

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

<u>Department of Human Services, Aging and People with Disabilities (APD)</u>	411
Agency and Division Name	Administrative Rules Chapter Number

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FILING CAPTION
(Must be 15 words or fewer)

APD: Amending Room and Board Rules

Last Date and Time for Public Comment: Written comments may be submitted via email to apd.rules@dhsoha.state.or.us or mailed to Kristina Krause at 500 Summer Street NE, E-02, Salem, OR 97301 until **May 27, 2022, at 5 p.m.**

TELECONFERENCE ONLY

	+1 971-277-2343		
05/20/2022	10:00 – 10:30 AM	Conf. ID: 737527953#	Staff
Hearing Date	Time	Address	Hearings Officer

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

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

RULEMAKING ACTION

ADOPT:

411-068-0008

AMEND:

411-068-0000; 411-068-0005; 411-068-0010; 411-068-0015;
411-068-0020; 411-050-0025; 411-068-0030; 411-068-0035;
411-068-0040; 411-068-0045; 411-068-0050; 411-068-0055;
411-068-0060; 411-068-0065; 411-068-0070; 411-068-0075;
411-068-0080; 411-068-0085; 411-068-0090

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (Department) is proposing to permanently amend rules in chapter 411, division 068.

411-068-0000 Definitions Relating to Room and Board Facilities:

- Housekeeping for consistency and to clarify information. Changes include minor grammatical changes, renumbering rule references, and amending language for consistency.
- New abuse definition proposed so that the division 068 rules will be consistent with the current Adult Protective Services definitions in 411-020-0002, which were last revised on December 27, 2018.
- Applicant – New proposed definition.
- Application for Registration - Minor language change.
- Assistance with Activities of Daily Living – proposed amended language includes “and grooming”.
- Background check - New definition proposed.
- Background Check Rules – New language
- Care – Propose removing the word “certain” while referring to tasks.
- Certificate of Registration – Propose language update to “Registration” throughout rule.
- Complaint – New definition proposed.

- Division – Amended language to read “Department” throughout rule.
- House Rules – Propose adding amended language “written and posted” to the definition.
- New definition – “Resident” is synonymous with “Tenant” as defined in this rule.
- Operator – Minor language change proposed to replace the word “person” with “individual”.
- Residency Agreement – Proposed amended language added to expand on this definition.
- Room and Board Facility – Propose “RB” as an abbreviation to “Room and Board Facility”.
- Subject Individual - New definition proposed.
- Tenant – New definition.
- Tenant Manager – New definition.

411-068-0005 Certificate of Registration required:

- Amended language - Any person who operates a facility must obtain a registration, prior to providing services and prior to receiving compensation for services.
- Amended language for separate registration when operating more than one R&B facility.
- New language on the change of ownership of an R&B.
- Amended language - for when a R&B is sold or otherwise transferred or conveyed to another person. The new owner must apply for and obtain a new registration prior to the transfer of operation to the new operator.
- Amended language - “Registration” to replace “Certificate of Registration”.

411-068-0008 Background Checks

- New language – All SI’s must have an approved background check.

411-068-0010 Application and Fees

- Changes include minor grammatical changes and amending language for consistency.

- Amended language to include a reference to the required application form (APD 0926).
- New language requiring additional information be included in the description of the property (floor plan) as part of the application.
- Amended language to require the name of the landlord or mortgage holder of the property in addition to other corporate officers, partners, or other persons having a financial interest.
- Amended language requiring a written plan covering the administrative responsibilities.
- Amended language to include a reference 411-068-0040 (Residency Agreement).
- New language requiring an official document from a financial institution evidencing the right to occupy the property.
- Amended language – Applications are not complete until all the required information, and the application and registration are received by the Department. Incomplete applications void after 60 days, and failure to provide complete and accurate information may result in a denial of the application.
- New language indicating an applicant may withdraw the application at any time.
- New language – An applicant whose registration has been suspended, revoked, or non-renewed or has voluntarily suspended under threat of sanction shall not be permitted to make a new application for one year from the date the action was final, or for a longer period if specified in a final order.
- New language – After receipt of the initial application materials, including the registration fee, the Department or its authorized representative must investigate the information submitted, including pertinent information received from outside sources, conduct a personal interview with the applicant, and conduct a physical inspection of the RB facility identifying any deficiencies in writing, and specify a time frame for correction not to exceed 60 calendar days.

411-068-0015 Issuance of Certificate of Registration

- Changes include amending language for consistency. These changes include replacing, "Division" with "Department" and "Certificate of Registration" with "Registration".
- Propose amending language to include "calendar" to clarify the number of days an applicant must comply before the Department issues a denial of registration.

411-068-0020 Renewal

- Changes include amending language for consistency. Amended language includes adding the word "calendar", replacing the word "Division" with "Department" and replacing "takes action" with "acts".
- Renewal application now refers to initial application requirement rule (411-068-0010(1)).

411-068-0025 Exceptions

- Changes include amending language for consistency – "Division" to "Department" and "residents" to "tenants".

411-068-0030 Waiver of Registration Requirement

- Amended language includes replacing "room and board" with "RB" and "Division" with "Department".

411-068-0035 Identification

- Amended language includes replacing "room and board" with "RB" and "Division" with "Department".

411-068-0040 Residency Agreement

- Proposed amended language - "Disclosure of all", "resident" to "tenant" and "House rules shall not violate landlord tenant laws or these administrative rules."
- Amended ORS Chapter to include "90 and" 91.

411-068-0045 Standards for Operators of Room and Board Facilities

- Amended language includes replacing "room and board" with "RB" and "Division" with "Department".
- Amended language to include the proper form "MSC 0301 QED".

411-068-0050 Standards for a Room and Board Facility

- Changes include minor grammatical changes, renumbering rule references, and amending language for consistency.
- Amended language - “Tenant” to replace “resident”
- New and amended language – New minimum requirements for household occupant bedrooms.
- New language – New minimum requirements for fire safety.
- New proposed language – New minimum requirements for medication storage and administration.

411-068-0055 Limitation on the Provision of Services

- Housekeeping to make rules more consistent and clarify information. Changes include minor languages amendments/updates and other small language amendments.

411-068-0060 Complaints

- Housekeeping to make rules more consistent and clarify information. Changes include minor languages amendments/updates and other small language amendments.

411-068-0065 Complaint Records

- Changes include minor language updates.

