

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

**CHAPTER 411
DIVISION 52**

**ADULT FOSTER HOMES FOR OLDER ADULTS OR ADULTS WITH
PHYSICAL DISABILITIES - COMPLAINTS, INVESTIGATIONS, AND
SANCTIONS**

411-052-0005 Investigations and Inspections *(Amended 01/01/2022)*

(1) The LLA must conduct an in-person inspection of an AFH and all structures on the AFH property. The in-person inspection must be conducted:

- (a) Before issuance of a license.
- (b) Before the annual renewal of a license.
- (c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents.
- (d) Anytime the Department has probable cause to believe a home has violated a regulation or provision of these rules or is operating without a license.

(2) The Department may conduct inspections:

- (a) Any time such inspections are authorized by these rules and any other time the Department considers it necessary to determine if a home is in compliance with these rules or with conditions placed upon the license.
- (b) To determine if cited violations have been corrected.
- (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 AFHs regarding fire safety upon the Department's request.

(4) The Department, the LLA, the investigative authority, the Oregon Health Authority (OHA), and the Centers for Medicare and Medicaid Services (CMS) have authority and must have full access to examine and copy facility and resident records, including, but not limited to, Residency Agreements, and resident account records, as applicable.

(5) The Department, LLA, investigative authority, OHA, and CMS staff have authority to interview the licensee, administrator, resident manager, other caregivers, and the residents. Interviews must be confidential and conducted privately.

(6) Licensees must authorize all staff to permit the Department, LLA, the investigative authority, OHA and CMS staff, for the purpose of inspection, investigation, and other duties within the scope of the inspector's or investigator's authority:

(a) Entrance to the AFH and any other structure on the premises; and

(b) Access to resident and facility records.

(7) The Department, LLA, the investigative authority, OHA, and CMS has authority to conduct inspections with or without advance notice to the licensee, staff, or the residents of the home. The Department, LLA, and CMS shall not give advance notice of any inspection if it is believed that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules. State personnel and representatives are required to show Department issued identification in compliance with the Department's October 09, 2020 policy.

(8) If the Department, LLA, investigative authority, OHA or CMS staff are not permitted access for inspection, a search warrant may be obtained.

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

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

(a) MANDATORY REPORTING. The licensee and all facility employees are mandatory reporters and must immediately report abuse and suspected abuse, including events overheard or witnessed by observation to the investigative authority.

(b) 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).

(11) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The licensee or administrator shall not interfere with a good faith disclosure of information by an employee or volunteer concerning the abuse or mistreatment of a resident in the adult foster home. The information that is shared may include the reporting of violations of licensing or certification requirements, criminal activity at the adult foster home, violations of state or federal laws or any practice that threatens the health and safety of a resident being made to:

(A) The Long-Term Care Ombudsman, the Department of Human Services, a law enforcement agency or other entity with legal or regulatory authority over the adult foster home; or

(B) A family member, guardian, friend or other person who is acting on behalf of the resident.

(b) Interfering with the disclosure of information could include the following measures:

(A) By training an employee or volunteer to sign a nondisclosure or similar agreement prohibiting the employee or volunteer from disclosing the information; or

(B) By taking actions or communicating to the employee or volunteer that the employee or volunteer may not disclose the information.

(c) The licensee or administrator shall 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.

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

(d) The licensee or administrator must ensure any complainant, witness, or employee of a facility is not subjected to retaliation by any caregiver, (including the caregiver's family and friends who may live in or frequent the AFH) 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.

(e) Anyone who, in good faith, reports abuse or suspected abuse has 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.

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

(13) Any person who believes these rules have been violated may file a complaint with the Department, the LLA, or the investigative authority.

(14) The Department or the investigative authority shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20.

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

(16) A copy of the entire investigation report shall be sent to the Department upon completion of the investigation report.

(17) PUBLIC FILE. Comply with the Department's June 30, 2019, Public File policy for maintaining current information on all licensed adult foster homes. The Department's Public File policy can be found at the Local Licensing Authority.

