

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

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| <u>Department of Human Services, Aging and People with Disabilities (APD)</u> | | <u>411</u> |
| 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: [3/8/2022]

Effective Date: [3/21/2022] through [6/12/2022]

RULEMAKING ACTION

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

SUSPEND:

411-049-0150

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 **suspending** rules in chapter 411, division 049 relating to adult foster home facilities. The amendments include the following:

411-049-0150:

- 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. **Updated filing: The temporary rule filed December 9, 2021, is being suspended due to passage of SB 1548 (2022 Regular Session).**

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

OAR chapter 411, division 49 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. **Note: The temporary rule filed December 9, 2021, is being suspended due to passage of SB 1548 (2022 Regular Session).**

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. **Note: The temporary rule filed December 9, 2021, is being suspended due to passage of SB 1548 (2022 Regular Session).**

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>

Senate Bill 1548 (2022 Regular Session)

<https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1548/Enrolled>

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

3/8/2022

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**

411-049-0150 Limited Adult Foster Homes

(1) The licensee must comply with all requirements for HCB Settings as described in these rules. (See OAR chapter 411, division 004).

(2) To qualify for a limited AFH license the applicant or licensee must be at least 21 years of age and submit:

(a) A completed application for initial or renewal limited licenses.

(b) The Department's Health History and Physician's or Nurse Practitioner's Statement that indicates the applicant or licensee is physically, cognitively, and emotionally capable of providing care to a specific adult who is older or who has a physical disability and with whom the applicant has an established relationship of not less than one year. The Health History and Statement must be submitted initially and every third year or sooner if there is reasonable cause for health concerns.

(c) Documentation of the initiation of a background check or copy of an approved background check for each subject individual.

(d) Completion of the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W).

(e) A \$20 non-refundable fee. If the licensee requests and is granted a variance from the capacity limitation of one resident, a \$20 per bed non-refundable fee for each non-relative resident is required.

(3) Licensees who are at least 18 years of age and under 21 years of age on January 1, 2018 are exempt from the minimum age requirement of 21 years.

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

(5) The applicant or licensee must live in the home that is to be licensed.

(6) The applicant or licensee must own, rent, or lease the home where care is being provided. The applicant or licensee must provide verification of proof of ownership or a copy of the signed and dated rental or lease agreement as applicable.

(7) A caregiver must be available at all times, 24 hours a day, seven days a week, when the resident is in the home. The caregiver must have the knowledge and ability to meet the resident's care needs. All caregivers must:

(a) Have an approved background check according to the Background Check Rules before working in the home.

(b) Complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W).

(c) Be at least 18 years of age.

(8) The licensee must notify the LLA if the licensee shall be absent from the home 10 days or more and the resident shall be remaining in the home during the absence. The licensee must also submit a staffing plan to the LLA demonstrating coverage during the absence that meets the needs of the resident.

(9) The resident's bedroom 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 bedroom must be equipped with a functional call bell or intercom within the resident's abilities to operate.

(10) The licensee and caregiver must have a complete understanding of the resident's medications. The licensee must have a copy of current

prescribing practitioner orders including, if applicable, written authorization for self-administration of medications.

(11) Medications must be stored in the original labeled container except when stored in a seven-day closed container manufactured for advanced set-up of medications.

(12) The licensee and caregiver must place used, disposable syringes and needles, and other sharp items in a puncture-resistant, red container designed for disposal of sharp items. Disposal must be according to local regulations as stated in OAR 411-050-0720(15). (See ORS 459.386-459.405).

(13) The licensee, the licensee's family, and employees of the home must guarantee not to violate the Resident's Rights as outlined in OAR 411-051-0105.

(14) The licensee must have a copy of any applicable legal documents, such as Advance Directive, Physician Order for Life-Sustaining Treatment (POLST), and Do Not Resuscitate (DNR) orders.

(15) The home must have a working landline and corded telephone. 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. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(16) CONSTRUCTION. Interior and exterior doorways used by a resident must be wide enough to accommodate wheelchairs and walkers if used by the resident. Interior and exterior stairways must be unobstructed, equipped with handrails, and appropriate to the condition of the resident.

(17) Hardware for all exit doors and interior doors must be readily visible and have simple hardware that may not be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted.

(a) The resident's bedroom must have a lockable door for the resident's privacy, as stated in OAR 411-051-0105. The locking

device must release by a single-action on the inside of the room and open to a hall or common-use room.

(b) The resident shall be provided a key that only locks and unlocks his or her bedroom door.

(c) A master key to the resident's door lock must be immediately available to the licensee and all other caregivers in the home.

(18) If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(19) 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 200 and the smoke developed index 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.

(20) Manufactured homes must be in compliance with OAR 411-050-0720(6).

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

(a) A functional smoke alarm with back-up battery must be installed in all sleeping areas and hallways or access ways that adjoin sleeping areas.

(b) A functional carbon monoxide alarm with back-up battery must be installed within 15 feet of each bedroom and at a height as recommended by the manufacturer.

(c) At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted 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.

(d) The licensee must have a safe evacuation plan and may be required to demonstrate the evacuation plan. The licensee may be required to install an Americans with Disabilities Act (ADA) compliant ramp for the safety of all occupants.

(e) The licensee and all occupants must be able to evacuate within three minutes to an initial point of safety exterior to and away from the structure, with access to a public sidewalk or street. The licensee and all occupants must be able to demonstrate the ability to further evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less.

(f) Smoking is prohibited in any bedroom, including that of the resident, the licensee, occupants, or caregivers and in any room where oxygen is used or stored.

(g) The home must be built of standard construction and must meet all applicable state and local building, mechanical, and housing codes for fire and life safety, ~~including the Oregon Residential Specialty Code (ORSC).~~

(h) A resident must have a bedroom that:

(A) Was constructed as a bedroom when the home was built or remodeled under permit.

(B) Is finished with walls or partitions of standard construction that go from floor to ceiling.

(C) Has a door large enough to accommodate the occupant of the room and any equipment that may be necessary such as a hospital bed or wheelchair.

(D) Has adequate ventilation, heat, and lighting with at least one operable window or exterior door that leads directly outside as a secondary egress for resident use.

(E) Has at least 70 square feet of usable floor space.

(i) All exit ways, including windows, must remain unobstructed at all times.

(j) Flammable materials must not be stored within 36 inches of open flame or heat sources.

(k) Only sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the State Fire Marshal or State Fire Marshal's designee. Heaters must be plugged directly into an outlet and may not be used with extension cords.

(l) The licensee must install or make available, any supportive device necessary to meet the resident's needs and ensure resident safety including, but not limited to, grab bars, ramps, and door alarms.

(22) 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 LLA.

(23) The licensee must notify the LLA at least 30 days before any change in residential or mailing address.

(24) The Department, the LLA, and the Centers for Medicare and Medicaid Services (CMS) have authority to conduct inspections with or without advance notice to the licensee or the resident of a home. The licensee must allow and authorize other caregivers and occupants to permit entrance and access to the home and the resident for the purpose of assessing, monitoring, inspection, investigation, and other duties within the scope of the Department, the LLA, or CMS.

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

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