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ADULT FOSTER HOME RULES

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

Purpose

The purpose of these rules is to establish standards and procedures 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 and Disabled 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; intimidation or inappropriate sexual comments;
  - (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) Violating the rights guaranteed to the resident by the Bill of Rights in OAR 411-50-447;

- (g) Using chemical or physical restraints, without a written order from a physician, Nurse Practitioner, or Christian Science practitioner; or to discipline or punish a resident; or for the convenience of the adult foster home;
  - (h) Financial exploitation which includes, but is not limited to, unreasonable rate increases; borrowing from or loaning money to a resident; witnessing wills in which a provider, caregiver, or any member of their families is a beneficiary; adding a provider's name to a resident's bank account or other property; inappropriately expending a resident's personal funds; commingling a resident's funds with a provider's, a caregiver's or another resident's funds; or acting as a resident's guardian, conservator, trustee or attorney-in-fact (under a power of attorney).
- (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 an activity, but cannot do it entirely alone;
  - (c) "Dependent" 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 physically 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 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.
- (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.
- (7) "Care" means the provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules.
- (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 monetary or in-kind 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 State of Oregon 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 and Disabled Services Division (SDSD) 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 65 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 written application by the provider.

- (22) "Family Member", for the purposes of this rule, means husband or wife, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, or first cousin.
- (23) "Home" means the physical structure in which residents live, synonymous with adult foster home.
- (24) "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.
- (25) "House Rules" mean written and posted rules governing house activities in an AFH which are developed by the provider and approved by the Division.
- (26) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.
- (27) "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; failure to follow the Plan of Care; 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.
- (28) "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.
- (29) "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.
- (30) "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.
- (31) "Relative" means those persons specified in Section (22) of this rule.
- (32) "Relative Foster Home" means a home which provides care and services to only an elderly or physically disabled family member who is eligible for financial assistance from the Division.
- (33) "Resident" means any person who is receiving room, board, care, and services for compensation in an adult foster home on a 24-hour basis.

- (34) "Residential Care" means the provision of care on a 24-hour basis.
- (35) "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.
- (36) "Resident Rights" or "Rights" means civil, legal or human rights, including but not limited to those rights listed in the AFH Bill of Rights. (See ORS 443.739)
- (37) "Respite Resident" means a person who receives residential care for a period of 14 days or less or who only stays overnight.
- (38) "Restraints" means any physical device or chemical substance which restricts movement, body access, or functioning of a resident.
- (39) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping for compensation to persons who do not need care or services. Provisions for two or more persons require registration with the Division under OAR 411-68-000 through 411-68-090.
- (40) "Self Administration of Medication" means the act of a resident placing a medication in or on his/her own body. This means the resident manages and takes his or her own medications, in that the resident identifies the medication and the times and manners of administration, and places the medication internally or externally on his/her own body without assistance.
- (41) "Services" means activities which help the residents develop skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living or individual social activities.
- (42) "Shift Caregivers" mean caregivers who, by written exception of the Division, are providing care for regularly scheduled periods of time, such as 8 or 12 hours, in homes where there is no provider or resident manager living in the home.
- (43) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Senior and Disabled Services Division other than the provider or certified resident manager.

#### 411-50-405 License Required

- (1) Any facility which meets the definition of an adult foster home as defined in OAR 411-50-400 must be licensed by the Division.
- (2) No person or entity shall represent themselves as an adult foster home or accept placement of a person without first being licensed.
- (3) An adult foster home that is not licensed may not admit a person needing care or services.

(4) No person may be a provider, resident manager, substitute caregiver or otherwise work in or reside in or on the premises of an adult foster home who has been convicted of one or more crimes as defined in OAR 411-09-000 through 411-09-020 which the Division determines are substantially related to the qualifications, functions, or duties of a caregiver or may otherwise endanger the health, safety or rights of a resident.

(5) Any facility which meets the definition of a Relative Foster Home must have a conditional license from the Division if receiving compensation from the Division. In order to qualify for a conditional license and for compensation from the Division, the applicant/provider must submit a completed application and physician's statement, obtain a criminal record clearance, demonstrate a clear understanding of the resident's care needs, and meet minimal fire safety compliance including the installation of smoke detectors and fire extinguishers. 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.

