

NOTE: This draft rule addresses proposed language to implement SB99.

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

**CHAPTER 411
DIVISION 54**

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

Amendments are proposed to the following six rules:

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411-054-0005 Definitions *(Amended 06/24/2022)*

For the purpose of these rules, the following definitions apply:

- (1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).
- (2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing and grooming, bathing and personal hygiene, mobility, elimination, and cognition.
- (3) "Acuity-Based Staffing Tool" means the tool described in ORS 443.432 or an acuity-based staffing tool adopted by a facility that meets requirements established by the Department in OAR 411-054-0050. An ABST is used by a facility to assess the acuity of each resident and determine the amount of staff time necessary to meet the 24-hour scheduled and unscheduled needs of each resident. Facilities may choose to use the tool established by the Department, the ODHS ABST, or use another acuity-based staffing tool.
- (4) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.
- (5) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility as described in OAR 411-054-0065.
- (6) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.
- (7) "Aging and People with Disabilities (APD)" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(8) "Applicant" means the individual, individuals, or entity, required to complete a facility application for license.

(a) Except as set forth in OAR 411-054-0013(1)(b), applicant includes a sole proprietor, each partner in a partnership, and each member with a 10 percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business;
or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor, each partner in a partnership, and each member with a five percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business;
or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(9) "Approved Dementia Training" means a dementia training curriculum approved by an entity selected by the Department to be an approving entity pursuant to a Request for Application (RFA) process.

(10) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to

perform specific activities in relation to residential care and assisted living facilities including:

- (a) Conducting inspections and investigations regarding protective service, abuse, and neglect.
- (b) Monitoring.
- (c) Making recommendations to the Department regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(11) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(12) "Building Codes" are comprised of the set of specialty codes, including the Oregon Structural Specialty Code (OSSC), Oregon Mechanical Specialty Code (OMSC), Oregon Electrical Specialty Code (OESC), Oregon Plumbing Specialty Code (OPSC), and their reference codes and standards.

(13) "Caregiver" means a facility employee who is either direct care staff or a universal worker, who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents.

(14) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.

(15) "Change of Condition - Short-Term" means a change in the resident's health or functioning, that is expected to resolve or be reversed with

minimal intervention, or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(16) "Change of Condition - Significant" means a major deviation from the most recent evaluation, that may affect multiple areas of functioning or health, that is not expected to be short-term, and imposes significant risk to the resident. Examples of significant change of condition include, but are not limited to:

- (a) Broken bones.
- (b) Stroke, heart attack, or other acute illness or condition onset.
- (c) Unmanaged high blood sugar levels.
- (d) Uncontrolled pain.
- (e) Fast decline in activities of daily living.
- (f) Significant unplanned weight loss.
- (g) Pattern of refusing to eat.
- (h) Level of consciousness change.
- (i) Pressure ulcers (stage 2 or greater).

(17) "Choice" means a resident has viable options that enable the resident to exercise greater control over their life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(18) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(19) "Competency" means to possess specific knowledge, technical skill, and the ability to perform tasks related to the role and responsibilities of direct care staff.

(20) "Competency Assessment" means an evaluation of knowledge, technical skill and ability to carry out care pursuant to the requirements in OAR 411-054-0070. Evaluation shall include verification and documentation of direct care staff competency through observation, written testing or verbal testing.

(21) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(22) "Consumer Summary" means a summary of services provided by the facility. This statement also includes a summary of services not provided. This summary is one of the documents that must be provided to potential residents before move-in.

(23) "Conversion Facility (CF)" means a nursing facility that has followed the requirements in these rules to become a residential care facility through the conversion facility process.

(24) "Department" means the Oregon Department of Human Services (ODHS).

(25) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:

(A) Chosen by the individual or, as applicable, the legal representative;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual,

or as applicable the legal representative, in connection with the provision of funded supports.

(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(b) An individual or the legal representative of the individual is not required to appoint a designated representative.

(26) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.

(27) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

- (a) Medication administration.
- (b) Resident-focused activities.
- (c) Assistance with activities of daily living.
- (d) Supervision and support of residents.
- (e) Serving meals, but not meal preparation.

(28) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.

(29) "Director" means the Director of the Department or that individual's designee.

(30) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made, that renders

the licensee unable to operate the facility or makes the facility uninhabitable.

(31) "Disclosure Statement" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(32) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(33) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.

(34) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility. For purposes of HCBS, "facility" can also mean "provider".

