

**DEPARTMENT OF HUMAN SERVICES  
SENIORS AND PEOPLE WITH DISABILITIES DIVISION  
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411  
DIVISION 50**

**ADULT FOSTER HOMES**

**Licensure of Adult Foster Homes**

**411-050-0400 Definitions**

*(Amended 7/1/2010)*

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

(1) "AAA" means an Area Agency on Aging 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 programs within the Department of Human Services, Seniors and People with Disabilities Division. For the purpose of these rules, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Division regarding adult foster home license denial, revocation, suspension, non-renewal, and civil penalties.

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

(3) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for health and safety. For the purpose of these rules, ADLs consist of eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior management.

(a) "Independent" means the resident may perform an ADL without help.

(b) "Assist" means the resident is unable to accomplish all tasks of an ADL, even with assistive devices, without the assistance of another person.

(c) "Full Assist" means the resident is unable to do any part of an ADL task, even with assistive devices, without the assistance of another person. This means the resident requires the hands-on assistance of another person through all phases of the activity, every time the activity is attempted.

(4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer adults who are elderly or physically disabled and are not related to the licensee or resident manager by blood, marriage, or adoption. For the purpose of these rules, adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no resident thereof requires any element of care. "Facility" and "home" are synonymous with adult foster home.

(5) "Advance Directive for Health Care" means the legal document signed by the resident giving health care instructions in the event that the resident is no longer able to give directions regarding his or her wishes. The directive gives the resident the means to continue to control her or his own health care in any circumstance.

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

(7) "Behavioral Interventions" mean those interventions that modify the resident's behavior or the resident's environment.

(8) "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 chapter 851, division 047.

(9) "Care" means the provision of room, board, 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. Care also means assistance to promote maximum independence and enhance the quality of life for residents.

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

(11) "Care Plan" means the licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services shall be provided.

(12) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, and shift caregiver's qualifications, as applicable.

(13) "Client" means a resident in an adult foster home for whom the Department pays for care and for whom case management services are provided. "Client" also means a Medicaid recipient.

(14) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care, and services. Compensation does not include the voluntary sharing of expenses between or among roommates.

(15) "Complaint" means an allegation that a licensee or caregiver has violated these rules or an expression of dissatisfaction relating to a resident or the condition of the adult foster home.

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

(17) "Criminal Records Check Rules" refers to OAR 407-007-0200 to 407-007-0370.

(18) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight.

(19) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.

(20) "Department" means the Department of Human Services.

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

(22) "Disabled" means an individual with a physical, cognitive, or emotional impairment which, for the individual, constitutes or results in a functional limitation in one or more activities of daily living.

(23) "Division" means the Seniors and People with Disabilities Division (SPD) of the Department of Human Services. Division also includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.

(24) "Elderly" or "Aged," for the purposes of these rules, means any person age 65 or older.

(25) "Exception" means a variance from a regulation or provision of these rules, granted in writing by the Division, upon written application by the licensee.

(26) "Exempt Area" means a county where there is a county agency that 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. Exempt area county licensing rules must be submitted to the Director for review and approval prior to implementation.

(27) "Family Member," for the purpose of these rules, 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, niece, nephew, or first cousin.

(28) "Home" means the physical structure in which residents live. Home is synonymous with adult foster home.

(29) "Home-like" means an environment that promotes the dignity, security, and comfort of residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the residents.

(30) "House Policies" mean written and posted statements addressing house activities in an adult foster home.

(31) "Legal Representative" means a person who has the legal authority to act for the resident.

(a) For health care decisions, this is a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or Power of Attorney for Health Care.

(b) For financial decisions, this is a legal conservator, an agent under a power of attorney, or a representative payee.

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

(33) "Licensed Health Care Professional" means a person who possesses a professional medical license that is valid in Oregon. Examples include but are not limited to a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT), or occupational therapist (OT).

(34) "Licensee" means the person who applied for, was issued a license, and whose name is on the license and who is responsible for the operation of the home. The licensee of the adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless he or she is also the operator.

(35) "Limited License" means a license is issued to a licensee who intends to provide care for compensation to a specific individual who is unrelated to the licensee but with whom there is an established relationship.

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

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

(38) "Occupant" means anyone residing in or using the facilities of the adult foster home including residents, licensees, resident managers, friends or family members, day care persons, and boarders.

(39) "Ombudsman" means the Oregon Long-Term Care Ombudsman or an individual designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the adult foster home residents.

(40) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident may not easily remove and restricts freedom of movement or normal access to his or her body. Physical restraints include but are not limited to wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

(41) "P.R.N. (pro re nata) Medications and Treatments" mean those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(42) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager, or shift caregiver). "Provider" does not include

the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(43) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person must meet the standards of OAR 411-050-0440 and OAR 411-050-0443 except for completing the training and testing requirements. (See OAR 411-050-0415(9))

(44) "Psychoactive Medications" mean various medications used to alter mood, anxiety, behavior, or cognitive processes. For the purpose of these rules, psychoactive medications include but are not limited to antipsychotics, sedatives, hypnotics, and antianxiety medications.

(45) "Relative" means those persons identified as family members as defined in this rule.

(46) "Relative Adult Foster Home" means a home in which care and services are provided only to adult family members of the licensed provider who are 18 years or older and are elderly or physically disabled. The adult family member receiving care must be eligible for Medicaid assistance from the Department. A spouse is not eligible for compensation as a relative adult foster care licensee.

(47) "Reside" means for a person to make an adult foster home his or her residence on a frequent or continuous basis.

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

(49) "Residential Care" means the provision of care on a 24-hour day basis.

(50) "Resident Manager" means an employee of the licensee who lives in the home and is directly responsible for the care of residents on a 24-hour day basis for five consecutive days.

(51) "Resident Rights" or "Rights" means civil, legal, or human rights including but not limited to those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739)

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

(53) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, and housekeeping to adults who are elderly or physically disabled and do not need assistance with their activities of daily living. Room and board facilities for two or more persons must register with the Division under OAR chapter 411, division 068.

(54) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

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

(56) "Services" mean activities that help the residents develop skills to increase or maintain their level of functioning or which assist the residents to perform personal care or activities of daily living or individual social activities.

(57) "Shift Caregivers" mean caregivers who, by written exception of the Division, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(58) "Subject Individual" means:

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

(A) All licensed adult foster home providers and provider applicants;

(B) All persons intending to work in or currently working in the adult foster home including but not limited to direct caregivers and individuals in training;

(C) Occupants, excluding residents, residing in or on the premises of the proposed or currently licensed adult foster home including household members and boarders; or

(D) Volunteers if allowed unsupervised access to residents.

(b) "Subject Individual" does not apply to:

(A) Residents of the adult foster home and residents' visitors;

(B) Persons who live or work on the adult foster home premises who do not:

(i) Have regular access to the home for meals; or

(ii) Have regular use of the adult foster home's appliances or facilities; and

(iii) Have unsupervised access to residents or residents' personal property.

(C) Persons employed by a private business that provides services to residents and is not regulated by the Department.

(59) "Substitute Caregiver" means any person other than the licensee, resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of the Division.

(60) "These Rules" mean the rules in OAR chapter 411, division 050.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705

**411-050-0401 Purpose**

*(Amended 1/1/2007)*

The purpose of these rules is to establish standards and procedures for adult foster homes that provide care for adults who are elderly or physically disabled in a home-like environment that is safe and secure. The goal of adult foster care is to provide necessary care while emphasizing the resident's independence. This goal is reached through a cooperative relationship between the care providers and the resident (or court-appointed guardian) in a setting that protects and encourages resident dignity, choice, and decision-making. Residents' needs are to be addressed in a manner that supports and enables residents to maximize their ability to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.720

#### **411-050-0405 License Required**

*(Amended 7/1/2010)*

(1) Any facility, which meets the definition of an adult foster home in OAR 411-050-0400, must apply for and obtain a license from the Division or an exempt area county.

(2) A person or entity may not represent themselves as operating an adult foster home or accept placement of an individual without being licensed as an adult foster home.

(3) **RELATIVE ADULT FOSTER HOME.** Any home, which meets the definition of a relative adult foster home, must have a license from the Division if receiving compensation from the Department.

(a) To qualify for this license and for compensation from the Department, the applicant or licensee must submit:

(A) A completed application for initial and renewal licenses;

(B) The Department's Health History and Physician or Nurse Practitioner's Statement that indicates the applicant is physically, cognitively, and emotionally capable of providing care to his or her relative. The completed form must be submitted initially and every third year or sooner if there is reasonable cause for health concerns;

(C) The Department's Background Check Request form completed by each subject individual and approved according to OAR 411-050-0412.

(b) The applicant or licensee must demonstrate a clear understanding of the resident's care needs;

(c) The applicant or licensee must meet minimal fire safety standards including:

(A) Functional smoke alarms installed in all sleeping areas and hallways or access ways that adjoin sleeping areas; and

(B) A functional 2-A-10BC fire extinguisher on each floor of the home.

(d) The applicant or licensee must obtain any training and maintain resident record documentation deemed necessary by the Division to provide adequate care for the resident.

(e) A spouse is not eligible for compensation as a relative adult foster care licensee. A relative adult foster home license is not required if services are provided to a relative without compensation to the licensee from the Department.

(4) LIMITED FOSTER HOME. If a home meets the definition of a limited license, the home must be licensed by the Division if the caregiver receives compensation privately or from the Department. The license shall be limited to the care of a specific individual and the licensee shall make no other admissions. The individual receiving care shall be named on the license. The licensee may be subject to the requirements specified in Standards and Practices for Care and Services (See OAR 411-050-0447). The person requesting a limited license must:

(a) At a minimum, meet the standards of a relative adult foster home;

(b) Submit the Department's Background Check Request form completed by each subject individual and approved according to OAR 411-050-0412; and

(c) Acquire any additional training deemed necessary by the Division to provide adequate care for the resident.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.725

**411-050-0408 Capacity**

*(Amended 7/1/2010)*

(1) Residents must be limited to five persons who are unrelated to the licensee and resident manager by blood or marriage and require care.

(2) Respite residents are included in the license capacity of the home.

(3) The number of residents permitted to reside in an adult foster home shall 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 facility standards of these rules.

(4) Determination of maximum capacity must include consideration of:

(a) Total household composition including children and relatives requiring care and supervision;

(b) A minimum of one qualified caregiver per five residents, including respite and day care; and

(c) Whether children over the age of five have a bedroom separate from their parents.

(5) When there are family members requiring care in a home in which the licensee is the primary, live-in caregiver, the allowable number of unrelated residents shall be a maximum capacity of five if the following criteria are met:

(a) The licensee is able to demonstrate the ability to evacuate all occupants from the adult foster home within three minutes or less (See OAR 411-050-0445(5)(o));

(b) The licensee has adequate staff and has demonstrated the ability to provide appropriate care for all residents (See OAR 411-050-0444(1)(e));

(c) There is an additional 40 square feet of common living space for each person above the five residents (See OAR 411-050-0445(1)(e));

(d) Bathrooms and bedrooms meet the requirements of OAR 411-050-0445(3) and (4);

(e) The care needs of day care and respite individuals are within the classification of the license and any conditions imposed on the license; and

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

(6) If there are day care individuals in the home, licensees must have arrangements for day care individuals to sleep in areas other than a resident's bed, a resident's private room, or space designated as common use, in accordance with OAR 411-050-0445(4)(c).

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705 & 443.775

### **411-050-0410 License Application and Fees**

*(Amended 7/1/2010)*

(1) The Department's application form must be completed and submitted with the non-refundable fee by the licensee applicant. The application is not complete until all of the required application information is submitted to the Division. Incomplete applications are void after 60 calendar days from the date the licensing office receives the application form and nonrefundable fee. Failure to provide accurate information may result in the denial of the application.