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 124.050, 124.060, 124.075, 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-052-0010 Letter of Determination *(Adopted 7/1/2019)*

(1) Upon a determination of substantiated abuse or a rule violation, the Department must provide written letter of determination to the licensee. 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.

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

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

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

(A) Provide sufficient, qualified staffing in accordance with these rules without reasonable effort to correct.

(B) Check for or act upon relevant information available from a licensing board.

(C) Act upon information from any source regarding a possible history of abuse by any staff or prospective staff.

(D) Adequately train, orient, or provide sufficient oversight to staff.

(E) Provide adequate oversight to residents.

(F) Allow sufficient time to accomplish assigned tasks.

(G) Provide adequate services.

(H) Provide adequate equipment or supplies.

(l) Follow orders for treatment or medication.

(b) INDIVIDUAL RESPONSIBLE. Examples of when the Department determines an individual is responsible include, but is not limited to:

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

(B) Acts contradictory to clear instructions from the facility, such as those identified in section (2)(a) of this rule, unless the act is determined by the Department to be the responsibility of the facility.

(C) Callous disregard for resident rights or safety.

(D) 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) NURSING ASSISTANTS. In cases of substantiated abuse by a nursing assistant, the written notice shall explain:

(A) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140.

(B) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(3) DISTRIBUTION.

(a) The written notice shall be mailed to:

(A) The licensee.

(B) Any person reported to have committed wrongdoing.

(C) The complainant, if known.

(D) The Long-term Care Ombudsman.

(E) The LLA.

(b) A copy of the written notice must be placed in the Department's facility complaint file.

(4) 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, and the residents' case manager and representatives.

(5) Licensees who acquire substantiated complaints pertaining to the health, safety, or welfare of residents may be assessed civil penalties, have conditions placed on their licenses, or have their licenses suspended, revoked, or not renewed.

(6) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the LLA. Individuals may purchase a photocopy upon requesting an appointment to do so.

(7) The Department and the LLA shall 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 comply with OAR 411-052-0005 and must:

(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.

(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 LLA office along with other public information regarding the AFH.

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 124.050, 124.060, 124.075, 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-052-0015 Procedures for Correction of Violations (*Amended 01/01/2022*)

(1) If, as a result of an inspection or investigation, the Department determines that abuse has occurred, the licensee shall be notified verbally to immediately cease the abusive act. The Department 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 LLA 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 comply with OAR 411-052-0005 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 LLA may approve a reasonable time of more than 30 calendar days if correction of the violation within

that time frame is not practical. If the licensee or administrator requests more than 30 calendar days to correct the violation, such time must be specified in the licensee or administrator's plan of correction and must be found acceptable by the LLA.

(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.

(f) The right of the licensee to request a variance as provided in OAR 411-049-0160.

(4) At any time after receipt of a notice of violation or an inspection report, a meeting may be requested by the applicant, the licensee, the LLA, or the Department. The meeting must be requested within 21 calendar days and be scheduled within 10 business days of a request by any 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, LLA, or the Department does not extend any previously established time frame for correction.

(5) The applicant or licensee must notify the LLA of correction of the violation by completing a written response in the licensee or administrator's statement of correction section on the violation. Notification of correction of the violation must be submitted to the LLA no later than the date specified in the notice of violation.

(6) The LLA may conduct a re-inspection of the home after the date the LLA receives the report of compliance, or after the date 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 or administrator must correct the violation

and abate the conditions no later than 24 hours after receipt of the notice of violation. The LLA 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 LLA has not received a report of compliance, the Department may institute one or more administrative sanctions.

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-052-0020 Sanctions - Administrative *(Adopted 7/1/2019)*

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

- (a) Attachment of conditions to a license.
- (b) Civil penalties.
- (c) Denial, suspension, revocation, or non-renewal of license.
- (d) Reclassification of a license.

(2) If the Department imposes an administrative sanction, the Department shall serve a notice of administrative sanction upon the licensee personally, by certified or registered mail or, if requested by the licensee, by certified electronic 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 violation.
- (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 Department's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case.
- (g) A statement that the Department shall issue a final order of default if the licensee fails to request a hearing within the specified time.