411-068-0070 Access and Inspection

- Changes include minor languages updates as well as adding amended language “the Oregon Health Authority, licensing, and authorities”.

411-068-0075 Procedures for Corrective Action

- Changes include amended language, as well as amended language surrounding the issuance and delivery of rule violations, inspections, and timeframes for corrective action.
- Amended language to include – “either verbally or in writing” for violation notices when there is a risk of imminent danger.
- Amended Language – for cases of imminent danger the department may inspect the home after the “24-hour” period.

- Amended language for immediate danger to include “revoked” and “the Department or authorized representative may make” arrangement to voluntarily move tenants.

411-068-0080 Administrative Sanctions

- Housekeeping to make rules more consistent and clarify information. Changes include amended language.
- Propose to replace “refusal to renew” with “non-renewal”.
- Propose adding “all elements required by ORS 183.415 including but not limited to:”
- New proposed language to allow operators to request an informal conference
- Propose adding “calendar” to “60 day” hearing request timeframe for administrative sanctions.

411-068-0085 Denial, Suspension, Revocation or Non-Renewal of Registration

- Housekeeping to make rules more consistent and clarify information. Changes include amended language and renumbering rule references for consistency.
- Propose removing “Refusal to Renew” from the title of this section to read as written above.
- Propose amending language to read “10 calendar days” for hearing request timeframes (immediate suspensions and revocations).
- Propose amending language to include a reference to the abuse definition.
- Propose amending language to read “10 calendar days” for requesting an administrative review of an allegation of abuse.
- Propose an update to the correct ORS 183.310 to 183.500.
- Propose adding the failure to provide an approved background check to reasons the Department may deny, suspend, revoke or non-renew a registration.
- Propose amending language to read “An operator has” failed to comply with a final order to correct a violation or a final order of the Department.

- Propose amended language to read “Department or an authorized representative” may arrange for residents to move for their protection.

411-068-0090 Civil Penalties

- Housekeeping to make rules more consistent and clarify information.
- Propose amended language for civil penalties to include a daily monetary penalty for failure to operate with a current registration.
- Proposed amended language for notices of civil penalty to include all elements required by ORS 183.415.
- Propose amending language to include all of chapter ORS 183 related to contested cases before the Department.
- Propose removing the word “person” and replacing with “operator”.
- Amended language – from the date of, “mailing” changed to “Service”.
- Amended language to include a reference that is inclusive of all of chapter 183 relating to contested case.

Other changes may be made to 411-068-0000 to 411-068-0090 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

STATEMENT OF NEED

Need for Rule(s):

The Oregon Room and Board Rules originally became effective in August of 1990 and have not been revised/updated in more than 30 years. The Department needs to accomplish the following in the revision of these rules:

- To ensure rules align with statutory requirements.
- Update the rules to correspond with current terminology and to perform minor grammar, punctuation, formatting, and housekeeping changes.
- To ensure the health, safety and wellbeing of the tenants residing in Room and Board (R&B) facilities ODHS registers. In recent years the Department has had difficulty holding operators

accountable for providing unhealthy living conditions. The changes give the Department the needed authority and framework to initiate appropriate corrective action measures up to and including revocation of the registration. The need is to ensure Room and Board tenants are provided with healthy living conditions/accommodations according to the reasonable/prudent persons standard; and

- To include background checks through the Background Check Unit (BCU) for all subject individuals working in an R&B facility.

Other changes may be made to 411-068-0000 to 411-068-0090 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

Documents Relied Upon, and where they are available:

ORS 443.480 to 443.500

https://www.oregonlegislature.gov/bills_laws/ors/ors443.html

EQUITY IMPACT STATEMENT

The RAC was unable to identify any measurable impacts to specific racial groups with respect to inequities. Adoption of these rules may have a positive impact on racial inequities as the adoption of the proposed rule changes will bring the standards of operation in a Room and Board setting up to APD current standards and will improve living conditions for all Room and Board tenants.

FISCAL AND ECONOMIC IMPACT

Fiscal and Economic Impact:

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

Statement of Cost of Compliance:

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

State Agencies: The Department estimates there will be no fiscal impact to state agencies.

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

Consumers: There is no measurable fiscal impact, although increased regulation could potentially result in very minimal increases in administrative costs that could potentially result in higher rent costs for tenants of a Room and Board.

Providers: There is no measurable fiscal impact although increased regulation could potentially result in very minimal increases in administrative costs.

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 currently four (4) Room and Board Facilities registered by Adults and People with Disabilities, Safety Oversight and Quality's Adult Foster Home program.

(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)?

Adult foster Home Providers as well as the four (4) Room and Boards (small businesses) currently registered by Adults and People with Disabilities, Safety Oversight and Quality, Adult Foster Home program were invited to attend the Rule Advisory Committee. Small businesses, or representatives of a small business, as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee held on January 20, 2021 and will also be included in the public review and comment period.

Was an Administrative Rule Advisory Committee consulted?

Yes.

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

03/28/2022
Date

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

**CHAPTER 411
DIVISION 68**

REGISTRATION OF ROOM AND BOARD FACILITIES

411-068-0000 Definitions Relating to Room and Board Facilities

(1) "Abuse" means "abuse" as defined in OAR 411-020-0002 (Adult Protective Services).

(a) PHYSICAL ABUSE.

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of these rules, conduct that may be considered physical abuse includes, but is not limited to:

(i) Acts of violence, such as, striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) NEGLECT.

(A) For the purposes of these rules, neglect means the active or passive failure to provide the basic care or services necessary to maintain the health and safety of an adult, when that failure:

(i) Results in physical harm, significant emotional harm, unreasonable discomfort, or serious loss of personal dignity to the adult; or

(ii) Creates the risk of serious harm to the adult.

(B) The expectation for care may exist because of an assumed responsibility or a legal or contractual agreement, including, but not limited to, where an individual has a fiduciary responsibility to assure the continuation of necessary care or services.

(C) An adult, who in good faith, is voluntarily under treatment solely by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) ABANDONMENT. Abandonment includes desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) VERBAL OR EMOTIONAL ABUSE.