(35) "Gender expression" means an individual's gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the individual was assigned at birth.

(36) "Gender identity" means an individual's internal, deeply held knowledge or sense of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth or name and sex as it appears in medical records or as it is described by any other individual, including a family member, conservator or legal representative of the individual. An individual's gender is the last gender identity expressed by an individual who lacks the present ability to communicate.

(37) "Gender nonconforming" means having a gender expression that does not conform to stereotypical expectations of one's gender.

(38) "Gender transition" means a process by which an individual begins to live according to that individual's gender identity rather than the sex the

person was assigned at birth. The process may include changing the individual's clothing, appearance, name or identification documents or undergoing medical treatments.

(39) "Harass" or "harassment" means to act in a manner that is unwanted, unwelcomed or uninvited, that demeans, threatens or offends a resident and results in a hostile environment for a resident. This includes requiring a resident to show documentation of gender identity in order to gain entrance to a restroom or other area of a care facility that is available to other individuals of the same gender identity as the resident is harassment.

~~(35)~~(40) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division of the Oregon Health Authority (OHA).

~~(36)~~(41) "HCB" means "Home and Community-Based".

~~(37)~~(42) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. ODHS, Safety, Oversight and Quality and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.

~~(38)~~(43) "Health Care Facility" means a facility, as defined in ORS 442.015(12)(a), that provides acute care or a higher level of care to a resident according to OAR 411-054-0080.

~~(39)~~(44) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

~~(40)~~(45) "Hospice Program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life-threatening disease with a limited medical prognosis. A hospice program is an institution for purposes of ORS 146.100.

~~(41)~~(46) "Immediate Jeopardy" means a situation where the failure of a residential care facility to comply with a Department rule has caused, or is likely to cause, a resident:

- (a) Serious injury;
- (b) Serious harm;
- (c) Serious impairment; or
- (d) Death.

~~(42)~~(47) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.

~~(43)~~(48) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

~~(44)~~(49) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

~~(45)~~(50) "Individual" means a person enrolled in or utilizing HCBS.

~~(46)~~(51) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 (1)(d) and (2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual, or as applicable the legal representative, as described in OAR 411-004-0040.

~~(47)~~(52) "Informed Consent" means options, risks, and benefits have been explained to an individual, and, as applicable, the legal representative of the individual, in a manner that the individual, and, as applicable, the legal representative, comprehends.

~~(48)~~(53) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

~~(49)~~(54) "Intensive Intervention Community (IIC)" means an RCF endorsed to house fewer than six socially dependent individuals or individuals with physical disabilities. The purpose of the IIC is to serve individuals with co-occurring mental, emotional, or behavioral disturbances who are more appropriately served in smaller settings.

~~(50)~~(55) "Involuntary Move-Out" means a move out of a resident to which the resident or the resident's legal representative does not agree.

(56) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation. These terms are defined below:

(a) "Lesbian" means ...

(b) "Gay" means ...

(c) "Bisexual" means ...

(d) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care.

(d) "Queer" means ...

(e) "Intersex" means ...

(f) "Asexual" means ...

(g) "2S" means

~~(51)~~(57) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

~~(52)~~(58) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

~~(53)~~(59) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(b) For an individual 18 years of age and older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.

~~(54)~~(60) "Major Alteration":

(a) Means:

(A) Any structural change to the foundation, floor, roof, exterior, or load bearing wall of a building;

(B) The addition of floor area to an existing building; or

(C) The modification of an existing building that results in a change in use where such modification affects resident services or safety.

(b) Does not include cosmetic upgrades to the interior or exterior of an existing building (for example: changes to wall finishes, floorings, or casework).

~~(55)~~(61) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

~~(56)~~(62) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes).

(a) Modified special diets include, but are not limited to:

- (A) Small frequent meals;
- (B) No added salt;
- (C) Reduced or no added sugar; and
- (D) Simple textural modifications.

(b) Medically complex diets are not included.

~~(57)~~(63) "New Construction" means:

- (a) A new building.
- (b) An existing building or part of a building that is not currently licensed.
- (c) A major alteration to an existing building.
- (d) Additions, conversions, renovations, or remodeling of existing buildings.

~~(58)~~(64) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851.

~~(59)~~(65) "OHA" means the Oregon Health Authority.

~~(60)~~(66) "Owner" means an individual with an ownership interest.

~~(61)~~(67) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

~~(62)~~(68) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030.