#### 411-50-408 Capacity

- (1) Residents shall be limited to five persons unrelated to the provider and who require care;
- (2) Respite residents are included in the licensed limit of the home;
- (3) 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 and relatives 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.
- (4) When there are relatives requiring care and/or day care residents, the allowable number of unrelated residents may continue to be the maximum capacity of five 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;

- (f) The well-being of the household including any children or other family members will not be jeopardized; and
- (g) If day care persons are in the home, they must have arrangements for sleeping in areas other than a resident's bed or a resident's private room or space designated as common use.

411-50-410 License 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 SDS 448, Part I, provided by the Division. The application is not complete until the required application information is submitted to the Division. Incomplete applications are void after 60 days.
- (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 SDS 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 SDS 903);
  - (d) A completed Financial Information Sheet, form SDS 448A;
  - (e) A signed Criminal Record Authorization form (SDS 303) for each person who will have regular contact with the residents, including the provider(s), the resident manager, caregivers, and other persons over the age of 16 who will reside in the home or on the premises;
  - (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.
  - (i) Application references must be three non-relatives that have current knowledge of the applicant's character and capabilities.

- (j) If the provider uses a resident manager, a written plan on coverage for resident manager absences must be submitted. Use of shift caregivers may be used in lieu of a resident manager if granted an exception by the Division.
- (5) After receipt of the completed application materials and fee, the Division shall investigate the information submitted, inspect the home, and conduct a personal interview with the applicant to determine compliance with these rules. Applicants must attend a local orientation program prior to being licensed as offered by the local licensing authority.
- (6) The provider will be given a copy of the inspection reports (SDS 517 and 517A), identifying any areas of non-compliance and specifying a time frame for correction, but no later than 60 days from date of inspection. The provider shall post the most recent inspection reports available in the entry or equally prominent place and shall, upon request, provide a copy of the information to each resident of or person applying for admission to the home or the legal representative, guardian or conservator of the resident or applicant.
- (7) Applicants shall be in compliance with these Administrative Rules before a license is issued. If cited deficiencies from the inspection 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 which limit, restrict or specify other criteria for operation of the home. The conditions must be posted with the license. (See OAR 411-50-483)
- (3) A condition may be attached to a license to limit the provider to the care of a specific person(s). No other admissions will be made by 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 SDS 448, Part II; SDS 303; 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. (See OAR 411-50-440)
- (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 60 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 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 prior to the license renewal.
- (4) The provider will be given a copy of the inspection reports (SDS 517 and 517A), citing any deficiencies and a time frame for correction, which shall be 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 must apply in writing to the Division for an exception from a provision of these rules. The provider must prove to the Division by clear and convincing evidence that such an exception does not jeopardize the care, health, welfare or safety of the residents. Evidence will indicate that all resident's needs can be met and all residents and family members can be evacuated within three minutes.
- (2) Notwithstanding section (1) of this rule, 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 State Fire Marshal or its designee.
- (3) An exception is not effective until granted in writing. Each exception will be reviewed at each renewal period.
- (4) Residents whose care needs exceed the licensed classification of the home shall not be admitted without prior approval of the Division.

#### 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/admission agreement with the resident or person paying for care. This contract/admission agreement shall include, but not be limited to, services to be provided; schedule of rates; conditions under which the rates can be changed; the home's policy on refunds at the time of hospitalization, death, discharge, transfer to a nursing facility or other care facility, or voluntary move and any charges for storage of a resident's belongings after leaving the home. Discharge and refund policy shall be in compliance with OAR 411-50-437.
- (3)
  - (a) Prior to admitting an individual to an adult foster home, the facility shall advise the individual seeking admission of the availability of admission assessment services provided through the Division or Certified Assessment Program.
  - (b) The facility shall certify on a form provided by the Division that the individual has been so advised. The facility shall maintain a copy of the form in the individual's client record and make a copy available to the Division upon request.
- (4) Thirty (30) days prior to any general 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 the resident's increased care or service needs and the rate schedule in the resident's contract/admission agreement has specified charges for changes in resident impairment levels and/or services.

(5) Residents shall not be liable for damages considered normal wear and tear.