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

(3) The license application must include:

- (a) Complete contact information for the applicant, including a mailing address if different from the adult foster home, and a business address for electronic mail;
- (b) Verification of attendance at a local office Orientation and successful completion of the Division's Basic Training examination. (See OAR 411-050-0440(1)(g)(A) and (B));
- (c) The maximum resident capacity requested that includes any respite residents and identifies any relatives needing care. The applicant must indicate the maximum number of any room and board occupants and day care individuals and include the name of any other occupants in the home;
- (d) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Division;
- (e) A Health History and Physician or Nurse Practitioner's Statement (form SDS 903) regarding the applicant's ability to provide care;
- (f) A completed Financial Information sheet (SDS 448A), a budget for operating the home that includes payroll expenses, and proof of at least two months' liquid resources;
- (g) The applicant must provide the Division with a list of all unsatisfied judgments, liens, and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The Division shall require the applicant provide proof of having the amount of resources necessary to pay those claims. The Division may require or permit the applicant to provide a current credit report to satisfy this financial requirement;
- (h) If the home is leased or rented, the applicant must submit a copy of the lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

- (A) The owner and landlord's name;
  - (B) Verification that the rent is a flat rate; and
  - (C) Signatures and date signed by the landlord and applicant;
- (i) If the applicant is purchasing or owns the home, verification of purchase or ownership must be submitted with the application. The financial information may not be included in the public file;
- (j) A signed Criminal Records Request form provided by the Department for each subject individual;
- (k) The applicant must submit a current and accurate floor plan that indicates:
- (A) The size of rooms;
  - (B) Which rooms are to be resident bedrooms and which are to be caregiver bedrooms;
  - (C) The location of all the exits on each level of the home, including emergency exits such as windows;
  - (D) The location of any wheelchair ramps, if applicable;
  - (E) The location of all fire extinguishers and smoke alarms; and
  - (F) The planned evacuation routes.
- (l) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;
- (m) A \$20 per bed non-refundable fee for each non-relative resident;
- (n) Three personal references who are not family members of the applicant (See OAR 411-050-0400(27)). Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references;

(o) If the applicant or licensee intends to use a resident manager or shift caregivers, a Department's supplemental application completed by the resident manager or shift caregivers must be submitted; and

(p) Written information describing the operation plan for the adult foster home, including the use of substitute caregivers, other staff, a back-up licensed provider, or approved resident manager if applicable, and a plan on coverage for resident manager or shift caregiver absences, if applicable.

(4) **SHIFT CAREGIVERS.** Shift caregivers may be used in lieu of a resident manager if granted a written exception by the Division. Use of shift caregivers detracts from the intent of a home-like environment, but may be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs such as those with Alzheimer's Disease, AIDS, or head injuries. If shift caregivers are used, they must meet or exceed the experience and training qualifications for the license classification requested.

(5) After receipt of the completed application materials including the non-refundable fee, the Division shall investigate the information submitted including pertinent information received from outside sources, inspect the home, and conduct a personal interview with the applicant.

(6) If cited violations from the home inspection are not corrected within the time frames specified by the Division, the issuance of the license shall be denied.

(7) The applicant may withdraw his or her application at any time during the application process by written notification to the Division.

(8) An applicant whose license has been revoked, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial was final, or for a longer period if specified in the order revoking or denying the license.

(9) All moneys collected under ORS 443.725 to 443.780 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 443.735

**411-050-0412 Criminal Records Check**  
(Amended 7/1/2010)

(1) All subject individuals must be approved and maintained as required in accordance with these rules and OAR 407-007-0200 to 407-007-0370, Criminal Records Check Rules:

- (a) Annually;
- (b) Prior to a subject individual's change in position (i.e., changing from substitute caregiver to resident manager); and
- (c) Prior to working in another home, regardless of whether the employer was the same or not, unless section (2) of this rule applies.

(2) PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL. A subject individual may be approved to work in multiple homes within the jurisdiction of the local Division. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various adult foster homes within the local Division's jurisdiction.

(3) On or after July 28, 2009, no licensee, licensee applicant, or employee of the licensee shall be approved who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(4) Section (3) of this rule does not apply to:

- (a) Employees of the licensee who were hired prior to July 28, 2009 if they continue employment in the same position; or
- (b) Any subject individual who is an occupant of the home but is neither a licensee nor a caregiver.

(5) The licensee must have written verification from the Division that the required criminal records checks have been completed for all subject individuals. (See OAR 411-050-0444(6)(a)(A))

(6) All subject individuals must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The licensee must notify the Division or designee within 24 hours.

(7) The Division must provide for the expedited completion of a criminal records check for the state of Oregon when requested by a licensed provider because of an immediate staffing need.

Stat. Auth.: ORS 181.537, 410.070, 443.004, & 443.735  
Stats. Implemented: ORS 181.537, 443.004, & 443.735

### **411-050-0415 Issuance** *(Amended 7/1/2010)*

(1) The Division shall issue a license within 60 calendar days after the completed application materials have been received if the home and applicant are in compliance with these rules. The license shall state the name of the resident manager, or shift caregivers as applicable, the name of the licensee who have met the requirements to operate the adult foster home, the address of the premises to which the license applies, the license classification, the maximum number of residents, and the expiration date. The license must be posted in a prominent place in the home and be available for inspection at all times.

(2) The licensee shall be given a copy of the Division's inspection report form as follows:

(a) INITIAL LICENSE. Form SDS 516 identifying any areas of non-compliance, and a time frame for correction.

(b) RENEWAL LICENSE. Form SDS 517A and, if applicable, form SDS 517B identifying any areas of non-compliance. The SDS 517B shall specify a time frame for correction of each violation, not to exceed 30 calendar days from the date of inspection.

(3) The licensee must post the most recent inspection reports in the entry or equally prominent place and must, upon request, provide a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian or conservator of a resident.

(4) The Division may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The conditions must be posted with the license (See OAR 411-050-0483).

(5) The Division shall not issue an initial license unless:

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

(b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825;

(c) The Division has completed an inspection of the adult foster home;

(d) The Department has completed a criminal records check in accordance with OAR 411-050-0412;

(e) The Division has checked the record of sanctions available from its files;

(f) The Division has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse; and

(g) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the adult foster home.

(6) A license is valid for one year unless revoked or suspended by the Division.

(7) In seeking an initial license, the burden of proof shall be upon the applicant of the adult foster home to establish compliance with ORS 443.705 to 443.825 and these rules.

(8) The Division shall not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain

substantial compliance with the rules and regulations while operating his or her existing home or homes.

(9) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home for purposes of this rule. A person shall be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

#### **411-050-0420 Renewal**

*(Amended 7/1/2010)*

(1) At least 60 calendar days prior to the expiration of a license, the Division shall mail a reminder notice and renewal application to the licensed provider. The Division may investigate any information in the renewal application and shall conduct an unannounced inspection of the adult foster home prior to the license renewal.

(2) RENEWAL APPLICATION REQUIREMENTS. The licensee, resident manager, and shift caregivers, as applicable, must submit complete and accurate renewal applications prior to the expiration date to keep the license in effect until the Division takes action. The licensee's renewal application must include:

(a) The Department's license renewal application form;

(b) A \$20 non-refundable fee for each resident based on the license capacity requested;

(c) The Department's Criminal Records Request form completed for each subject individual;

(d) A completed Financial Information Sheet (form SDS 0448A) if the licensee's financial information has changed since the prior application;

(e) A Health History and Physician or Nurse Practitioners' Statement (form SDS 0903) must be updated every third year or sooner if there is reasonable cause for health concerns; and

(f) The Department's supplemental application completed by the resident manager or shift caregivers, as applicable.

(3) LATE RENEWAL REQUIREMENTS (UNLICENSED ADULT FOSTER HOME). The home shall be treated as an unlicensed facility, subject to civil penalties, if the required renewal information and fee are not submitted prior to the expiration date and residents remain in the home. (See OAR 411-050-0487)

(4) The licensee shall be given a copy of the Division's inspection report, (form SDS 517A and, if applicable, form 517B) citing any violations and specifying a time frame for correction, which shall not exceed 30 calendar days from the date of inspection.

(5) If cited violations are not corrected within the time frame specified by the Division, the renewal license may be denied.

(6) The Division shall not renew a license unless the following requirements are met.

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and these rules, including any applicable conditions and other final orders of the Division;

(b) The Division has completed an inspection of the adult foster home;

(c) The Department has completed criminal records checks in accordance with OAR 411-050-0412;

(d) The Division has checked the record of sanctions available from its files; and

(e) The Division has determined that the nursing assistant registry contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.

(7) In seeking a renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the licensee to establish compliance with ORS 443.705 to 443.825 and these rules.

(8) In proceedings for renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof shall be upon the Division to establish noncompliance with ORS 443.705 to 443.825 and these rules.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

#### **411-050-0430 Exceptions**

*(Amended 7/1/2010)*

(1) An applicant or licensee may request an exception to the provisions of these rules. The request must be in writing and must include clear and convincing evidence that such an exception:

(a) May not jeopardize the care, health, welfare, or safety of the residents and all of the residents' needs shall be met; and

(b) Must assure that all residents, in addition to other occupants in the home, may be evacuated in three minutes or less.

(2) EXCEPTIONS NOT ALLOWED. Notwithstanding section (1) of this rule, no exception shall be granted from a regulation or provision of these rules pertaining to:

(a) Resident capacity (See OAR 411-050-0408);

(b) Minimum age of licensee, resident manager, shift caregiver, and substitute caregivers (See OAR 411-050-0440);

(c) Standards and practices for care and services (See OAR 411-050-0447); or

(d) Inspections of the facility (See OAR 411-050-0450).

(3) Exceptions may not be granted to any rule that is inconsistent with Oregon Revised Statutes.

(4) Exception requests related to fire and life safety may not be granted by the Division without prior consultation with the State Fire Marshal or the State Fire Marshal's designee.

(5) In making its determination to grant an exception, the Division shall consider the licensee's history of compliance with rules governing adult foster homes or other long-term care facilities for the elderly or physically disabled in Oregon or any other jurisdiction, if appropriate. The Division must determine that the exception is consistent with the intent and purpose of these rules prior to granting an exception. (See OAR 411-050-0401)

(6) An exception is not effective until granted in writing by the Division. Exceptions shall be reviewed pursuant these rules. If applicable, the licensee must reapply for an exception at the time of license renewal or more often if determined necessary by the Division.

(7) At all times the burden of proof shall be on the applicant or licensee to prove that the requirements of this rule have been met.

(8) If an exception to any provision of these rules is denied, the applicant or licensee may request a meeting with the local Division.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

#### **411-050-0435 Contracts and Refunds**

*(Amended 7/1/2010)*

(1) MEDICAID CONTRACTUAL AGREEMENT.

(a) Applicants or licensees who intend to care for Medicaid eligible clients must enter into a contractual agreement with the Department,

sign a completed provider enrollment form and follow Department rules and contract terms.

(b) A valid contractual agreement is not a guarantee that Medicaid eligible individuals shall be placed in an adult foster home.

(c) No Medicaid eligible individuals shall be admitted into an adult foster home unless and until:

(A) The Division has approved a provider enrollment agreement. The Department may not issue a Medicaid payment to a licensee without a current provider enrollment agreement in place;

(B) The client has been screened according to OAR 411-050-0447; and

(C) The Division has authorized the placement. The authorization must be clearly documented in the resident's record with other required admission materials. (See OAR 411-050-0447(2))

(d) The rate of compensation established by the Division is considered payment in full and licensees may not accept additional funds or in-kind payment.

(e) The Department shall not make payment for the date of discharge or for any time period thereafter.

(f) A licensee who elects to provide care for a Medicaid recipient is not required to admit more than one Medicaid recipient. However, if the licensee has a valid Medicaid contract for that home, private-pay residents who become eligible for Medicaid assistance may not be asked to leave solely on the basis of Medicaid eligibility.

(g) Either party may terminate a Medicaid contract according to the terms of the contract.

(h) DEATH OF MEDICAID RESIDENT WITH NO SURVIVING SPOUSE. The licensee must forward all personal incidental funds

(PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of a Medicaid resident with no surviving spouse. (See Limits on Estate Claims, OAR 461-135-0835)

(2) PRIVATE CONTRACT. Licensees who care for private-pay residents must enter into a written contract, which is an admission agreement with the resident or person paying for care. A copy of the contract is subject to review by the Division prior to licensure.

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

(A) Services to be provided and the rate to be charged. A payment range may not be used unless the contract plainly states when an increase in rate may be expected based on increased care or service needs;

(B) Conditions under which the rates may be changed;

(C) The home's refund policy in instances of a resident's hospitalization, death, discharge, transfer to a nursing facility or other care facility, or voluntary move. The refund policy must be in compliance with OAR 411-050-0435(3);

(D) The home's policies on voluntary moves and whether or not the licensee requires written notification of a resident's intent not to return;

(E) Charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home, if any; and

(F) A statement indicating that residents are not liable for damages considered normal wear and tear on the adult foster home and its contents.

(b) The licensee may not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.

(c) The licensee must give a copy of the signed contract to the resident or the resident's representative, which must be documented in the resident's record.

(d) The licensee may not include any illegal or unenforceable provision in a contract with a resident and may not ask or require a resident to waive any of the resident's rights or licensee's liability for negligence.

(e) Thirty calendar days prior to any general rate increases, additions, or other modifications of the rates, the licensee must give written notice of the proposed changes to private-pay residents and their family or other representatives, unless the change is due to the resident's increased care or service needs, and the agreed upon rate schedule in the resident's contract has specified charges for those changes.

### (3) REFUNDS.

(a) If a resident dies, the licensee may not retain nor require payment for more than 15 calendar days after the date of the resident's death, or the time specified in the licensee's contract, whichever is less.

(b) If a resident leaves an adult foster home for medical reasons and the resident or the resident's representative indicates the intent to not return, the licensee may not charge the resident for more than 15 calendar days or the time specified in the licensee's contract, whichever is less, after the date the licensee receives notification from the resident or the resident's representative.