(a) FOR INDIVIDUALS RECEIVING MEDICAID. The person-centered service plan coordinator completes the person-centered service plan.

(b) FOR NON-MEDICAID INDIVIDUALS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.

~~(63)~~(69) "Person-Centered Service Plan Coordinator" means a:

(a) Resident's AAA or APD case manager assigned to provide case management services or person-centered service planning for and with individuals; or

(b) Person of the individual's choice for individuals who pay privately.

~~(64)~~(70) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

~~(65)~~(71) "Pre-Service Training" means training that must be completed before direct care staff provide care to residents.

~~(66)~~(72) "Primary Care Provider" means the health care provider primarily responsible for the on-going diagnosis and treatment of the resident where they currently reside.

~~(67)~~(73) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

~~(68)~~(74) "Provider" means any person or entity providing HCBS.

~~(69)~~(75) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

~~(70)~~(76) "Psychotropic Medications" means any drug that affects brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories:

(a) Anti-psychotic.

(b) Anti-depressant.

(c) Anti-anxiety.

(d) Hypnotic.

~~(71)~~(77) "Qualified facility staff," for purposes of OAR 411-054-0080, means the facility nurse, administrator, or administrator's designee.

~~(72)~~(78) "Quality Measurement Program" means the quality metrics program, as described in OAR 411-054-0320.

~~(73)~~(79) "Quality Measurement Council" means a group of individuals appointed by the Governor to develop and oversee the Quality Metric Reporting Program as described in OAR 411-054-0320.

~~(74)~~(80) "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR 333-675-0000.

~~(75)~~(81) "Renovate" means to restore to good condition or to repair.

~~(76)~~(82) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting. This agreement is one of the documents that must be provided to potential residents before move-in.

~~(77)~~(83) "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

~~(78)~~(84) "Resident Evaluation" means an evaluation that uses the information obtained when addressing the elements required in OAR 411-054-0034(5).

~~(79)~~(85) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

~~(80)~~(86) "Residential Care Facility Administrator (RCFA)" means an administrator of a residential care or assisted living facility, as defined in ORS 678.710 and licensed by the Oregon Health Licensing Office, according to OAR chapter 853. All individuals serving as administrators in residential care or assisted living facilities will be required to hold this license as of January 1, 2022. Until that deadline, as described in OAR 411-054-0065, individuals serving as administrators will meet the requirements for one of three options:

- (a) Full administrator license;
- (b) Provisional administrator license;
- (c) ODHS-approved administrator.

~~(81)~~(87) "Restraint" means:

(a) Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached to or adjacent to the individual's body that the individual cannot remove easily, which restricts freedom of movement or normal access of the individual to the individual's body. Any manual method includes physically restraining someone by manually holding someone in place.

(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the individual's medical or psychiatric condition.

~~(82)~~(88) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).

~~(83)~~(89) "Risk Agreement" means a process where a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

~~(84)~~(90) "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

~~(85)~~(91) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the

resident. For IICs, the term "interdisciplinary team" is synonymous with "service planning team."

~~(86)~~(92) "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

~~(93)~~ "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.

~~(87)~~(94) "Staffing Assessment" means a review conducted by the Department to determine if a facility is using an acuity-based staffing tool according to administrative rule.

~~(88)~~(95) "Staffing Levels" means the number of staff required to provide the levels, intensity and qualifications of staff necessary to meet the scheduled and unscheduled needs of each resident 24 hours a day, seven days a week. Staffing levels are established by using an acuity-based staffing tool to determine the amount of time and expertise necessary to provide services to assist with activities of daily living and related tasks.

~~(89)~~(96) "Staffing Plan" means a plan outlining the staffing levels required to meet the scheduled and unscheduled needs of all residents within a facility. Staffing plans should incorporate and be consistent with the facility's acuity-based staffing tool data.

~~(90)~~(97) "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.

(a) For the purpose of these rules, subject individual includes:

(A) All applicants, licensees, and operators of a residential care or assisted living facility.

(B) All individuals employed or receiving training in an assisted living or residential care facility.

(C) Volunteers, if allowed unsupervised access to residents.

(b) For the purpose of these rules, subject individual does not apply to:

(A) Residents and visitors of residents.

(B) Individuals that provide services to residents who are employed by a private business not regulated by the Department.

~~(91)~~(99) "Substantial Compliance" means a level of compliance with state law and rules of the Department such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents of a facility.

~~(92)~~(100) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

~~(93)~~(101) "These Rules" mean the rules in OAR chapter 411, division 054.