411-50-437 Refunds

- (1) If a resident dies, or leaves an adult foster home for medical reasons and the resident or their representative indicates in writing the intent to not return, the provider shall not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the resident has left the adult foster home. The provider has an obligation to act in good faith to reduce the charge by seeking a new resident to fill the vacancy.
- (2) The provider may charge a reasonable fee for storage of the resident's belongings beyond the 15 days if the contract/admission agreement includes fees for storage.
- (3) If a resident dies or leaves an adult foster home due to substantiated neglect or substantiated abuse at the adult foster home or due to conditions of imminent danger of life, health or safety, the provider shall not charge the resident beyond the resident's last day in the home. Upon receipt of a complaint of abuse or neglect the Division shall commence an investigation.
- (4) The provider shall refund any advance payments within 30 days after the resident dies or leaves the adult foster home.

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, good judgment and good personal character determined necessary by the Division to provide 24-hour care for adults who are physically 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 satisfactory to the Division of successful treatment/rehabilitation or references regarding current condition;

- (e) Must satisfy a Criminal Record Clearance under OAR 411-09-000 through 411-09-020 and are required to sign a Criminal Record Authorization, form SDS 303. The criminal record clearance may require a fingerprint check at the discretion of the Division. A provider may not have been convicted of an offense as provided in OAR 411-09-010;
  - (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) A provider is responsible for the supervision, training and overall conduct of resident managers and other caregivers when acting within the scope of their employment, duties, or when present in the home.
  - (h) In addition to prior education and experience all providers must complete the following training requirements:
    - (A) The Division's 18-hour Basic Training Course must be completed within 90 days of licensure.
    - (B) An applicant who has not completed the Basic Training Course must complete a Caregiver Preparatory Training Course approved by the Division before providing care to any resident. The Caregiver Preparatory Training Course will include emergency procedures, medication procedures, personal care procedures, food preparation, home environment and safety procedures, and residents' rights.
    - (C) Each subsequent year following the Basic Training Course, providers and resident managers are required to take at least ten hours of ongoing training related to care of elderly and physically 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 by condition 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;
  - (i) Provide evidence of financial resources to operate an adult foster home for at least two months without solely relying on potential resident income. A credit reference check may be required.
- (2) The resident manager or shift caregiver shall meet the provider qualifications listed in Section (1)(a) through (h) of this rule.

(3) Substitute Caregivers, other than the provider or resident manager, 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, which may require fingerprinting, and sign a release form SDS 303, and may not have been convicted of an offense as provided in OAR 411-09-010;
- (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 including appropriate delegation by a Registered Nurse;
- (e) Not be a resident; and
- (f) Possess physical health, mental health, good judgment, and good personal character determined necessary by the Division to provide care for adults who are elderly or physically disabled.

411-50-442 Training Requirements for Substitute Caregivers

- (1) (a) A substitute caregiver left in charge of the home in the provider's or resident manager's absence for any length of time must complete the Caregiver Preparatory Training Course approved by the Division prior to giving care;
- (b) In addition, substitute caregivers left in charge of a home for ~~multiple 24-hour periods during a month or for any period~~ that exceeds 48 hours, may be required to meet the education, experience and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home;
- (2) Substitute caregivers working in the home while providers or resident managers are present must receive instruction in specific care responsibilities from the provider/resident manager prior to giving care, and in addition must complete the Caregiver Preparatory Training Course as a part of their on-the-job instruction;
- (3) The Division may grant an exception to the training requirements in Section (1) of this rule for a substitute caregiver who holds a current Oregon license or certificate as a health care professional such as a physician, registered nurse, licensed practical nurse or certified nursing assistant (CNA); or who demonstrates the ability to provide adequate care to residents based on similar training or at least one year of experience providing direct care to elderly, disabled or dependent adults;

(4) The provider must orient any substitute caregiver to the home and to the residents, including location of fire extinguisher, ~~evacuation procedures~~; location of residents' records; location of telephone numbers for the residents' physicians, the provider and other emergency contacts; location of medications and key for medication cabinet; introduction to residents; instructions for caring for each resident; and delegation by an RN for nursing tasks if applicable;

(5) The provider/resident manager shall keep documentation of the training and orientation of substitute caregivers.

#### 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)(h).

(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)(h) 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)(h) 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 current 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. A Class I provider may administer routine oral medications. All residents must be in stable medical conditions.

