Upon request of a city or county, an agency applying for licensing of a facility shall supply the city or county with a copy of its application for state licensing of the facility. [1981 c.427 §3]

443.540 Siting application. A city or county shall approve or deny an application for the siting of a residential facility within 90 days after the date of application, unless both the applicant and the city or county agree to an extension of time. [1981 c.427 §4]

443.550 Denial prohibited unless procedure adopted. After July 1, 1982, no city or county may deny an application for the siting of a residential facility unless it has adopted the procedure authorized by ORS 443.530. [1981 c.427 §5]

(Handicapped)

443.580 Definitions for ORS 443.580 to 443.600. As used in ORS 443.580 to 443.600 unless the context requires otherwise:

(1) "Handicapped person" means an individual who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities.

(2) "Major life activity" means self-care, ambulation, communication, transportation, education, socialization, employment and the ability to acquire and maintain adequate, safe and decent shelter.

(3) "Residential home" means a residence for five or fewer unrelated physically or mentally handicapped persons and for staff persons who need not be related to each other or to any other home resident. [1983 c.293 §1]

443.590 Policy. The Legislative Assembly finds and declares that:

(1) It is the policy of this state that physically or mentally handicapped persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability requires them to live in groups;

(2) There is a growing need for residences to provide quality care and protection for physically or mentally handicapped persons and to prevent inappropriate placement of such persons in state institutions and nursing homes;

(3) It is difficult to site and establish residential homes in the communities of this state; and

(4) Restrictions on the siting of such residences have become a state-wide problem. [1983 c.293 §2]

443.600 Residential home as residential use; powers of city and county over zoning. (1) A residential home shall be considered a residential use of property for zoning purposes. Residential homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. No city or county shall enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a residential home.

(2) A city or county may impose zoning conditions on the establishment and maintenance of a residential home in an area zoned for residential or commercial use, provided that such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone.

(3) A county may:

(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

(b) Impose reasonable conditions on the establishment of a residential home in an area zoned for farm use; and

(c) Allow a division of land for a residential home in an exclusive farm use zone only as provided in ORS 215.263 (8). [1983 c.293 §3; 1985 c.544 §1]

(Mentally Handicapped)

443.610 Policy. The Legislative Assembly finds:

(1) That mentally handicapped persons are entitled to live as normally as possible within communities and not be excluded because their disability requires a group living environment;

(2) That there is a growing need for such residences to provide quality care and protection for these persons and to prevent inappropriate placement in state institutions or nursing homes;

(3) That it is difficult to site such residences in communities in the state; and

(4) That the problem is state wide. [1987 c.351 §1]

443.620 Residential care facilities allowed as conditional use. In zones permitting densities of eight or more dwellings per acre, residential care facilities, as defined under ORS 443.400, shall be allowed as a conditional use. [1987 c.351 §2]

443.630 City and county compliance with ORS 443.620. (1) Cities and counties shall amend ordinances to comply with ORS 443.620 as part of periodic land use plan review occurring after January 1, 1988. Nothing in this section prohibits a city or county from amending its ordinances prior to periodic review.

(2) After periodic land use plan review occurring after January 1, 1988, no city or county shall enact or enforce zoning ordinances or siting criteria which would preclude siting of residential care facilities in zones permitting densities of eight or more dwellings per acre. [1987 c.351 §3]

443.640 Exemptions. Cities with populations of fewer than 2,500 are exempted from the provisions of ORS 443.610 to 443.640. [1987 c.351 §4]

ADULT FOSTER HOMES

443.705 Definitions for ORS 443.705 to 443.825. As used in ORS 443.705 to 443.825:

(1) "Adult foster home" means any family home or facility in which residential care is provided for five or fewer adults who are not related to the provider by blood or marriage.

(2) "Department" means, as appropriate, the Senior Services Division or the Mental Health Division of the Department of Human Resources.

(3) "Director" means the Director of the Department of Human Resources.

(4) "Licensed adult foster home" means a home which has been investigated and approved by the department. This includes an onsite inspection of the facility.

(5) "Provider" means any person operating an adult foster home.

(6) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation. [1983 c.629 §1; 1985 c.663 §1; 1987 c.430 §1]

443.715 Exclusions from definition of "adult foster home." For purposes of ORS 443.705 to 443.825, "adult foster home" does not include:

(1) Any house, institution, hotel, or other similar place that supplies board and room only, or room only, or board only, if no resident thereof requires any element of care.

