

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION
For internal agency use only.

Department of Human Services, Aging and People with Disabilities (APD)	411	
Agency and Division Name	Administrative Rules Chapter Number	
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FILING CAPTION

(Must be 15 words or fewer)

APD: Amending rules related to adult foster home purpose, definitions, and licensure

Agency Approved Date: [12/22/2021]

Effective Date: [01/01/2022] through [06/29/2022]

RULEMAKING ACTION

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

AMEND:

411-049-0135

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is immediately amending rules in chapter 411, division 049 relating to adult foster home facilities. The amendments include the following:

411-049-0135 License Applications: Amending program OARs to be consistent with the Department of Building Codes, Oregon Residential Specialty Code (ORSC) OAR requirements for usage as an adult foster home and the documentation requirements necessary to show that the facility has met these requirements. The Department of Building Codes OARs became effective 4/1/2021. Housekeeping to include minor grammatical changes, renumbering rule references, and amending language for consistency.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

OAR chapter 411, division 049 must be amended promptly to ensure the current Department of Building Codes rules that became effective 4/1/2021 are referenced in the AFH program OARs for sprinkler or alternative requirements related to the health and safety of residents in adult foster homes and to ensure licensed adult foster home providers and the local licensing authority have clear guidance and information regarding the changes.

Justification of Temporary Filing:

The Department of Building Codes, Oregon Residential Specialty Code (ORSC) changed their OAR requirements for buildings to be used as adult foster homes. The usage and documentation requirements necessary to show that the facility has met the updated requirements became effective 4/1/2021.

OAR chapter 411, division 049 needs to be amended promptly to ensure that new construction adult foster homes and residential homes not previously licensed as adult foster homes meet the new standards in order to become licensed. The new standards are for the health and safety of residents and limit liability to licensed providers. Information about the changes made to the Department of Building Codes, Oregon Residential Specialty Code is not widely known and updating the rules in chapter 411, division 049 will ensure that potential licensees, current licensees, and the

local licensing authority have clear and concise information regarding the recent law changes for compliance and safety purposes.

Failure to act promptly and immediately amend OAR chapter 411, division 049 will result in serious prejudice to the public interest, AFH residents, licensed providers, and the local licensing authority. These rules need to be adopted promptly to mitigate the consequences of non-compliance with the new ORSC usage requirements and the related documentation necessary to show that the facility has met these requirements.

Documents Relied Upon, and where they are available:

State of Oregon Building Codes Division, 2021 Oregon Residential Specialty Code Adoption

<https://www.oregon.gov/bcd/laws-rules/Documents/20210401-21orsc-pr.pdf>

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities

12/22/2021

Signature

Date

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

**CHAPTER 411
DIVISION 49**

**ADULT FOSTER HOMES FOR OLDER ADULTS OR ADULTS WITH
PHYSICAL DISABILITIES – PURPOSE, DEFINITIONS, AND
LICENSURE**

411-049-0135 License Applications

(Temporary effective 01/01/2022 through 06/29/2022)

(1) INITIAL LICENSE APPLICATION. The initial license application (APD 0448) must include:

(a) Verification of attendance at a Department-approved orientation program conducted by the LLA responsible for the licensing of the proposed AFH and successful completion of the Department's Ensuring Quality Care Course and examination. (See OAR 411-049-0125).

(b) Three personal references for the applicant who are not family members as defined in OAR 411-049-0102. Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references.

(c) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Department. To request a Class 3 license, the application must include:

(A) Proof of at least three years of full-time experience providing direct care to adults who are older or adults with physical disabilities and who required full assistance in four or more of activities of daily living.

(B) Current contact information from at least two licensed health care professionals who have direct knowledge of the applicant's abilities and experience as a caregiver; or

(C) A copy of the applicant's current unencumbered license as a healthcare professional in Oregon, if applicable.

(d) Documentation of the initiation of a background check or a copy of an approved background check for each subject individual as defined in OAR 411-049-0102.

(e) A Health History and Physician, Physician's Assistant, or Nurse Practitioner's Statement (form SDS 903) regarding the applicant's ability to provide care.

(f) FINANCIAL INFORMATION. A completed AFH Financial Information form (SDS 448A), and supplemental information listed in OAR 411-049-0125(3) documenting at least two months of liquid resources to pay the operating costs of the home.

(g) If an applicant uses income from another AFH to document possession of at least two months of operating expenses, the applicant must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of each home for at least two months.

(h) Copies of the home's Residency Agreements according to OAR 411-050-0750.

(i) If the applicant is purchasing or owns the home, verification of purchase or ownership.

(j) If the home is leased or rented, a copy of the completed 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.

(C) The signatures of the landlord and applicant and the date signed.

(k) Complete contact information for the applicant including:

(A) A mailing address if different from the proposed AFH.

(B) A business address for electronic mail.

(l) The maximum resident capacity requested.

(m) Identify an Oregon-licensed registered nurse who has agreed to provide RN consultation, training and delegation to caregivers as needed.

(n) Identification of:

(A) Any relatives needing care.

(B) The maximum number of any room and board tenants.

(C) The maximum number of adult day services individuals.

(D) The names of any other occupants in the home.

(o) A \$20 per bed non-refundable fee for each non-relative resident.

(p) If the applicant intends to use an administrator, resident manager, floating resident manager, or shift caregivers, the Department's supplemental application (form SDS 448B) completed by the applicant, as appropriate.

(q) Succession Plan or current AFH Back-up Provider Agreement form (APD 0350).

(r) The current AFH Weekly Plan of Operation form (APD 0351) describing the operational plan for the AFH.