(c) The licensee has an obligation to act in good faith to reduce the charge to the resident who has left the home, by seeking a new resident to fill the vacancy.

(d) The licensee must refund any unused advance payments to the resident, or the resident's representative as appropriate, within 30 calendar days after the resident dies or leaves the home.

(e) If the adult foster home closes or the licensee gives written notice for the resident to leave, the licensee waives the right to collect any

fees beyond the date of closure or the resident's departure, whichever is sooner.

(f) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Department investigator, or due to conditions of imminent danger of life, health, or safety, the licensee may not charge the resident beyond the resident's last day in the home.

(g) Refund policies must also apply to the sections in these rules on moves, transfers, and discharges. (See OAR 411-050-0444(9)(10)(11))

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738 & 443.785

#### **411-050-0437 Refunds**

*(Repealed 1/1/2007)*

#### **411-050-0440 Qualification and Training Requirements for Licensees, Resident Managers, and Other Caregivers**

*(Amended 7/1/2010)*

(1) LICENSEE REQUIREMENTS. Adult foster home licensees must meet and maintain the requirements specified in this section. Adult foster home applicants and licensees must:

(a) Live in the home that is to be licensed unless there is an approved resident manager, or an exception for shift caregivers has been granted according to section (4) of this rule;

(b) Be at least 21 years of age;

(c) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, 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 or other qualified practitioner indicating they are physically, cognitively, and emotionally 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;

(d) Be approved annually in accordance with OAR 411-050-0412 and maintain that approval as required;

(e) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents and their family members or representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), physicians, nurses, case managers, Division staff, and other professionals involved in the care of residents;

(f) Be able to respond appropriately to emergency situations at all times; and

(g) TRAINING REQUIREMENTS. Applicants and licensees must have the education, experience, and training to meet the requirements of their requested classification. (See OAR 411-050-0443) The following training requirements must be completed prior to obtaining a license:

(A) Potential applicants must attend a Division-approved orientation program offered by the local licensing authority.

(B) Potential applicants must pass the Division's Basic Training Course examination to meet application requirements for licensure. Potential applicants who fail the first examination may take the examination a second time, however successful completion of the examination must take place within 90 calendar days of the end of the Basic Training Course. Potential applicants who fail a second test must retake the Division's Basic Training Course prior to repeating the examination.

(2) FINANCIAL REQUIREMENTS. Applicants and licensees must have the financial ability and maintain sufficient liquid resources to pay the operating costs of the adult foster home for at least two months without solely relying on potential resident income. If an applicant is unable to demonstrate the

financial ability and resources required by this section, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(3) RESIDENT MANAGER REQUIREMENTS. Applicants for resident manager must meet and maintain the qualification and training requirements specified in sections (1)(a) through (1)(g)(B) of this rule. An applicant shall not be approved as a resident manager until the Division has verified that all the requirements have been satisfied.

(4) SHIFT CAREGIVER REQUIREMENTS. A written exception is required for the use of shift caregivers. Applicants for shift caregivers must meet and maintain the qualifications outlined in sections (1)(b) through (1)(g)(B) of this rule. An applicant shall not be approved as a shift caregiver until the Division has verified that all the requirements have been satisfied. (See OAR 411-050-0410(4)(o))

(5) EMPLOYMENT APPLICATION. An application for employment in any capacity in an adult foster home must include a question asking whether the applicant has been found to have committed abuse.

(6) TRAINING WITHIN FIRST YEAR OF LICENSING. Licensees, resident managers, and shift caregivers must complete within the first year of obtaining an initial license a Basic First Aid course, a cardiopulmonary resuscitation (CPR) course, and attend Fire and Life Safety training as available. The Division and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

(7) ANNUAL TRAINING REQUIREMENTS FOR LICENSEES, RESIDENT MANAGERS, AND SHIFT CAREGIVERS FOR LICENSE RENEWAL.

(a) Each year after the first year of licensure, licensees, resident managers, and shift caregivers must complete at least 12 hours of Division-approved training related to the care of adults who are elderly or physically disabled. Up to four of those hours may be related to the business operation of an adult foster home.

(b) Licensees, resident managers, and shift caregivers, as applicable, must maintain their CPR certification.

(c) Registered nurse delegation or consultation, CPR certification and First Aid training, or consultation with an accountant do not count toward the 12 hours of the annual training requirement.

(8) **SUBSTITUTE CAREGIVER REQUIREMENTS.** Substitute caregivers, or any other person left in charge of residents for any period of time, may not be a resident, and must at a minimum, meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be approved annually in accordance with OAR 411-050-0412 and maintain that approval as required;

(c) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents, residents' representatives and family members, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), physicians, case managers, Division staff, and other professionals involved in the care of residents;

(d) Be able to respond appropriately to emergency situations at all times;

(e) Have a clear understanding of their job responsibilities, have knowledge of the residents' care plans, and be able to provide the care specified for each resident including appropriate delegation or consultation by a registered nurse;

(f) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Division to provide care for adults who are elderly or physically disabled, as determined by reference checks and other sources of information; and

(g) **TRAINING REQUIREMENTS FOR SUBSTITUTE CAREGIVERS.**

(A) Substitute caregivers must be oriented to the home and to the residents by the licensee or resident manager including:

- (i) The location of any fire extinguishers;
- (ii) Demonstration of evacuation procedures;
- (iii) Location of residents' records;
- (iv) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;
- (v) Location of medications and key for medication cabinet;
- (vi) Introduction to residents;
- (vii) Instructions for caring for each resident; and
- (viii) Delegation by a registered nurse for nursing tasks if applicable.

(B) A substitute caregiver must complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W), and must receive instruction in specific care responsibilities from the licensee or resident manager. The Workbook must be completed by the substitute caregiver without the help of any other person and be considered part of the required orientation to the home and residents.

(C) Substitute caregivers left in charge of an adult foster home for any period that exceeds 48 continuous 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.

(D) The Division may grant an exception to the Caregiver Preparatory Training Study Guide and Workbook requirement in section (8)(g)(B) of this rule for a substitute caregiver who holds a current Oregon license as a health care professional such as a physician, registered nurse, or licensed practical

nurse 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 adults who are elderly or physically disabled. A certified nursing assistant (CNA) must complete the Caregiver Preparatory Training Workbook and have a certificate of completion signed by the licensee.

(9) If a licensee is not in compliance with one or more of these rules or the classification for which he or she is licensed, the Division may require, by condition, additional training in the deficient area.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735 & 443.738

**411-050-0441 Training Requirements for Providers and Resident Managers**

*(Repealed 1/1/2007)*

**411-050-0442 Training Requirements for Substitute Caregivers**

*(Repealed 1/1/2007)*

**411-050-0443 Classification of Adult Foster Homes**

*(Amended 7/1/2010)*

(1) A Class 1, Class 2, or Class 3 adult foster home license shall be issued by the Division based upon the qualifications of the applicant, resident manager, and shift caregivers, as applicable, and compliance with the requirements of these rules.

(a) After receipt of the completed application materials, including the nonrefundable fee, the Division shall investigate the information submitted including any pertinent information received from outside sources.

(b) An applicant may not be issued a license and may not be granted an upgraded license classification if the Division finds unsatisfactory references or a history of noncompliance within the last 24 months.

(c) A Class 1 license may be issued if the applicant and resident manager, as applicable, complete the training requirements outlined in OAR 411-050-0440;

(d) A Class 2 license may be issued if the applicant and resident manager, as applicable, complete the requirements outlined in OAR 411-050-0440. In addition, each must have the equivalent of two years' full time experience in providing direct care to adults who are elderly or physically disabled;

(e) A Class 3 license may be issued if the applicant, resident manager, and shift caregivers, as applicable, complete the training requirements outlined in OAR 411-050-0440 and have a current license as a health care professional in Oregon or possess the following qualifications:

(A) Have the equivalent of three years' full time experience providing direct care to adults who are elderly or physically disabled and require full assistance in four or more of their activities of daily living.

(B) Have references satisfactory to the Division. The applicant must submit current contact information from at least two licensed health care professionals who have direct knowledge of the individual's ability and past experience as a caregiver.

(2) A licensee may be approved to care for ventilator-dependent residents. This approval shall be granted by the Division's Central Office if the licensee, resident manager, and shift caregivers, as applicable, meet the criteria for a Class 3 home according to section (1)(e) of this rule, and comply with the additional requirements for adult foster homes serving ventilator-dependent residents. (See OAR 411-050-0491)

(3) Licensees may only admit or continue to care for residents whose impairment levels are within the classification level of the licensed home.

(a) A licensee with a Class 1 license may only admit residents who need assistance in no more than four activities of daily living.

(b) A licensee with a Class 2 license may provide care for residents who require assistance in all activities of daily living, but require full assistance in no more than three activities of daily living.

(c) A licensee with a Class 3 license may provide care for residents who require full assistance in four or more activities of daily living, but only one resident who requires bed-care or full assistance with all activities of daily living.

(4) A licensee may request in writing an exception if:

(a) A new resident wishes to be admitted whose impairment level exceeds the license classification level;

(b) A current resident becomes more impaired, exceeding the license classification level; or

(c) There is more than one resident in the home who requires full bed-care or full assistance with all activities of daily living.

(5) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home. The Division shall respond in writing within 30 calendar days' receipt of the written request. The licensee must prove the following criteria are met by clear and convincing evidence that:

(a) It is the choice of the resident to reside in the home;

(b) The licensee is able to give appropriate care and service to the resident in addition to meeting the care and service needs of the other residents;

(c) Additional staff is hired to meet the additional care requirements of all residents in the home as necessary;

(d) Outside resources are available and obtained to meet the resident's care needs;

(e) The exception may not jeopardize the care, health, safety, or welfare of the residents; and

(f) The licensee is able to demonstrate how all occupants may be safely evacuated in three minutes or less if the exception is granted.

(6) A licensee may submit to the Division a written request for a change in license classification. The Division's determination shall be made within 60 calendar days of receipt of the licensee's written request.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

#### **411-050-0444 Operational Standards**

*(Amended 7/1/2010)*

##### **(1) GENERAL PRACTICES.**

(a) Licensees must own, rent, or lease the home to be licensed, however the local licensing authority may grant exception to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located may not allow the owner to interfere with the admission, discharge, or transfer of any resident in the adult foster home unless the owner is a licensee or co-licensee named on the license.

(b) **COOPERATION AND ACCESS.** The licensee must cooperate with Division personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(A) Department personnel have access to all resident and facility records and may conduct private interviews with residents.

(B) The State Long-Term Care Ombudsman has access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers have access to facility records and, with written permission from the resident or the resident's legal

representative, may have access to resident records. (See OAR 114-005-0030)

(c) Information related to residents must 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) Licensees must be able to arrange or provide for appropriate transportation for residents when needed.

(e) STAFFING STANDARDS. A licensee may not employ a resident manager or shift caregiver who does not meet or exceed the experience and training classification standard for the adult foster home.

(f) If a resident manager, or shift caregiver, changes during the period the license covers, the licensee must notify the Division immediately and identify who shall be providing care. This includes circumstances when the licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in staff, in which case the licensee must submit an updated plan of 24-hour coverage to the Division. Otherwise:

(A) The licensee must submit a request for a change of resident manager, or shift caregiver as applicable, to the Division along with the Department's completed resident manager application form, a completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903), the Department's Criminal Records Request form, and a \$10 non-refundable fee.

(B) Upon a determination by the Division that the applicant meets the requirements of a resident manager, and the applicant has obtained the required training and passed the test, a revised license shall be issued with the name of the new resident manager or shift caregiver. The classification of the home shall be reevaluated based on the qualifications of the new resident manager or shift caregivers, and changed accordingly.

(g) UNEXPECTED AND URGENT STAFFING NEED. If the Division determines an unexpected and urgent staffing need exists, the Division may authorize a person who has not completed the Basic Training or passed the test to act as a resident manager or shift caregiver until training and testing are completed, or for 60 calendar days, whichever period is shorter. The licensee must notify the Division of the situation in writing and satisfactorily demonstrate his or her inability to find a qualified resident manager, or shift caregiver as applicable, and that the person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home.

(h) A licensee is responsible for the supervision, training, and overall conduct of resident managers, other caregivers, family members, and friends when acting within the scope of their employment, duties, or when present in the home.

(i) Sexual relations between residents and any employee of the adult foster home, licensee, or any member of the licensee's household is prohibited unless a pre-existing relationship existed.

(j) A licensee must notify the Division in writing prior to any change of his or her residence or mailing address.

(k) COMMUNICATION.

(A) Applicants for an initial license must obtain an active electronic mail address prior to obtaining a license.

(B) A licensee must notify the Division within 24 hours upon a change in the home's business address for electronic mail and telephone number for the licensee and the adult foster home.

(See also section (5) of this rule)

(2) SALE OR LEASE OF EXISTING ADULT FOSTER HOMES AND TRANSFER OF LICENSES.

