

**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 relating to adult foster home standards of operation

Agency Approved Date: [03/08/2022]

Effective Date: [03/21/2022] 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:

411-050-0745

SUSPEND:

411-050-0730

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 and amending temporary rules in chapter 411, division 050 relating to adult foster home standards of operation that became effective on January 1, 2022.

OAR 411-050-0730 Operational Standards

The temporary rule effective January 1, 2022 that required adult foster

home providers to comply with Oregon Residential Specialty Code (ORSC) sprinkler requirements is being suspended due to passage of SB 1548 (2022 Regular Session).

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).
- Facilities must maintain the requirement to record a Certificate of Occupancy or other documentation from the Building Code Division or local building officials related to meet Oregon Residential Specialty Code (ORSC) sprinkler requirements. **Note: This updated filing removes this requirement due to passage of SB 1548 (2022 Regular Session).**

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

COVID-19 is a deadly virus. Given the pandemic has continued to spread and impact so many citizens, the governor has directed state agencies to take additional steps to control this pandemic. The fact that COVID-19 is particularly aggressive toward the elderly population, the Department is amending rules addressing long-term care settings, to control the virus in these settings.

Additionally, fire and life safety for new construction and newly licensed adult foster homes is crucial to the health and safety of adult foster home residents. The Department of Building Code Services has implemented new OARs through Oregon Residential Specialty Code (ORSC) requiring sprinkler systems or an alternative. To ensure the health and safety of residents, create guidance for licensed providers and the local licensing authority, the Department has amended program language to reflect the changes to State of Oregon Building Codes Division OARs that became effective April 1, 2021. **Note: This updated filing removes this requirement due to passage of SB 1548 (2022 Regular Session).**

Justification of Temporary Filing:

Failure to implement these COVID-19 mitigation rules could literally cost lives. To protect the health and safety of residents in long-term care facilities, it is imperative the state take measures to control the spread of COVID-19. Requiring staff be vaccinated, and requiring masks be worn in facilities will both help control the spread of this pandemic and will save lives. Implementing these requirements as soon as possible will help to control this disease.

Failure to act promptly and immediately amend OAR chapter 411, division 050 will result in serious prejudice to the public interest and residents of long-term care facilities. These rules need to be adopted promptly so that residents will be protected, and lives will be saved.

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>

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

03/08/2022

Signature

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**

411-050-0730 Operational Standards

(Temporary effective 03/21/2022 through 06/29/2022)

(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, ~~including the Oregon Residential Specialty Code (ORSC).~~

(b) The Fair Housing Act.

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

(d) Federal regulations governing HCB Settings (OAR chapter 411, division 004).

(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

411-050-0745 Records – Facility

(Temporary effective 03/21/2022 through 06/29/2022)

(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.

(~~ji~~) 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).

(~~kj~~) 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) Maintain record of Certificate of Occupancy or other documentation from the Building Code Division or local building officials consistent with the requirements in OAR 411-049-0135(1)(s).~~

~~(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 and 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

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