

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

*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 Contact	Email	Telephone

**FILING CAPTION**

*(Must be 15 words or fewer)*

**Restore Adult Foster Home rule language to clarify and  
implement Code of Federal Regulations 3280.11**

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Last Date and Time for Public Comment: Written comments may be submitted via email to [Kristina.R.Krause@dhsoha.state.or.us](mailto:Kristina.R.Krause@dhsoha.state.or.us), faxed to 503-373-7823, or mailed to Kristina Krause, APD Rules Coordinator, 500 Summer Street NE, E2, Salem, OR 97301 until **05/26/2020 at 5 p.m.**

05/20/2020 3 p.m. – 4 p.m. Call-in only due to CDC/Governor’s guidance  
+ 1 (503) 934-1400, Conference ID: 4758983# Staff

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Hearing Date	Time	Address	Hearings Officer
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Note for attendees: If you wish to provide comment, please call in to the number above by 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 and other formats. If you need help or have questions, please contact Eleni Gialoyrakes at 503-373-2083, 711 TTY, [eleni.m.gialoyrakes@dhsoha.state.or.us](mailto:eleni.m.gialoyrakes@dhsoha.state.or.us) at least 48 hours before the meeting.

**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.*

**ADOPT:**

**AMEND:**

411-050-0720; 411-050-0730

**REPEAL:**

**RULE SUMMARY:**

411-050-0720: Restores previous language and adds clarification to Oregon Administrative Rules related to the Code of Federal Regulations Title 24, Chapter 3280.11 requirement for manufactured homes to meet specific fire and life safety standards to be licensed as an Adult Foster Home.

411-050-0730: Changes appendix reference for Oregon Fire Code relating to adult foster homes from Appendix L to Appendix R.

**STATEMENT OF NEED AND FISCAL IMPACT**

**Need for Rule(s):**

The Department finds failure to act promptly will result in serious prejudice to the public interest, the Department, and Adult Foster Home licensees and residents. These rules need to be adopted promptly so Adult Foster Homes remain in compliance with Code of Federal Regulations requirements.

OAR chapter 411, division 050 must be amended promptly since there is an element missing from 411-050-0720(6) that requires clarification. This section was in rule previously and was removed during a large update. This language clarifies standards for mobile homes, specific to fire and life safety standards for manufactured homes built prior to 1976. The omission of this language may potentially allow for manufactured homes that do not meet fire and life safety standards to be licensed creating a significant safety risk to Adult Foster Home residents.

**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 impact on state agencies.

Units of Local Government: The Department estimates there will be no fiscal impact on the units of local government.

Consumers: The Department estimates there will be no fiscal impact on consumers.

Providers: The Department estimates there will be no fiscal or economic impact on providers.

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);**

There are approximately 1,600 adult foster homes subject to this rule, most of which are considered a small business as defined by ORS 183.310.

**(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.

**Documents Relied Upon, and where they are available:**

**24 CFR 3280.11**

[CFR 3280.11](#)

[https://www.govregs.com/regulations/expand/title24\\_chapterXX\\_part3280\\_subpartA\\_section3280.11#title24\\_chapterXX\\_part3280\\_subpartA\\_section3280.11](https://www.govregs.com/regulations/expand/title24_chapterXX_part3280_subpartA_section3280.11#title24_chapterXX_part3280_subpartA_section3280.11)

**Was an Administrative Rule Advisory Committee consulted? Yes or No?**  
**If not, why not?**

Yes.

**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. Standard 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/COMMUNICABLE/DISEASE/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, 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

#### **411-050-0730 Operational Standards**

(1) A licensee must own, rent, or lease the home to be licensed, however, the LLA may grant a variance to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the AFH is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. The licensee of a building where an AFH is located may not allow the owner, landlord, or lessor to interfere with the admission, transfer, or voluntary or involuntary move of any resident in the AFH unless the owner, landlord, or lessor is named on the license.