(a) A license is not transferable and does not apply to any location or person other than the location and the person indicated on the license obtained from the Division.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication including advertising and disclosure statements that the license to operate an adult foster home is not transferable and must refer them to the Division for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the Division prior to the transfer of operation of the home.

(d) The licensed provider must promptly notify the local Division's licensing program in writing about the licensee's intent to close or intent to convey the adult foster home to another individual. The licensee must provide written notice to the residents and the resident's representatives and case managers as applicable, according to section (12)(a) of this rule.

(e) The licensed provider must inform a person intending to assume operation of an existing adult foster home that residents currently residing in the home must be given at least 30 calendar days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the Division at a level appropriate to the care needs of the residents in the home.

### (3) SANITATION AND SAFETY PRECAUTIONS IN THE ADULT FOSTER HOME.

(a) **COMMUNES AND INCONTINENCE GARMENTS.** If used, commodes must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(b) LAUNDRY. Soiled linens and clothing must be stored in closed containers prior to laundering in an area that is separate from food storage, kitchen, and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(c) PETS OR OTHER ANIMALS. Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and must not present a danger to residents or guests.

(d) INFECTION CONTROL. Standard precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(e) DISPOSAL OF SHARPS. Precautions must be taken 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 a puncture-resistant, red container for disposal. The puncture-resistant container must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(f) WATER TEMPERATURE. Residents who are unable to safely regulate the water temperature must be supervised.

(g) Resident access to or use of swimming or other pools, hot tubs, saunas, or spas on the premises must be supervised. (See also General Conditions, OAR 411-050-0445(1)(f))

(h) There must be current, basic first-aid supplies and a first-aid manual readily available in the home.

#### (4) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the basic food groups according to the United States Department of Agriculture (USDA's) food pyramid and include fresh fruit and vegetables when in season. Consideration must be given to residents' cultural and ethnic background in food preparation.

(b) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families. Meal substitutions in compliance with section (4)(a) of this rule and with resident approval are acceptable.

(c) There must be no more than a 14-hour span between the evening and morning meals. (Snacks do not substitute for a meal determining the 14-hour span.) Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(d) Food may not be used as an inducement to control the behavior of a resident.

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

(f) Special consideration must be given to residents with chewing difficulties and other eating limitations. Special diets must be followed as prescribed in writing by the resident's physician or nurse practitioner.

(g) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator.

(h) The household utensils, dishes, glassware, and household food may not be stored in resident bedrooms, bathrooms, or living areas.

(i) Meals must be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibility of the licensee. Meals and snacks, as part of an

individual recreational outing by choice, are the responsibility of the resident.

(j) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(k) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors, and in good repair.

(l) Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects, and rodents).

#### (5) TELEPHONE.

(a) The home must have a working, landline telephone with a listed number that is separate from any other number the home has, such as but not limited to internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If the licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as it complies with the requirements of these rules.

(b) The licensee must notify the Division, residents, the residents' families, legal representatives, and case managers, as applicable, of any change in the adult foster home's telephone number within 24 hours of the change.

(c) Restrictions on the use of the telephone by residents are to be specified in the written house policies and may not violate residents' rights. Individual restrictions must be well documented in the care plan.

(d) The licensee must make available and accessible for residents' use a telephone that is in good working order with reasonable accommodation for privacy during telephone conversations. Residents with hearing impairments, to the extent that they may not

hear normal telephone conversation, must be provided with a telephone that is amplified with a volume control or is hearing aid compatible.

(6) FACILITY RECORDS.

(a) Facility records must be maintained in the adult foster home and be available for inspection. Facility records include but are not limited to:

(A) Proof that the licensee has the Department's approval as a result of a criminal records check for all subject individuals..

(B) Proof that the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0440. The following documentation must be available for review upon request:

(i) Proof of required continuing education according to OAR 411-050-0440. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of classroom hours.

(ii) Completed certificates to document caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook.

(iii) Documentation of all substitute caregivers' orientation to the adult foster home as required by OAR 411-050-0440(8).

(iv) Employment applications and the names, addresses, and telephone numbers of caregivers employed or used by the licensee.

(C) Copies of notices to the Division pertaining to changes in the resident manager, shift caregiver, or other primary caregiver.

(D) Proof of required vaccinations for animals on the premises.

(E) Well water tests, if required, according to OAR 411-050-0445(2)(a). Test records must be retained for a minimum of three years.

(F) Contracts with the Department including a copy of the adult foster home's private-pay contract.

(G) Records of evacuation drills according to OAR 411-050-0445(5)(o), including the date, time of day, length of time for evacuation of all occupants, names of all residents, and which residents required assistance. The records must be kept at least three years.

(b) REQUIRED POSTED ITEMS. The licensee must post the following items in the entryway or other equally prominent place where residents, visitors, and others may easily read them:

(A) The adult foster home license;

(B) Conditions, if any are attached to the license;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0445(5)(p);

(D) The Residents' Bill of Rights;

(E) The home's current house policies, which have been reviewed and approved by the Division;

(F) The Division's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Division's most recent inspection form;

(I) The Division's notice pertaining to the use of any intercoms, monitoring devices, and video cameras that may be used in the adult foster home; and

(J) A weekly menu according to section (4) of this rule.

(c) POST BY PHONE. Emergency telephone numbers including the contact number for at least one licensed provider or approved resident manager who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee, if the licensee does not live in the home. The list must be readily visible and posted by a central telephone in the adult foster home.

## (7) RESIDENT RECORDS.

(a) An individual resident record must be developed, kept current, and readily accessible on the premises for each individual admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) An initial screening assessment;

(B) General information according to OAR 411-050-0447(2)(a);

(C) Documentation on form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment;

(D) Financial information:

(i) Detailed records and receipts if the licensee manages or handles a resident's money. Resident account record form SDS 713 or other expenditure forms may be used if the licensee 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 and be initialed by the person making the entry. Receipts must document all deposits and purchases of \$5 or more made on behalf of a resident.

(ii) Contracts signed by residents or their representatives who are paying privately may be kept in a separate file but must be made available for inspection by the Division.

(E) Medical and legal information including but not limited to:

(i) Medical history, if available;

(ii) Current physician or nurse practitioner's orders;

(iii) Nursing instructions, delegations, and assessments as applicable;

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less. (Older records may be stored separately); and

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Health Care Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.

(F) A complete and current care plan;

(G) Copies of the current house policies and the current Residents' Bill of Rights, signed and dated by the resident or the resident's representative;

(H) SIGNIFICANT EVENTS. A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident;

(I) NARRATIVE OF RESIDENT'S PROGRESS. Narrative entries describing each resident's progress must be documented at least weekly and maintained in each resident's

individual record. They must be signed and dated by the person writing them; and

(J) Non-confidential information or correspondence pertaining to the care needs of the resident.

(b) ACCESS TO RESIDENT RECORDS.

(A) Resident records must be readily available at the adult foster home to all caregivers working in the home and to representatives of the Department conducting inspections or investigations, as well as to residents, their authorized representatives, or other legally authorized persons.

(B) The State Long-Term Care Ombudsman has access to all resident and facility records. A Deputy Ombudsman and Certified Ombudsman Volunteers have access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative. (See OAR 114-005-0030)

(c) RECORD RETENTION. Records, including any financial records for residents must be kept for a period of three years.

(d) In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 411, division 005, Privacy of Protected Information. A copy of these rules shall be made available by the Division upon request.

(8) HOUSE POLICIES. House policies must be in writing and a copy given to the resident and the resident's family or representative, at the time of admission. House policies established by the licensee must:

(a) Include any restrictions the adult foster home may have on the use of alcohol, tobacco, pets, visiting hours, dietary restrictions, or religious preferences;

(b) Indicate the home's policy regarding the presence and use of legal marijuana on the premises;

(c) Not be in conflict with the Residents' Bill of Rights, the family atmosphere of the home, or any of these rules;

(d) Be reviewed and approved by the Division prior to the issuance of a license and prior to implementing any changes; and

(e) Be posted where they may easily be seen and read by residents and visitors.

(9) RESIDENT MOVES, TRANSFERS, AND DISCHARGES. The Department encourages licensees to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves out of an adult foster home for any reason, at the time of move-out the licensee must submit copies of pertinent information from the resident's record to the resident's new place of residence. Pertinent information must include at a minimum:

(A) Copies of current medication sheets and an updated care plan.

(B) Documentation of actions taken by the adult foster home staff, resident, or the resident's representative pertaining to the move, transfer, or discharge.

(b) A copy of the Department's Notice of Resident Move, Transfer, or Discharge form (SDS 901) must be maintained at least three years for all involuntary moves.

(c) Licensees must immediately document in the resident's record voluntary and involuntary moves, transfers, and discharges from the adult foster home, as events take place. (See sections (10) and (11) of this rule)

(10) VOLUNTARY MOVES, TRANSFERS, AND DISCHARGES.

(a) If a Department client or a client's representative gives notice of the client's intent to leave the adult foster home, or the client leaves the home abruptly, the licensee must promptly notify the client's case manager.

(b) The licensee must obtain prior authorization from the resident, the resident's legal representative, and case manager, as applicable, prior to:

(A) Moving voluntarily from one bedroom to another in an adult foster home;

(B) Transferring voluntarily from one adult foster home to another that has a license issued to the same person; or

(C) Moving voluntarily to any other location.

(c) Notifications and authorizations must be documented and available in the resident's record.

#### (11) INVOLUNTARY MOVES, TRANSFERS, AND DISCHARGES.

(a) MANDATORY WRITTEN NOTICE. A resident may not be moved involuntarily from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary stay without a minimum of 30 calendar days' written notice to the resident and the resident's legal representative, guardian, conservator, and case manager, as applicable. The written notice must be on the Department's Notice of Involuntary Move, Transfer, or Discharge of Resident form (SDS 901), be completed by the licensee, and contain the specific reasons the facility is unable to meet the resident's needs, as determined by the facility's evaluation.

(b) Residents may only be moved, transferred, or discharged for the following reasons:

(A) Medical reasons. The resident has a medical or nursing condition that is complex, unstable, or unpredictable and exceeds the level of health services the facility provides as specified in the facility's disclosure information.

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0445(5)(o).

(C) Welfare of the resident or other residents.

(i) The resident exhibits behavior that poses an imminent danger to self or others including acts that result in the resident's arrest or detention.

(ii) The resident engages in behavior or actions that repeatedly and substantially interfere with the rights, health, or safety of residents or others.

(iii) The resident engages in illegal drug use, or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care.

(E) The adult foster home has had its license revoked, not renewed, or it was voluntarily surrendered by the licensee.

(F) The resident engages in the use of medical marijuana in violation of the homes written policies or contrary to Oregon Law under the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

(c) LESS THAN 30 DAYS' WRITTEN NOTICE. A licensee may give less than 30 calendar days' written notice in specific circumstances as identified in paragraphs (A) or (B) below, but must do so as soon as possible using the Department's Notice of Involuntary Move, Transfer, or Discharge of Resident form (SDS 901). This notice must be given to the resident, the resident's representative, guardian, conservator, and case manager, as applicable. A licensee may give less than 30 calendar days' notice ONLY if:

(A) Undue delay in moving the resident would jeopardize the health, safety, or well-being of the resident.

(i) The resident has a medical emergency that requires the immediate care of a level or type that the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home, and the licensee determines that he or she is no longer able to meet the needs of the resident.

(d) WRITTEN NOTICE OF INVOLUNTARY MOVES. The licensee must complete the Department's Notice of Involuntary Move, Transfer, or Discharge of Resident form (SDS 901). The written notice must include the following information:

(A) The resident's name;

(B) The reason for the proposed move, transfer, or discharge;

(C) The date of the proposed change;

(D) The location to which the resident is going, if known;

(E) A notice of the right to hold an informal conference and hearing;

(F) The name, address, and telephone number of the person giving the notice; and

(G) The date the notice is issued.

(e) INVOLUNTARY MOVES AND RESIDENT RIGHTS. An individual who is to be involuntarily moved or refused the right of return or readmission, is entitled to an informal conference and hearing prior to an involuntary move, transfer, or discharge as follows:

(A) INFORMAL CONFERENCE. The Division shall 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 licensee 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 the resident, the licensee, and a representative from an adult foster home association if the licensee requests it. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the Division shall document the outcome in writing and no administrative hearing shall be held.

(B) ADMINISTRATIVE HEARING. If a resolution is not reached as a result of the informal conference, the resident or resident's representative may request an administrative hearing. If the resident is being moved, transferred, or discharged with less than 30 calendar days' notice according to section (11)(c) of this rule, the hearing must be held within seven business days of the transfer or discharge. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

## (12) CLOSURE OF ADULT FOSTER HOMES.

(a) Licensees must notify the Division prior to the voluntary closure of a home, proposed sale, or transfer of ownership, and give residents, resident's families, representatives, and case managers for Department clients, as appropriate, a minimum of 30 calendar days' written notice on the Department's form (SDS 901) according to section (11) of this rule.