- (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. A Class II provider may request an exception to provide care to a Level III resident.
- (4) A provider with a Class III license may provide care for residents who are dependent in four or more 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.
- (5) Providers may only admit or continue to care for residents whose impairment levels are within the classification level of the home. A provider may request in writing an exception to care for a more impaired resident, or request a reclassification of the license if:
  - (a) A new resident wishes to be admitted whose impairment level exceeds the license classification level; or
  - (b) A current resident becomes more impaired, exceeding the license classification level; or
  - (c) There is more than one totally dependent or bed care resident in the home.
- (6) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home if the provider proves the following criteria are met by clear and convincing evidence:
  - (a) It is the choice of the resident to reside in the home; and
  - (b) The provider is able to provide appropriate care of the resident in addition to the care of the other residents; or
  - (c) Additional staff is hired to meet the additional care requirements of all residents in the home; or
  - (d) Outside resources are available and obtained to meet the resident's care needs;
  - (e) The exception will not jeopardize the care, health, safety or welfare of the residents; and
  - (f) The 3-minute fire evacuation standard for all residents and family members can be met.
- (7) A licensee may request a change in license classification during the year. The request must be in writing. A response will be made within 60 days.

## 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 all 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 well 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, approved exits and exterior steps shall be accessible and appropriate to the condition of the 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;
- (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 receiving care for remuneration who exceeds the limit of five;
- (f) Interior doorways used by residents must be wide enough to accommodate wheelchairs/walkers if used by residents;
- (g) Providers must be able to provide or arrange for appropriate resident transportation;
- (h) Providers shall not permit residents to use swimming or other pools, hot tubs, saunas, or spas on the premises without supervision and physician orders. Swimming pools, hot tubs, spas, or saunas shall not be accessible to residents in care without supervision. They shall also be equipped with safety barriers and devices designed to

prevent accidental injury;

- (i) There shall be current readily available first-aid supplies and a first-aid manual; and
- (j) Providers must own, rent or lease the home to be licensed. Exceptions may be granted by the local licensing authority to churches, hospitals, non-profit associations or similar organizations.

(2) Sanitation

- (a) A public water supply shall be utilized if available. If a non-municipal water source is used, a sample may be collected by the licensor or sanitarian and tested at the provider's expense for coliform bacteria yearly and records shall be retained for three 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;
- (f) There will be adequate control of insects and rodents; and
- (g) (A) Universal precautions for infection control should be followed in resident care;
- (B) Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids;
- (C) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal shall be according to local regulations and resources (ORS 459.386 through 459.405).

(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 the 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, or equivalent, 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. Special consideration must be given to residents with chewing difficulties and other eating limitations. Food shall not be used as an inducement to control the behavior of a resident. Menus for the coming week shall be prepared and posted weekly in a location accessible to residents and families;
- (b) 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;

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- (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 by choice 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 in a reasonable accommodation for privacy for incoming and outgoing calls shall be provided in the home where residents live. Residents with hearing impairments (to the extent that they cannot hear over a normal phone) shall be provided with a telephone that is amplified with a volume control or is hearing aid compatible. The telephone number must be a listed number;
- (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 State Fire Marshal's Office at the request of the licensing authority or Division staff using the standards in this rule;

- (b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, shall be installed in accordance with all applicable fire and life safety codes. Such equipment shall be used and maintained properly and be in good repair. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. Unvented portable oil, gas or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction. Extension cord wiring shall 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, sliding bolts, hooks and eyes, and double key deadbolts are not permitted;
- (d) Bedrooms shall have at least one window or exterior door 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. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee. 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. The maximum flame spread of finished materials shall not exceed Class III (76-200) and smoke density shall not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exitway is composed of readily combustible such as acoustical tile or wood paneling, such material must be treated with an approved intumescent surface coating. Exception: Buildings supplied with an approved automatic sprinkler system.
- (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 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 date 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 workman who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose;
- (g) Smoke detectors shall be installed in accordance with the manufacturer's listing and be installed in each bedroom, in hallways or access areas that adjoin bedrooms and in basements. In addition, in two-story houses, smoke detectors must be installed at the top of the stairway to the second floor and in the main living area of the home. Ceiling placement of smoke detectors is recommended. Detectors shall be equipped with a device that warns of low battery when battery operated. All smoke detectors are to be maintained in functional condition. Bedrooms used by hearing impaired occupants who cannot hear a regular smoke alarm must be equipped with a visual/audio alerting smoke alarm;
- (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 or safety containers and secured in areas to prevent tampering by residents or vandals. 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, but are not limited to, reduction of residents under care, additional staffing, or increased fire protection. Continued problems will be grounds for revocation or non-renewal of the license;
- (n) The provider shall provide, keep updated and post a floor plan containing room sizes, location of each resident's bedroom, 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) Providers shall not place residents who are unable to walk without assistance in a basement, split-level, second story or other area that does not have an exit at ground level. Nonambulatory residents shall be given first floor rooms. Stairs shall have a riser height of between 6-8 inches and tread width of between 8-10 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;
- (p) All common use areas of the house and exitways must be barrier free and corridors and hallways shall be a minimum of thirty (30) inches wide or as approved by the authority having jurisdiction. There shall be a wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. There must be a second safe means of egress;
- (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;
- (r) There shall be at least one plug-in rechargeable flashlight available for emergency lighting;
- (s) Smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted.