(A) Verbal or emotional abuse includes threatening significant physical harm, or threatening or causing significant emotional harm to an adult using:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of these rules:

(i) Conduct that may be considered verbal or emotional abuse includes, but is not limited to, the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes, but is not limited to, anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) FINANCIAL EXPLOITATION. Financial exploitation including:

(A) Wrongfully taking, by means including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult reasonably believes the threat conveyed maybe carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult;

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult; or

(E) The taking, borrowing, or accepting of assets, funds, property, or medications from an adult residing in a facility by an employee of the facility, unless the adult and employee are related, and the action described in this paragraph does not constitute a wrongful taking as described in paragraph (A).

(f) SEXUAL ABUSE. Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Verbal or physical harassment of a sexual nature, including, but not limited to severe, threatening, pervasive, or inappropriate exposure of an adult to sexually explicit material or language;

(C) Sexual exploitation of an adult;

(D) Any sexual contact between an employee of a facility and an adult residing in the facility unless the two are spouses or domestic partners;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) INVOLUNTARY SECLUSION. Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to their room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility evaluates the behavior and develops care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in the specified areas poses a risk to health or safety.

(h) WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.

(A) A wrongful use of a physical or chemical restraint includes situations where:

(i) A licensed health professional has not conducted a thorough assessment before implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated before the use of the restraint; or

(iii) The restraint is used for convenience or discipline.

(B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

~~(1) "Abuse" means any act or absence of action inconsistent with the health, safety and welfare of the residents of the facility. This includes but is not limited to:~~

~~(a) Physical assault such as hitting, kicking, scratching, pinching, choking or pushing;~~

~~(b) Denying meals or denying residents access to their clothing or aids to physical functioning;~~

~~(c) Use of derogatory or inappropriate names, phrases, or profanity; ridicule; harassment; coercion; threats; cursing; or intimidation;~~

~~(d) Sexual exploitation of residents including inappropriate physical contact between the operator, or an employee or agent of the operator and residents;~~

~~(e) Use of physical restraints, or forced confinement;~~

~~(f) Financial exploitation which includes but is not limited to: unreasonable rate increases; requiring residents to work for the benefit of the operator unless such work is voluntary and compensated; or use by the operator or employee of representative payee status for the payment of a resident's Social Security benefits to coerce, restrict, or exploit the resident.~~

(2) "Administration of Medication" means the act of placing a medication in, or on, a tenant's/resident's body.

(3) "Aid to Physical Functioning" means any special equipment utilized by the tenant/resident such as a hearing aid, cane, walker, etc., which maintains or enhances the tenant's/resident's physical functioning.

(4) "Applicant" means any individual, partnership, corporation, or other entity operator of a room and board facility who completes an application to own or operate a Room and Board Facility for registration.

(5) "Application for Registration" means an application form (APD 0926) provided/designed and distributed by the Department/Division to register room and board facilities.

(6) "Assistance with Activities of Daily Living" means those personal functional activities required by an individual for continued well-being including, but not limited to the following: eating/nutrition, dressing, personal hygiene, mobility, toileting and behavior management.

(a) Bathing and personal hygiene;

(b) Dressing and grooming;

(c) Eating;

(d) Mobility;

(e) Bowel and bladder management; and

(f) Cognition.

(7) "Background Check" means a criminal record check and abuse check as defined in OAR 407-007-0210. An approved "Background Check" means a final determination, made by an authorized agency or district that the subject individual is fit to:

(a) Hold a position, paid or unpaid;

(b) Obtain or retain credentials;

(c) Have direct access to; or

(d) Otherwise provide services necessary for the health, welfare, maintenance or protection of an individual.

(8) "Background Check Rules" means the rules in OAR 407-007-0200 to 407-007-0370.

(79) "Care" means the performance of certain tasks by an individual for the benefit of a ~~tenant~~resident including supervision, protection, assistance with activities of daily living, administration of medication, nursing assistance, and management of money or other financial resources.

(810) "Certificate of Registration (Registration)" means a certificate issued by the ~~Department~~Division to applicants who have completed an application for registration and meet all applicable requirements of ORS 443.480 to 443.500 and these rules.

(911) "Compensation" means payments or services provided by or on behalf of a person in exchange for other services provided by another person.

(12) "Complaint" means an allegation of abuse, a violation of these rules, or an expression of dissatisfaction relating to a tenant or the condition of a Room and Board facility.

(1013) "~~Department Division~~" means the ~~Aging Seniors~~ and People with Disabilities ~~program~~Division within of the Oregon Department of Human Services.

(4114) "Facility" means a room and board facility unless the specific context indicates otherwise.

(4215) "House Rules" means written and posted procedures and standards for the daily operation of a room and board facility and include any restrictions or limitations on the use of the facility by tenantsresidents.

(4316) "Living Accommodations" means tenantresidential facilities including a place to sleep and common living areas.

(4417) "Meals" means the provision of food by the operator or other employee for the consumption by of tenantsresidents one or more times per day.

(4518) "Operator" means an individualperson, partnership, corporation, or other entity who owns or operates a room and board facility.

(4619) "Privately Arranged Housing" means the voluntary sharing of living accommodations and common expenses between two or more adults in a residence or apartment that does not offer such accommodations to the general public.

(20) "Resident" is synonymous with "Tenant" as defined in this rule.

(4721) "Residency Agreement" means an agreement or contract entered into by a tenantresident and the operator which specifies the terms and conditions of residency in the facility. The Residency Agreement identifies the policies of the home, services to be provided, and the rights and responsibilities of the individual, and the operator. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord tenant laws.

~~(18) "Resident" means a person who is receiving living accommodations and meals in a room and board facility, for compensation, who is elderly or disabled as defined in ORS 443.480, and who is not related to the operator by blood or marriage.~~

~~(19) "Resident Manager" means a person employed by the operator who resides at the facility and who is responsible for the day to day operation or management of the facility.~~

(~~2022~~) "Retirement Facility" means a facility that:

(a) Is exempt from the requirement for registration in OAR 411-068-0005; and

(b) Meets all of the following criteria:

(A) Offers to the general public for compensation individual dwelling units that include a private bathroom and a meal preparation and storage area;

(B) Represents itself to the public as a retirement facility; and

(C) A majority of the residents are 62 years of age or older.

(~~2123~~) "Rights" means civil, legal or human rights guaranteed by Federal and State law and afforded to all persons.

(~~2224~~) "Room and Board Facility (RB)" means a facility that offers to the general public living accommodations and meals for compensation to two or more adults who are elderly or disabled, as defined in ORS 443.480, not related to the operator by blood or marriage. For the purposes of these rules, a registered RB room and board facility does not include the following:

(a) Any facility operated by an institution of higher education.