(b) In circumstances where undue delay might jeopardize the health, safety, or well-being of residents, licensees, or staff, written notice, according to section (11) of this rule, must be given as soon as possible.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

## **411-050-0445 Facility Standards**

*(Amended 7/1/2010)*

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

### **(1) GENERAL CONDITIONS.**

(a) Each adult foster home must meet all applicable local business license, zoning, building, and housing codes, and state and local fire and safety regulations for a single family residence.

(b) INTERIOR AND EXTERIOR PREMISES. The building and furnishings must be clean and in good repair. The interior and exterior premises must be well maintained and accessible according to the individual needs of the residents. There must be no accumulation of garbage, debris, rubbish, or offensive odors. Walls, ceilings, and floors must be of such character to permit washing, cleaning, or painting, as appropriate.

(c) Adequate lighting, based on the needs of the individual, must be provided in each room, stairway, and exit way. Incandescent light bulbs and florescent tubes must be protected with appropriate covers.

(d) TEMPERATURE. The heating system must be in working order. Areas of the home used by residents must be maintained at a comfortable temperature. Minimum temperatures during the day will be no less than 68 degrees, no higher than 85 degrees, and no less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in their individual care plan.

(A) During times of extreme summer heat, the licensee must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.

(B) If the facility is air-conditioned, the system must be functional and the filters must be cleaned or changed as needed to ensure proper maintenance.

(C) If the licensee is unable to maintain a comfortable temperature for residents during times of extreme summer heat, air conditioning or another cooling system may be required.

(e) COMMON USE AREAS. Common use areas for the residents must be accessible to all residents. There must 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 may not be located in an unfinished basement or garage unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space shall be required for each day care person, room and board occupant, or relative receiving care for remuneration that exceeds the limit of five.

(f) SAFETY BARRIERS. Swimming pools, hot tubs, spas, saunas, and stairways, as appropriate, must also be equipped with safety barriers and devices designed to prevent injury.

(g) VIDEO MONITORS. Use of video monitors detracts from a home-like environment and licensees may not use them in any area of the home that would violate a resident's privacy unless requested by the resident.

## (2) SANITATION.

(a) NON-MUNICIPAL WATER SOURCE. A public water supply must be utilized if available. If a non-municipal water source is used, the licenser, a sanitarian, or a technician from a certified water-testing laboratory must collect a sample annually. The water sample must be tested at the licensee's expense for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

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

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

(d) VENTILATION. All doors and windows that are used for ventilation must have screens in good condition.

(3) BATHROOMS. Bathrooms must:

(a) Provide individual privacy and have a finished interior with a door which opens to a hall or common-use room. No person must have to walk through another person's bedroom to get to a bathroom;

(b) Have a mirror, a window that opens or other means of ventilation, and a window covering for privacy;

(c) Be clean and free of objectionable odors (See also Commodes and Incontinence Garments, OAR 411-050-0444(3)(a));

(d) Have bathtubs, showers, toilets, and sinks in good repair. A sink must be located near each toilet, and a toilet and sink must be available for the resident's use on each floor with resident rooms. There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants (including residents, day care persons, room and board occupants, licensee, and licensee's family);

(e) Have hot and cold water at each bathtub, shower, and sink in sufficient supply to meet the needs of the residents;

(f) Have nonporous surfaces for shower enclosures. Glass shower doors, if applicable, must be tempered safety glass, otherwise, shower curtains must be clean and in good condition and non-slip floor surfaces must be provided in bathtubs and showers;

(g) Have grab bars for each toilet, bathtub, and shower to be used by resident's for safety, and have barrier-free access to toilet and bathing facilities; and

(h) Have adequate supplies of toilet paper and soap supplied by the licensee. Residents must be provided with individual towels and washcloths, which, are laundered in hot water at least weekly or more often if necessary. Residents must 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 must be provided for residents' use.

#### (4) BEDROOMS.

(a) Bedrooms for all household occupants must:

(A) Have been constructed as a bedroom when the home was built, or remodeled under permit;

(B) Be finished with walls or partitions of standard construction which go from floor to ceiling;

(C) Have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(D) Be adequately ventilated, heated, and lighted with at least one window that opens which meets fire safety regulations (see section (5)(e) of this rule);

(E) Be at least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and

(F) Have no more than two persons per room. (See also OAR 411-050-0408(4) pertaining to children's bedrooms.)

(b) Licensees, resident managers, other caregivers, or family members may not sleep in areas designated as living areas, nor share bedrooms with residents.

(c) There must be an individual bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Waterproof mattress covers must 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 resident's bedroom must have sufficient separate, private dresser and closet space for his or her clothing and personal effects including hygiene and grooming supplies. Residents must be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for residents.

(e) Residents who are non-ambulatory, have impaired mobility, or are cognitively impaired must have bedrooms with a safe, second exit to the ground. Residents with bedrooms above or below the ground floor must demonstrate their capability for self-preservation.

(f) Resident bedrooms must be in close enough proximity to the licensee or caregiver in charge to alert him or her to nighttime needs or emergencies, or the bedrooms must be equipped with a call bell or intercom. Intercoms may not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request.

## (5) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home may 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 these rules, as appropriate.

(b) HEAT SOURCES. Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves and pellet stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment, including fireplaces, must be in good repair, used properly, and be well maintained according to the recommended maintenance schedule of the manufacturer or a qualified inspector.

(A) Licensees who do not have a permit verifying proper installation of an existing woodstove or pellet stove must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule.

(B) Fireplaces must have approved and listed protective glass screens or metal mesh screens anchored to the top and bottom.

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

(D) 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.

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

(d) Hardware for all exit doors and interior doors must have simple hardware that may not be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more residents who have impaired judgment and are known to wander

away from their place of residence must have an activated alarm system to alert a caregiver of an unsupervised exit by a resident.

(e) Bedrooms must have at least one window or exterior door that readily opens 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 22 inches in height or 20 inches in width. Sill height may not be more than 44 inches from the floor level or there must be approved steps or other aids to the window exit that may 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.

(f) CONSTRUCTION. Interior and exterior doorways used by residents must be wide enough to accommodate wheelchairs and walkers if used by residents. Interior and exterior stairways must be unobstructed, equipped with handrails, and appropriate to the condition of the residents. (See also section (5)(r) of this rule)

(A) Buildings must 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 may not exceed Class III (76-200) and smoke density may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(i) MANUFACTURED HOMES. Manufactured home (formerly mobile homes) units must have been built since 1976 and designed for use as a home rather than a travel trailer. The unit must have a manufacturer's label permanently affixed on the unit itself which states the unit meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced 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."

(ii) If such a label is not evident and the licensee believes the unit meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the manufacturer.

(iii) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(B) STRUCTURAL CHANGES. The licensee must notify the Division in writing at least 15 calendar days prior to any remodeling, renovations, or structural changes in the facility that require a building permit. Such activity must comply with building and housing codes and fire and safety regulations applicable to a single-family residence. The licensee must forward to the Division within 30 calendar days of completion copies of all required permits and inspections, an evacuation plan, and a revised floor plan. (See sections (5)(m) and (5)(p) of this rule)

(g) FIRE EXTINGUISHERS. At least one fire extinguisher with a minimum classification of 2A-10BC must be in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(h) SMOKE ALARMS. Smoke alarms must be installed in accordance with the manufacturer's instructions in each bedroom, in hallways or

access areas that adjoin bedrooms, the family room or main living area where residents congregate, any interior designated smoking area, and in basements. In addition, in multi-level homes, smoke alarms must be installed at the top of all stairways. Ceiling placement of smoke alarms is recommended. Alarms must be equipped with a device that warns of low battery when battery operated or with battery back-up if hard wired. Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(i) All smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when actuated, an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed. Intercoms and room monitors may not be used to amplify alarms.

(j) The licensee must maintain smoke alarms and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Division may require the licensee to hard wire the alarms into the electrical system.

(k) **COMBUSTIBLES AND FIREARMS.** Flammables, combustible liquids, and other combustible materials must be safely and properly stored in their 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 accessible to residents. Ammunition must be secured in a locked area separate from the firearms.

(l) **HAZARDOUS MATERIALS.** Cleaning supplies, medical sharps containers, poisons, insecticides, and other hazardous materials must be properly stored in their original, properly labeled containers in a safe area that is not accessible to residents, food preparation and food storage areas, dining areas, and medications.

(m) **EVACUATION PLAN.** An emergency evacuation plan must be developed, and revised as necessary to reflect the current condition

of the residents in the home. The plan must be rehearsed with all occupants.

(n) ORIENTATION TO EMERGENCY PROCEDURES. Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a smoke alarm, shown how to participate in an emergency evacuation drill, and receive an orientation to basic fire safety. New caregivers must also be oriented in how to conduct an evacuation.

(o) EVACUATION DRILL. Evacuation drills must be held at least once every 90 calendar days, with at least one per year conducted while the residents are in bed. Records of drills must be maintained according to OAR 411-050-0444(6)(a)(G). Licensees and all other caregivers must be able to demonstrate the ability to evacuate all occupants from the facility to the closest point of safety, which is exterior to and away from the structure, and has access to a public sidewalk or street within three minutes or less. If there are problems in demonstrating this evacuation time, conditions may be applied to the license which include but are not limited to reduced capacity of residents, additional staffing, or increased fire protection. Continued problems shall be grounds for revocation or non-renewal of the license.

(p) FLOOR PLAN. The licensee must develop a current and accurate floor plan that indicates:

- (A) The size of rooms;
- (B) Which rooms are to be resident bedrooms and which are to be caregiver bedrooms;
- (C) The location of all the exits on each level of the home, including emergency exits such as windows;
- (D) The location of wheelchair ramps, if applicable;
- (E) Where the fire extinguishers and smoke alarms are located; and
- (F) The planned evacuation routes.

(q) Licensees may not place residents, who are unable to walk without assistance or not capable of self-preservation, in a bedroom on a floor without a second ground level exit. (See also section (4)(e) of this rule)

(r) Stairs must have a riser height of between 6 to 8 inches and tread width of between 8 to 10.5 inches. Lifts or elevators are not an acceptable substitute for resident's capability to ambulate stairs (See also section (5)(f) of this rule).

(s) EXIT WAYS. All exit ways must be barrier free and the corridors and hallways must be a minimum of 36 inches wide or as approved by the authority having jurisdiction. Interior doorways used by residents must be wide enough to accommodate wheelchairs and walkers if used by residents. Any bedroom window or door identified as an exit must be free of obstacles that would interfere with evacuation.

(t) RAMPS. There must be at least one wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. Wheelchair ramps must comply with the Americans with Disabilities Act (ADA), have non-skid surfaces, handrails, and have a maximum slope of 1 inch rise in each 12 inches of distance. The maximum rise for any run must be 30 inches. Licensees may need to bring existing ramps into revised compliance if necessary to meet the needs of new residents or current residents with increased care needs.

(u) EMERGENCY EXITS. There must be a second safe means of exit from all sleeping rooms. Providers whose sleeping rooms are above the first floor may be required to demonstrate an evacuation drill from that room, using the secondary exit, at the time of licensure, renewal, or inspection.

(v) Adult foster homes located more than five miles distance 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 National Fire Prevention Association (NFPA) 72

with approved automatic reporting to the local jurisdiction providing fire protection.

(w) There must be at least one plug-in, rechargeable flashlight in good functional condition available on each floor for emergency lighting.

(x) Smoking regulations must be in accordance with the Oregon Indoor Clean Air Act, OAR 333-015-0025 to 333-015-0090. If smoking is allowed in a home, the licensee must adopt house policies that restrict smoking to designated areas. Smoking is prohibited in any bedroom including that of residents, licensee, resident manager, any other caregiver, occupant, or visitor, any room where oxygen is used and anywhere flammable materials are stored. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(y) Providers whose homes are located in areas where there is a danger of natural disasters which require rapid evacuation such as forest fires, flash floods, or tsunami waves must be aware of community resources for evacuation assistance.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

#### **411-050-0447 Standards and Practices for Care and Services**

*(Amended 7/1/2010)*

##### **(1) SCREENING AND ASSESSMENT.**

(a) Prior to admission of a resident, the licensee must conduct and document a screening to determine that the prospective resident's care needs do not exceed the license classification. The screening must evaluate the ability of the prospective resident to evacuate the home within three minutes along with all occupants of the home. The screening must also determine if the licensee and caregiver is able to meet the prospective resident's needs in addition to meeting the needs of the other residents of the home. The screening must include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs,

nutritional needs, activities, lifestyle preferences, and other information as needed to assure the prospective resident's care needs will be met.

(b) The screening interview process must include interviews with the prospective resident, the resident's family, prior care providers, and case manager as appropriate. The interview must also include as necessary, any physician, nurse practitioner, registered nurse, pharmacist, therapist, or mental health or other health care professional involved in the care of the resident. A copy of the screening document must be given to the prospective resident or the resident's representative. If the prospective resident becomes a resident in the home, a copy of the screening document must be placed in the resident's record.

