

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

Requires residential care facilities to implement infectious disease controls and training per HB 2600 (2019)

Agency Approved Date: [12-17-2020]

Effective Date: [01-01-2021] through [06-29-2021]

RULEMAKING ACTION

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

ADOPT: 411-054-0050

AMEND: 411-054-0013; 411-054-0025; 411-054-0070; 411-054-0105

SUSPEND:

RULE SUMMARY:

Include a summary for each rule included in this filing.

411-054-0013: Adds requirement that each facility pay \$200 for the kitchen inspection performed during the year the facility is not surveyed. These kitchen inspections will not begin until after January 1, 2022.

411-054-0025: Adds requirements that facilities develop protocols for preventing and controlling infection. These protocols will not be required until January 1, 2022.

411-054-0050: Adopts new section that requires each facility designate an “Infectious Disease Specialist” responsible for implementing infection prevention and control protocols, and requires this specialist be qualified and receive specific training. This specialist will not need to be in place until January 1, 2022.

411-054-0070: Adds requirement that all employees receive pre-service training related to preventing and controlling infectious diseases. This pre-service training will not be required until January 1, 2022. Annual training on this topic will not be required until January 1, 2023.

411-054-0105: Stipulates that the department will conduct a kitchen inspection every year, including having a “stand alone” kitchen inspection during the year a facility does not have a full survey. These kitchen inspections will not begin until after January 1, 2022.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

The Department needs to immediately amend rule to be in compliance with HB 2600 (2019).

Justification of Temporary Filing:

Failure to act promptly and immediately amend OAR chapter 411, division 054 will result in serious prejudice to the public interest, the Department, and communities licensed as residential care and assisted living facilities. These rules need to be adopted promptly so that facilities will be able to prepare for compliance with new requirements concerning the prevention and control of infectious disease, as required by HB 2600 (2019).

OAR chapter 411, division 054 needs to be amended promptly so that residential care and assisted living facilities are providing the latest trainings on infectious disease. Having staff fully trained on infectious disease prevention and control is necessary if these facilities are to provide quality care to residents in those facilities. (Implements HB 2600)

Documents Relied Upon, and where they are available:

Information about HB 2600 (2019) is available on the Oregon Legislative Information System (OLIS) at <https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2600>.

HB 2600 (2019) is enrolled as Oregon Laws 2019, ch. 592 available at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2019orlaw0592.pdf

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

12-17-2020
Date

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

**CHAPTER 411
DIVISION 54**

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0013 Application for Initial Licensure and License Renewal
(Temporary effective 1/1/2021 – 6/29/2021)

(1) APPLICATION. Applicants for initial licensure and license renewal must complete the Department's application form. A licensing fee, as described in ORS 443.415, must be submitted to the Department.

(a) The application form must be signed by the applicant's legally authorized representative, dated, and contain all information requested by the Department.

(b) A licensing fee must be submitted to the Department. The initial licensing fee for a new building or recently purchased building is paid according to number of beds, as required by ORS 443.415:

(A) For 1 to 15 beds: application fee shall be \$2,000 and the biennial renewal fee shall be \$1,000.

(B) For 16 to 49 beds: application fee shall be \$3,000 and the biennial renewal fee shall be \$1,500.

(C) For 50 to 99 beds: application fee shall be \$4,000 and the biennial renewal fee shall be \$2,000.

(D) For 100 to 150 beds: application fee shall be \$5,000 and the biennial renewal fee shall be \$2,500.

(E) For 151 or more beds: application fee shall be \$6,000 and the biennial renewal fee shall be \$3,000.

(c) Applicants must provide all information and documentation as required by the Department including but not limited to identification of financial interest of any individual, including stockholders who have an incident of ownership in the applicant representing an interest of 10 percent or more. For purposes of rule, an individual with a 10 percent or more incident of ownership is presumed to have an effect on the operation of the facility with respect to factors affecting the care or training provided, unless the individual establishes the individual has no involvement in the operation of the facility. For those who serve the Medicaid population, the applicant must identify any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.

(d) If the owner of the facility is a different entity from the operator or management company of the facility, both the operator and the owner must complete an application for licensure. Only one license fee is required.