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

(1) Screening Assessment and Care Plan

- (a) Prior to admission of a resident, the provider or resident manager must conduct a screening to determine that the resident is appropriate to the license classification; the resident's needs can be appropriately met; the resident's needs can be met in addition to the needs of the other residents of the home; and all residents and family members can be evacuated within three minutes;
- (b) Upon admission, the provider or resident manager must provide an admission orientation that includes an explanation of the house rules, an explanation of the Adult Foster Home Resident Bill of Rights, and enter into an admission contract/agreement that explains: Provider/resident expectations, schedule of rates, conditions under which rates can be changed and the house's refund policy.
- (c) After admission, the provider/resident manager must continue to assess the resident's care needs and develop a care plan within 14 days of admission. The care plan is to be developed with input from the resident, family, pharmacist (if multiple prescriptions are involved), case manager for Division residents, physician, and RN if delegation is involved. The provider shall inquire of any resident if a current advance health care directive(s) exists and obtain copies for the resident's record.

(2) Medications and Physician's Orders

- (a) There must be a written physician's order for any prescribed medications, treatments, therapies or use of restraints. Orders must be carried out as prescribed and with the consent of the resident or the resident's legal representative. Changes may not be made without a physician's order and the physician must be notified if a resident refuses to consent to a physician's order. Over-the-counter medications or home remedies requested by the resident shall be reviewed by the resident's physician or pharmacist as part of developing the care plan;
- (b) Each resident's medication shall be clearly labeled with the pharmacist's label or be in original labeled container or bubble pack 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. The medication chart shall contain a legible signature for each set of initials;
- (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. Chemical and physical restraints may be used only after considering all other alternatives and only when required to treat a resident's medical symptoms or to insure the physical safety of any resident.
- (A) Restraints may be used only:
- (i) Pursuant to a physician's order that specifies the type, circumstances and duration of the restraint and a delegation under the rules of the Oregon State Board of Nursing; or
  - (ii) Pursuant to the direction of a practitioner who is of a belief that prohibits use of chemical restraints.
- (B) Except in cases of emergency, restraints may only be used with the resident's or resident representative's consent which will be documented in the resident's record. In emergency situations the caregivers must immediately seek medical and/or emergency intervention.
- (C) Restraints may not be used for discipline of a resident or for the convenience of the adult foster home.
- (D) Residents physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered liquids, exercised or provided range of motion during this period.
- (E) Use of restraints at night shall be of the design to allow freedom of movement with safety.
- (F) Use of restraints shall not impede the three minute evacuation of all household members.

- (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.

(3) Delegation of Nursing Care Tasks

Routine and complex 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 written 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;
- (i) The registered nurse provides written delegation procedures, frequency of RN follow-up visits, and signature and license number of the registered nurse doing the delegating.

(4) 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) Initial screening form, completed prior to admission, documenting that a preliminary assessment has been conducted and that the resident's care needs do not exceed the classification of the home;

- (B) 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;
- (C) Documentation that the provider has informed private pay residents of Private Admission Assessment availability;
- (D) Medical Information:
  - (i) History of accidents, illnesses or mental status that may be pertinent to current care;
  - (ii) Current orders for medications, medical appointments, treatments, therapies, use of restraints, special diets, and delegation documentation;
  - (iii) Completed medication charts from previous months;
  - (iv) An Oregon Directive to Physicians and/or a Power of Attorney for Health Care, if applicable. Copies shall be put in a prominent place in the resident's record to be available for medical personnel. If the resident is transferred for medical care, copies of the Directive and Power of Attorney shall be sent with the resident;
- (E) Financial Information:
  - (i) Contracts with the Division, resident, relatives, or person(s) paying for care;
  - (ii) Division Financial Planning sheets (form SDS 512), if pertinent;
  - (iii) Resident Account Record (form SDS 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;
- (F) Resident's care plan, prepared by the provider based on information from the resident, family, case manager, pharmacist (if multiple prescriptions are involved), 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 during 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, and goals for helping the resident improve or maintain current levels of functioning. Specific