(b) Any private RB room and board facility approved by an institution of higher education which has as a houses resident tenants houses tenants, students or an employee of the institution.

(c) Any private or nonprofit retirement facility which does not fall under the generally understood definition of an "RB room and board facility," a "boarding house" or a "boarding hotel" and where a majority of the tenants residents are retirees;

(d) Any privately arranged housing the occupants of which may not be related by blood or marriage; and

(e) Any facility which is licensed ~~of or~~ registered under any other law of this state or city or county ordinance or regulation.

~~(2325)~~ "Self-administration of Medication" means the act of a resident placing a medication in, or on, his/her own body.

~~(2426)~~ "Services" means living accommodations and meals provided by the operator and non-care related tasks such as housekeeping, laundry, transportation or recreation performed by an operator or employee for the benefit of ~~tenants~~ residents.

~~(27)~~ "Subject Individual (SI)" has the meaning as given in OAR 407-007-0210, and means any person 16 years of age or older, including:

~~(a) Any registered operator and registration applicants;~~

~~(b) All persons intending to work in, or currently working in an RB facility, including, but not limited to, tenant managers, including trainees, and licensed healthcare workers when employed by or contracted with the registrant or RB facility.~~

~~(28)~~ "Tenant" means a person who is receiving living accommodations and meals in an RB facility, for compensation who is elderly or disabled as defined in ORS 443.480, and who is not related to the operator by blood or marriage.

~~(29)~~ "Tenant Manager" means a person employed by the operator who resides at the facility and who is responsible for the day-to-day operation or management of the facility.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0005 Certificate of Registration Required

(1) Any person who operates a ~~room and board~~ RB facility as defined in these rules must obtain a Certificate of Registration (registration) for the facility from the ~~Division~~ Department prior to providing services and prior to receiving compensation for the services provided. ~~Any person operating a room and board facility prior to August 1, 1990 must submit a completed~~

~~application for registration within 30 days following the effective date of these rules. All persons who wish to begin operation of a room and board facility on or after August 1, 1990 must register the facility with the Division before providing services or receiving compensation.~~

(2) If an operator runs more than one ~~room and board~~RB facility, each facility must ~~behave a~~ separately registered registration.

(3) A change of ownership of a facility requires both a new registration application and a new registration. A registration is non-transferable and does not apply to any location or person other than those indicated on the registration obtained by the Department.~~No Certificate of Registration which has been issued to an operator for the operation of a room and board facility for a given location shall be valid for use by any other operator or at any facility other than that for which it was issued.~~

(4) When an RB facility is to be sold or otherwise transferred or conveyed to another operator, the new operator must apply for and obtain a new Certificate of Registration registration prior to the transfer of operation ~~of the facility.~~ to a new operator.

(5) A Certificate of Registration registration is valid for one year unless revoked or suspended at an earlier date.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0008 Background Check

(1) All SI's must have an approved background check, which for non-operators or non-operator applicants, may include an approved preliminary fitness determination, prior to operating, training in, working in or living in an RB facility.

(a) Operators must maintain documentation of preliminary and final fitness determinations with RB facility records in accordance with these rules and the background check rules.

(b) Verification may include printed or electronic documentation, which must be readily accessible upon request.

(2) The background check may not to be used as a screening tool for hiring. New employees may be offered a position contingent upon passing the background check.

(3) A new background check must be completed:

(a) Every two years;

(b) Prior to any SI's change in employment position;

(c) If the Department has reason to believe a new background check is needed.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0010 Application and Fees

(1) An Application for a ~~Certificate of Registration~~registration shall be submitted by the operator in writing on a form APD 0926, ~~provided by the Division~~. The application shall include but not be limited to:

(a) A description of the property or place in or upon which the applicant proposes to maintain or conduct an room and boardRB facility.;

(b) A complete and accurate floor plan that indicates:~~The maximum number of residents who can reside at the facility;~~

(A) The size of rooms.

(B) Which bedrooms are to be used by tenants, the operator, and the tenant manager.

(C) The location of all exits and emergency exits such as windows.

(D) The location of fire extinguishers, smoke alarms, and carbon monoxide alarms, planned evacuation routes and designated smoking areas in or on the RB facility premises.

- (c) The maximum number of tenants who can reside at the facility.~~The names of all residents residing at the facility at the time of application;~~
- (d) The names of all tenants residing at the facility at the time of application.~~The number of floors to be occupied;~~
- (e) The number of floors to be occupied. ~~The number of beds on each floor;~~
- (f) The number of beds on each floor.~~The name, address, telephone number, birth date, and Social Security number of the applicant;~~
- (g) The name, address, telephone number and birth date of the applicant.~~The names, addresses, telephone numbers, birth dates, and Social Security numbers of any partner, corporate officer or other persons having a financial interest in the property;~~
- (h) The names, addresses, telephone numbers and birth dates of any partner, corporate officer or other persons having a financial interest in the property, including but not limited to a landlord or mortgage holder of the property. ~~The name, address, telephone number, birth date, and Social Security number of the resident manager, if applicable;~~
- (i) The name, address, telephone number and birth date of the tenant manager, if applicable.~~A description of services which will be offered to residents;~~
- (j) A written plan describing the administrative responsibilities, staff coverage and services which will be offered to tenants.~~A copy of the residency agreement; and~~
- (k) A copy of the residency agreement as described in 411-068-0040. ~~Signed and dated forms, SDS 303, for release of criminal records for the applicant and the resident manager, if applicable;~~
- (l) Documentation of the initiation of a background check or a copy of an approved background check for all SI's as defined in OAR 411-

~~068-0000. A signed and dated statement from the operator stating that the operator and the facility are in compliance with all the requirements of these rules.~~

(m) A signed and dated statement from the operator stating that the operator and the facility are in compliance with all the requirements of these rules.

(n) A copy of an official document from a financial institution or local government or a fully executed contract evidencing the operator's right to occupy the property designated as the proposed RB facility, such as a recorded deed, sale agreement, lease agreement between current property owner and applicant. The right to occupy the premises must be concurrent with at least the term of the registration.

(2) The registration fee shall be \$20 per year, per facility, and shall accompany the application.

~~(3) The application~~ Applications shall are not be considered complete until all the required information, and the application, and registration fee are received by the Division Department. Incomplete initial applications are void after 60 calendar days from the date the Department receives the application form and registration fee. Failure to provide complete and accurate information may result in a denial of the application.