(e) The application shall require the identification of any individual with a 10 percent or more incident of ownership that has ever been convicted of a crime associated with the operation of a long-term, community-based, or health care facility or agency under federal law or the laws of any state. For those who serve the Medicaid population, any individual with a 5 percent or more incident of ownership must be identified, regardless of the individual's effect on the operation of the facility.

(f) The application shall require the identification of all states where the applicant, or individual having a 10 percent or more incident of ownership in the applicant, currently or previously has been licensed as owner or operator of a long-term, community-based, or health care facility or agency under the laws of any state including any facility, currently or previously owned or operated, that had its license denied or revoked or received notice of the same under the laws of any state. For those who serve the Medicaid population, all states where the applicant or any individual having a 5 percent or more incident of ownership must be identified, regardless of the individual's effect on the operation of the facility.

(g) The Department may deny, revoke, or refuse to renew the license if the applicant fails to provide complete and accurate information on the application and the Department concludes that the missing or corrected information is needed to determine if a license shall be granted.

(h) Each application for a new license must include a completed background check request form for the applicant and for each individual with 10 percent or more incident of ownership in the applicant. For those who serve the Medicaid population, a background check request form is required for the applicant and for each individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.

(i) The Department may require financial information as stated in OAR 411-054-0016 (New Applicant Qualifications), when considering an applicant's request for renewal of a license.

(j) Applicants must provide other information and documentation as the Department may reasonably require for the proper administration of these rules, including but not limited to information about incident of ownership and involvement in the operation of the facility or other business enterprises, as relevant.

(k) For facilities that serve the Medicaid population and are managed by a Board of Directors, the Centers for Medicare and Medicaid Services (CMS) require a social security number and date of birth for each board member.

(2) LICENSE RENEWAL. Application for a license renewal must be made at least 45 days prior to the expiration date of the existing license. Filing of an application for renewal and submission of the required non-refundable fee before the date of expiration extends the effective date of expiration until the Department takes action upon such application.

(a) The Department shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(b) An applicant for license renewal must provide the Department with a completed background check request form for the applicant and for each individual with incident of ownership of 10 percent or more in the applicant when required by the Department. For those who serve the Medicaid population, a background check request form is required for the applicant and each individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.

(c) A building inspection may be requested at the Department's discretion. The Department may require physical improvements if the health or safety of residents is negatively impacted.

(3) DEMONSTRATED CAPABILITY.

(a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing services in a manner consistent with the requirements of these rules.

(b) The Department may consider the background and qualifications of any individual with a 10 percent or more incident of ownership in the applicant when determining whether an applicant may be licensed. For those who serve the Medicaid population, the background and qualifications of any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.

(c) The Department may consider the applicant's history of compliance with Department rules and orders including the history of compliance of any individual with a 10 percent or more incident of ownership in the applicant. For those who serve the Medicaid population, the history of compliance of the applicant and any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.

(4) KITCHEN INSPECTION. The Department shall annually inspect each facility's kitchen and other places where food is prepared.

(a) During a year in which the facility is surveyed, the kitchen inspection shall be completed as part of the standard survey.

(b) During a year in which a facility is not surveyed, the kitchen inspection shall require a separate visit and inspection by the Department. The fee for this separate kitchen inspection is \$200.

(c) This section (4) will not go into effect until January 1, 2022.

Stat. Auth.: ORS 410.070, 443.417, 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0025 Facility Administration

(Temporary effective 1/1/2021 – 6/29/2021)

(1) FACILITY OPERATION.

(a) The licensee is responsible for the operation of the facility and the quality of services rendered in the facility.

(b) The licensee is responsible for the supervision, training, and overall conduct of staff when staff are acting within the scope of his or her employment duties.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(d) The licensee is responsible for obtaining background checks on all subject individuals.

(2) BACKGROUND CHECK REQUIREMENTS.

(a) Background checks must be submitted to the Department for a criminal fitness determination on all subject individuals in accordance with OAR chapter 407-007-0200 to 407-007-0370, and 407-007-0600 to 0640, including before a subject individual's change in position.

(A) On or after July 28, 2009, no individual may be a licensee, or employed in any capacity in a facility, who has been

convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(B) Subject individuals who are employees and hired before July 28, 2009 are exempt from subsection (a) of this section provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

(C) Background checks are to be completed every two years on all subject individuals.