information must 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;
  - (ix) Date of review and signature of person preparing the plan; and
  - (x) Pharmaceutical care requirements;
- (G) A copy of the written house rules and Residents' Bill of Rights with documentation these have been discussed with the resident and signed by the resident or legal representative;
- (H) A written report of all significant incidents relating to the health or safety of 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 week;
- (I) 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 under any circumstances commingle, 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). Providers/caregivers shall not accept gifts from residents through undue influence or accept gifts of substantial value. Providers or caregivers shall not influence, solicit from or suggest to any resident that they or their family give the caregiver or the caregiver's family money or property for any purpose. The caregiver or the caregiver's family shall not accept gifts of substantial value or loans from the resident or the resident's family;
- (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 and Disabled Services Division upon request.

(5) Residents' Bill of Rights

Providers, their families and employees of the home shall guarantee not to violate these rights and to help the residents exercise them. 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 informed of all resident rights and all house rules;
- (c) Be encouraged and assisted to exercise constitutional and legal rights including the right to vote;
- (d) Be informed of their medical condition and the right to consent to or refuse treatment;
- (e) Receive appropriate care and services and prompt medical care as needed;
- (f) Be free from mental and physical abuse;
- (g) Complete privacy when receiving treatment or personal care;
- (h) Associate and communicate privately with any person of choice and send and receive personal mail unopened;

- (i) Have access to and participate in activities of social, religious, and community groups;
- (j) Have medical and personal information kept confidential;
- (k) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;
- (l) Be free from chemical and physical restraints except as ordered by a physician, nurse practitioner or by a Christian Science practitioner. Restraints are used only for medical or safety reasons, and after other alternatives have been tried. Restraints are not used for discipline or convenience;
- (m) Manage own financial affairs unless legally restricted;
- (n) Be free from financial exploitation. The provider shall not solicit, accept or receive money or property from a resident other than the amount agreed to for services;
- (o) A written agreement regarding services to be provided and the rates to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home;
- (p) Not to be transferred or moved out of the home without 30 days' written notice and an opportunity for a hearing. A provider may transfer a resident only for medical reasons or for the welfare of the resident or other residents, or for nonpayment;
- (q) A safe and secure environment;
- (r) Be free of discrimination in regard to race, color, national origin, sex, or religion; and
- (s) Make suggestions or complaints without fear of retaliation.

(6) 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, pets, and visitations, and must not be in conflict with the residents' Bill of 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 and a copy submitted to the Division to be included in the public disclosure file.

(7) 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. The training of the provider or staff will ensure that the care provided is appropriate to the age and condition of the residents. 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, family and case manager of changes in the health status of the resident;
- (c) Providers shall not inflict, or tolerate to be inflicted, abuse or punishment; financial exploitation; or neglect of resident(s);
- (d) Providers shall exercise reasonable precautions against any conditions which could threaten the health, safety or welfare of residents;
- (e) A caregiver must be present and available at the home at all times when residents are in the home. A resident shall not be left in charge in lieu of a caregiver; and
- (f) Providers shall make available at least six hours of activities per week which are of interest to the residents, not including television and movies. Activities shall be oriented to individual preferences as indicated in the resident's care plan.

(8) Moves, Transfers and Discharges

- (a) (A) A resident may not be moved or transferred without 30 days' written notice to the resident, and the resident's legal representative, guardian, conservator and case manager (if the resident has one) 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:
  - (i) Medical reasons; or
  - (ii) Welfare of the resident or other residents;
  - (iii) Behavior which poses an imminent danger to self, others or caregivers;
  - (iv) Behavior which substantially interferes with the orderly operation of the home;