(s) Effective beginning January 1, 2022, a copy of the Certificate of Occupancy or other documentation issued by the Building Code Division or local building officials verifying that the facility has met the Oregon Residential Specialty Code (ORSC) building requirements for usage as an AFH.

(A) Within the first two years of licensure, an AFH licensee who submitted a complete initial application to the Department between April 1, 2021 and December 31, 2021 must show proof of a Certificate of Occupancy or other documentation issued by the Building Code Division or local building officials indicating the facility has met the ORSC building requirements for usage as an AFH. Failure to submit the required documentation may result in sanctions that could include non-renewal or revocation of the license.

(B) AFHs that were licensed prior to April 1, 2021 are exempt from the requirement to obtain a Certificate of Occupancy or other documentation.

(~~ts~~) A current and accurate floor plan that indicates:

(A) The size of rooms.

(B) Which bedrooms are to be used by residents, the licensee, caregivers, for adult day services, and room and board tenants, as applicable.

(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.

(E) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms.

(F) The planned evacuation routes, initial point of safety, and final point of safety.

(G) Any designated smoking areas in or on the AFH premises.

(~~u~~†) A copy of the applicant's current license as a health care professional in Oregon, if applicable.

(~~y~~‡) Incomplete initial applications are void after 60 calendar days from the date the LLA receives the application form and non-refundable fee, and the Department may deny the application if not withdrawn.

(2) MULTIPLE HOMES. An applicant may not be licensed to operate a second AFH, or any additional home, without first demonstrating a history of substantial compliance for previous and currently licensed AFHs.

(a) A separate application is required for each location where an AFH is to be operated.

(b) A written plan describing the administrative responsibilities and staffing to cover each home is required.

(c) The applicant must complete the Department's application form for the specific type of license requested and submit the application form to the LLA with the non-refundable fee.

(d) Applications are not complete until all the required information is submitted to the LLA. Failure to provide complete and accurate information may result in the denial of the application.

(e) The applicant may withdraw their application at any time during the application process by written notification to the LLA.

(f) An applicant whose license has been revoked, non-renewed, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied, shall not be granted a new license by the LLA for a period of not less than one year from the date the action was final, or for a longer period if specified in the final order.

(g) All moneys collected under ORS 443.725 to 443.825 are paid to the Quality Care Fund.

(3) LICENSE RENEWAL. At least 90 calendar days prior to the expiration of a license, the LLA must send a reminder notice and renewal application to the licensee. License renewal inspections may be conducted with an appointment when requested by a licensee or administrator. The request must be made no less than 30 days prior to the expiration of the license and the appointment must be scheduled at a mutually agreed upon time in cooperation with the LLA. If advance notice may obstruct or diminish the effectiveness of the enforcement of these rules, the appointment request may be denied.

(a) The application (form APD 0448C) must be completed and timely submitted with the required non-refundable fee to the LLA prior to the expiration date of the current license. Timely submission of the renewal application and fee shall keep the license in effect until the LLA or the Department takes action. The complete application will include:

(A) The requirements listed in (7)(i) through (sf) of this rule.

(B) A Health History and Physician or Nurse Practitioner's Statement (form APD 0903). The Health History and Physician or Nurse Practitioner's Statement must be updated every third year or sooner if there is reasonable cause for health concerns.

(C) FINANCIAL INFORMATION FOR THE HOME'S FIRST LICENSE RENEWAL. A completed Financial Information Worksheet (form APD 0448A) demonstrating the financial ability to maintain sufficient liquid resources to pay the home's operating costs for at least two months.

(D) Documentation of a current approved background check for each subject individual according to OAR 411-049-0120.

(E) Copies of the home's Residency Agreement forms if changes to the original forms reviewed by the LLA are proposed.

(F) Proof of required annual training as specified in OAR 411-049-0125(8).

(b) A renewal application remaining incomplete at the time of license expiration, or failure to provide accurate information on the renewal application may result in the denial of the application.

(4) LOCAL LICENSING AUTHORITY AND DEPARTMENT ACTION. After receipt of the completed application materials, including the non-refundable fee:

(a) FOR INITIAL LICENSE APPLICATIONS:

(A) The LLA must investigate the information submitted including pertinent information received from outside sources, conduct a personal interview with the applicant, and conduct an in person inspection of the home identifying any deficiencies on the Department's APD 0516 form, and specify a time frame for correction not to exceed 30 days.

(B) The licensee must be given a copy of the Department's inspection form (APD 0516).

(C) The LLA must 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.

(D) The Department shall deny the issuance of a license if deficiencies cited are not corrected within the time frames specified by the LLA.

(b) FOR RENEWAL LICENSE APPLICATIONS:

(A) The LLA shall investigate the information submitted, review the licensing records for the applicant, conduct an in person inspection of the home, and provide the licensee a copy of the Department's Statement of Deficiencies and Plan of Correction form identifying any violations and specifying a time frame for correction not to exceed 30 days.

(B) The Department may deny a renewal application if cited deficiencies are not corrected within the time frame specified by the LLA.

(C) EXPIRED AND UNLICENSED ADULT FOSTER HOME. If the required renewal information and fee are not timely submitted to the LLA as required in (8) of this rule and residents remain in the home after the date the license expires, the home shall be treated as an unlicensed facility, subject to civil and criminal penalties (See OAR 411-052-0025 and OAR 411-052-0045).

(c) The licensee or administrator must post the most recent inspection reports, according to OAR 411-049-0140, and must provide upon request 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.

(d) The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The conditions must be visibly posted with the license.

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