(2) Any specialized living situation for physically handicapped persons where the Senior Services Division provides payment for personal care services other than to an adult foster home provider.

(3) Any small residential care facility for mentally retarded and developmentally disabled persons certified and funded by the Mental Health Division. [1983 c.629 §2; 1985 c.663 §2]

443.725 License required; resident manager required. (1) Every provider of adult foster care shall be licensed with the department before caring for adult residents.

(2) A provider must live in the home that is to be licensed or hire a certified resident manager. [1983 c.629 §3; 1985 c.663 §3]

443.735 Issuance of license; renewal. (1) Applications for license to maintain and operate an adult foster home shall be made on forms provided by the department. Each application shall be accompanied by a fee of $20 per bed requested for license.

(2) Upon receipt of an application and fee, the department shall cause an investigation to be made by the appropriate divisions, as determined by the director. The department shall issue a license to any applicant for operation of an adult foster home in compliance with ORS 443.705 to 443.825 and 443.991 (3) or (4) or rules of the director. A license may be denied when an adult foster home is not in compliance with ORS 443.705 to 443.825 and 443.991 (3) or (4) or rules of the director.

(3) A license under ORS 443.725 is effective for one year from the date of issue unless sooner revoked. Each license shall state the name of the resident manager of the adult foster home, the name of the person who owns the adult foster home, the address of the premises to which the license applies and the maximum number of

residents. If during the period covered by the license a resident manager changes, the provider must within 15 days request modification of the license. The request must be accompanied by a fee of $10.

(4) No license under ORS 443.725 is transferable or applicable to any location, persons operating the adult foster home or the person owning the adult foster home other than that indicated on the application for licensing.

(5) All adult foster homes now certified will be considered to be licensed until such time as the current certification expires.

(6) All moneys collected under ORS 443.725 to 443.780 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Resources. [1983 c.629 §4; 1985 c.663 §4]

443.745 Denial, suspension or revocation; conditional license; review. (1) A license may be denied, suspended, revoked or have conditions attached upon a finding by the department of any of the following:

(a) There exists a threat to the health, safety or welfare of any resident.

(b) There is reliable evidence of abuse, neglect or exploitation of any resident.

(c) The facility is not operated in compliance with ORS 443.705 to 443.825 and 443.991 (3) or (4) or the rules adopted thereunder.

(d) Such other circumstances as may be established by the department by rule.

(2) Conditions attached to a license shall be effective upon order of the director.

(3) Suspension or revocation of a license authorized by this section for any reason other than abuse, neglect or exploitation of the resident shall be preceded by a hearing under ORS 183.310 to 183.550 if requested by the provider.

(4) If the license is suspended or revoked for the reason of abuse, neglect or exploitation of a resident, the provider may request a review in writing within 10 days after notice of the suspension or revocation. If a request is made, the director shall review all material relating to the allegation of abuse, neglect or exploitation and to the suspension or revocation within 10 days of the request. The director shall determine, based on review of the material, whether or not to sustain the decision to suspend or revoke. If the director determines not to sustain the decision, the license shall be restored immediately. The decision of the director is subject to judicial review as a contested case under ORS 183.310 to 183.550.

(5) In the event the license to maintain an adult foster home is ordered suspended or revoked, the department may withhold service payments until the defective situation is corrected. For protection of residents, the department may arrange for them to move. [1983 c.629 §5; 1985 c.663 §5; 1987 c.431 §1]

443.755 Entry and inspection of homes; access to residents; fire inspection. (1) The department staff shall be permitted access to enter and inspect all licensed adult foster homes. The department shall be permitted access to enter and inspect any unlicensed adult foster home upon the receipt of an oral or written complaint, or in case the department itself has cause to believe that an adult foster home is operating without a license or there exists a threat to the health, safety or welfare of any resident. The department staff shall be permitted access to the residents of adult foster homes in order to interview residents privately and to inspect residents' records.

(2) The state or local fire inspectors shall be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the department. [1983 c.629 §6; 1985 c.663 §6]

443.765 Complaint procedure; retaliation prohibited; notice of rates and rules; liability for complaints. (1) Complaints against adult foster homes may be filed with the department by any person, whether or not a resident of the home. The department shall investigate complaints regarding adult foster homes.