- (v) Failure to make payment for care;
  - (vi) The home has had its license revoked, not renewed, or voluntarily surrendered; or
  - (vii) The resident's care needs exceed the ability (taking into account the provider's own health) or classification of the provider;
- (B)
- (i) If the resident has a medical emergency, the provider may give less than 30 days' advance notice, but shall give the written notice as soon as possible under the circumstances. This includes situations in which the resident is hospitalized or is temporarily out of the home and the provider refuses to allow the resident to return to the home;
  - (ii) "Medical emergency" means a change in medical condition that requires immediate care of a level or type that the provider is unable to provide or behavior that poses an imminent danger to the resident or to other residents or people living in the home;
  - (iii) The written notice shall include the resident's name; the reason for the proposed transfer, discharge or move; the date of the proposed change; the location to which the resident is going; the right to have the Division hold an informal conference and hearing; the name, address and telephone number of the person giving the notice; and the date of the notice.
- (b) A person who is to be involuntarily transferred, or refused the right of return or readmission, shall be entitled to an informal conference and hearing as provided in this rule.
- (A) The Division will hold an informal conference as promptly as possible after the request is received. The Division shall send written notice of the time and place of the conference to the provider and all persons entitled to the notice. Participants may include the resident, and at the resident's request, a family member, case manager, Ombudsman, legal representative of resident; the provider, and a representative from the provider association if the provider requests it. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, the Division will document it in writing and no formal hearing will be held. If a resolution is not reached at the end of the informal conference, the resident or resident representative may request a formal hearing.

- (B) The resident shall have the right to an administrative hearing prior to an involuntary transfer or discharge. If the resident is being transferred or discharged for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the transfer or discharge. The provider shall hold a space available for the resident pending receipt of an administrative order. ORS 441.605(4) and the rules thereunder governing transfer notices and hearings for residents of long term care facilities shall apply to adult foster homes.

(9) Closing

Providers shall notify the Division prior to a voluntary closure of a home, proposed sale or transfer of ownership 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 written approval is given and agreement obtained from residents, family members and case managers.

(10) General Practices

- (a) The adult foster home license, attached conditions to the license if applicable, the Residents' Bill of Rights, floor plan, house rules, the Division's inspection form, Ombudsman Poster, and the Division's procedure for making complaints shall be conspicuously posted in the entryway or other equally prominent place where they can be seen by residents and others;
- (b) The provider shall cooperate with Division personnel in inspections, complaint investigations, planning for client care, application procedures and other necessary activities. Division personnel have access to all resident and facility records and may conduct private interviews with residents. The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to resident records with written permission from the resident and facility records relevant to caregiving.
- (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 or sanction action 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 may 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 facility and resident records, including but not limited to, admission agreement, private pay resident contracts/admission agreements, 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) 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.
- (2) Any person who believes these Administrative Rules have been violated may file a complaint with the Division.
- (3) The Division will investigate and act on complaints as quickly as possible. The primary purpose of the prompt response is to protect the residents and correct the situation. Investigations of complaints alleging injury, abuse or neglect shall be completed as soon as possible and all investigations will be completed within 60 days unless there is a concurrent criminal investigation that requires additional time.
- (4)
  - (a) The adult foster home provider shall not retaliate against any resident after the resident or someone acting on his/her behalf has filed a complaint 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.
  - (b) 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.
  - (c) 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.
- (5) Standards will be followed for investigations related to abuse, neglect, or injury.
  - (a) The Division will cause an investigation within two hours if a complaint alleges that a resident has been injured, abused or neglected and that any resident's health or safety is in imminent danger or that the resident has died or been hospitalized due to abuse or neglect.
  - (b) The Division will cause an investigation to begin by the end of the next working day if circumstances exist which could result in the injury, abuse, or neglect and that the circumstances could place the resident's health or safety in imminent danger.

- (c) All available witnesses identified by any sources as having personal knowledge relevant to the complaint shall be interviewed.
  - (d) An unannounced on-site visit will be conducted.
  - (e) All evidence and physical circumstances that are relevant and material to the complaint shall be observed.
  - (f) Immediate protection shall be provided. The provider shall correct any substantiated problem immediately.
  - (g) A report will be written within 60 days of receipt of a complaint which includes the investigator's personal observations, a review of documents and records, a summary of all witness statements, and a conclusion.
  - (h) Reports indicating the need for a sanction by either the local licensing authority or the Division shall be referred to the appropriate office for corrective action immediately upon completion of the investigation.
- (6) (a) The Division, through its local offices, will mail a copy of the investigation report to the following people within 7 days of the completion of the investigation:
- (A) The complainant (unless the complainant requests anonymity);
  - (B) The resident(s) involved and any persons designated by the resident(s) to receive the information;
  - (C) The provider; and
  - (D) The Long-Term Care Ombudsman.
- (b) The report shall protect as confidential the identity of the resident, the complainant, and any witnesses.
- (c) The report shall be accompanied by a notice informing such persons of the right to give additional information about the content of the report to the Division's local office within seven days of receipt.
- (7) The SDSA unit/Type B AAA shall review the responses and reopen the investigation if additional evidence of a violation is received. A copy of the entire report must be sent to SDSA Program Assistance Section upon completion of the investigation, whether or not the investigation report concludes the complaint is substantiated.