(b) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual may be approved to work in multiple facilities under the same operational entity. The Department's Background Check Request must be completed by the subject individual to show intent to work at various facilities.

(3) EMPLOYMENT APPLICATION. An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse. The licensee must check all potential employees against the Oregon State Board of Nursing (Board) and inquire whether the individual is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the individual or any substantiated abuse findings against a nursing assistant.

(4) Reasonable precautions must be exercised against any condition that may threaten the health, safety, or welfare of residents.

(5) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and must be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license.

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility.

(c) The current facility staffing plan.

(d) A copy of the most recent re-licensure survey, including all revisits and plans of correction as applicable.

(e) The Ombudsman Notification Poster.

(f) Other notices relevant to residents or visitors required by state or federal law.

(6) NOTIFICATION. The facility must notify the Department's Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

(a) Any change of the administrator of record.

(b) Severe interruption of physical plant services where the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food.

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable.

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility.

(e) Unusual resident death or suicide.

(f) A resident who has eloped from the facility and has not been found within 24 hours.

(7) POLICIES AND PROCEDURES. The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment. The facility must develop and implement:

(a) A policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in his or her daily living.

(b) A written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) Effective methods of responding to and resolving resident complaints.

(d) All additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition and Monitoring), OAR 411-054-0045 (Resident Health Services), and OAR 411-054-0085 (Refunds and Financial Management).

(e) A policy on smoking.

(A) The smoking policy must be in accordance with:

(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(ii) The rules in OAR chapter 333, division 015; and

(iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(f) A policy for the referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident.

(g) A policy on facility employees not receiving gifts or money from residents.

(h) Protocols for preventing and controlling infection, as described in OAR 411-054-0050.

(8) RECORDS. The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility, the licensee must provide the Department with written notification of the location of all records.

(9) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

Stat. Auth.: ORS 181.534, 410.070, 443.004, 443.012, 443.450

Stats. Implemented: ORS 181.534, 443.004, 443.400-443.455, 443.991

411-054-0050 Infection Prevention and Control

(Temporary effective 1/1/2021 – 6/29/2021)

(1) Facilities must establish and maintain infection prevention and control protocols to provide a safe, sanitary and comfortable environment. This includes protocols to prevent the development and transmission of communicable diseases.

(2) Each facility must designate an individual to be the facility's "Infectious Disease Specialist" responsible for carrying out the infection prevention and control protocols and serving as the primary point of contact for the Department regarding disease outbreaks. The Infectious Disease Specialist must:

(a) Be qualified by education, training and experience or certification; and

(b) Complete specialized training in infection prevention and control protocols within three months of being designated under this paragraph, unless the designee has received the specialized training within the 24-month period prior to the time of the designation. The Department will describe trainings that will be acceptable to meet the specialized training requirement in rule, by July 1, 2021.

(3) This rule will not go into effect until January 1, 2022.

Stat. Auth.: ORS 181.534, 410.070, 443.004, 443.012, 443.450

Stats. Implemented: ORS 181.534, 443.004, 443.400-443.455, 443.991

411-054-0070 Staffing Requirements and Training

(Temporary effective 1/1/2021 – 6/29/2021)

(1) STAFFING REQUIREMENTS. Facilities must have qualified awake direct care staff, sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident. Direct care staff provide services for residents that include assistance with activities of daily living, medication administration, resident-focused activities, supervision, and support.

(a) If a facility employs universal workers whose duties include other tasks (e.g., housekeeping, laundry, food service), in addition to direct resident care, staffing must be increased to maintain adequate resident care and services.

(b) Prior to providing care and services to residents, direct care staff must be trained as required in sections (2) - (4) of this rule.

(c) The following facility employees are ancillary to the caregiver requirements in this section:

(A) Individuals whose duties are exclusively housekeeping, building maintenance, clerical, administrative, or food preparation.

(B) Licensed nurses who provide services as specified in OAR 411-054-0045 (Resident Health Services).

(C) Administrators.

(d) The Department retains the right to require minimum staffing standards based on acuity, complaint investigation or survey inspection.