(2) The department shall prepare a notice which must be posted in a conspicuous place in each adult foster home stating the telephone number of the department and the procedure for making complaints.

(3) The department shall maintain a file of all complaints and the action taken on the complaint, indexed by the name of the owner or operator. The filed complaint forms shall protect the privacy of the complainant, the resident and the witnesses.

(4) Any person has a right to inspect and photocopy the complaint files maintained by the department.

(5)(a) No owner or operator of an adult foster home shall retaliate against a resident by increasing charges, decreasing services, rights or privileges, or threatening to increase charges or decrease services, rights or privileges, by taking or

threatening to take any action to coerce or compel the resident to leave the facility, or by abusing or threatening to harass or to abuse a resident in any manner after the resident has filed a complaint with the department.

(b) Anyone who makes a report under ORS 443.705 to 443.825, and any witness or employe of a facility interviewed about the complaint shall not be subject to any retaliation by any owner or operator of an adult foster home for making a report or being a witness, including but not limited to restriction of otherwise lawful access to the home or to any resident thereof, or, if an employe, to dismissal or harassment.

(6) The provider shall give all residents, upon admission, a notice of the monthly rates and the house rules.

(7) Anyone participating in good faith in the making of a complaint pursuant to this section who has reasonable grounds for the making thereof shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of such complaint. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such complaint. [1983 c.629 §7; 1985 c.651 §3]

443.775 Rulemaking; compliance; enforcement; civil penalties. (1) The department shall adopt rules governing adult foster homes and the level of care provided in such homes, including the provision of care to more than one person with nursing care needs under specified conditions and department approval, such as are necessary to protect the health, safety or welfare of the residents and to provide for an appropriate continuum of care, but shall not be inconsistent with the residential nature of the living accommodations and the family atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

(2) The department shall make rules to assure that any employe who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation.

(3) For adult foster homes in which clients reside for whom the department pays for care, including homes in which the provider and the resident are related, the department may require substantial compliance with its rules relating to standards for care of the client as a condition for paying for care.

(4) By order the director may delegate authority under this section to personnel other than of Senior Services Division and Mental Health Division.

(5) The department may commence a suit in equity to enjoin maintenance of an adult foster home if:

(a) The home is operated without a valid license under this section; or

(b) After the license to maintain the home is ordered suspended or revoked, a reasonable time for placement of residents in other facilities has been allowed but such placement has not been accomplished.

(6) The department shall establish by rule the maximum capacity of adult foster homes, including all nonrelated and related persons receiving residential care and day care.

(7) Any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted thereunder may be punished by a civil penalty, to be fixed by the director by rule, not to exceed $50 per violation, to a maximum of $100 or, per occurrence of substantiated abuse, a maximum of $250. [1983 c.629 §8; 1985 c.663 §7; 1987 c.369 §2; 1987 c.430 §2; 1987 c.431 §2]

443.780 Exemption where county has licensing and inspection program. (1) The director may exempt from the license, inspection and fee provisions of ORS 443.705 to 443.825 adult foster homes in those counties where there is a county agency which provides similar programs for licensing and inspection that the director finds are equal to or superior to the requirements of ORS 443.705 to 443.825.

(2) ORS 443.775 (2) applies regardless of any exceptions granted to a county agency. [1985 c.663 §11]

443.790 Authority of director to impose civil penalty; factors to be considered. (1) In addition to any other liability or penalty provided by law, the director may impose a civil penalty on a person for any of the following:

(a) Violation of any of the terms or conditions of a license issued under ORS 443.735.

(b) Violation of any rule or general order of the department that pertains to a facility.

(c) Violation of any final order of the director that pertains specifically to the facility owned or operated by the person incurring the penalty.

(d) Violation of ORS 443.745 or of rules required to be adopted under ORS 443.775.

(2) A civil penalty may not be imposed under subsection (1) of this section and this subsection for violations other than those involving health,

safety or welfare of a resident or of the rules required to be adopted by ORS 443.775 unless a violation is found on two consecutive surveys of the facility. The director in every case shall prescribe a reasonable time for elimination of a violation:

(a) Not to exceed 30 days after first notice of a violation; or

(b) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

(3) In imposing a civil penalty, the director shall consider the following factors:

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

(b) Any prior violations of statutes, rules or orders pertaining to facilities.