- (8) (a) 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.) The investigation reports, including copies of the responses (with confidential information deleted), shall be available to the public at the local Senior and Disabled Services Division office or the Type B Area Agency on Aging licensing office along with other public information regarding the adult foster home;
  - (B) Protect the privacy of the complainant and the resident; and
  - (C) Treat the names of the witnesses as confidential information.
- (b) Any person may inspect and purchase a photocopy of the public complaint files maintained by the Division upon requesting an appointment to do so.
- (9) Providers who acquire substantiated complaints pertaining to the health, safety or welfare of residents may be assessed civil penalties, may have conditions placed on their licenses, and/or may have their licenses suspended, revoked or not renewed. The Division shall take appropriate corrective action within 60 days from completion of the investigation report.

#### 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 indicates 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 violation 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, by certified mail, or by registered 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.~~  
*The Division will issue a final order.*

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;
  - (b) The applicant or provider has been convicted of one or more crimes described in OAR 411-09-010 which the Division determines are substantially related to the qualifications, functions, or duties of a caregiver; or
  - (c) The provider employs caregivers or allows household members to reside in or frequent the adult foster home who have been convicted of one or more crimes as described in OAR 411-09-010 which the Division determines are related to the potential care, health, safety and/or rights of the residents.
- (2) The Division may 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) (A) 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 preceding 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 in Section (1)(d)(A) of this rule 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.
- (e) Has threatened the health, safety, or welfare of any resident;
- (f) Has abused, neglected, or exploited any resident;
- (g) Has a medical or psychiatric problem which interferes with the ability to provide foster care;
- (h) Refuses to allow access and inspection;
- (i) 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
- (j) Fails to comply with a final order of the Division imposing an administrative sanction.

(3) If a license is ~~suspended~~, not renewed, or revoked, the licensee shall be entitled to a hearing preceding the effective date of the ~~suspension~~, non-renewal or revocation if the licensee requests a hearing in writing within 21 days after receipt of the notice. If no written request for a timely hearing is received, the notice shall become the final order by default. The Division may designate its file as the record for purposes of order by default.

(4) If an initial license is denied, the applicant shall be entitled to a hearing if the applicant requests a hearing in writing within 60 days of the receipt of the notice. If no written request for a hearing is timely received, ~~the notice of the denial shall become a final order by default.~~

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(5) Notwithstanding Sections (3) and (4) of this rule, the Division may immediately suspend, or not renew a license for reason of abuse, neglect, or exploitation of a resident if the Division finds that the abuse, neglect or exploitation causes an immediate threat to any of the residents. 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. 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.

(6) If a license is suspended, revoked, or not renewed, the Division may arrange for residents to move for their protection or restrict the admission of any new residents.

#### 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. A provider must request a hearing in writing within 21 days from the receipt of the notice. ~~If no written request for a hearing is timely received, the notice of the conditions shall become a final order by default.~~ *The Division*
- (4) In addition to, or in-lieu of, a contested case hearing, a provider may request a review by Program Assistance, SDSD, of conditions imposed by the AAAs or SDSD local offices. 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 or suspension 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 \$100 per violation to a maximum of \$250, may be assessed for violation of these rules. Mandatory penalties up to \$500 shall be assessed for falsifying resident or facility records or causing another to do so.
- (2) Civil penalties of a maximum of \$1,000 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 provider 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 be imposed for violations other than those involving health, safety, or welfare of a resident and protection from retaliation of an employee who makes a complaint if the provider fails to correct the violation as stated in Section (4)(a) and (4)(b) of this rule; 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 (6); 411-50-445; 411-50-447 (1) through (9); and 411-50-455 (4).
- (5) Any civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice shall be delivered in person, or 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 receipt of the notice in which to make written application for a hearing. If a written request for a hearing is not timely received, the notice of civil penalty shall become a final order by default.
- (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 of statutes, rules or orders 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 or threatened the health, safety, or welfare of one or more residents.
- (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 judgment 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 197.660 to 197.670.