

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

<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 relating to adult foster home standards of operation

Last Date and Time for Public Comment: Written comments are accepted until **5:00 PM on 05/13/2022** and should be sent to apd.rules@dhsoha.state.or.us.

	TELECONFERENCE ONLY +1 971-277-2343, 675541543# 500 Summer Street NE, E-02 Salem, OR 97301	
<u>05/04/2022</u>	<u>10:00 – 10:30 AM</u>	<u>Staff</u>
Hearing Date	Time	Hearings Officer
	Address	

HEARING NOTES: If you wish to provide comment, please call in to the teleconference number no later than 15 minutes after the start time listed.

Everyone has a right to know about and use DHS|OHA programs and services. DHS|OHA provides free help. Some examples of the free help DHS|OHA can provide are: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Kristina Krause at 503-339-6104, apd.rules@dhsoha.state.or.us or 711 TTY at least five business days before the hearing.

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

AMEND:

411-050-0720; 411-050-0745

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (Department) is proposing to permanently amend rules in chapter 411, division 050 relating to adult foster home standards of operation. The changes are summarized below:

OAR 411-050-0720 Safety

- Facilities must comply with masking requirements as prescribed by Governor Brown's mandate and infection control guidance from the CDC and OHA, to control the spread of COVID-19.

OAR 411-050-0745 Records – Facility

- Facilities must comply with vaccination requirements for COVID-19 as prescribed in Oregon Health Authority administrative rule at OAR 333-019-1010.
- Facilities must maintain proof of vaccination or documentation of a medical or religious exemption as required by Oregon Health Authority in OAR 333-019-1010(4).

Other changes may be made to OAR chapter 411, division 050 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure and clarity of the rule.

STATEMENT OF NEED

Need for Rule(s):

Rules were implemented specific to the Governor's vaccine mandate for healthcare workers and the need for masking in adult foster homes as a direct response to the COVID-19 pandemic.

Other changes may be made to OAR chapter 411, division 050 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure and clarity of the rule.

Documents Relied Upon, and where they are available:

Oregon Health Authority Oregon Administrative Rule 333-019-1010

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1234>

EQUITY IMPACT STATEMENT

HB 2993 (2021 Regular Session)

APD AFH providers are very diverse, and some come from communist backgrounds and have a distrust of government. Efforts are continuously being made to bridge these concerns.

FISCAL AND ECONOMIC IMPACT

Fiscal and Economic Impact:

The Fiscal and Economic Impact is stated below in the Department's statement of Cost of Compliance.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department estimates there will be no fiscal or financial impact.

Units of Local Government: The Department estimates there will be no fiscal or economic impact to local government.

Consumers: The Department estimates there will be no fiscal or economic impact for consumers.

Providers: The Department estimates there will be a cost to providers for masks for caregivers and the consumers in the AFH could average around \$25-50 dollars a month (\$300-\$600 annually) depending on the number of

masks needed.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

1,300 APD AFH plus any new homes that license over time. Estimating about 300 potential new AFH over the next five years.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

Describe how small businesses were involved in the development of these rule(s)?

A small business, or representative of a small business, as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Was an Administrative Rule Advisory Committee consulted?

Yes. There was an email RAC in which information was gathered from interested parties, AFH providers, and the provider union.

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

Signature

3/8/2022

Date

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

**CHAPTER 411
DIVISION 50**

**ADULT FOSTER HOMES FOR OLDER ADULTS OR ADULTS WITH
PHYSICAL DISABILITIES - STANDARDS OF OPERATION**

411-050-0720 Safety

(1) FIRE AND LIFE SAFETY. Buildings must meet all applicable state and local building, fire, mechanical, and housing codes for fire and life safety. The home may be inspected for fire safety by the State Fire Marshal's Office, or the State Fire Marshal's designee, at the request of the LLA or the Department using the standards in these rules, as appropriate.

(2) HEAT SOURCES. All heating equipment including, but not limited to, wood stoves, pellet stoves, and fireplaces must be installed in accordance with all applicable state and local building and mechanical codes. Heating equipment must be in good repair, used properly, and maintained according to the manufacturer's or a qualified inspector's recommendations.

(a) A licensee who does not have a permit verifying proper installation of an existing woodstove, pellet stove, or gas fireplace must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth, Patio, and Barbeque Association member and follow the inspector's recommended maintenance schedule.

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

(c) The LLA may require the installation of a non-combustible, heat-resistant, safety barrier 36 inches around a woodstove 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. Portable electric heaters shall be listed and labeled. 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 the State Fire Marshal's designee. A heater must be directly connected to an electrical outlet and may not be connected to an extension cord.

(3) EXTENSION CORDS AND ADAPTORS. Extension cord wiring and multi-plug adaptors may not be used in place of permanent wiring. Listed and labeled re-locatable power strips or taps (RPTs) with circuit breaker protection are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPT must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(4) LOCKS AND ALARMS. Hardware for all exit doors and interior doors must be readily visible, have simple hardware that may not be locked against exit, and have an obvious method of operation.

(a) Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted.

(b) 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.