(2) Each AFH licensee must comply with:

(a) All applicable local business license, zoning, building, and housing codes.

(b) The Fair Housing Act.

(c) State and local fire and safety regulations for a single-family residence, and Oregon Fire Code, Appendix RL.

(d) Federal regulations governing HCB Settings. Licensees initially licensed before January 1, 2016 must fully comply with Home and Community-Based Services and Settings and Person-Centered Service Plans, OAR chapter 411, division 004, by no later than June 30, 2020.

(3) ZONING. AFHs are subject to applicable sections of ORS 197.660 to 197.670.

(4) COOPERATION AND ACCESS. The licensee or administrator must cooperate with the Department, Centers for Medicare and Medicaid Services (CMS), Oregon Health Authority (OHA) and local licensing and investigative personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(a) Department, CMS, OHA, local licensing, and investigative personnel must be provided access to all resident and facility records and may conduct private interviews with residents.

(b) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records, and with written permission from the resident or the resident's legal representative, may have access to resident records. (See OAR 114-005-0030).

(5) CONFIDENTIALITY. Licensees and AFH staff must keep personal and healthcare information related to residents confidential and private as

required by all applicable confidentiality and privacy laws, except as may be necessary in the planning or provision of care or medical treatment, or related to an inspection, investigation, or sanction action under these rules. Applicable confidentiality and privacy laws include, but are not limited to:

(a) For medical information:

(A) Health Insurance Portability and Accountability Act (HIPAA).

(B) ORS 192.553 to 192.581, confidentiality of protected health information.

(b) For resident records generally:

(A) ORS 410.150, Use of files, confidentiality, and privileged communications.

(B) OAR chapter 411, division 005, Privacy of protected information.

(6) TRANSPORTATION. A licensee or administrator must arrange for or provide appropriate transportation for residents when needed.

(7) COMMUNICATION.

(a) Applicants for an initial license must obtain and provide to the LLA a current, active business address for electronic mail before obtaining a license.

(b) A licensee or administrator must notify the LLA within 24 hours upon a change in the home's business address for electronic mail.

(c) A licensee or administrator must notify the LLA, the residents and the resident's family members, representatives, and case managers, as applicable, of any change in the telephone number for the licensee or the AFH within 24 hours of the change.

(d) A licensee must notify the LLA in writing before any change of the licensee's residence or mailing address.

## (8) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA's) My Plate and include fresh fruit and vegetables when in season.

(b) Meals must reflect consideration of a resident's preferences and cultural and ethnic background. This does not mean the licensee or administrator must prepare multiple, unique meals for the residents at the same time.

(c) A schedule of mealtimes and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families.

(A) Meal substitutions for scheduled menu items in compliance with (8)(a) of this rule are acceptable and must be documented on, or attached to, the weekly menu.

(B) The licensee or administrator must maintain the weekly menus for a minimum of the most recent six months during which the home has conducted business.

(C) The licensee or administrator must support the resident's right to access food at any time. Limitations may only be used when there is a health or safety risk, as stated in OAR 411-051-0105, and when a written informed consent is obtained. Licensees have until June 30, 2020 to fully comply with this HCB Settings requirement, OAR 411-051-0105(3).

(D) If a resident misses a meal at a scheduled time, an alternative meal must be made available.

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

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

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

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

(h) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Storage and food preparation areas must be free from food that is spoiled or expired.

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

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

(A) Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(B) Payment for food beyond the required three meals and snacks are the responsibility of the resident.

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

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

#### (9) TELEPHONE.

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

(b) The licensee must make a telephone that is in good working order available and accessible for the residents use with reasonable accommodation for privacy during telephone conversations. A resident with a hearing impairment, to the extent the resident may not hear a normal telephone conversation, must be provided with a telephone that is amplified with a volume control or a telephone that is hearing aid compatible.

(c) Restrictions on the use of the telephone by the residents must be specified in the written Residency Agreement and may not violate the residents' rights. Individual restrictions must be well documented in the resident's care plan.

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, 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