(c) The licensee is required to disclose to a prospective resident any house policies that may limit the resident's activities or preferences while living in the adult foster home. Examples include but are not limited to the use of tobacco or alcohol, pets, religious practices, dietary restrictions, and the use of intercoms. Licensed providers must disclose the home's policy regarding the legal presence and use of medical marijuana. (See OAR 411-050-0444(8)(b))

## (2) PRIOR TO ADMISSION.

(a) GENERAL INFORMATION. The licensee must obtain and document general information regarding the resident prior to the resident's admission. The information must include names, addresses, and telephone numbers of relatives, significant persons, case managers, and medical or mental health providers. The record must also include the date of admission and, if available, the resident's social security and medical insurance numbers, birth date, prior living facility, and mortuary;

(b) The licensee must have made every effort to obtain physician or nurse practitioner's written orders for medications, treatments, therapies, and special diets, as applicable, prior to the admission of the resident. Any telephone orders must be followed with written orders. A physician, nurse practitioner, or pharmacist review of the

resident's preferences for over-the-counter medications and home remedies must also be obtained at that time. The licensee must also obtain and place in the record any medical information available including history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care;

(c) The licensee must ask for copies of the following documents, if the resident has them: Advance Directive for Health Care, Physician's Order for Life Sustaining Treatment (POLST), proof of court-appointed guardianship and proof of conservatorship, whichever may be applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care;

(d) Prior to admission, the licensee must inform the resident or the resident's representative if the home serves Medicaid clients;

(e) The licensee must inform private-pay residents, or their representatives if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee must document on the Department's form (SDS 913) that the individual has been advised of their right to receive a long-term care assessment. The facility must maintain a copy of the form in the resident's record and make a copy available to the Division upon request; and

(f) The licensee must discuss the Residents' Bill of Rights, and the home's current house policies with the resident and the resident's representative as appropriate. The discussion must be documented by having the resident sign and date a copy of the house policies, which have been approved by the Division, and the Residents' Bill of Rights, form SDS 305A. Copies of the signed house policies and Residents' Bill of Rights must be maintained in the resident's record.

### (3) CARE PLAN.

(a) During the initial 14 calendar days following the resident's admission to the home, the licensee must continue the assessment process which includes documenting the resident's preferences and care needs. The assessment and care plan must be completed by

the licensee and documented within the initial 14-day period. The care plan must describe the resident's needs and preferences, the resident's capabilities, and what assistance the resident requires for various tasks. The care plan must also include by whom, when, and how often care and services shall be provided. Specific information must include:

- (A) The resident's ability to perform activities of daily living (ADLs);
- (B) Special equipment used by the resident;
- (C) Communication needs (Examples may include but are not limited to hearing or vision, such as eraser boards or flash cards, or language barriers such as sign language or non-English speaking);
- (D) Night needs;
- (E) Medical or physical health problems, including physical disabilities, relevant to care and services;
- (F) Cognitive, emotional, or impairments relevant to care and services;
- (G) Treatments, procedures, or therapies;
- (H) Registered nurse consultation, teaching, delegation, or assessment;
- (I) Behavioral interventions;
- (J) Social, spiritual, and emotional needs including lifestyle preferences, activities, and significant others involved;
- (K) Emergency exiting ability including assistance and equipment needed;
- (L) Any use of physical restraints or psychoactive medications; and

(M) Dietary needs and preferences;

(b) The care plan must be reviewed and updated every six months and as the resident's condition changes. A review note with the date and licensee's signature must be documented in the record at the time of the review. If the care plan contains many changes and becomes less legible, a new care plan must be written.

#### (4) REGISTERED NURSE CONSULTATION.

(a) RN CONSULTATION AND ASSESSMENT. The licensee must obtain a medical professional consultation and assessment to meet the care needs of the resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task, as defined by the Oregon State Board of Nursing, has been ordered by a physician or other qualified practitioner.

(b) The licensee must also request a registered nurse consultation under the following conditions:

(A) When the resident has a health concern or behavioral symptoms that may benefit from a nursing assessment and provider education.

(B) When written parameters are needed to clarify the physician or nurse practitioner's p.r.n. order for medication and treatment. (See section (5)(g) of this rule)

(C) Prior to the use of physical restraints when not assessed, taught, and reassessed, according to section (5)(m) of this rule, by the physician, nurse practitioner, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist.

(D) Prior to the use of new psychoactive medications when not assessed, taught, and reassessed according to section (5)(h) of this rule, by the physician, nurse practitioner, or mental health practitioner, and prior to requesting psychoactive medications to treat behavioral symptoms.

(E) When care procedures have been ordered, which are new for a specific resident, the licensee, or other caregivers.

(c) RN DELEGATIONS. The registered nurse may determine that a nursing care task is to be taught utilizing the delegation process. Delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 851, division 047)

(d) Documentation of nurse consultations, delegations, assessments, and reassessments must be maintained in the resident's record and made available to the Division upon request.

#### (5) STANDARDS FOR MEDICATIONS, TREATMENTS, AND THERAPIES.

(a) The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen. The reason the medication is used, medication actions, any specific instructions, and common side effects must be referenced by medication resource material readily available at the facility.

(b) WRITTEN ORDERS. The licensee must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies which have been prescribed by the physician or nurse practitioner. Orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent.

(A) CHANGED ORDERS. Changes may not be made without a physician or nurse practitioner's order and the physician or nurse practitioner must be notified if a resident refuses to consent to an order. Order changes obtained by telephone must be followed-up with signed orders. Changes in the dosage or frequency of an existing medication require a new pharmacy label. If a new pharmacy label is not obtained, the change must be written on the existing pharmacy label and match the new medication order. (See section (5)(e)(D) of this rule)

(B) DOCUMENTATION. Attempts to obtain the written changes must be documented and readily available for review in the resident's record. Over-the-counter medications or home remedies requested by the resident must be reviewed by the resident's physician, nurse practitioner, or pharmacist as part of developing the initial care plan and at time of care plan review.

(c) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee who implements a hospice, home health, or other physician-generated order must:

(A) Have a copy of the hospice or home health document that communicates the written order;

(B) Transcribe the order onto the medication administration record (MAR);

(C) Implement the order as written; and

(D) Include the order on subsequent medical visit reports for the physician or nurse practitioner to review.

(d) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:

(A) Have a copy of the hospice or home health document that communicates the order; and

(B) Include the order on subsequent medical visit reports for the physician or nurse practitioner to review.

(e) MEDICATION ADMINISTRATION RECORD (MAR). A current, written medication administration record must be kept for each resident and must:

(A) List the name of all medications administered by the caregiver, including over-the-counter medications and prescribed dietary supplements. The record must identify the

dosage, route (if other than oral), and the date and time each medication or supplement is to be given;

(B) Identify any treatments and therapies given by the caregiver. The record must indicate the type of treatment or therapy and the time the procedure is to be performed;

(C) Be immediately initialed by the person administering the medication, treatment, or therapy as it is completed. Each medication administration record must contain a legible signature that identifies each set of initials;

(D) Document changed and discontinued orders on the medication administration record immediately showing the date of the change or discontinued order. Changed orders must be written on a new line with a line drawn to the start date and time; and

(E) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the person administering the medication must be circled, and a brief but complete explanation must be recorded on the back of the medication record.

(f) **DISPOSAL OF MEDICATION.** Licensees must dispose of all unused, discontinued, outdated, recalled, and contaminated medications according to the requirements of the adult foster home's local DEQ waste management company. A record of the disposal must be readily available in the resident's record. Documentation regarding the disposal must include:

(A) The date of disposal;

(B) Description of medication, (i.e., name, dosage, and amount being disposed);

(C) Name of resident for whom the medication was prescribed;

(D) Reason for disposal;

(E) Method of disposal;

(F) Signature of person disposing of the medication; and

(G) For controlled medications, signature of witness to the disposal according to section (5)(i)(E) of this rule.

(g) P.R.N. MEDICATIONS. Prescription medications ordered to be given "as needed" or "p.r.n." must have specific parameters indicating what the medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(A) P.R.N. DOCUMENTATION. As needed (p.r.n) medication must be documented on the resident's medication administration record with the time, dose, the reason the medication was given, and the outcome.

(B) P.R.N. ADVANCE SET-UP. As needed (p.r.n.) medications may not be included in any advance set-up of medication.

(h) PSYCHOACTIVE MEDICATIONS.

(A) A licensee may use psychoactive medications to treat a resident's behavioral symptoms only after a consultation with the physician, nurse practitioner, registered nurse, or mental health professional has been obtained. The consultation must identify a probable cause of the behavior and include behavioral and environmental interventions to be used instead of or in addition to medication. The alternative interventions must be tried and the resident's response to them must be documented prior to the use of medication.

(B) Prescriptions or orders for psychoactive medication must specify the dose, frequency of administration, and the circumstance for use, (i.e., specific symptoms). The licensee and all caregivers must be aware of these parameters.

(C) The licensee and all caregivers must know the intended effect of a medication for a particular resident, the common side effects, as well as the circumstances for reporting to the physician or nurse practitioner.

(D) The care plan must identify and describe the behavioral symptoms for which psychoactive medications are being used and list all interventions, including behavioral, environmental, and medication.

(E) A plan for reassessment of psychoactive medication usage must be individually determined for each resident. The reassessment must be completed by the physician or nurse practitioner.

(F) Psychoactive medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) MEDICATION CONTAINERS, STORAGE, AND DISPOSAL.

(A) Each of the resident's medication containers, including bubble packs, must be clearly labeled by the pharmacy. Over-the-counter medication purchased for a specific resident's use must be in the original labeled container and marked with the resident's name.

(B) Over-the-counter medications in stock bottles (with original labels) may be used for multiple residents in the home.

(C) All medications must be kept in a locked, central location, separate from medications of the caregiver or caregiver's family.

(D) Residents may not have access to medications of the licensee, caregivers, or other household members.

(E) Unused, outdated, or discontinued medications may not be kept in the home and must be disposed of. Licensees must contact the local DEQ waste management company in their area for instructions on proper disposal of unused or expired

medications. Disposal of all medications may be documented on the medication administration record but must be readily available in the resident's record. Disposal of all controlled substances must be documented and witnessed by at least one other individual who is 18 years of age or older.

(j) **ADVANCED SET-UP.** The licensee may set up each resident's medications for up to seven calendar days in advance (excluding p.r.n. medications) by using a closed container manufactured for that purpose. If used, each resident must have his or her own container with divisions for the days and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route (if other than oral), and description of the medications. The container must be stored in the locked area with the medications.

(k) **SELF-ADMINISTRATION OF MEDICATION.** Residents must have a physician or nurse practitioner's written order of approval to self-medicate. Residents able to handle their own medical regimen may keep medications in their own room in a small storage area that may be locked. The licensee must notify the physician or nurse practitioner if the resident show signs of no longer being able to self-medicate safely.

(l) **INJECTIONS.** Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident or administered by a relative of the resident, or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may also give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (OAR chapter 851) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated.

(m) **PHYSICAL RESTRAINTS.** Physical restraints may only be used when required to treat a resident's medical symptoms, or to maximize a resident's physical functioning. Licensees and caregivers may use physical restraints in adult foster homes only in compliance with these rules, including the Residents' Bill of Rights. (See section (7) of this

rule) Prior to the use of any type of physical restraint, the following must be completed:

(A) ASSESSMENT. A physician, nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist must complete an assessment, which includes consideration of all other alternatives. If, following the assessment and trial of other measures, it is determined that a restraint is necessary, the least restrictive restraint must be used and as infrequently as possible and the licensee must obtain a written order from the resident's physician, nurse practitioner, or Christian Science practitioner.

(B) CONSENT. Physical restraints may not be used without first obtaining written consent of the resident or the resident's legal representative.

(C) REASSESSMENT. The frequency for reassessment of the physical restraint's use must be determined based on the recommendations made in the initial assessment. A physician, nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist may perform the reassessment.

(D) DOCUMENTATION. The following must be kept in the resident's record pertaining to physical restraints:

(i) The assessment completed by a medical professional according to section (5)(m)(A) above. The assessment must include:

(I) Documentation of all other alternatives and less restrictive measures which were considered;

(II) Identification of alternative, less restrictive measures that must be used in place of the restraint whenever possible;

(III) A written procedural guidance for correct use of the restraint;

(IV) The frequency and procedures for nighttime use (if applicable); and

(V) Dangers and precautions related to the use of the restraint.

(ii) A written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, or Christian Science practitioner. The order must include specific parameters including type, circumstances, and duration of the use of the restraint. (P.R.N. orders for restraints are not allowed.);

(iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint;

(iv) The use of any type of physical restraint must be recorded on the resident's care plan showing why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment and cautions for maintaining safety while restrained must also be recorded on the care plan; and

(v) The reassessments completed by a medical professional according to section (5)(m)(C) above.

