

**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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Rules Coordinator	Telephone
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Filing Contact	Telephone

FILING CAPTION

(Must be 15 words or fewer)

Requires facilities distribute Long-Term Care Ombudsman information to residents at admission to implement HB2524.

Last Date and Time for Public Comment: Written comments may be submitted via email to 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 **05/21/2020 at 5 p.m.**

CALL-IN ONLY DUE TO CDC/GOVERNOR'S GUIDANCE			
05/15/2020	1 p.m. – 2 p.m.	+1 (971) 673-8888, Conference ID: 70246239#	Staff
Hearing Date	Time	Address	Hearings Officer

Note to attendees: If you wish to provide comment at the hearing, 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 Lynn Beaton at 503-509-7076, 711 TTY, lynn.d.beaton@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: 411-051-0110; 411-054-0030; 411-086-0040

REPEAL:

RULE SUMMARY:

HB 2524 (2019 Regular Session) requires the following long-term care facilities to provide residents with information supplied by the Long-Term Care Ombudsman:

411-051-0110: Requires adult foster homes to distribute information from the Long-Term Care Ombudsman to residents at time of admission

411-054-0030: Requires residential care and assisted living facilities to distribute information from the Long-Term Care Ombudsman to residents at time of admission

411-086-0040: Requires nursing facilities to distribute information from the Long-Term Care Ombudsman to residents at time of admission

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

The Department needs to immediately amend rule to be in compliance with HB 2524 (2019).

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);

Approximately 1,700 small businesses would be affected by this rule. Almost all adult foster homes and many assisted living facilities, residential care facilities, and nursing facilities are small businesses.

(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. We believe the required record keeping is minimal and that there would be no additional cost incurred by facilities.

(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. We do not anticipate this additional requirement will result in any additional costs of services or supplies to facilities.

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

Several small businesses were sent the draft language for comment as part of the email rule advisory committee (RAC) process. In addition, advocacy groups representing each of the facility types were also sent the information and invited to participate. OHCA, the Long-Term Care Ombudsman, and a limited number of small business providers offered comments to the draft rules on behalf of small businesses.

Documents Relied Upon, and where they are available:

HB 2524 Enrolled (2019 Regular Session

<https://olis.oregonlegislature.gov/liz/2019R1/Measures/Overview/HB2524>

Oregon Laws 2019, Chapter 117

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2019orlaw0117.pdf

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 51**

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

411-051-0110 Pre-Admission

(1) PRE-ADMISSION SCREENING AND ASSESSMENT.

(a) Before admission, the licensee or administrator must conduct and document a screening using the Department's current Adult Foster Home Screening and Assessment and General Information form (SDS 0902) to determine if a prospective resident's care needs exceed the license classification of the home. The screening must:

(A) Evaluate the ability of the prospective resident to evacuate the home within three minutes along with all the occupants of the home.

(B) Determine if the licensee and caregivers can meet the prospective resident's needs in addition to meeting the needs of the other residents of the home.

(C) Include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information, as needed, to assure the prospective resident's care needs shall be met.

(b) The screening process must include interviews with the prospective resident and the prospective resident's family, prior care providers, and case manager, as appropriate. The licensee or administrator must also interview, as necessary, any physician, nurse practitioner, physician assistant, registered nurse, pharmacist, therapist, or mental health or other licensed health care professional

involved in the care of the prospective resident. A copy of the screening document must be:

(A) Given to the prospective resident or their representative.

(B) Placed in the resident's record if admitted to the home; or

(C) Maintained for a minimum of three years if the prospective resident is not admitted to the home.

(c) If the Department or AAA knows a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 163A.005 is applying for admission to an AFH, the Department or AAA shall notify the home of the person's status as a sex offender.

(d) The licensee or administrator may refuse to admit a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in 163A.005.

(e) REQUIRED DISCLOSURES.

(A) The licensee or administrator must disclose the home's policies to a prospective resident or the prospective resident's representative, as applicable. A copy of the home's current Residency Agreement identifying the home's policies shall be provided to the prospective resident and their representative. (See OAR 411-050-0705).

(B) LONG-TERM CARE ASSESSMENT. The licensee or administrator must inform a prospective private-pay resident or the prospective resident's representative, if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee or administrator must document on the Department's form (SDS 913) that the prospective private-pay resident has been advised of the right to receive a long-term care assessment. The licensee or administrator must maintain a copy of the form in the resident's record upon admission and make a copy available to the Department upon request.

(2) BEFORE ADMISSION.

(a) The licensee or administrator must obtain and document general information regarding a resident before the resident's admission. The information must include the names, addresses, and telephone numbers of the resident's relatives, significant persons, case managers, and medical or mental health providers. The information must also include the date of admission and, if available, the resident's medical insurance information, birth date, prior living facility, and mortuary.

(b) Before admission, the licensee or administrator must obtain and place in the resident's record:

(A) Prescribing practitioner's written or verbal orders for medications, treatments, therapies, and special diets, as applicable. Any verbal orders must be followed by written orders within seven calendar days of the resident's admission. Attempts to obtain written orders must be documented in the resident's record.

(B) Prescribing practitioner or pharmacist review of the resident's preferences for over-the-counter medications and home remedies.

(C) Any medical information available, including the resident's history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care.

(c) The licensee or administrator must ask for copies of the resident's Advance Directive, Physician's Order for Life Sustaining Treatment (POLST), and proof of court-appointed guardianship or conservatorship, if applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care.

(d) The licensee or administrator must review the home's current Residency Agreement with the resident and the resident's representative, as appropriate. These reviews must be documented

by having the resident, or the resident's representative, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the resident's record.

(e) Upon admission of a resident, the licensee or administrator shall provide the resident or the resident's representative with information developed by the Long-Term Care Ombudsman describing the availability and services of the ombudsman. The facility shall document that the facility provided this information as required.

(3) SCREENING BEFORE RE-ADMISSION. When a resident temporarily leaves the home including, but not limited to, a resident's hospitalization, the licensee or administrator shall conduct the necessary elements of the pre-admission and screening assessment requirements, and document those findings to:

(a) Determine whether readmission to the home is appropriate for the classification of the home.

(b) Determine whether the licensee or administrator can continue to meet the resident's care and safety needs in addition to those of the other residents.

(c) Demonstrate compliance with these rules.

(d) If applicable, demonstrate the basis for refusing the resident's re-admission to the home according to reasons identified in OAR 411-050-0760(3).

Stat. Auth.: ORS 127.520, 409.050, 410.070, 413.085, 441.373, 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, 441.373, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991