(e) Based on resident acuity and facility structural design there must be adequate direct care staff present at all times, to meet the fire safety evacuation standards as required by the fire authority or the Department.

(f) The licensee is responsible for assuring that staffing is increased to compensate for the evaluated care and service needs of residents at move-in and for the changing physical or mental needs of the residents.

(g) A minimum of two direct care staff must be scheduled and available at all times whenever a resident requires the assistance of two direct care staff for scheduled and unscheduled needs.

(h) In facilities where residents are housed in two or more detached buildings, or if a building has distinct and segregated areas, a designated caregiver must be awake and available in each building and each segregated area at all times.

(i) Facilities must have a written, defined system to determine appropriate numbers of direct care staff and general staffing based on resident acuity and service needs. Such systems may be either manual or electronic.

(A) Guidelines for systems must also consider physical elements of a building, use of technology if applicable and staff experience.

(B) Facilities must be able to demonstrate how their staffing system works.

(2) REQUIREMENTS APPLICABLE TO ALL TRAINING. The facility shall:

(a) Have a training program that includes methods to determine competency of direct care staff through evaluation, observation, or

written testing. Facility shall also maintain documentation regarding each direct care staff's demonstrated competency.

(b) Maintain written documentation of all trainings completed by each employee.

(3) PRE-SERVICE ORIENTATION FOR ALL EMPLOYEES.

(a) Prior to beginning their job responsibilities, all employees must complete an orientation that includes training regarding:

(A) Residents' rights and the values of community-based care.

(B) Abuse and reporting requirements.

(C) Standard precautions for infection control.

(D) Preventing and containing disease outbreaks, as described in section (4) of this rule.

~~(D)~~(E) Fire safety and emergency procedures.

(b) If the staff member's duties include preparing food, they must have a food handler's certificate.

(c) All staff must receive a written description of their job responsibilities.

(4) PRE-SERVICE INFECTIOUS DISEASE TRAINING FOR ALL EMPLOYEES.

(a) Prior to beginning their job responsibilities, unless the employee received the training described below within the 24-month period prior to the time of hiring, all employees must complete training addressing the prevention, recognition, control and reporting of the spread of infectious disease. The Department, in consultation with the Oregon Health Authority, has determined this training must address the following:

(A) Transmission of communicable disease and infections.

(B) Standard precautions.

(C) Hand hygiene.

(D) Use of personal protective equipment.

(E) Cleaning of physical environment, including, but not limited to:

(i) Disinfecting high-touch surfaces and equipment.

(ii) Handling, storing, processing and transporting linens to prevent the spread of infection.

(F) Isolating and cohorting of residents during a disease outbreak.

(b) Employees must also receive training on the rights and responsibilities of employees to report disease outbreaks under ORS 433.004 and safeguards for employees who report disease outbreaks.

(c) The pre-service training may be provided in person, in writing, by webinar or by other electronic means, including online training made available by the Department by July 1, 2021.

(d) Administrators and employees will be required to complete annual training on infectious disease outbreak and infection control. Such training will be included within the current number of required annual training hours and will not necessitate additional hours of training. These annual training requirements will be required no earlier than January 1, 2023.

(e) This section (4) will not go into effect until January 1, 2022.

(4)(5) PRE-SERVICE TRAINING FOR ALL DIRECT CARE STAFF.

(a) Prior to providing care to residents, all direct care staff must complete an approved pre-service dementia training.

(b) Pre-service dementia care training requirements for:

(A) 2018 - Direct care staff hired on or before December 31, 2018 shall complete pre-service dementia care training outlined in OAR 411-054-0070 by December 31, 2018, regardless of when they first provide direct care to residents.

(B) 2019 and beyond - Direct care staff hired on or after January 1, 2019 shall complete required pre-service dementia training prior to providing direct care to residents.

(c) Documentation of dementia training:

(A) A certificate of completion shall be issued to direct care staff who satisfactorily complete approved dementia training. Facilities shall also maintain records of all direct care staff who have successfully completed pre-service dementia training.

(B) Each facility shall maintain written documentation of continuing education completed, including required pre-service dementia training, for all direct care staff.