(E) DAYTIME USE. 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 toileting, exercised, or provided range-of-motion exercises during this period.

(F) NIGHTTIME USE. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint shall be of the design to allow freedom of

movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any kind may not be used to keep a resident in bed.

(G) If any physical restraints are used in an adult foster home, they must allow for quick release at all times. Use of restraints may not impede the three-minute evacuation of all household members.

(H) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

## (6) RESIDENT CARE.

(a) Care and supervision of residents must be in a home-like atmosphere and must be appropriate to the needs, preferences, age, and condition of the individual resident. The training of the licensee and staff must be appropriate to the age, care needs, and condition of the residents. (See OAR 411-050-0440(1)(g)) 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 must cooperate with the plan and ensure that it is implemented as instructed.

(c) NOTIFICATION. The licensee must notify emergency personnel, the resident's physician, registered nurse, family representative, and case manager, as applicable, under the following circumstances:

(A) EMERGENCIES (MEDICAL, FIRE, POLICE). In the event of an emergency, the licensee or other caregiver with the resident at the time of the event must first call 911 or the appropriate emergency number for their community. This does not apply to residents with medical emergencies who practice Christian Science. Caregivers must follow written instructions from the hospice nurse, if applicable. If the resident has a completed Physician's Orders for Life Sustaining Treatment (POLST) form, or other legal documents such as an Advance

Directive for Health Care and Do Not Resuscitate (DNR) orders, copies must be available to the emergency personnel when they arrive.

(B) HOSPITALIZATION. In the event the resident is hospitalized.

(C) HEALTH STATUS CHANGE. When the resident's health status or physical condition changes.

(D) DEATH. Upon the death of the resident.

(d) Licensees shall not inflict, or tolerate to be inflicted, abuse or punishment, financial exploitation, or neglect of residents.

(e) Licensees must exercise reasonable precautions against any conditions that could threaten the health, safety, or welfare of residents.

(f) A qualified caregiver must always be present and available at the home when residents are in the home. A resident may not be left in charge in lieu of a caregiver.

(g) ACTIVITIES. Licensees must make available at least six hours of activities per week which are of interest to the residents, not including television and movies. (Information regarding activity resources is available from the Division). Activities must be oriented to individual preferences as indicated in the resident's care plan (See section (3)(a)(J) of this rule). Documentation of each resident's activity participation must be recorded in the resident's records.

(h) DIRECT INVOLVEMENT OF CAREGIVERS. Licensees or caregivers must be directly involved with residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the licensee must demonstrate how regular positive contact shall occur.

(i) RESIDENT MONEY. If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee may not under any circumstances

commingle, borrow from, or pledge any funds of a resident. The licensee may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece, or nephew. Nothing in this rule shall be construed to prevent a licensee or a licensee's employee from acting as a representative payee for the resident. (See also OAR 411-020-0001(3)(e))

(A) Personal incidental funds (PIF) for Department clients must be used at the discretion of the client for such things as clothing, tobacco, and snacks (not part of daily diet).

(B) Licensees and other caregivers may not accept gifts from residents through undue influence or accept gifts of substantial value. Caregivers and family members of caregivers may not accept gifts of substantial value or loans from the resident or the resident's family. Licensees or other caregivers may not influence, solicit from, or suggest to any of the residents or their representatives that the residents or their representatives give the caregiver or the caregiver's family money or property for any purpose.

(C) The licensee may not subject the resident or the resident's representative to unreasonable rate increases.

(j) Licensees and other caregivers may not loan money to residents.

(7) RESIDENTS' BILL OF RIGHTS. Licensees, their families, and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Division must be explained and a copy given to residents at admission. The Residents' 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 policies;

(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 or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not used for discipline or convenience;
- (m) Manage their own financial affairs unless legally restricted;
- (n) Be free from financial exploitation. The licensee may not charge or ask for application fees or non-refundable deposits or 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 licensee must give 30 days' written notice before any change in the rates or the ownership of the home;

(p) Not be transferred or moved out of the adult foster home without 30 calendar days' written notice and an opportunity for a hearing. A licensee 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, gender, sexual orientation, or religion; and

(s) Make suggestions or complaints without fear of retaliation.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738, 443.739, & ORS 443.775

#### **411-050-0450 Inspections**

*(Amended 1/1/2007)*

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

(a) Prior to issuance of a license;

(b) Prior to the annual renewal of a license. The Division will conduct this inspection unannounced;

(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 violations have been corrected; and

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

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

(4) The Division staff must have full access and authority to examine and copy facility and resident records, including but not limited to, admission agreements, private pay resident contracts, and resident account records, as applicable.

(5) Private Interview. Division staff has authority to interview the licensee, resident manager, other caregivers and residents. Interviews must be confidential and conducted privately.

(6) Licensees must authorize resident managers and other caregivers to permit entrance and access to resident and facility records by Division staff or the purpose of inspection, investigation, and other duties within the scope of Division authority.

(7) The Division has authority to conduct inspections with or without advance notice to the licensee, staff, or a resident of the home. The Division will 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 are not permitted access or inspection, a search warrant may be obtained.

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

(10) Public File. The Division will maintain current information on all licensed adult foster homes and must make all non-confidential information available to prospective residents and other interested members of the public at local Division offices or Area Agencies on Aging licensing offices throughout the state as authorized by law. The information includes:

(a) The location of the adult foster home and the name and mailing address of the licensee if different;

- (b) A brief description of the physical characteristics of the home;
- (c) A copy of the current license which indicates the current classification of the home;
- (d) The date the licensee was first licensed to operate that home;
- (e) The date of the last licensing inspection including any fire inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;
- (f) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings, actions taken by the Division and responses from the licensee and complainant, as appropriate. All complaint terminology must be clearly defined and the final disposition clearly designated;
- (g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the Division involving the home; and
- (h) Whether care is provided primarily by the licensed provider, a resident manager or shift caregivers.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.740 & 443.755

### **411-050-0455 Abuse Reporting, Complaints, and Notification of Findings**

*(Amended 7/1/2010)*

(1) ABUSE REPORTING. Abuse is prohibited. The facility employees and licensee may not permit, aid, or engage in abuse of residents who are under their care. Abuse and suspected abuse must be reported in accordance with OAR 411-020-0020.

- (a) STAFF REPORTING. All facility employees must immediately report abuse and suspected abuse to the local SPD office or the local AAA.

(b) LICENSEE REPORTING. The licensee must immediately notify the local SPD office, or the local AAA, of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

(c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances, etc.).

## (2) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The licensee may not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner including but not limited to:

(A) Increasing or threatening to increase charges;

(B) Decreasing or threatening to decrease services;

(C) Withholding rights or privileges;

(D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(E) Threatening to harass or abuse a resident in any manner.

(b) Licensees must ensure that any complainant, witness, or employee of a facility may not be subject to retaliation by any adult foster home caregiver, (including their family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint, or being a witness, including but not limited to restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(c) Anyone who, in good faith, reports abuse or suspected abuse shall have immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

(3) Immunity under this section does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(4) The Division shall furnish each adult foster home with a Complaint Notice which states the telephone number of the Division, the Long-Term Care Ombudsman, and the procedure for making complaints.

(5) Any person who believes these rules have been violated may file a complaint with the Division.

(6) The Division shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20.

(7) Immediate protection shall be provided for the residents by the Division, as necessary, regardless of whether the investigative report is completed. The licensee must immediately cease any practice that places a resident at risk of serious harm.

(8) NOTIFICATION OF FINDINGS. The Division, through its local offices, shall provide, by written communication or electronic mail, a copy of the preliminary investigation report to the licensee and complainant within seven business days of the completion of the investigation:

(a) The report shall be accompanied by a notice informing the licensee and complainant of their right to give additional information about the content of the report to the Division's local office within 10 calendar days of receipt of the report.

(b) The Division's local office shall review the responses and reopen the investigation or amend the report if the additional evidence warrants a change.

(c) A copy of the entire report shall be sent to the Division upon completion of the investigation report, whether or not the investigation report concludes the complaint is substantiated or wrongdoing occurred.

(9) Upon completion of substantiation of abuse or rule violation, the Division shall immediately provide written notification of its findings to the licensee.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation;

(B) Include the date and time of each occurrence;

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(E) Include a copy of the complaint investigation report;

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 calendar days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Division determines there is substantiated abuse, the Division may determine that the licensee, an individual, or both the licensee and an individual were responsible for abuse. In determining responsibility, The Division shall consider intent, knowledge and ability to control, and adherence to professional standards, as applicable.

(A) LICENSEE RESPONSIBLE. Examples of when the Division shall determine the licensee is responsible for the abuse include but are not limited to the following:

(i) Failure to provide sufficient staffing in accordance with these rules without reasonable effort to correct;

(ii) Failure to check for or act upon relevant information available from a licensing board;

(iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff;

(iv) Failure to adequately train, orient, or provide sufficient oversight to staff;

(v) Failure to provide adequate oversight to residents;

(vi) Failure to allow sufficient time to accomplish assigned tasks;

(vii) Failure to provide adequate services;

(viii) Failure to provide adequate equipment or supplies;  
or

(ix) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL RESPONSIBLE. Examples of when the Division shall determine the individual is responsible shall include but are not limited to:

(i) Intentional acts against a resident including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse;

(ii) Acts contradictory to clear instructions from facility, such as those identified in section (9)(b)(A) of this rule, unless the act is determined by the Division to be the responsibility of the facility;

(iii) Callous disregard for resident rights or safety; or

(iv) Intentional acts against a resident's property (e.g., theft or misuse of funds).

(C) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(D) APPEAL RIGHTS FOR NURSING ASSISTANT. If a nursing assistant has a finding of substantiated abuse, the nursing assistant has due process in accordance with OAR 411-089-0140(2).

(c) DISTRIBUTION.

(A) The written notice shall be mailed to:

- (i) The licensee;
- (ii) Any person reported to have committed wrongdoing;
- (iii) The complainant, if known;
- (iv) The Long-term Care Ombudsman; and
- (v) The Division or Type B AAA office.

(B) A copy of the written notice shall be placed in the Division's facility complaint file.

(10) Upon receipt of a notice that substantiates abuse for victims covered by ORS 430.735, the facility must provide written notice of the findings to the individual found to have committed abuse, residents of the facility, the residents' case managers, and the residents' guardians.

(11) Licensees 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, or may have their licenses suspended, revoked, or not renewed.

(12) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the local Division.

Individuals may purchase a photocopy upon requesting an appointment to do so.

(13) The Division may not disclose information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0450(10) and:

(a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency;

(b) Treat the names of the witnesses as confidential information; and

(c) Clearly designate the final disposition of the complaint.

(A) PENDING COMPLAINT REPORTS. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) COMPLAINT REPORTS AND RESPONSES. The investigation reports, including copies of the responses, with confidential information deleted, must be available to the public at the local Division office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 124.050, 124.060, 124.075, 443.740, 443.765, & 443.769

#### **411-050-0460 Procedures for Correction of Violations**

*(Amended 7/1/2010)*

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

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

(3) The notice of violation may not include information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Notices placed in the public file must be in compliance with OAR 411-050-0450(10) and must include the following:

- (a) A description of each condition that constitutes a violation;
- (b) Each rule that has been violated;
- (c) A specific time frame for correction, not to exceed 30 calendar days after receipt of the notice. The Division may approve a reasonable time in excess of 30 calendar days if correction of the violation within that time frame is not practical. If the licensee requests more than 30 calendar days to correct the violation, such time will be specified in the licensee's plan of correction and found acceptable by the Division;
- (d) Sanctions that may be imposed against the home for failure to correct the violation;
- (e) The right of the licensee to contest the violation if an administrative sanction is imposed; and
- (f) The right of the licensee to request an exception as provided in OAR 411-050-0430.

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

- (a) The purpose of the meeting is to discuss the violation stated in the notice of violation, provide information, and to assist the applicant or licensee in achieving compliance with the requirements of these rules.

(b) The request for a meeting by an applicant, licensee, or the Division may not extend any previously established time frame for correction.

(5) The applicant or licensee must notify the Division of correction of the violation no later than the date specified in the notice of violation.

(6) 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 the violation must be corrected as specified in the notice of violation.

(7) For violations that present an imminent danger to the health, safety, or welfare of residents, the licensee must correct the violation and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division may inspect the home after the 24-hour period to determine if the violation has been corrected as specified in the notice of violation.

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

(9) 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 may institute one or more administrative sanctions.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

#### **411-050-0465 Administrative Sanctions**

*(Amended 7/1/2010)*

(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; and/or

(d) Reclassification of a license.

(2) If the Division imposes an administrative sanction, the Division 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 Division shall issue a final order of default if the licensee fails to request a hearing within the specified time.

(4) The licensee shall comply with any final order of the Division.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

#### **411-050-0480 Denial, Revocation, or Non-Renewal of License**

*(Amended 7/1/2010)*

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

(a) There has been substantial non-compliance 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 Department has conducted a criminal records check and determined the applicant or licensee is not approved in accordance with OAR 411-050-0412.

