

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

Oregon Department of Human Services (ODHS) Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
ODHS, Aging and People with Disabilities 500 Summer Street NE, E-02 Salem, OR 97301		
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FILING CAPTION

(Not more than 15 words that reasonably identifies the subject matter of the agency's intended action)

APD: Amending 411-054 rules to address LGBTQIA2S+ protections (SB 99 (2023)) and HCBS requirements

Last Date and Time for Public Comment: Written comments are accepted until **5:00 p.m. on June 19, 2024**. Please email comments to apd.rules@odhs.oregon.gov.

Hearing Date and Time: **May 22, 2024, at 2 p.m.**

Zoom (virtual)

Join by computer:

<https://www.zoomgov.com/j/1608204196?pwd=T3ZZd21hY3MxL0FpT0ZGdXhESjJwdz09>

Join by phone: 1-669-254-5252, 1608204196

HEARING NOTES:

If you wish to provide comments about the proposed rules, please register in advance at the following link:

<https://www.zoomgov.com/meeting/register/vJlftuoqjojHK3yAm60y7dGPDEuuyD8I6A>

After registering, you will receive a confirmation email containing information about joining the rule hearing. If you need help signing up, please call the APD

Rules Coordinator, Kristina Krause, at 503-339-6104 or send an email directly to Kristina.R.Krause@odhs.oregon.gov.

Please join the rule hearing no later than 15 minutes after the start time if you wish to testify (provide comments) on the proposed rules.

Everyone has a right to know about and use ODHS programs and services. ODHS provides free help. Some examples of the free help ODHS 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 email Victoria Surico at victoria.s.surico@odhs.oregon.gov or call 971-283-6116 at least five business days before the hearing. We accept all relay calls.

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

AMEND:

411-054-0070

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is proposing to permanently amend rules in OAR chapter 411, division 054. The changes are summarized below.

Amend: OAR 411-054-0070

Rule Title: Staffing Requirements and Training

Rule Summary: Requires pre-service and annual Home and Community Based Services training for all facility staff. Requires pre-service training beginning April 1, 2024, and annual training beginning April 1, 2025. Requires preservice and biennial training addressing LGBTQIA2S+ protections.

Other changes may be made to OAR 411-054-0070 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 Department of Human Services (Department) is amending OAR chapter 411, division 054 to implement Senate Bill 99 (2023 Regular Session), which requires facilities to implement protections for residential care and assisted living facilities residents who identify as LGBTQIA2S+. These rules need to be adopted promptly so the department will follow SB 99 (2023 Regular Session) requirements.

The Oregon Department of Human Services (Department) is also amending OAR chapter 411, division 054 to implement federal Home and Community Based Services requirements from CMS. Specifically, CMS audit findings indicated the need to ensure all facilities are properly trained on HCBS.

Other changes may be made to OAR 411-054-0070 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:

Oregon Administrative Rules for Home and Community-Based Services (411-004):

<https://www.oregon.gov/odhs/rules-policy/apdrules/411-004.pdf>

Senate Bill 99 Enrolled (2023 Regular Session):

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB99>

RACIAL EQUITY IMPACT STATEMENT

Required by HB 2993 (2021 Regular Session)

ORS 183.335(2)(a)(F)

An equity review was conducted for these proposed rules. There are currently 575 community-based care facilities regulated by the Community-Based Care program; each of these facilities will be affected by these rules. Currently there are no specific metrics in the proposed rule that would

address racial equity. As reminded by the APD Equity Review Team, it will be crucial to develop a strong communication plan to adequately implement these rule changes.

All community-based care facilities are required to complete LGBTQIA2S+ training every other year. The equity review process was discussed during the Rule Advisory Committee meeting held on April 3, 2024. The department asserts that the trainings necessary under this rule will safeguard the rights of LGBTQIA2S+ and HIV-positive residents. This will be accomplished by ensuring facility staff are well-trained on issues involved with providing care to LGBTQIA2S+ residents within aging populations.

Additionally, all facilities are required to complete the HCBS training every year. The rule's requirement for HCBS training ensures that facility staff are well-trained on issues related to HCBS, which will protect residents' rights under HCBS. All HCBS trainings are intended for facility staff, and delivery of the trainings has been developed by ODHS staff and is standardized to address the topic in a culturally sensitive, plain-language format. The initial required HCBS training is an on-line, one-fits-all training. However, future trainings, including annual trainings, may be tailored to address disproportionalities in service equity.

FISCAL AND ECONOMIC IMPACT

Fiscal and Economic Impact:

There will be fiscal impacts associated with Senate Bill 99. Facilities will need to fund the following requirements from the legislation: pre-service and biennial training; record keeping related to LGBTQIA2S+ protections; and revising of contracts.

All fiscal impacts related to the Home and Community-Based Services rule are associated with the costs of completing the federally required HCBS trainings. These expenses include the provision of training and the tracking of staff training records. There is also a cost to the facility for the staff person's time involved in taking the training. The initial training was developed by the Department and there are no additional costs to the facility or staff for this initial training. Later trainings may require a cost, if an

individual facility decides to develop their own training or invest in a training not sponsored by the Department.

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 that the Department's trainings will not affect any other state agencies.

Units of Local Government: The Department estimates no costs to local government.

Consumers: The Department estimates no costs to residents of facilities.

Providers: For both the LGBTQIA2S+ and HCBS trainings, the Department estimates that some providers will decide to develop and offer their own trainings in the future. However, the actual costs of these trainings will depend on the individual providers and the trainings they develop. However, if providers elect to use state-sponsored trainings, there will be no cost. Providers will face additional costs for the LGBTQIA2S+ program, including record retention and contract language revision. Although these costs should be relatively minor, it is difficult to estimate the exact cost amount of these requirements.