(d) Portability of pre-service dementia training: After completing the pre-service training, if a direct care staff person is hired within 24 months by a different facility, the hiring facility may choose to accept the previous training or require the direct care staff to complete the hiring facility's pre-service dementia training.

(e) A certificate of completion must be made available to the Department upon request.

(f) Pre-service dementia care training must include the following subject areas:

(A) Education on the dementia disease process, including the progression of the disease, memory loss, and psychiatric and behavioral symptoms.

(B) Techniques for understanding, communicating, and responding to distressful behavioral symptoms, including, but not limited to, reducing the use of antipsychotic medications for non-standard uses.

(C) Strategies for addressing social needs of persons with dementia and engaging them with meaningful activities.

(D) Information concerning specific aspects of dementia care and ensuring the safety of residents with dementia, including, but not limited to, how to:

- (i) Identify and address pain.
- (ii) Provide food and fluids.
- (iii) Prevent wandering and elopement.
- (iv) Use a person-centered approach.

(g) Pre-service orientation to resident:

(A) Prior to providing personal care services for a resident, direct care staff must receive an orientation to the resident, including the resident's service plan.

(B) Staff members must be directly supervised by a qualified person until they have successfully demonstrated satisfactory performance in any task assigned and the provision of individualized resident services, as applicable.

~~(5)~~(6) TRAINING WITHIN 30 DAYS OF HIRE FOR DIRECT CARE STAFF.

(a) The facility is responsible to verify that direct care staff have demonstrated satisfactory performance in any duty they are assigned.

(b) Knowledge and performance must be demonstrated in all areas within the first 30 days of hire, including, but not limited to:

(A) The role of service plans in providing individualized resident care.

(B) Providing assistance with the activities of daily living.

(C) Changes associated with normal aging.

(D) Identification of changes in the resident's physical, emotional and mental functioning and documentation and reporting on the resident's changes of condition.

(E) Conditions that require assessment, treatment, observation and reporting.

(F) General food safety, serving and sanitation.

(G) If the direct care staff person's duties include the administration of medication or treatments, appropriate facility staff, in accordance with OAR 411-054-0055 (Medications and Treatments) must document that they have observed and evaluated the individual's ability to perform safe medication and treatment administration unsupervised.

| ~~(6)~~(7) ANNUAL IN-SERVICE TRAINING FOR DIRECT CARE STAFF.

(a) All direct care staff must complete and document a minimum of 12 hours of in-service training annually on topics related to the provision of care for persons in a community-based care setting, including training on chronic diseases in the facility population and dementia training. Annual in-service training hours are based on the anniversary date of hire.

(b) Requirements for annual in-service dementia training:

(A) Except as provided in paragraph (B) of this section, each direct care staff must complete 6 hours of annual in-service training on dementia care.

(B) Exception: Staff hired prior to January 1, 2019 must complete 6 hours of dementia care in-service training by the anniversary of their hire date in 2020 and annually thereafter.

(C) Dementia care training may be included in the required minimum 12 hours of annual in-service training described in subsection (a) above.

(D) Dementia care training must reflect current standards for dementia care and be informed by the best evidence in the care and treatment of dementia.

(E) The facility shall determine the competency of direct care staff in dementia care in the following ways:

(i) Utilize approved dementia care training for its direct care staff, coupled with methods to perform a competency assessment as defined in OAR 411-054-0005(19).

(ii) Ensure direct care staff have demonstrated competency in any duty they are assigned. Facility staff in a supervisory role shall perform assessment of each direct care staff.

(iii) Maintain written documentation of all dementia care training completed by each direct care staff and shall maintain documentation regarding each employee's assessed competency.

~~(7)~~(8) APPROVAL OF DEMENTIA TRAINING CURRICULUM. All dementia care training provided to direct care staff must be approved by a private or non-profit organization that is approved by the Department through a "Request for Application" (RFA) process.

~~(8)~~(9) ADDITIONAL REQUIREMENTS. Staff:

(a) Under 18 years of age may not perform medication administration or delegated nursing tasks. Staff under the age of 18 must be directly supervised when providing bathing, toileting, incontinence care or transferring services.

(b) Must be trained in the use of the abdominal thrust and First Aid. Cardiopulmonary resuscitation (CPR) training is recommended, but not required.