~~(94)~~(102) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

(a) The general public.

(b) A specific population, for example, residents with dementia or traumatic brain injury.

~~(95)~~(103) "Unit" means the personal and sleeping space of an individual receiving services in an RCF or ALF setting, as agreed to in the Residency Agreement.

~~(96)~~(104) "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

~~(97)~~(105) "Voluntary Move-Out" means the facility and the resident, or resident's legal representative, have mutually agreed the facility can no longer meet the resident's health, behavior or care needs.

Stat. Auth.: ORS 410.070, 443.450, 443.738

Stats. Implemented: ORS 443.400 - 443.455, 443.738, 443.991, 678.710

411-054-0025 Facility Administration

(Amended 06/09/2021)

(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) Resident Rights and Protections, as described in OAR 411-054-0027.

(g) The LGBTQIA2S+ Poster, as described in OAR 411-054-0026(4).

~~(f)~~(h) 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.

(i) Protocols and policy addressing LGBTQIA2+ protections, as defined in Oregon Laws 2023, Section 567, xxx.

(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) Unless required by state or federal law, a care facility shall not disclose any personally identifiable information regarding:

(A) A resident's sexual orientation;

(B) Whether a resident is LGBTQIA2S+;

(C) A resident's gender transition status; or

(D) A resident's human immunodeficiency virus status.

(c) The facility shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (b) of this section to other residents, visitors or facility staff, except to the minimum extent necessary for facility staff to perform their duties.

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

~~(e)~~(e) 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, 443.450

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

411-054-0026 Disclosure and Notification to Potential Residents
(Amended 12/15/2021)

The facility must provide the following documents to potential residents before move-in:

(1) UNIFORM DISCLOSURE STATEMENT. This is a Department-designated form (form APD 9098A) to provide to each individual who requests information about the facility.

(2) RESIDENCY AGREEMENT. This is an agreement prepared by the facility. The residency agreement must be reviewed by the Department before distribution and must include the following:

(a) Terms of occupancy, including policy on the possession of firearms and ammunition.

(b) Payment provisions including the basic rental rate and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable.

(c) The method for evaluating a resident's service needs and assessing the costs for the services provided.

(d) Policy for increases, additions, or changes to the rate structure. The disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the

requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan.

(e) Refund and proration conditions.

(f) A description of the scope of resident services available according to OAR 411-054-0030.

(g) A description of the service planning process.

(h) Additional available services.

(i) The philosophy of how health care and ADL services are provided to the resident.

(j) Resident rights and responsibilities.

(k) The facility's system for packaging medications including the option for residents to choose a pharmacy that meets the requirements of ORS 443.437.

(l) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move consistent with OAR 411-054-0080.

(m) Resident rights pertaining to notification of involuntary move-out.

(n) Notice that the Department has the authority to examine resident records as part of the evaluation of the facility.

(o) The facility's staffing plan.

(p) Additional elements as listed in 411-054-0027(2).

(3) CONSUMER SUMMARY STATEMENT. The facility must develop a Consumer Summary Statement specific to the facility. This form is separate from the residency agreement. For a model consumer summary that may

be used as an example, please see the Department form (form APD 9098CS).

(a) Similar to the residency agreement, this summary statement must be provided to a potential resident before move-in. The consumer summary must include the following:

(A) A summary of the services provided by the facility.

(B) A summary of the services and types of care the facility does not provide.

(C) A statement that, if the facility is not capable of meeting the resident's needs for care and services, the facility may require the resident to move to another facility or care setting, in accordance with OAR 411-054-0080.

(D) A statement explaining that, if a resident leaves the facility to receive acute medical, psychiatric, nursing or other specialized care, the facility will evaluate the facility's ability to meet the resident's care needs before the resident is permitted to return to the facility, in accordance with OAR 411-054-0080(6).

(E) An explanation of the resident's right to appeal should the facility either require the resident to leave the facility, or not permit the resident to return following treatment as described in paragraph (D). Appeal rights are explained in OAR 411-054-0080(7).

(F) A statement as to whether the facility will arrange or coordinate hospice care for a resident upon request.

(b) The information in the summary statement outlined in subsection (a) above must:

(A) Be in writing.

(B) Be written in plain English.

(C) Be explained to the individual or the person acting on behalf of the individual in a manner the individual or representative understands.

(D) Be provided separately from all other disclosure documents, such as the Uniform Disclosure Statement (APD form 9098A), and the facility's Residency Agreement.