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);

As defined by ORS 183.310, a small business means a corporation, partnership, sole proprietorship, or other legal entity that has 50 or fewer employees. The Department estimates that approximately 30% of community-based care facilities are small businesses, under this definition.

(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)?

Representatives of small business, as defined in ORS 183.310, participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Was an Administrative Rule Advisory Committee consulted?

Yes, starting in October 2023, a series of rule advisory committee meetings have been held regarding implementation of Senate Bill 99 in APD adult foster homes, residential care and assisted living facilities, and nursing facilities. A final community engagement meeting will be held in early May 2024.

Additionally, a rule advisory committee meeting was held on April 3, 2024, to discuss the proposed changes to the federal Home and Community-Based Services program.

/s/ Nakeshia Knight-Coyle, Director, Aging and People with Disabilities

04/23/2024

Signature

Date

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

**CHAPTER 411
DIVISION 54**

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0070 Staffing Requirements and Training

(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.

(j) All staff will have a written position description that specifies their specific duties and responsibilities.

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

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

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

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

(3) PRE-SERVICE ORIENTATION FOR ALL EMPLOYEES. ~~(a)~~ Prior to beginning their job responsibilities, all employees must complete ~~an~~ orientation ~~that includes~~ training regarding:

(a) A review of their written position description with their job responsibilities.

(b)(A) RESIDENTS' RIGHTS. Residents' rights and the values of community-based care, including the Department-approved LGBTQIA2S+ trainings.

(A) Effective December 31, 2024, all staff must have completed the required training. All new staff, hired on and after January 1, 2025, must complete the required training prior to beginning job responsibilities.

(B) The Department-approved LGBTQIA2S+ trainings shall address the elements described in paragraph (6)(b) of this rule.

(c)(B) Abuse and reporting requirements.

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

(d)(D) Fire safety and emergency procedures.

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

~~(ed) 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) HOME AND COMMUNITY-BASED SERVICES (HCBS) TRAINING. All staff are required to complete the Department-approved HCBS training, as provided below:

(A) Effective March 31, 2024, all staff must have completed the required training.

(B) All new staff, hired on or after April 1, 2024, must complete the required training prior to beginning job responsibilities.

(g) 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.~~

~~(e)~~(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) Direct care sStaff 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 IN-SERVICE 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)~~(5)- 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)-(6) 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 facility staff.

(i) Each facility shall designate two employees, one who represents management and one who represents direct care staff by July 1, 2024. It is acceptable for the designated employee representing management to generally be housed offsite, but the direct care representative must be onsite.

(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 must select the LGBTQIA2S+ training to be used by the facility by either:

(i) Choosing to use the standard Department-approved biennial LGBTQIA2S+ training, or

(ii) Applying to the Department to request approval of a biennial LGBTQIA2S+ training to be provided by the facility.

(C) ORS 441.116 requires all LGBTQIA2S+ trainings 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) The defined terms commonly associated with LGBTQIA2S+ individuals and human immunodeficiency virus status.

(iv) Best practices for communicating with or about LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including the use of an individual's chosen name and pronouns.

(v) A description of the health and social challenges historically experienced by LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including discrimination when seeking or receiving care at care facilities and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination.

(vi) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including suggested changes to care facility policies and procedures, forms, signage, communication between residents and their families, activities, in-house services and staff training.

(vii) The facility, 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.

(D) The proposal for training submitted by a facility, entity, or individual shall include:

(i) The regulatory criteria described in paragraph (C) of this section as part of the proposal.

(ii) The following elements must be included in the proposal:

(I) A statement of the qualifications and training experience of the facility, 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.

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

(iii) The Department will review the materials and determine whether to approve or deny the training. No later than 90 days after the request is received, the Department will inform the facility in writing of the Department's decision.

(c) Annual Home and Community-Based Services (HCBS) training requires the following:

(A) All staff will be required to complete annual training concerning the Home and Community-Based Services regulations.

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

(C) These annual trainings will be required as of April 1, 2025.

(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, LGBTQIA2S+

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.

(10) Contractors who provide services or supports directly to residents must complete the required LGBTQIA2S+ trainings outlined in paragraph (6)(b)(C) of this rule.

(a) Contractors who must be trained include, but are not limited to, RN and administrative consultants, housekeeping services, dietary services, beauticians, barbers, or other contractors who provide services or supports directly to residents.

(b) Exempt from this training requirement are contractors who contract directly with the resident or the resident's representative, and contractors who do not generally provide services or supports directly to residents, including, but not limited to, contractors for landscaping, pest control, deliveries and building repairs.

(c) By December 31, 2024, facilities shall ensure that all contracts entered into with entities described in paragraph (a) of this section shall include language requiring contractors provide Department-approved LGBTQIA2S+ training to their employees within 12 months of entering into the contract with the facility and every two years thereafter.

(d) For existing contracts in effect January 1, 2025, facilities shall require the contractor provide Department-approved LGBTQIA2s+ training to employees by December 31, 2025, and every two years thereafter.

(e) For new contracts created after January 1, 2025, facilities shall require contractors provide the Department-approved LGBTQIA2S+ training to employees within 12 months of entering into the contract with the facility, and every two years thereafter.

(f) Facilities must inform contractors that the cost of all LGBTQIA2S+ trainings for contracted employees shall be paid by the contractor.

Stat. Auth.: ORS 410.070, 441.112, 443.450

Stats. Implemented: ORS 441.116, 443.400 - 443.455, 443.991