(5) BEDROOM WINDOWS. Bedrooms must have at least one window or exterior door that leads directly outside and is approved for emergency escape or rescue. The exit window or door must readily open from the inside without special tools, and provide a clear, unobstructed opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 24 inches in height or 20 inches in width. If the interior sill height of the window is more than 44 inches from the floor level, approved steps or other aids to the window exit that the occupants are capable of using must be provided. Windows with a clear opening of not less than 5.0

square feet or 720 square inches with interior sill heights of no more than 44 inches above the floor may be accepted when approved by the State Fire Marshal or the State Fire Marshal's designee.

(6) CONSTRUCTION. Construction must be in compliance with OAR 411-050-0715(2) as well as all applicable local business license, zoning, building, and housing codes.

(a) STRUCTURAL CHANGES. The licensee must notify the LLA, in writing, at least 15 calendar days before any remodeling, renovations, or structural changes in the home that require a building permit. Such activity must comply with local building, sanitation, utility, and fire code requirements applicable to a single-family dwelling (see ORS 443.760(1)).

(b) The licensee must forward all required permits, inspections and evacuation plan as described in OAR 411-050-0725(2), and a revised floor plan as described in (16) of this rule, to the LLA within 30 calendar days of completion.

(c) MANUFACTURED HOMES. A manufactured home (formerly mobile homes) must have been built in 1976 or later and designated for use as a home rather than a travel trailer. The manufactured home must have a manufacturer's label permanently affixed on the unit itself that states the manufactured home 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."

(A) If such a label is not evident and the licensee believes the manufactured home meets the required specifications, the

licensee must take the necessary steps to secure and provide verification of compliance from the home's manufacturer.

(B) Manufactured homes built in 1976 or later meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(7) FIRE EXTINGUISHERS. At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted where they are easily visible and readily accessible for use on each floor, including basements.

(a) Fire extinguishers shall be inspected by the licensee or designated staff at least once per calendar month.

(b) Service personnel providing or conducting annual maintenance on portable fire extinguishers shall possess a valid certificate as outlined in the fire code.

(c) Documentation of monthly and annual inspections for each fire extinguisher shall be maintained and made available upon request.

(8) CARBON MONOXIDE AND SMOKE ALARMS.

(a) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when activated 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.

(b) The licensee or administrator must test all carbon monoxide alarms and smoke alarms in accordance with the manufacturer's instructions at least monthly (per NFPA 72). Testing must be documented in the facility records. The licensee or administrator must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(c) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the manufacturer's instructions. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(A) If bedrooms are in multi-level homes, carbon monoxide alarms must be installed on each level, including the basement.

(B) Carbon monoxide alarms may be hard-wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with a battery back-up. Battery operated carbon monoxide alarms must be equipped with a device that warns of a low battery.

(C) A bedroom used by a hearing-impaired occupant who may not hear a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(d) SMOKE ALARMS. Smoke alarms shall be installed in each sleeping room, adjacent hallways, common living areas, basements and in multi-level homes at the top of each stairway.

(A) Ceiling placement of smoke alarms is recommended.

(B) Battery operated smoke alarms or hard-wired smoke alarms with a battery backup must be equipped with a device that warns of a low battery.

(C) A bedroom used by a hearing-impaired occupant who may not hear a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(9) COMBUSTIBLES AND FIREARMS. Flammables, combustible liquids, and other combustible materials must be safely and properly stored in the original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals.

(a) Oxygen and other gas cylinders in service or in storage, must be adequately secured to prevent the cylinders from falling or being knocked over.

(b) No smoking signs must be visibly posted where oxygen cylinders are present.

(c) Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be in an area of the home that is not accessible to the residents.

(d) Ammunition must be secured in a locked area separate from the firearms.

(10) HAZARDOUS MATERIALS. Cleaning supplies, poisons, insecticides, and other hazardous materials must be properly stored in the original container, or in a container manufactured for the type of product. The containers must be properly labeled and kept in a safe area that is not accessible to residents, or near food preparation areas, food storage areas, dining areas, or medications.

(11) PETS AND 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 not present a danger to the residents or guests.

(12) FIRST AID. Current, basic first-aid supplies and a first-aid manual must be readily available in the home.

(13) WATER TEMPERATURE. A resident who is unable to safely regulate the water temperature must be supervised.

(14) INFECTION CONTROL. Masking protocols will be determined by the Department. Other sStandard and enhanced precautions for infection control must be followed in resident care as directed by the:

(a) Oregon Health Authority's infection control staff at <http://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/COMMUNICABLEDISEASE/HAI/pages/index.aspx>; or

(b) Local county health department staff.

(15) MEDICAL SHARPS. Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. All sharps, including, but not limited to needles and lancets, must be disposed of in approved sharps containers that:

(a) Are puncture-resistant.

(b) Are leak-proof.

(c) Are labeled or color-coded red to warn that the contents are hazardous.

(d) Have a lid, flap, door, or other means of closing the container and inhibits the ability to remove sharps from the container.

(e) Are not overfilled.

(f) Are stored in an upright position in a secure location as close as practical to the use area. The container must not be accessible to residents or not close to any food preparation or food storage area.