(E) Be signed by the individual or the person acting on behalf of the individual, acknowledging that the individual or representative understands the content and implications of the information.

(c) The facility must submit an updated Consumer Summary Statement to the Department any time the facility has a management or ownership change. The Consumer Summary Statement must be submitted to the Department 60 days prior to the change of ownership or management. All Consumer Summary Statements will be posted on the Department's licensing webpage.

(4) LGBTQIA2S+ PROTECTIONS. All current nondiscrimination policy and written materials providing notice of resident rights pursuant to ORS 441.605, and in all places and on all materials where that policy or those written materials are posted, include the following:

(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual's association with another individual on account of the other individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Department of Human Services at (provide current contact information).

~~(4)~~(5) All disclosure information and residency agreements must be written in compliance with these rules.

(a) The facility may not include any provision in the residency agreement, summary statement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.

(b) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to the resident's designated representative.

(c) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed, emailed, or mailed to the Department before distribution.

Stat. Auth.: ORS 410.070

Stat. Implemented: ORS 443.443

411-054-0027 Resident Rights and Protections

(Amended 12/15/2017)

(1) GENERAL RIGHTS. The facility must implement a residents' Bill of Rights. Each resident and the resident's designated representative, if appropriate, must be given a copy of the resident's rights and responsibilities before moving into the facility. The Bill of Rights must state that residents have the right:

(a) To be treated with dignity and respect.

(b) To be given informed choice and opportunity to select or refuse service and to accept responsibility for the consequences.

(c) To be given informed consent before any nontherapeutic examination, observation or treatment is provided.

~~(c)~~(d) To participate in the development of their initial service plan and any revisions or updates at the time those changes are made.

~~(d)~~(e) To receive information about the method for evaluating their service needs and assessing costs for the services provided.

~~(e)~~(f) To exercise individual rights that do not infringe upon the rights or safety of others.

~~(f)~~(g) To be free from neglect, financial exploitation, verbal, mental, physical, or sexual abuse.

~~(g)~~(h) To receive services in a manner that protects privacy and dignity.

~~(h)~~(i) To have prompt access to review all of their records and to purchase photocopies. Photocopied records must be promptly provided, but in no case require more than two business days (excluding Saturday, Sunday, and holidays).

~~(i)~~(j) To have medical and other records kept confidential except as otherwise provided by law.

~~(j)~~(k) To associate and communicate privately with any individual of choice, to send and receive personal mail unopened, and to have reasonable access to the private use of a telephone.

~~(k)~~(l) To be free from physical restraints and inappropriate use of psychoactive medications.

~~(l)~~(m) To manage personal financial affairs unless legally restricted.

~~(m)~~(n) To have access to, and participate in, social activities.

~~(n)~~(o) To be encouraged and assisted to exercise rights as a citizen.

~~(o)~~(p) To be free of any written contract or agreement language with the facility that purports to waive their rights or the facility's liability for negligence.

~~(p)~~(q) To voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of retaliation.

~~(q)~~(r) To be free of retaliation after they have exercised their rights provided by law or rule.

~~(r)~~(s) To have a safe and homelike environment.

~~(s)~~(t) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

~~(t)~~(u) To receive proper notification if requested to move-out of the facility, and to be required to move-out only for reasons stated in OAR 411-054-0080 (Involuntary Move-out Criteria) and have the opportunity for an administrative hearing, if applicable.

(2) LGBTQIA2S+ PROTECTIONS. A care facility and the staff of the facility may not take any of the following actions based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status:

(a) Deny admission to a care facility, transfer or refuse to transfer a resident within a facility or to another facility or discharge or evict a resident from a facility;

(b) Deny a request by a resident to choose the resident's roommate, when a resident is sharing a room;

(c) If rooms are assigned by gender, assign, reassign or refuse to assign a room to a transgender or other LGBTQIA2S+ resident other than in accordance with the resident's gender identity, unless at the request of the resident or if required by federal law;

(d) Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery or presents as gender nonconforming;

(e) Repeatedly and willfully refuse to use a resident's chosen name or pronouns after being reasonably informed of the resident's chosen name or pronouns;

(f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics, or to engage in grooming practices, that are permitted to any other resident; (g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner;

(h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort;

(i) Fail to accept a resident's verbal or written attestation of the resident's gender identity or require a resident to provide proof of the resident's gender identity using any form of identification;

(j) Fail to take reasonable actions, within the care facility's control, to prevent discrimination or harassment when the facility knows or should have known about the discrimination or harassment; or

(k) Refuse or willfully fail to provide any service, care or reasonable accommodation to a resident or an applicant for services or care.