(4) An applicant may withdraw their application at any time during the application process by submitting written notice to the Department.

(5) An applicant whose registration has been suspended, revoked or non-renewed, or has been voluntarily surrendered during a suspension, revocation or non-renewal process, or whose application for a registration has been denied, shall not be permitted to make a new application for one year from the date the action was final, or for a longer period if specified in the final order.

(6) After receipt of the completed initial application materials, including the registration fee, the Department or its authorized representative must investigate the information submitted, including pertinent information received from outside sources, conduct a personal interview with the applicant, and conduct a physical inspection of the home identifying any

deficiencies in writing, and specify a time frame for correction not to exceed 60 calendar days.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0015 Issuance of Certificate of Registration

(1) If the ~~Department~~Division determines that all ~~the~~ requirements of ORS 443.480 to 443.500 and these rules have been met, it shall issue a ~~Certificate of R~~egistration to the applicant for the facility within 60 calendar days of receipt of the completed application and the registration fee.

(2) If the ~~Department~~Division determines that any of the requirements for registration have not been met, the ~~Department~~Division shall notify the applicant within 60 calendar days of receipt of the application materials and the registration fee. ~~requirements that have not been met within 60 days of receipt of the completed application and the registration fee~~ The applicant shall have 30 calendar days to come into compliance with the requirements. If the requirements are not met within the time allowed the ~~Department~~Division shall issue an order denying the registration.

(3) The ~~Certificate of R~~egistration shall include but not be limited to: the name, address and phone number of the operator of the facility; the address and phone number of the facility; the maximum number of ~~tenants~~residents who can reside at the facility; the effective date and expiration date of the registration; and a statement in a prominent location and typeface that states "**A ~~C~~ertificate of Registration does not constitute approval, recommendation or endorsement of a room and board facility by ~~the Seniors Aging and People with Disabilities~~Division program within the Oregon Department of Human Services."**

(4) The issuance of a ~~Certificate of R~~egistration shall not mean that the ~~Department~~Division has inspected, approved or made any representation regarding the quality of a ~~room and board~~RB facility.

(5) A ~~room and board~~RB facility operator shall not advertise, represent or imply that a home has been inspected or approved by the State of Oregon.

Stat. Auth.: ORS 410.070, 443.485
Stats. Implemented: ORS 443.480, 443.500

411-068-0020 Renewal

(1) At least 30 days prior to the expiration of the registration, a reminder notice and application for renewal will be sent by the ~~Department~~Division to the current operator. If the ~~Department~~Division receives the application for renewal and the annual registration fee of \$20 prior to the expiration date, the facility's registration shall remain in force until the ~~Department~~Division ~~takes action~~acts on the application for renewal. If the application for renewal and the fee are not submitted prior to the expiration date, the facility shall be considered an unregistered facility subject to civil penalties.

(2) The application for renewal shall include the same information as the original application for registration as specified in OAR 411-068-0010(1).

(3) The ~~Department~~Division shall respond to the application for renewal in the same manner and within the same periods of time specified in OAR 411-068-0015.

Stat. Auth.: ORS 410.070, 443.485
Stats. Implemented: ORS 443.480, 443.500

411-068-0025 Exceptions

(1) An operator or applicant may apply to the ~~Division~~Department for an exception from the provisions of these rules. An exception may be granted if the operator proves to the ~~Division~~Department by clear and convincing evidence that such an exception will not jeopardize the health, safety, and welfare of the ~~resident~~tenants.

(2) Any exception will be granted in writing and reviewed at each renewal period.

Stat. Auth.: ORS 410.070, 443.485
Stats. Implemented: ORS 443.480, 443.500

411-068-0030 Waiver of Registration Requirement

(1) Any city or county that requires registration or licensure of ~~room and board~~RB facilities may request a waiver of the requirements of ORS 443.480 to 443.500 for facilities within its jurisdiction. Such a request shall be made in writing to the ~~Division~~Department and shall include a copy of the ordinance or regulation and an explanation of why the city or county believes the requirements are substantially similar or superior to the requirements of ORS 443.480 to 443.500 and these rules.

(2) If the ~~Division~~Department finds that the requirements of the local jurisdiction are substantially similar or superior to ORS 443.480 to 443.500 and these rules, it shall issue a waiver in writing to the local jurisdiction. Such a waiver shall be reviewed by the ~~Department~~division upon amendment of the local ordinance or regulation, or upon amendment of ORS 443.480 to 443.500 or these rules.

(3) If the ~~Division~~Department finds that the local requirements are not substantially similar or superior to ORS 443.480 to 443.500 and these rules, the ~~Department~~division shall issue a written order to the local jurisdiction denying the request for a waiver.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0035 Identification

The ~~Division~~Department shall establish and maintain a statewide registry of ~~room and board~~RB facilities which shall be made available upon request.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0040 Residency Agreement

(1) Prior to accepting compensation from or providing services to any elderly or disabled person, the operator or ~~resident~~tenant manager and the person seeking residence at the facility shall both sign a residency agreement. Such an agreement shall include:

(a) ~~Disclosure of all monthly charges and other fees;~~All monthly charges and other fees

(b) A description of all services to be provided.

(c) A copy of the house rules, including any restrictions or limitations on the use of the facility by ~~residents~~ tenants such as use of tobacco or alcohol, use of telephones, visitors, etc. House rules shall not violate landlord tenant laws or these administrative rules;

(d) The terms and conditions under which the agreement may be terminated by either party, including any policy on refunds; and

(e) If the ~~resident~~ tenant chooses to have the operator act as representative payee for the payment of the ~~resident's~~ tenant's Social Security benefits, the residency agreement shall indicate this choice.

(2) The residency agreement shall conform to ORS Chapter 90 and 91, and all other state, federal or local statutes, rules or ordinances relating to the rights and responsibilities of landlords and tenants.