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

(d) The immediacy and extent to which the violation threatens the public health or safety. [1987 c.431 §§4, 6]

443.795 Notice of penalty; application for hearing. (1) Any civil penalty imposed under ORS 443.790 (3) shall become due and payable when the person incurring the penalty receives a notice in writing from the director. The notice referred to in this section shall be sent by registered or certified mail and shall include:

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

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

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

(d) A statement of the right of the person to request a hearing.

(2) The person to whom the notice is addressed shall have 10 days from the date of mailing of the notice in which to make written application for a hearing before the director.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550. [1987 c.431 §5]

443.805 Order assessing penalty; judgment; lien; execution. (1) If the person notified fails to request a hearing within the time specified in ORS 443.795, or if after a hearing the person is found to be in violation of a license, rule or order listed in ORS 443.790 (1), an order may be entered by the division assessing a civil penalty.

(2) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property in the county owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. [1987 c.431 §7]

443.815 Judicial review of penalties. Judicial review of civil penalties imposed under ORS 443.790 shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty. [1987 c.431 §8]

443.825 Disposition of penalties recovered. All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [1987 c.431 §9]

PENALTIES

443.990 [Subsection (2) enacted as 1953 c.659 §14; 1969 c.641 §17; repealed by 1977 c.717 §23]

443.991 Penalties. (1) Violation of ORS 443.015 is punishable as a Class C misdemeanor.

(2) Violation of any provision of ORS 443.400 to 443.455 is a Class B misdemeanor. In addition, the department may commence an action to enjoin operation of a residential facility:

(a) When a residential facility is operated without valid licensure; or

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed.

(3) Violation of ORS 443.725 is punishable as a Class C misdemeanor.

(4) Violation of any provision of ORS 443.755 is a Class B misdemeanor. In addition, the department may commence an action to enjoin operation of an adult foster home:

(a) When an adult foster home is operated without a valid license; or

(b) After notice of revocation has been given and a reasonable time for placement of individuals in other facilities has been allowed. [Subsection (1) enacted as 1977 c.738 §11; subsection (2) enacted as 1977 c.717 §14; 1979 c.284 §144; 1985 c.663 §8]

8-8148

B-Engrossed
Senate Bill 609

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and House Amendments dated May 7

Sponsored by COMMITTEE ON HUMAN RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Department of Human Resources to set maximum capacity of adult foster homes.

A BILL FOR AN ACT

Relating to adult foster homes; amending ORS 443.705 and 443.775.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 443.705 is amended to read:

443.705. As used in ORS 443.705 to 443.780:

(1) "Adult foster home" means any family home or facility in which [*24-hour*] **residential care** is provided for five or fewer adults who are not related to the provider by blood or marriage.

[*(2) "Care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation.*]

[*(3)*] (2) "Department" means, as appropriate, the Senior Services Division or the Mental Health Division of the Department of Human Resources.

[*(4)*] (3) "Director" means the Director of the Department of Human Resources.

[*(5)*] (4) "Licensed adult foster home" means a home which has been investigated and approved by the department. This includes an onsite inspection of the facility.

[*(6)*] (5) "Provider" means any person operating an adult foster home.

(6) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation.

SECTION 2. ORS 443.775 is amended to read:

443.775. (1) The department shall adopt rules governing adult foster homes such as are necessary to protect the health, safety or welfare of the residents but shall not be inconsistent with the residential nature of the living accommodations and the family atmosphere of the home.

(2) The department shall make rules to assure that any employe who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation.

(3) For adult foster homes in which clients reside for whom the department pays for care, including homes in which the provider and the resident are related, the department may require substantial compliance with its rules relating to standards for care of the client as a condition for paying for care.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

1 (4) By order the director may delegate authority under this section to personnel other than of
2 Senior Services Division and Mental Health Division.
3 (5) The department may commence a suit in equity to enjoin maintenance of an adult foster
4 home if:
5 (a) The home is operated without a valid license under this section; or
6 (b) After the license to maintain the home is ordered suspended or revoked, a reasonable time
7 for placement of residents in other facilities has been allowed but such placement has not been ac-
8 complished.
9 **(6) The department shall establish by rule the maximum capacity of adult foster homes,**
10 **including all nonrelated and related persons receiving residential care and day care.**
11