(2)(3) HCBS RIGHTS.

(a) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than June 30, 2019 for

providers initially licensed before January 1, 2016 the following rights must include the freedoms authorized by 42 CFR 441.301(c)(4) & 42 CFR 441.530(a)(1):

- (A) Live under a legally enforceable residency agreement.
- (B) The freedom and support to access food at any time.
- (C) To have visitors of the resident's choosing at any time.
- (D) Choose a roommate when sharing a bedroom.
- (E) Furnish and decorate the resident's bedroom according to the Residency Agreement.
- (F) The freedom and support to control the resident's schedule and activities.

(b) The rights described in (B) through (F) of this section must meet the requirements set forth in OAR 411-054-0038 and shall not be limited without the informed, written consent of the resident or the resident's representative, and approved by the person-centered service plan coordinator.

(3) Licensees and facility personnel may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident, as follows, parent, child, brother, sister, grandparent, grandchild, aunt or uncle, or niece or nephew. An owner, administrator, or employee may act as a representative payee for the resident or serve in other roles as provided by law.

(4) Licensees and facility personnel may not spend resident funds without the resident's consent.

(a) If the resident is not capable of consenting, the resident's representative must give consent.

(b) If the resident has no representative and is not capable of consenting, licensees and facility personnel must follow the

requirements described in OAR 411-054-0085 and may not spend resident funds for items or services that are not for the exclusive benefit of the resident.

Stat. Auth.: ORS 410.070, 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0034 Resident Move-In and Evaluation *(Amended 09/01/19)*

(1) INITIAL SCREENING AND MOVE-IN.

(a) The facility must determine whether a potential resident meets the facility's admission requirements.

(b) Before the resident moving in, the facility must conduct an initial screening to determine the prospective resident's service needs and preferences. The screening must determine the ability of the facility to meet the potential resident's needs and preferences, while considering the needs of the other residents and the facility's overall service capability.

(c) Each resident record must, before move-in and when updated, include the following information:

(A) Prior living arrangements;

(B) Emergency contacts;

(C) Service plan involvement - resident, family, and social supports;

(D) Financial and other legal relationships, if applicable, including, but not limited to:

(i) Advance directives;

(ii) Guardianship;

(iii) Conservatorship; and

(iv) Power of attorney.

(E) Primary language;

(F) Gender identity, preferred name and preferred pronouns.

~~(F)~~(G) Community connections; and

~~(G)~~(H) Health and social service providers.

(2) RESIDENT EVALUATION - GENERAL. The resident evaluation identifies the resident's preferences, strengths, and relationships, as well as activities that are meaningful to the individual. The evaluation describes the resident's physical health status, mental status, and the environmental factors that help the individual function at their optimal level. The evaluation is the foundation that a facility uses to develop the resident's service plan. The evaluation information may be collected using tools and protocols established by the facility, but must contain the elements stated in this rule.

(a) Resident evaluations must be:

(A) Performed before the resident moves into the facility, with updates and changes as appropriate within the first 30 days; and

(B) Performed at least quarterly, to correspond with the quarterly service plan updates.

(C) Reviewed and any updates must be documented each time a resident has a significant change in condition.

(D) Done in person and the facility must gather data that is relevant to the needs and current condition of the resident.

(E) Documented, dated, and indicate who was involved in the evaluation process.

(b) 24 months of past evaluations must be kept in the resident's files in an accessible, on-site location.

(c) The facility administrator is responsible for assuring only trained and experienced staff perform resident evaluations.

(3) EVALUATION REQUIREMENTS AT MOVE-IN.

(a) The resident evaluation must be completed before the resident moves into the facility. This evaluation provides baseline information of the resident's physical and mental condition at move-in.

(b) If there is an urgent need and the evaluation is not completed before move-in, the facility must document the reasons and complete the evaluation within eight hours of move-in.

(c) The initial evaluation must contain the elements specified in section (5) of this rule and address sufficient information to develop an initial service plan to meet the resident's needs.

(d) The initial evaluation must be updated and modified as needed during the 30 days following the resident's move into the facility.

(e) After the initial 30 day move-in period, the initial evaluation must be retained in the resident's file for 24 months. Future evaluations must be separate and distinct from the initial evaluation.