(3) The operator shall maintain a record of the original signed residency agreement(s) for each ~~resident~~ tenant.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0045 Standards for Operators of Room and Board Facilities

(1) The ~~Division~~ Department may deny registration to an applicant if any of the following conditions apply:

(a) The applicant or ~~resident~~ tenant manager, if applicable, has been convicted of one or more crimes described in OAR 407-007-02810 or

(b) The applicant has had a certificate to operate a ~~a room and board~~ RB facility, or a license to operate a foster home or residential care facility denied, suspended, revoked or ~~refused to be non-~~ renewed in this or any other state/county if the denial, suspension, revocation or ~~refusal to renew~~ non-renewal was due to abuse of the ~~residents~~ tenants or a threat to the health and safety of the ~~residents~~ tenants. The applicant or operator is required to establish to

the ~~Division~~ Department by clear and convincing evidence his/her ability and fitness to operate a ~~room and board~~ RB facility. If the applicant or operator does not meet this burden, ~~then the Division~~ the Department shall deny, suspend, revoke or refuse to renew the ~~license~~ registration;

(A) The applicant or operator is associated with a person whose registration or license for a ~~room and board~~ RB facility, a foster home or residential care facility was denied, suspended, revoked or not renewed due to abuse of the ~~residents~~ tenants or a threat to the health and safety of the ~~tenants~~ residents within three years preceding the application, unless the applicant or operator can demonstrate to the ~~Division~~ Department by clear and convincing evidence that the person does not pose a threat to the ~~residents~~ tenants;

(B) For purposes of this subsection, an applicant or operator is "associated with" a person as described in paragraph (1)(~~be~~)(A) of this rule if the applicant or operator:

- (i) Resides with the person;
- (ii) Employs the person in the ~~room and board~~ RB facility;
- (iii) Receives financial backing from the person for the benefit of the facility;
- (iv) Receives managerial assistance from the person for the benefit of the facility; or
- (v) Knowingly allows the person to have access to the facility.

(2) If a new ~~resident~~ tenant manager begins employment in that capacity during the time period covered by the ~~Certificate of Registration~~ registration, the operator shall submit that person's name, birth date, and evidence of a completed background check for the new tenant Social Security number, ~~and form SDS 303 completed and signed by the new resident~~ manager.

Stat. Auth.: ORS 410.070, 443.485
Stats. Implemented: ORS 443.480, 443.500

411-068-0050 Standards for a Room and Board Facility

~~Each facility must meet the following standards for the protection of residents:~~

(1) Each facility shall meet applicable local zoning and building codes, and state and local fire, sanitary and safety regulations.

(2) Bedrooms for all household occupants must have:
~~Each bedroom shall:~~

(a) Been constructed as a bedroom when the building was built or remodeled under permit;~~Be adequately ventilated, heated, and lighted and have an outside window;~~

(b) A finished interior with walls or partitions of standard construction that extend from floor to ceiling;~~Be separate from the operator, members of the operator's family, or other employees;~~

(c) A door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;~~Have adequate space for bed and personal belongings; and~~

(d) Be adequately ventilated, heated, and lighted and have at least one window that opens to the outside;~~Have a bed with adequate bedding and linens available.~~

(e) Be separate from the operator, members of the operator's family or other employees;

(f) At least 70 square feet of usable floor space of one tenant or 120 square feet for two tenants excluding any area where a sloped ceiling does not allow a person to stand upright;

(g) Have a bed with adequate bedding and linens available; and

(h) No more than two occupants per room.

(3) A telephone must be available for use by ~~residents~~tenants. A listing of emergency telephone numbers, including the numbers of the local police, fire department, ambulance, Adult Protective Services, the Local Licensing Authority, and Aging and ~~and the local Area Agency on Aging/Seniors and People with Disabilities~~ program within the Division ~~Department~~ office shall be placed in plain view on or next to the telephone.

(4) Bathing and toilet areas shall be private, clean, in good repair, and shall be accessible at all times. There shall be adequate supplies of toilet paper and soap for each bathroom.

(5) FIRE SAFETY. Operators must meet minimal fire safety standards including:

(a) Within 24 hours of arrival to the RB facility each tenant shall be shown how to utilize all exits from the facility. The operator must have a safe evacuation plan and may be required to demonstrate the evacuation plan.~~All residents shall be shown how to utilize all exits from the facility within 24 hours of arrival to the facility;~~

(b) A functional smoke alarm with back-up battery must be installed in all bedrooms and hallways or access ways that adjoin sleeping areas.~~Facilities shall be equipped with smoke detectors in each bedroom and extinguisher(s) in functional condition which are of a type approved for home use;~~

(c) A functional carbon monoxide alarm with back-up battery must be installed within 15 feet of each bedroom and at a height as recommended by the manufacturer.~~Sleeping quarters shall be confined to the first floor for nonambulatory residents and others with substantial disabling conditions; and~~

(d) At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.~~Recommendations of the local fire department or State~~

~~Fire Marshal shall be enforced. The Division may request an inspection for fire safety upon receipt of a complaint regarding a facility.~~

(e) Smoking is prohibited in any bedroom, including that of the tenant, the operator, tenant manager, occupants, and in any room where oxygen is used or stored.

(f) Sleeping quarters shall be confined to the first floor for non-ambulatory tenants and others with substantial disabling conditions.

(g) Recommendations of the local fire department or State Fire Marshal shall be enforced. The Department may request an inspection for fire safety upon receipt of a complaint regarding a facility.

(6) Food Preparation and Storage:

(a) All food and drink shall be clean; ~~wholesome;~~ free from spoilage, pathogenic organisms, toxic chemicals, and other harmful substances; and shall be prepared, stored, handled, and served so as to be safe for human consumption. Food storage and preparation areas shall be kept in clean and sanitary condition. The temperature of potentially hazardous food shall be maintained at ~~45-41~~ degrees Fahrenheit or below, or at ~~140-135~~ degrees Fahrenheit or above at all times. (see the Oregon Health Authority's Food Sanitation Rule).

(b) Employees or ~~residents-tenants~~ engaged in food handling shall observe sanitary methods, including hand washing as appropriate. Employees or ~~residents-tenants~~ with diseases which can be transmitted by foods shall not be assigned to food handling duties.

(c) Poisonous or toxic materials shall be prominently and distinctly labelled for easy identification of contents, and shall not be used in a way that contaminates food equipment, or utensils, nor in a way that constitutes a hazard to employees or ~~residentstenants;~~ and

(d) Meals provided by the facility shall be nutritionally balanced and shall provide the recommended daily allowance of vitamins, minerals, and calories.

(7) Medication storage and administration:

(a) Tenant medications must be stored separately from medications belonging to the operator, tenant manager, and all other non-tenants.