B-Engrossed
Senate Bill 611

Ordered by the House May 20
Including Senate Amendments dated April 28
and House Amendments dated May 20

Sponsored by COMMITTEE ON HUMAN RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Expands enforcement tools for adult foster homes to include attachment of conditions to license and levying of civil penalties up to $50 per violation, to maximum of $100 or up to $250 per occurrence of substantiated abuse. **Prescribes procedures for levying and paying civil penalties.**

A BILL FOR AN ACT

Relating to adult foster homes; creating new provisions; and amending ORS 443.745 and 443.775.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 443.745 is amended to read:

443.745. (1) A license may be **denied,** suspended, [*or*] revoked **or have conditions attached** upon a finding by the department of any of the following:

(a) There exists a threat to the health, safety or welfare of any resident.

(b) There is reliable evidence of abuse, neglect or exploitation of any resident.

(c) The facility is not operated in compliance with ORS 443.705 to 443.780 and 443.991 (3) or (4) or the rules adopted thereunder.

(d) Such other circumstances as may be established by the department by rule.

(2) Conditions attached to a license shall be effective upon order of the director.

[*(2)*] **(3)** Suspension or revocation of a license authorized by this section for any reason other than abuse, neglect or exploitation of the resident shall be preceded by a hearing under ORS 183.310 to 183.550 if requested by the provider.

[*(3)*] **(4)** If the license is suspended or revoked for the reason of abuse, neglect or exploitation of a resident, the provider may request a review in writing within 10 days after **notice of** the suspension or revocation. If a request is made, the director shall review all material relating to the allegation of abuse, neglect or exploitation and to the suspension or revocation within 10 days of the request. The director shall determine, based on review of the material, whether or not to sustain the decision to suspend or revoke. If the director determines not to sustain the decision, the license shall be restored immediately. The decision of the director is subject to judicial review as a contested case under ORS 183.310 to 183.550.

[*(4)*] **(5)** In the event the license to maintain an adult foster home is ordered suspended or revoked, the department may withhold service payments until the defective situation is corrected. For protection of residents, the department may arrange for them to move.

SECTION 2. ORS 443.775 is amended to read:

443.775. (1) The department shall adopt rules governing adult foster homes such as are neces-

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

B-Engrossed
Senate Bill 612

Ordered by the House May 25
Including Senate Amendments dated April 28
and House Amendments dated May 25

Sponsored by COMMITTEE ON HUMAN RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Regulates level of nursing care in adult foster care facilities.

A BILL FOR AN ACT

Relating to adult foster care; amending ORS 443.775, 678.036 and 678.150.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 678.150 is amended to read:

678.150. (1) The board shall elect annually from its number a president and secretary, each of whom shall serve until a successor is elected and qualified. The board shall meet on the call of the president or as the board may require. Special meetings of the board may be called by the secretary upon the request of any three members. Five members shall constitute a quorum.

(2) Members of the board are entitled to compensation and expenses as provided in ORS 292.495.

(3) The board shall adopt a seal which shall be in the care of the executive director.

(4) The board shall keep a record of all its proceedings and of all persons licensed and schools or programs accredited or approved under ORS 678.010 to 678.445. The records shall at all reasonable times be open to public scrutiny.

(5) Subject to the State Personnel Relations Law, the board shall hire, define the duties and fix the salary of an executive director who shall hire and define the duties of such other employes as are necessary to carry into effect the provisions of ORS 678.010 to 678.445. The executive director, with approval of the board, may also employ special consultants. All salaries, compensation and expenses incurred or allowed shall be paid out of funds received by the board.

(6) The board shall determine the qualifications of applicants for a license to practice nursing in this state and establish educational and professional standards for such applicants subject to laws of this state.

(7) The board shall:

(a) Exercise general supervision over the practice of nursing in this state.

(b) Prescribe standards and approve curricula for nursing education programs preparing persons for licensing under ORS 678.010 to 678.445.

(c) Provide for surveys of nursing education programs at such times as may be necessary.

(d) Accredit such nursing education programs as meet the requirements of ORS 678.010 to 678.445 and of the board.

(e) Deny or withdraw accreditation from nursing education programs for failure to meet pre-

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

scribed standards.

(f) Examine, license and renew the licenses of duly qualified applicants and administer examinations for other states where requested to do so by the other state.