(4) QUARTERLY EVALUATION REQUIREMENTS.

(a) Resident evaluations must be performed quarterly after the resident moves into the facility.

(b) The quarterly evaluation is the basis of the resident's quarterly service plan.

(c) The most recent quarterly evaluation, with documented change of condition updates, must be in the resident's current record and available to staff.

(d) If the evaluation is revised and updated at the quarterly review, changes must be dated and initialed and prior historical information must be maintained.

(5) The resident evaluation must address the following elements:

(a) Preferred name and personal pronouns, based on gender identity.

~~(a)~~(b) Resident routines and preferences including:

(A) Customary routines, such as those related to sleeping, eating, and bathing;

(B) Interests, hobbies, and social and leisure activities;

(C) Spiritual and cultural preferences and traditions; and

(D) Additional elements as listed in 411-054-0027(2).

~~(b)~~(c) Physical health status including:

(A) List of current diagnoses;

(B) List of medications and PRN use;

(C) Visits to health practitioners, emergency room, hospital, or nursing facility in the past year; and

(D) Vital signs if indicated by diagnoses, health problems, or medications.

(c) Mental health issues including:

(A) Presence of depression, thought disorders, or behavioral or mood problems;

(B) History of treatment; and

(C) Effective non-drug interventions.

(d) Cognition, including:

(A) Memory;

- (B) Orientation;
- (C) Confusion; and
- (D) Decision-making abilities.

(e) Personality, including how the person copes with change or challenging situations.

(f) Communication and sensory abilities including:

- (A) Hearing;
- (B) Vision;
- (C) Speech;
- (D) Use of assistive devices; and
- (E) Ability to understand and be understood.

(g) Activities of daily living including:

- (A) Toileting, bowel, and bladder management;
- (B) Dressing, grooming, bathing, and personal hygiene;
- (C) Mobility - ambulation, transfers, and assistive devices; and
- (D) Eating, dental status, and assistive devices.

(h) Independent activities of daily living including:

- (A) Ability to manage medications;
- (B) Ability to use call system;
- (C) Housework and laundry; and

(D) Transportation.

(i) Pain - pharmaceutical and non-pharmaceutical interventions, including how a person expresses pain or discomfort.

(j) Skin condition.

(k) Nutrition habits, fluid preferences, and weight if indicated.

(l) List of treatments - type, frequency, and level of assistance needed.

(m) Indicators of nursing needs, including potential for delegated nursing tasks.

(n) Review of risk indicators including:

(A) Fall risk or history;

(B) Emergency evacuation ability;

(C) Complex medication regimen;

(D) History of dehydration or unexplained weight loss or gain;

(E) Recent losses;

(F) Unsuccessful prior placements;

(G) Elopement risk or history;

(H) Smoking. The resident's ability to smoke without causing burns or injury to themselves or others or damage to property must be evaluated and addressed in the resident's service plan; and

(I) Alcohol and drug use. The resident's use of alcohol or the use of drugs not prescribed by a physician must be evaluated and addressed in the resident's service plan.

(o) Environmental factors that impact the resident's behavior including, but not limited to:

(A) Noise.

(B) Lighting.

(C) Room temperature.

(6) If the information has not changed from the previous evaluation period, the information does not need to be repeated. A dated and initialed notation of no changes is sufficient. The prior evaluation must then be kept in the current resident record for reference.

Stat. Auth.: ORS 410.070, 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

411-054-0070 Staffing Requirements and Training

(Amended 06/09/2021)

(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.

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

(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)(A) RESIDENTS' RIGHTS. Residents' rights and the values of community-based care, including a Department-approved online training concerning LGBTQIA2S+ rights, as follows:-

(A) The following dates apply to the initial LGBTQIA2S+ trainings:

(i) Effective December 31, 2024, all staff must have completed the required online training, and the Department will begin to regulate for compliance.

(ii) All new staff, hired on and after January 1, 2025, must complete the required online training prior to beginning job responsibilities.

(B) The Department-approved LGBTQIA2S+ online trainings shall address the elements described in paragraph (5)(b)(D) of this rule.

(b)(B) Abuse and reporting requirements.

~~(C) Standard precautions for infection control.~~

(c)(D) 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.~~

(d) ~~PRE-SERVICE~~ INFECTIOUS DISEASE PREVENTION TRAINING. 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.