(g) Must be closed immediately once full and properly disposed of within 10 days, according to the home's waste management company's or pharmacy's instructions.

(16) FLOOR PLAN. The licensee must develop 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, and 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 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's premises.

(17) SAFETY BARRIERS. Patios, decks, walkways, swimming pools, hot tubs, spas, saunas, water features, fire pits, stairways, and open bodies of water, as applicable, must be equipped with safety barriers designed to reasonably prevent injury to current residents of the home. Resident access to or use of swimming or other pools, hot tubs, spas, saunas, fire pits, or any open bodies of water on the premises must be supervised.

(18) SMOKING. The licensee must identify the home's smoking policies in the home's Residency Agreement. If smoking is allowed in or on the premises of the home:

(a) The Residency Agreement must restrict smoking to designated areas, and prohibit smoking in:

(A) Any bedroom, including that of the residents, licensee, administrator, resident manager, any other caregiver, occupant, or visitor.

(B) Any upholstered furniture with cushions or pillows.

(C) Any room where oxygen is used.

(D) Anywhere flammable materials are stored.

(b) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

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

411-050-0745 Records – Facility

(1) FACILITY RECORDS. Completed facility records must be kept current, maintained in the AFH, and made available for review upon request.

Facility records include, but are not limited to:

(a) Proof the licensee and all subject individuals have a background check approved by the Department as required by OAR 411-049-0120.

(b) By October 18, 2021, AFH licensees must comply with vaccination requirements for COVID-19 as prescribed in OAR 333-019-1010. Licensees must maintain proof of vaccination or documentation of a medical or religious exception as required in OAR 333-019-1010(4).

~~(c)~~ Proof the licensee and all other caregivers have met and maintained the minimum qualifications at each home where they train or work, as required by OAR 411-049-0125, including:

(A) Proof of required continuing education. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of Department-approved classroom hours.

(B) Completed certificates to document the substitute caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook and to document the administrator, resident manager, floating resident manager, and shift caregivers, as applicable, completion and passing of the Department's Ensuring Quality Care Course and examination.

(C) Documentation of orientation to the AFH on the Department's form (APD 0349) for the administrator, resident manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable.

(D) The licensee must maintain copies of all caregiver's certificates of completion as part of the AFH facility records as required in OAR 411-050-0745.

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

(F) Verification that all caregivers are not listed on either of the Exclusion Lists.

(~~de~~) Copies of notices sent to the LLA pertaining to changes in the resident manager, floating resident manager, shift caregiver, or other primary caregiver.

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

(~~fe~~) Well water tests, if required, according to OAR 411-050-0715(10). Test records must be retained for a minimum of three years.

(~~gf~~) Residency Agreements with all residents and, if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.

(~~hg~~) Records of evacuation drills according to OAR 411-050-0725, including the date, time of day, evacuation route, length of time for evacuation of all occupants, names of all residents and occupants, and names of residents and occupants that required assistance.

(~~ih~~) Records of monthly fire extinguisher inspection, smoke alarm and carbon monoxide alarm testing.

(j) Succession Plan or the Department's current Adult Foster Home Back-Up Agreement form (APD 350) completed by the current back-up provider and the licensee, as stated in OAR 411-049-0135(1)(q).

(k) Documentation the licensee confirmed the RN has a valid, unencumbered Oregon license on the OSBN website at: <https://osbn.oregon.gov/OSBNVerification/Default.aspx>.

(l) Falsifying records or causing another to do so shall result in issuance of a mandatory civil penalty as described in OAR 411-052-0025(2).

(m) Excluding menus as required in OAR 411-050-0730(8), facility records must be maintained a minimum of three years.

(2) REQUIRED POSTED ITEMS. The following items must be posted in one location in the entryway or other equally prominent place in the home where residents, visitors, and others may easily read them:

(a) The AFH license.

(b) Conditions attached to the license, if any.

(c) A copy of a current floor plan meeting the requirements of OAR 411-050-0720(16).

(d) The AFH Resident's Rights and Freedoms form (APD 0305).

(e) The home's policies as stated in the current Residency Agreement that has been reviewed for compliance with these rules by the LLA.

(f) The Department's procedure for making complaints (SDS 0519).

(g) The Long-Term Care Ombudsman poster.

(h) The Department's inspection forms identifying the number and type of violations, if any, including how corrections were made since the last annual inspection.

(i) The Department's notice pertaining to the use of any intercoms and monitoring devices that may be used in the AFH.

(j) A weekly menu according to OAR 411-050-0730(8).

(3) POST BY TELEPHONE. The following emergency contacts must be readily visible and posted by a central telephone in the AFH:

(a) The contact number for the individual named in back-up provider agreement or succession plan, who has agreed to respond in person in the event of an emergency.

(b) The emergency contact number for the licensee or administrator.

(c) The contact numbers for the home's registered nurse consultant(s), which may include a healthcare staffing agency.

Stat. Auth.: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 4443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790, 443.880

Stats. Implemented: ORS 197.660 - 197.670, 409.050, 410.070, 413.085, 441.373, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991