(c) Must have sufficient communication and language skills to enable them to perform their duties and communicate with residents, other staff, family members, and health care professionals, as needed.

Stat. Auth.: ORS 410.070, [443.012](#), 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0105 Inspections and Investigations

(Temporary effective 1/1/2021 – 6/29/2021)

(1) The facility must cooperate with Department personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(a) Records must be made available to the Department upon request. Department personnel must have access to all resident and facility records and may conduct private interviews with residents. Failure to comply with this requirement shall result in regulatory action.

(b) The State Long Term Care Ombudsman must have access to all resident and facility records that relate to an investigation. Certified Ombudsman volunteers may have access to facility records that relate to an investigation and access to resident records with written permission from the resident or guardian.

(c) The State Fire Marshal or authorized representative must be permitted access to the facility and records pertinent to resident evacuation and fire safety.

(2) Staff of the Department shall visit and inspect every facility at least but not limited to once every two years [for a full survey](#) to determine whether the facility is maintained and operated in accordance with these rules.

(a) For each year during which a facility does not have a full survey, the Department shall visit and conduct an inspection of the kitchen and other areas where food is prepared for residents.

(b) Subsection (a) will not go into effect until January 1, 2022.

~~(ca)~~ Facilities not in compliance with these rules must submit, within ten days of receipt of the inspection report, a plan of correction that satisfies the Department.

~~(db)~~ The Department may impose sanctions for failure to comply with these rules.

(3) Department staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment, and other areas of operation.

(4) A copy of the most current inspection report and any conditions placed upon the license must be posted with the facility's license in public view near the main entrance to the facility.

(5) ABUSE OR RULE VIOLATION. Upon completion of substantiation of abuse or rule violation, the Division shall immediately provide written notification to the facility.

(a) WRITTEN NOTICE. The written notice shall:

(A) Explain the nature of each allegation;

(B) Include the date and time of each occurrence;

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(E) Include a copy of the complaint investigation report;

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Department determines there is substantiated abuse, the Department may determine that the facility, an individual, or both the facility and an individual are responsible for the abuse. In determining responsibility, the Department shall consider intent, knowledge and ability to control, and adherence to professional standards as applicable.

(A) FACILITY. Examples of when the Department shall determine the facility is responsible for the abuse include but are not limited to:

(i) Failure to provide minimum staffing in accordance with these rules without reasonable effort to correct;

(ii) Failure to check for or act upon relevant information available from a licensing board;

(iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff;

(iv) Failure to adequately provide oversight, training, or orientation of staff;

(v) Failure to allow sufficient time to accomplish assigned tasks;

(vi) Failure to provide adequate services;

(vii) Failure to provide adequate equipment or supplies; or

(viii) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL. Examples of when the Department shall determine the individual is responsible for the abuse include but are not limited to:

(i) Intentional acts against a resident including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse;

(ii) Acts contradictory to clear instructions from the facility, unless the act is determined by the Department to be caused by the facility as identified in paragraph (A) above;

(iii) Callous disregard for resident rights or safety; or

(iv) Intentional acts against a resident's property (e.g., theft, misuse of funds).

(C) An individual may not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(c) DUE PROCESS RIGHTS.

(A) NON-NURSING ASSISTANT. The written notice in cases of substantiated abuse by a person other than a nursing assistant shall explain the person's right to:

(i) File a petition for reconsideration pursuant to OAR 137-004-0080; and

(ii) Petition for judicial review pursuant to ORS 183.484.

(B) NURSING ASSISTANT. The written notice in cases of substantiated abuse by a nursing assistant shall explain:

(i) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140; and

(ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(C) FACILITY. The written notice shall advise the facility of the facility's due process rights as appropriate.

(d) DISTRIBUTION.

(A) The written notice shall be mailed to the facility, any person reported to have committed wrongdoing, the complainant (if known), and the Department or Type B AAA office; and

(B) A copy of the written notice shall be placed in the Department's facility complaint file.

(6) Upon receipt of a notice of abuse for victims covered by ORS 430.735, the facility shall provide written notice of the findings to the person found to have committed abuse, the residents of the facility, the residents' case managers, and the residents' guardians.

Stat. Auth.: ORS 410.070, 443.417, 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991