(b) All tenant medications, including over-the-counter medications, must be stored as directed by the manufacturer in the original labeled container unless stored in a seven-day closed container manufactured for the advanced set-up of medications. Stored medications must be kept in a locked location in the tenant's bedroom, or a locked central location that is cool, clean, dry, not subject to direct sunlight or fluctuation in temperature.

(c) Medications requiring refrigeration must remain refrigerated and must also be locked and stored separately from non-tenant medications.

(d) Facility staff must know the location of the medications and must have the key to the medication cabinet. Facility staff may assist a tenant with self-administration of medications if a tenant has elected to have the facility store medication on behalf of the tenant. Facility staff may assist by dispensing a tenant's medication that is locked in a central location but shall not administer medications to tenant by placing medications in or on a tenant's body.

~~(78)~~ Operators shall maintain a record of all compensation received from a ~~resident tenant~~ in return for services, and a record of all compensation paid to a ~~resident tenant~~ for work or other services performed by a ~~residenttenant~~.

~~(89)~~ ~~Residents-Tenants~~ shall be allowed to exercise all civil and human rights accorded to other citizens, such as voting, privacy, and sending and receiving mail unopened.

~~(910)~~ An operator and other employee of a facility shall not abuse ~~residents tenants~~ and shall exercise reasonable precautions against any other conditions which threaten the health, safety or welfare of ~~residentstenants~~.

Stat. Auth.: ORS 410.070, 443.485
Stats. Implemented: ORS 443.480, 443.500

411-068-0055 Limitation on the Provision of Services in a Room and Board Facility

- (1) No operator or other employee of a ~~room and board~~RB facility shall provide care as defined in OAR 411-068-0000 to any resident tenant of a ~~room and board~~RB facility.
- (2) No residency agreement of a ~~room and board~~RB facility shall contain any promise to provide any service that falls within the definition of care specified in OAR 411-068-0000.
- (3) Nothing in these rules is meant to prohibit an operator or other employee from ~~providing assistance to a resident~~aiding a tenant in the self-administration of medication provided that the resident tenant requests such assistance.
- (4) Nothing in these rules is meant to prohibit an operator or employee from providing non-care related services to a resident tenant.
- (5) No operator or other employee of a ~~room and board~~RB facility shall provide services or engage in behavior that constitutes a financial conflict of interest including: borrowing from or loaning money to residents tenants; witnessing wills in which the operator or employee is beneficiary; adding the operator's or employee's name to a resident's tenant's bank accounts or other personal property; inappropriately expending a resident's tenant's personal funds; co-mingling the resident's tenant's funds with the operator's or other residents' tenants' funds; or becoming guardian or conservator for a resident tenant.
- (6) Operators shall make reasonable efforts to refer residents tenants in need of care services to appropriate social service agencies or medical facilities. If a resident is in tenant needs of protective services, through self-neglect or inability to provide for his or her own care needs, the operator shall call the Division Department or the local area agency on agingLocal Licensing Authority.

(7) Operators who wish to provide care to tenants as defined in OAR 411-068-0000 ~~to residents~~ must apply for licensure as an adult foster home or a residential care facility.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0060 Complaints

(1) The ~~Division~~Department shall issue a notice to each ~~room and board~~RB facility, which shall include the telephone number of the ~~Division~~Department and the ~~local~~Local area agency on agingLicensing Authority and the procedures for making complaints. The notice shall be posted in a conspicuous place available to ~~residents~~tenants.

(2) Complaints regarding a facility may be made to the ~~Division~~Department or ~~local~~Local area agency on agingLicensing Authority by any person, ~~whether or not~~including a ~~resident~~tenant of the facility. When a complaint is received, the ~~Division~~Department or authorized representative shall investigate ~~or cause an investigation of the facility~~the complaint.

(3) No operator or employee of a facility shall retaliate against a ~~resident~~tenant by increasing charges, decreasing services, rights or privileges; threatening to increase charges or decrease services, rights or privileges; taking or threatening to take any action to coerce or compel the ~~resident~~tenant to leave the home; or by harassing, abusing, or threatening to harass or abuse a ~~resident~~tenant in any manner related to the filing, or possible filing, of a complaint with the ~~Division~~Department.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0065 Complaint Records

(1) A record shall be maintained by the ~~Division~~Department of all complaints and any action taken on the complaint. Any information regarding the investigation of the complaint shall not be filed in the public file until the investigation has been completed.

(2) The name, addresses, and other identifying information of the complainant, the ~~resident~~tenant, and any witnesses are confidential and shall not be placed in the public record.

(3) Any person has the right to inspect and photocopy the public complaint files maintained by the ~~Division~~Department. Disclosure of information for the public complaint file shall be governed by relevant statutes concerning public records and confidentiality.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0070 Access and Inspection

(1) ~~The Division~~Department staff or authorized representative of the Department shall be permitted access to enter and inspect all registered facilities upon receipt of a complaint or other information that gives the ~~Division~~Department cause to believe there exists a threat to the health, safety or welfare of the ~~residents~~tenants.

(2) If an authorized representative of the ~~Division~~Department is denied access to enter and inspect a registered facility when investigating a complaint, such denial shall be grounds for suspension, revocation, or non-renewal ~~refusal to renew~~ registration of registration.

(3) When investigating a complaint, an authorized representative of the ~~Division~~Department shall be permitted access to the ~~residents~~tenants of the facility in order to interview ~~residents~~tenants privately and to inspect copies of the residency agreement and other records maintained by the operator.

(4) Upon receipt of a complaint or request of the ~~Division~~Department, state and local fire inspectors shall be permitted access to enter and inspect a facility regarding fire safety.

(5) Upon receipt of a complaint or request of the ~~Division, Department, the Local Licensing Authority, the Oregon Health Authority,~~ state and local ~~health officers~~authorities shall be permitted access to enter and inspect a facility regarding health and sanitation.

(6) If the ~~Division-Department~~ or authorized representative has reasonable cause to believe a facility subject to the requirements of ORS 443.480 to 443.500 is operating without registration, it may request permission to enter the facility to determine if it is in violation of ORS 443.480 to 443.500 and/or it may apply to the district or circuit courts for a search warrant.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0075 Procedures for Correction of Violations

(1) If the ~~Division-Department~~ or its authorized representative determines that abuse has occurred in aan RB facility, the operator must be notified verbally and in writing to immediately cease the abusive act or to take action to prevent further abuse.