(g) Issue subpenas, compel the attendance of witnesses and administer oaths or affirmations to persons giving testimony at hearings.

(h) Enforce the provisions of ORS 678.010 to 678.445, and incur necessary expenses therefor.

(i) Prescribe standards for the delegation of special tasks of patient care to nursing assistants and for the supervision of nursing assistants. The standards shall include rules governing the delegation of administration of noninjectable medication by nursing assistants and shall include rules prescribing the types of noninjectable medication which can be administered by nursing assistants, and the circumstances, if any, and level of supervision under which nursing assistants can administer noninjectable medication. In formulating the rules governing the administration of noninjectable medication by nursing assistants, the board shall consult with nurses, physicians, gerontologists and pharmacologists. Notwithstanding any other provision of this paragraph, however, determination of the appropriateness of the delegation of a special task of patient care shall remain with the registered nurse issuing the order.

(j) Notify licensees at least annually of changes in legislative or board rules that affect the licensees. Notice may be by newsletter or other appropriate means.

(8) The board shall determine the scope of practice as delineated by the knowledge acquired through approved courses of education or through experience.

(9) For local correctional facilities, lockups and juvenile detention facilities, as defined in ORS 169.005, juvenile training schools as defined in ORS 420.005, for facilities operated by a public agency for detoxification of persons who use alcohol excessively, for homes or facilities licensed under ORS 443.705 to 443.780 for adult foster care, and for facilities licensed under ORS 443.400 to 443.455 for residential care, training or treatment, the board shall adopt rules pertaining to the provision of nursing care, and to the various tasks relating to the administration of noninjectable medication including administration of controlled substances. The rules shall provide for delegation of nursing care and tasks relating to the administration of medication to other than licensed nursing personnel by a physician licensed by the Board of Medical Examiners for the State of Oregon or by a registered nurse, designated by the facility. Such delegation must occur under the procedural guidance, initial direction and periodic inspection and evaluation of the physician or registered nurse. However, the provision of nursing care shall only be delegated by a registered nurse.

(10) Pursuant to ORS 183.310 to 183.550, the board shall adopt rules necessary to carry out the provisions of ORS 678.010 to 678.445.

SECTION 2. ORS 443.775 is amended to read:

443.775. (1) The department shall adopt rules governing adult foster homes and the level of care provided in such homes, including the provision of care to more than one person with nursing care needs under specified conditions and department approval, such as are necessary to protect the health, safety or welfare of the residents and to provide for an appropriate continuum of care, but shall not be inconsistent with the residential nature of the living accommodations and the family atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

(2) The department shall make rules to assure that any employe who makes a complaint pursu-

1 ant to ORS 443.755 shall be protected from retaliation.

2 (3) For adult foster homes in which clients reside for whom the department pays for care, in-
3 cluding homes in which the provider and the resident are related, the department may require sub-
4 stantial compliance with its rules relating to standards for care of the client as a condition for
5 paying for care.

6 (4) By order the director may delegate authority under this section to personnel other than of
7 Senior Services Division and Mental Health Division.

8 (5) The department may commence a suit in equity to enjoin maintenance of an adult foster
9 home if:

10 (a) The home is operated without a valid license under this section; or

11 (b) After the license to maintain the home is ordered suspended or revoked, a reasonable time
12 for placement of residents in other facilities has been allowed but such placement has not been ac-
13 complished.

14 SECTION 3. ORS 678.036 is amended to read:

15 678.036. (1) A nurse who is responsible for supervising nursing assistants shall not be consid-
16 ered to be supervising a nursing assistant who administers noninjectable medication while the nurse
17 is absent from the facility at which the administration occurs unless the nursing assistant is acting
18 pursuant to specific instructions from the nurse or the nurse fails to leave instructions when the
19 nurse should have done so.

20 (2) A nurse who is responsible for supervising nursing assistants shall not be subject to an
21 action for civil damages for the failure of a nursing assistant who administers noninjectable
22 medication to notify the nurse of any patient reaction to the medication perceived by the assistant.

23 (3) A nurse who delegates the provision of nursing care to another person pursuant to
24 ORS 678.150 shall not be subject to an action for civil damages for the performance of a
25 person to whom nursing care is delegated unless the person is acting pursuant to specific
26 instructions from the nurse or the nurse fails to leave instructions when the nurse should
27 have done so.

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