(4) FINAL ORDER. The licensee must comply with any final order of the Department.

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 124.050, 124.060, 124.075, 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-052-0025 Sanctions - Civil Penalties *(Amended 6/24/2020)*

- (1) Except as otherwise provided in this rule, civil penalties of not less than \$100 per violation, and not more than \$250 per violation 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 or other qualified caregiver on duty 24 hours per day in the AFH.

(4) A mandatory penalty of not less than \$100 and not more than \$250 shall be imposed for dismantling or removing the battery from, or failing to install, any required smoke or carbon monoxide alarm.

(5) The Department shall impose a civil penalty of not less than \$250 and no more than \$500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee and the admission places the resident or other residents at risk of harm.

(6) A mandatory penalty of \$500 shall be assessed for interfering with or retaliating against an individual making a good faith disclosure of information concerning the abuse or mistreatment of an individual receiving care and services in an adult foster home.

(7) Civil penalties of not less than \$100 and not more than \$1,000 per occurrence may be assessed for substantiated abuse.

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

(a) To impose this civil penalty, the Department must establish:

(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.

(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.

(9) In addition to any other liability or penalty provided by law, the Department 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 the residents.

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

(f) The licensee fails to cooperate with the Department or fails to cooperate with the prescribing practitioner or licensed health care professional in carrying out a resident's care plan.

(g) The licensee fails to obtain an approved background check from the Department before employing a caregiver in the home.

(10) A civil penalty may be imposed for violations other than those involving the 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.

(11) Violations requiring a mandatory civil penalty that occurred while the licensee was operating the AFH will be imposed by the Department, even if the licensee subsequently closes the home or voluntarily surrenders the license.

(12) 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 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.

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

(13) The person to whom the notice is addressed shall have 20 calendar days from the date the notice is mailed to make written application for a hearing. If a written request for a hearing is not timely received, the Department shall issue a final order by default.

(14) All hearings shall be conducted according to the applicable provisions of ORS 183.

(15) When imposing a civil penalty, the Department shall consider the following factors:

(a) The 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.

(e) The degree of harm to residents.

(16) 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.

(17) 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 Department may also initiate a notice of revocation for failure to comply with a final order.

(18) 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.

(19) All penalties recovered under ORS 443.790 to 443.815 are paid to the Quality Care Fund.

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 124.050, 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-052-0030 Sanctions - Conditions *(Adopted 7/1/2019)*

(1) Conditions may be attached to a license and take effect immediately upon notification by the Department 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 the residents.
- (b) A threat to the health, safety, or welfare of a resident exists.
- (c) There is reliable evidence of abuse, neglect, or exploitation.
- (d) The licensee or caregivers demonstrate the inability to meet the evacuation times described in OAR 411-050-0720.
- (e) 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 licensee may admit or retain within a specific classification or 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.

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

(3) In accordance with OAR 411-052-0020(1)(a) through (d), the licensee shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.411 to 183.502. A licensee must request a hearing in writing within 21 calendar days after the date the notice was personally served or mailed. Conditions take effect immediately and are a final order of the Department 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 Department to discuss conditions imposed. The informal conference does not diminish the licensee's right to a hearing.

(5) Conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied. If the licensee believes the situation that warranted the condition has been remedied, the licensee may request in writing that the condition be removed.

(6) Conditions must be posted with the licensee in a prominent place in the home and be available for inspection at all times.

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 124.050, 124.060, 124.075, 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-052-0035 Sanctions - Denial, Revocation, or Non-Renewal of License *(Amended 01/01/2022)*

(1) The Department shall deny, revoke, or refuse to renew a license where the Department 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 AFH.

(b) The Department has conducted a background check and determined the applicant or licensee is not approved in accordance with OAR 411-049-0120.

(c) The licensee allows a caregiver, or any other person, excluding the residents, to reside or work in the AFH, who has been convicted of potentially disqualifying crimes, and has been denied, or refused to cooperate with the Department in accordance with OAR 411-049-0120.

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

(2) The Department shall deny, revoke, or refuse to renew a license where the Department has received notice from the Department of Revenue in accordance with ORS 305.385.