(c) The licensee allows a caregiver, or any other person, excluding the residents, to reside or work in the adult foster home, who has been convicted of potentially disqualifying crimes, and has been denied, or refused to cooperate with the Division in accordance with OAR 411-050-0412.

(d) The applicant or licensee falsely represents that he or she has not been convicted of a crime.

(2) The Division may deny, revoke, or refuse to renew an adult foster home license if the applicant or licensee:

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

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

(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 or county;

(d) 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, or 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 licensee is able to demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents. For purposes of this

subsection, an applicant or licensee is "associated with" a person if the applicant or licensee:

- (A) Resides with the person;
  - (B) Employs the person in the foster home;
  - (C) Receives financial backing from the person for the benefit of the foster home;
  - (D) Receives managerial assistance from the person for the benefit of the foster home;
  - (E) Allows the person to have access to the foster home; or
  - (F) Rents or leases the adult foster home from the person.
- (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 that interferes with the ability to provide foster care;
  - (h) Has previously been cited for the operation of an unlicensed adult foster home;
  - (i) Does not possess the good judgment or character deemed necessary by the Division;
  - (j) Fails to correct a violation within the specified time frame allowed;
  - (k) Refuses to allow access and inspection;
  - (l) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed, such as a license condition;
  - (m) Fails to comply with a final order of the Division imposing an administrative sanction, including the imposition of a civil penalty;

- (n) Fails to take or pass the Basic Training Course examination;
- (o) Fails to obtain an approved criminal records check for subject individuals according to OAR 411-050-0412 on more than one occasion;
- (p) Has previously surrendered a license while under investigation or administrative sanction during the last three years; or
- (q) The licensee fails to operate or has failed to operate any other facility licensed by the licensee in substantial compliance with ORS 443.705 to 443.825.

(3) If the license is revoked for the reason of abuse, neglect, or exploitation of a resident, the licensee may request a review in writing within 10 calendar days after receipt of the notice of the revocation. If a request is made, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and the revocation within 10 calendar days. 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 license shall be restored immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 et seq.

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

(5) A license subject to revocation shall remain valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.

(6) If an initial license is denied for any reason other than the results of a test or inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within 60 calendar days after receipt of the

denial notice. If no written request for a hearing is timely received, the Division shall issue a final order by default. The Division may designate its file as the record for purposes of default.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.002 & 443.745

### **411-050-0481 Suspension of License**

*(Amended 7/1/2010)*

(1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if:

(a) The Division finds that the abuse, neglect, or exploitation causes an immediate threat to any of the residents or

(b) The licensee fails to operate or has failed to operate any other facility licensed by the licensee in substantial compliance with ORS 443.705 to 443.825.

(2) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 calendar days after receipt of the notice and order of suspension. Within 10 calendar days after 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, 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 shall be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 et seq if requested within 90 calendar days.

(3) If a license is suspended, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.002 & 443.745

### **411-050-0483 Conditions**

*(Amended 1/1/2007)*

(1) Conditions may be attached to a license and take effect immediately upon notification by the Division or the delivery date of the notice, whichever is sooner. The type of condition attached to a license must directly relate to a risk of harm or potential risk of harm to residents. Conditions may be attached upon a finding that:

- (a) Information on the application or initial inspection requires a condition to protect the health, safety or welfare of residents;
- (b) There exists a threat to the health, safety, or welfare of a resident;
- (c) There is reliable evidence of abuse, neglect, or exploitation; or
- (d) The home is not being operated in compliance with these rules.

(2) Examples of conditions that may be imposed on a licensee include, but are not limited to:

- (a) Restricting the total number of residents based upon the ability of the licensee to meet the health and safety needs of the residents;
- (b) Restricting the number of residents a provider may admit or retain within a specific classification level based upon the ability of the licensee and staff to meet the health and safety needs of all the residents;
- (c) Changing the classification of the license based on the licensee's ability to meet the specific care needs of the residents;
- (d) Requiring additional staff to meet the resident's care needs;
- (e) Requiring additional qualifications or training of licensee and staff to meet specific resident care needs;

(f) Restricting admissions when there is a threat to the current residents of the home and admitting new residents would compound that threat; and

(g) Restricting a licensee from allowing persons on the premises who may be a threat to resident's health, safety or welfare.

(3) In accordance with OAR 411-050-0465, the licensee will 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 licensee must request a hearing in writing within 21 days after the receipt of the notice. Conditions will take effect immediately and are a final order of the Division unless later rescinded through the hearings process.

(4) In addition to, or in-lieu of, a contested case hearing, a licensee may request an informal conference with the Division of conditions imposed. The informal conference does not diminish the licensee'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 will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition must be indicated on the attachment to the license. If the licensee believes the situation that warranted the condition has been remedied, the licensee may request in writing that the condition be removed.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

#### **411-050-0485 Criminal Penalties**

*(Amended 1/1/2007)*

(1) Operating an adult foster home without a license is punishable as a Class C misdemeanor ORS 443.991(3).

(2) Refusing to allow access and inspection of a home by Division staff or state or local fire inspection is a Class B misdemeanor ORS 443.991(2).

(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 a notice of revocation or suspension has been given and a reasonable time for placement of individuals in other facilities has been allowed.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.991

#### **411-050-0487 Civil Penalties**

*(Amended 7/1/2010)*

(1) Except as otherwise provided in this rule, civil penalties, not to exceed \$100 per violation to a maximum of \$250 may be assessed for a general violation of these rules.

(2) Mandatory penalties up to \$500, unless otherwise required by law, shall be assessed for falsifying resident or facility records or causing another to do so.

(3) A mandatory penalty of \$250 shall be imposed for failure to have either the licensee, qualified resident manager, qualified shift caregiver, or qualified substitute caregiver on duty 24 hours per day in the adult foster home.

(4) A mandatory penalty of \$250 shall be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) The Division shall impose a civil penalty of not less than \$250 nor more than \$500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee if the admission places the resident or other residents at risk of harm.

(6) Civil penalties up to a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Division or the Division's designee conducts an investigation or survey and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Division shall impose a civil penalty of not less than \$2,500 for each violation.

(a) To impose this civil penalty, the Division shall establish that:

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

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(C) The person with the finding of abuse had a duty of care toward the resident.

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

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

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

(C) "Sexual abuse" means any form of nonconsensual sexual contact including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty provided by law, 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 licensee fails to achieve satisfactory compliance with the requirements of these 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;
- (f) The licensee fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or
- (g) The licensee fails to obtain an approved criminal records check from the Department prior to employing that person as a caregiver in the home.

(9) A civil penalty may be imposed for violations other than those involving health, safety, or welfare of a resident if the licensee fails to correct the violation as required when a reasonable time frame for correction was given.

(10) Any civil penalty imposed under this rule becomes due and payable 10 calendars days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person or sent by registered or certified mail and must 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.

(11) The person to whom the notice is addressed shall have 10 calendar days after 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 Division shall issue a final order by default.

(12) All hearings shall be conducted according to the applicable provisions of ORS 183.310 et seq.

(13) When imposing a civil penalty, the Division 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;  
and

(e) The degree of harm to residents.

(14) 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.

(15) Unless the penalty is paid within 10 calendar 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 that person. The Division may also initiate a notice of revocation for failure to comply with a final order.

(16) 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.

(17) All penalties recovered under ORS 443.790 to 443.815 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.001, 443.775, 443.790, 443.795, 443.815, & 443.825

#### **411-050-0490 Zoning for Adult Foster Homes**

*(Amended 7/1/2010)*

Adult foster homes shall be subject to applicable sections of ORS 197.660 to 197.670.

Stat. Auth.: ORS 443.705 - 443.795

Stats. Implemented: ORS 196.670, 197.660, & 443.760

#### **411-050-0491 Adult Foster Homes for Residents with Ventilator Care**

*(Amended 7/1/2010)*

Adult foster homes that provide ventilator care for residents must meet the following requirements.

(1) QUALIFICATIONS. Licensees must meet and maintain compliance with OAR 411-050-0440. In addition:

(a) The applicant or licensee, as applicable, must demonstrate competency in providing care for ventilator-dependent residents.

(b) The applicant or licensee, as applicable, must operate the class 3 home in substantial compliance with these rules for at least one year.

(c) The applicant or licensee, as applicable, must complete Division-approved training pertaining to ventilator-dependent residents and other training as may be required.

(2) OPERATIONAL STANDARDS. Licensees must meet and maintain compliance with OAR 411-050-0444. In addition:

(a) Qualified staff must be awake and available to meet the routine and emergency care and service needs of residents 24 hours a day.

(b) All caregivers must demonstrate competency in providing care for a ventilator-dependent population.

(c) All caregivers must be able to evacuate the residents and any other occupants of the home within three minutes or less.

(d) The applicant and licensee must have a satisfactory system in place to ensure caregivers are alert to the 24-hour needs of residents who may be unable to independently call for assistance.

(e) All caregivers must know how to operate the generator without assistance and be able to demonstrate its operation upon request by the Division.

(3) FACILITY STANDARDS. Licensees must meet and maintain compliance with OAR 411-050-0445. In addition:

(a) The residents' bedrooms must be a minimum of 100 square feet, or larger if necessary, to accommodate the standard requirements of OAR 411-050-0445(4) in addition to equipment and supplies necessary for the care and services needed by individuals with ventilator equipment.

(b) Homes that provide ventilator care for residents must have a functional, emergency back-up generator that is installed by a licensed electrician. The generator must be adequate to maintain electrical service for resident needs until regular service is restored.

(c) The home must have a functional, interconnected smoke alarm system with back-up batteries.

(d) The home must have a functional sprinkler system, and maintenance must be completed as recommended by the manufacturer.

(e) Each resident's bedroom must have a mechanism in place that shall enable residents to summon a caregiver's assistance when needed. The summons must be audible in all areas of the adult foster home.

#### (4) STANDARDS AND PRACTICES FOR CARE AND SERVICES.

Licensees must meet and maintain compliance with OAR 411-050-0447. In addition:

(a) The licensee must conduct and document a thorough screening on the Department's form.

(b) Prior to admitting a resident requiring ventilator care to the adult foster home, the licensee must obtain preauthorization from the Division's Central Office.

(c) The licensee must have a primary care physician identified for each resident being considered for admission.

(d) The licensee must retain the services of a registered nurse to work in the home who is trained in the care of ventilator-dependent individuals. RN services include but are not limited to the provision of medical consultation for and supervision of resident care, skilled nursing care as needed, and delegation of nursing care to caregivers. When the licensed provider is an RN, a back-up RN must be identified and available to provide nursing services in the absence of the licensee.

(e) The licensee must develop individual care plans with RN consultants that address the expected frequency of nursing supervision, consultation, and direct service intervention.

(f) The licensee must have physician, RN, and respiratory therapist consultation services available on a 24-hour basis and for in-home

visits as appropriate. The licensee must call the appropriate medical professional to attend emergent care needs of the resident.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

**411-050-0499 Clackamas County-Issued Adult Foster Home License, Transition to State Licensing**

*(Adopted 7/1/2009)*

(1) The purpose of this rule is to transition the adult foster home licensing and inspection program from Clackamas County to the Department of Human Services on July 1, 2009 and to allow time for existing Clackamas County licensed providers to come into compliance with SPD licensing standards. This rule only applies to adult foster homes in Clackamas County that were licensed by Clackamas County prior to July 1, 2009.

(2) SPD shall recognize an adult foster home license issued by Clackamas County Social Services Division pursuant to ORS 443.780 as a valid license to operate an adult foster home on and after July 1, 2009 until the expiration date of the license. At least 60 days prior to the expiration of the license, Clackamas County licensees must renew their adult foster home license with SPD pursuant to, and in accordance with ORS 443.705 to 443.825 and OAR chapter 411, division 050 requirements.

(3) Beginning on July 1, 2009, inspections or investigations may be conducted by SPD or its designee pursuant to OAR 411-050-0450.

(a) For purposes of license renewals, SPD shall issue a new license to an applicant if the home is in compliance with ORS 443.705 to 443.825 and OAR chapter 411, division 050 requirements.

(b) At the request of a licensee, or upon an inspection or investigation of a complaint, if licensee is not in compliance with OAR chapter 411, division 050 requirements, the licensee may request an exception from the administrative requirements pursuant to OAR 411-050-0430.

(c) In determining whether to grant an exception, SPD shall consider, in addition to the standards set forth in OAR 411-050-0430, whether the applicant or licensee would have met any comparable Clackamas

County licensing requirement or was granted an exception or waiver from the county requirement. An exception granted under OAR 411-050-0430 pursuant to this rule may be issued with an effective date of July 1, 2009, or such later date as SPD determines appropriate.

(4) This rule shall be effective until December 31, 2010.

Stat. Auth.: ORS 443.775

Stats. Implemented: ORS 443.705 – 443.825