(A) The Department, in consultation with the Oregon Health Authority, has determined this training must address the following curricula:

~~(A)~~(i) Transmission of communicable disease and infections, including: development of a ~~(i)~~ P policy with criteria directing staff to stay home when ill with a communicable disease, so as not to transmit disease.

~~(ii)~~(ii) Policy addressing R respiratory hygiene and coughing etiquette.

~~(B)~~(iii) Standard precautions.

~~(C)~~(iv) Hand hygiene.

~~(D)~~(v) Use of personal protective equipment.

~~(E)~~(vi) Cleaning of physical environment, including, but not limited to: ~~(i)~~ D disinfecting high-touch surfaces and equipment, and ~~(ii)~~ H handling, storing, processing and transporting linens to prevent the spread of infection.

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

~~(G)(viii)~~ 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.

~~(H) Facilities will be required to have all staff trained, as described in this rule, by July 1, 2022.~~

~~(e)(B)~~ INFECTIOUS DISEASE TRAINING CURRICULUM. Pre-service infectious disease training curriculum must be approved by the Department before facilities may offer training to staff.

~~(A)(i)~~ The pre-service training may be provided in person, in writing, by webinar or by other electronic means.

~~(B) Online training will be made available by the Department by January 1, 2022.~~

~~(C)(ii)~~ Facilities or other entities that want to provide training curriculum to facilities must first present that curriculum to the Department for review and approval.

~~(D) The Department will review training from facilities or other entities with the goal of making training available to facilities by January 1, 2022.~~

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

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

(a) DEMENTIA. 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)~~(A) Documentation of dementia training:

~~(A)~~(i) 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.

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

~~(d)~~(B) 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)~~(C) A certificate of completion must be made available to the Department upon request.

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

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

~~(B)~~(ii) 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)~~(iii) Strategies for addressing social needs of persons with dementia and engaging them with meaningful activities.

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

~~(i)~~(I) Identify and address pain.

~~(ii)~~(II) Provide food and fluids.

~~(iii)~~(III) Prevent wandering and elopement.

~~(iv)~~(IV) Use a person-centered approach.

~~(g)~~(b) ORIENTATION TO RESIDENT. 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) ANNUAL INSERVICE FOR ALL STAFF. Annual infectious disease training requires the following:~~

~~(a) 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.~~

~~(b) Annual in-service training must be documented in the employee record.~~

~~(c) These annual training requirements will be required as of July 1, 2023.~~

(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.

(5) ANNUAL AND BIENNIAL INSERVICE FOR ALL STAFF.

(a) Annual infectious disease training requires the following:

(a)(A) 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.

(b)(B) Annual in-service training must be documented in the employee record.

(c) These annual training requirements will be required as of July 1, 2023.

(b) Biennial LGBTQIA2S+ training requires the following:

(A) Administrators and employees shall be required to complete biennial training addressing LGBTQIA2S+ protections, as described in this section. The facility is responsible for the cost of providing this training to all staff.

(i) Each facility shall designate two employees, one who represents management and one who represents direct care staff by July 1, 2024.

(ii) The designated employees shall serve as points of contact for the facility regarding compliance with the preservice and biennial training requirements. These individuals shall develop a general training plan for the facility.

(B) Facilities may choose to use the Department-approved online biennial LGBTQIA2S+ training.

(C) Facilities may apply to the Department to request approval of a biennial LGBTQIA2S+ training to be provided by the facility.

(D) All facility LGBTQIA2S+ trainings must address:

(i) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency virus.

(ii) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression or human immunodeficiency virus status.

(iii) Trainings must also include requirements mandated by OR Laws 2023, chapter 567, Section 6(2)).

(iv) The individual or entity providing the training must demonstrate a commitment to advancing quality care for LGBTQIA2S+ residents and residents living with human immunodeficiency virus in this state.

(E) To submit a proposal for training, the facility shall:

(i) Submit the proposal to the Department for initial review with regulatory criteria described in paragraph (D) above.

(ii) Once the proposal has been determined to meet the regulatory criteria in paragraph (D), the Department shall forward the proposal to the Coalition for review. The Coalition will review the following:

(I) A statement of the qualifications and training experience of the individual or entity providing the training;

(II) The proposed methodology for providing the training either online or in person.

(III) An outline of the training; and

(IV) Copies of the materials to be used in the training.

(iii) The Coalition will make a recommendation to the Department concerning whether to approve the training.

(iv) The Department will inform the facility of the Department's decision to approve the training no later than 90 days after the request is submitted.

(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.

(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.

(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, 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991