(3) The Department may deny, revoke, or refuse to renew an AFH license if the applicant or licensee:

(a) Submits incomplete or untrue information to the Department.

(b) Has a history of, or demonstrates financial insolvency, such as foreclosure, eviction due to failure to pay rent, or 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, 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 Department 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 AFH.

(C) Receives financial backing from the person for the benefit of the AFH.

(D) Receives managerial assistance from the person for the benefit of the AFH.

(E) Allows the person to have access to the AFH.

(F) Rents or leases the AFH from the person.

(e) Has threatened the health, safety, or welfare of any resident.

(f) Has abused, neglected, or exploited any resident.

(g) Has interfered with an individual who has made a good faith disclosure of information concerning the abuse or mistreatment of a resident receiving care and services in an adult foster home.

(h) Has a medical or psychiatric problem that interferes with the ability to provide care and services.

(i) Has previously been cited for the operation of an unlicensed AFH.

(j) Does not possess the good judgment or character deemed necessary by the Department.

(k) Fails to correct a violation within the specified time frame.

(l) Refuses to allow access and inspection.

(m) Fails to comply with a final order of the Department to correct a violation of the rules for which an administrative sanction has been imposed, such as a license condition.

(n) Fails to comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty.

(o) Fails to take or pass the Department's Ensuring Quality Care course and examination.

(p) Fails to obtain an approved background check for subject individuals according to OAR 411-049-0120 on more than one occasion.

(q) Has previously surrendered a license while under investigation or administrative sanction during the last three years.

(r) Is not currently or has not previously been in compliance with employment or tax laws.

(s) Fails to operate the home or any other facility in substantial compliance with ORS 443.705 to 443.825.

(4) If the Department issues a notice of revocation for the reason of abuse, neglect, or exploitation of a resident, the licensee may request a review in writing within 10 calendar days from the date the notice of revocation was

mailed. If a request is made, the Department must review all material relating to the allegation of abuse, neglect, or exploitation and the revocation within 10 calendar days. The Department shall determine, based on a review of the material, whether to sustain the decision. If the Department does not sustain the decision, the license shall be restored immediately. The decision of the Department is subject to a contested case hearing under ORS 183.

(5) If a license is revoked or not renewed, the licensee is 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 from the date the notice is mailed. If no written request for a hearing is timely received, the Department shall issue the final order by default. The Department may designate its file as the record for purposes of default.

(6) A license subject to revocation or non-renewal remains valid during an administrative hearings process even if the hearing and final order are not issued after the expiration date of the license.

(7) If a license is denied or not renewed 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 from the date the notice was mailed. If no written request for a hearing is timely received, the Department shall issue a final order by default. The Department may designate its file as the record for purposes of default.

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

Stat. Auth.: ORS 409.050, 410.070, 413.085, 430.735, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 124.050, 124.060, 124.075, 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

411-052-0040 Sanctions - Suspension of License *(Adopted 7/1/2019)*

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

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

(b) The licensee fails to operate the home or any other facility 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 from the date the notice and order of suspension was mailed. Within 10 calendar days after receipt of the licensee's request for a review, the Department must 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 Department shall determine, based on a review of the material, whether to sustain the decision. If the Department does not sustain the decision, the suspension shall be rescinded immediately. The decision of the Department is subject to a contest case hearing under ORS 183 if requested with 90 calendar days.

(3) The Department shall suspend a license upon written notice from the Department of Revenue in accordance with ORS 305.385, and after notice to the licensee and a hearing if requested.

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

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 409.050, 410.070, 413.085, 443.001-443.004, 443.705-443.825, 443.875, 443.991

411-052-0045 Criminal Penalties *(Adopted 7/1/2019)*

(1) Operating an AFH without a license is punishable as a Class C misdemeanor per ORS 443.991(5).

(2) Refusing to allow access and inspection of a home by Department or LLA staff or state or local fire inspection is a Class B misdemeanor per ORS 443.991(6).

(3) The Department may commence an action to enjoin operation of an AFH:

(a) When an AFH is operated without a valid license.

(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 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991