(2) If the Department or its authorized representative determines a violation of these rules has occurred, the Department shall notify the operator in writing, by hand delivery, or by regular mail. ~~If an investigation finds a violation of these rules, the Division shall notify the provider in writing.~~

(3) The notice of violation shall state the following:

(a) A description of each condition that constitutes a violation;

(b) Each regulation that has been violated;

(c) Except in cases of imminent danger, a specific time frame for correction, but no later than ~~sixty (60)~~ calendar days after receipt of the notice;

(d) Sanctions that may be imposed against the facility for failure to correct the violations; and

(e) Right to contest the violations if an administrative sanction is imposed.

(4) During the time frame for correction specified in the notice of violation, the operator or the ~~Division-Department~~ may request a conference to

discuss the findings. The conference shall be scheduled within ~~ten~~10 calendar days of a request by either party.

(5) The purpose of the conference is to discuss the findings and to provide information to assist the operator in complying with the requirements of these rules.

(6) The request by an operator or the Division-Department for a conference shall not extend any previously established time limit for correction.

(7) The operator shall notify the Division-Department in writing of correction of violations no later than the date specified in the notice of violation.

(8) The Division-Department may conduct an inspection of the facility after the date the Division-Department receives the notice of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(9) For violations that present an imminent danger to the health, safety or welfare of residentstenants, the notice of violation shall order the operator to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation, either verbally or in writing. The Division-Department may inspect the home after the 24-hour period to determine if the violations have been corrected as specified in the notice ~~of~~ violation.

(10) If residents-tenants are in immediate danger, the registration may be suspended or revoked, and the Department or authorized representative may make arrangements ~~made~~ to voluntarily move the residentstenants.

(11) If the violations have not been corrected by the date specified in the notice of violation or if the Division-Department has not received a report of compliance, the Division-Department may institute one or more administrative sanctions.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0080 Administrative Sanctions

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) ~~A Civil penalty;~~

(b) ~~A Denial, suspension, revocation, or non-renewal refusal to renew of a~~ registration.

(2) If the ~~Division~~ Department imposes an administrative sanction, it shall serve a notice of administrative sanction upon the operator personally or by certified mail.

(3) The notice of administrative sanction shall state all elements required by ORS 183.415 including but not limited to:
~~The notice of administrative sanction shall state:~~

(a) Each sanction imposed;

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) Each statute or rule allegedly violated;

(d) A statement of the operator's right to a contested case hearing;

(e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that the ~~Department's~~ Division's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case;
~~and~~

(g) A statement that the notice becomes a final order upon default if the operator fails to request a hearing within the specified time; and

(h) A statement of the operator's right to request an informal conference in addition to, or in-lieu of, a contested case hearing. An

operator may request an informal conference with the Department to discuss sanctions imposed.

(4) If an administrative sanction is imposed for reasons other than abuse, it shall be preceded by a hearing if the operator requests the hearing in writing within 60 calendar days after receipt of the notice.

(5) If an operator fails to request the hearing within the 60 calendar days, the notice of administrative sanction shall become a final order of the Division-Department by default.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0085 Denial, Suspension, Revocation or Refusal to Renew Registration

(1) The Division-Department may immediately suspend, revoke, or non-renew~~refuse to renew~~ a Certificate of Registration for reason of abuse, neglect or exploitation of a tenant as defined in OAR 411-020-0002~~of a resident~~. The operator may request a review of the decision by submitting a request, in writing, within ~~ten~~ (10) calendar days of the notice and order of suspension, revocation or non-renewal.

(2) Within ~~ten~~ 10 calendar days of receipt of the operator's request for a review, the Division-Department administrator or designee shall review all material relating to the allegation of abuse and to the suspension, revocation or non-renewal, including any written documentation submitted by the operator within that time frame. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension, revocation or non-renewal ~~refusal to renew~~ shall be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS ~~183.310 to 183.550~~ if requested within 90 calendar days.

(3) The Division-Department may also deny, suspend, revoke, or refuse ~~non-renew~~ a registration where it finds:

(a) An operator has failed to provide an approved background check in accordance with OAR 411-068-0008(1).

~~There has been substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of the residents in a room and board facility; or~~

(b) There has been substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of the tenants in a RB facility. An operator or employee refuses to allow access and inspection by an authorized representative of the Division; or

(c) An operator or employee refuses to allow access and inspection by an authorized representative of the Department. The application or renewal for the Certificate of Registration contains fraudulent information or material misrepresentations; or

(d) The application or renewal for the registration contains fraudulent information or material misrepresentations.

~~Fails to comply with a final order of the Division to correct a violation of these rules for which an administrative sanction has been imposed; or~~

(e) An operator has failed to comply with a final order of the Department to correct a violation of these rules for which an administrative sanction has been imposed. Fails to comply with a final order of the Division imposing an administrative sanction.

(f) An operator has failed to comply with a final order of the Department imposing an administrative sanction.

(4) If registration is suspended, revoked, or non-renewed, the Division Department or an authorized representative may arrange for residents tenants to voluntarily move for their protection.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500

411-068-0090 Civil Penalties

(1) Civil penalties, not to exceed \$200 per violation per day, may be assessed for a facility operating without a current registration.

(2) Any civil penalty imposed under this section shall become due and payable when the person incurring the penalty receives a notice in writing from the ~~Division~~Department. The notice shall be sent by registered or certified mail and shall include all elements required by ORS 183.415 including but not limited to:

- (a) A reference to applicable the particular sections of the statute, rule, standard, or order involved;
- (b) A short and plain statement of the matters asserted or charged;
- (c) A statement of the amount of the penalty or penalties imposed; and
- (d) A statement of the right to request a hearing.

(3) The person to whom the notice is addressed shall have ~~ten-10 calendar~~ days from the date of mailing-service in which to make written application for a contested case hearing.

(4) All hearings shall be conducted according to the applicable provisions of ORS 183 relating to contested cases before the Department.~~310 to 183.550.~~

(5) If the person notified fails to request a hearing within the time specified; or if after a hearing the person is found to be in violation of a statute, rule, or order, an order may be entered assessing a civil penalty.

(6) Unless the penalty is paid within ~~ten-10 calendar~~ days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the ~~person~~operator.

(7) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(8) All penalties recovered under ORS 443.480 to 443.500 shall be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 410.070, 443.485

Stats. Implemented: ORS 443.480, 443.500