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**PERMANENT ADMINISTRATIVE RULES**

Oregon Health Authority, Health Systems Division:  
Mental Health Services

309

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Agency and Division

Administrative Rules Chapter Number

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Upon filing.

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Adopted on

07/01/2017

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Effective date

**RULE CAPTION**

Rules Revisions Required to Comply with Federal 1915(i) Home and Community-based  
Regulations

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Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:** 309-040-0307, 309-040-0393, 309-040-0394

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**AMEND:**

309-040-0300, 309-040-0305, 309-040-0310, 309-040-0315, 309-040-0320, 309-040-0325, 309-040-0330, 309-040-0335, 309-040-0340, 309-040-0345, 309-040-0350, 309-040-0355, 309-040-0360, 309-040-0365, 309-040-0370, 309-040-0375, 309-040-0380, 309-040-0385, 309-040-0390, 309-040-0395, 309-040-0400, 309-040-0405, 309-040-0410, 309-040-0415, 309-040-0420, 309-040-0425, 309-040-0430, 309-040-0435, 309-040-0440, 309-040-0445, 309-040-0450, 309-040-0455

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**REPEAL:**

309-040-0300 (T), 309-040-0301, 309-040-0305 (T), 309-040-0307 (T), 309-040-0310 (T), 309-040-0315 (T), 309-040-0320 (T), 309-040-0325 (T), 309-040-0330 (T), 309-040-0335 (T), 309-040-0340 (T), 309-040-0345 (T), 309-040-0350 (T), 309-040-0355 (T), 309-040-0360 (T), 309-040-0365 (T), 309-040-0370 (T), 309-040-0375 (T), 309-040-0380 (T), 309-040-0385 (T), 309-040-0390 (T), 309-040-0391, 309-040-0392, 309-040-0393 (T), 309-040-0394 (T), 309-040-0395 (T), 309-040-0400 (T), 309-040-0405 (T), 309-040-0410 (T), 309-040-0415 (T), 309-040-0420 (T), 309-040-0425 (T), 309-040-0430 (T), 309-040-0435 (T), 309-040-0440 (T), 309-040-0445 (T), 309-040-0450 (T), 309-040-0455 (T)

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**RENUMBER:**

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**AMEND & RENUMBER:**

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Stat. Auth.: ORS 413.042, 413.032, 413.735 & 413.085

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Other Auth.:

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Stats. Implemented: ORS 127.700 - 127.737, 426.072 & 443.705 - 443.825

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### RULE SUMMARY

Under Oregon Revised Statutes 413.042 and 413.450, the Authority licenses and has authority to regulate mental health treatment providers, including adult foster homes for adults with mental or emotional health disorders. The Authority's administrative rules set the minimum standards for providing services in licensed settings and describe the process by which the Authority regulates the service providers.

The rules provide updated procedural detail regarding federal regulation requirements, as issued by the Centers for Medicare and Medicaid Services (CMS) for 1915(i) Home and Community-Based Services (HCBS). The purpose of these updated regulations is to ensure individuals receive HCBS in settings that are integrated in and support full access to the greater community. The rules also provides clarification of current and appropriate behavioral health terminology, in particular, the use of 'adults with mental or emotional disorders' rather than adults with 'mental illness.'

The amendments are necessary to provide clarification for the Authority and the providers of HCBS practices and procedures regarding each individual's federal rights under HCBS.



Chris Norman

6/28/17

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Authorized Signer

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Date

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## **309-040-0300**

### **Purpose and Scope**

(1) These rules prescribe care and service standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community-based Adult Foster Homes (AFHs) for adults with mental or emotional disorders. The care and services standards are designed to promote the individual's right to independence, choice, and decision making while providing a safe, secure, homelike environment. The provider shall address the individual's needs in a manner that enables the individual to function at the highest level of independence possible:

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for home and community-based services authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving these services consistent with the standards set out in OAR chapter 411, division 4.

(2) These rules apply to adult foster homes providing services to five or fewer adults with mental or emotional disorders, regardless of whether the provider receives public funds.

Stat. Auth.: ORS 413.042, 413.032, 413.085

Stats. Implemented: ORS 443.705 - 443.825

## **309-040-0305**

### **Definitions**

As used in these rules, the following definitions apply:

(1) "Abuse" includes but is not limited to the following:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of an AFH or community program, or provider, or other caregiver

and the individual. For all other situations, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the individual;

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and OAR 943-045-0000, or any other rules established by the Division applicable to allegations of abuse of individuals residing at an AFH licensed by the Division.

(3) "Activities of Daily Living (ADL)" means those individual skills necessary for an individual's continued well-being including eating and nutrition, dressing, personal hygiene, mobility, and toileting.

(4) "Administration of Medication" means administration of medicine or a medical treatment to an individual as prescribed by a Licensed Medical Practitioner.

(5) "Adult Foster Home (AFH)" means any home licensed by the Health Systems Division of the Authority in which residential care is provided to five or fewer individuals who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. If an adult family member of the provider receives care, they shall be included as one of the individuals within the total license capacity of the AFH. An AFH or individual that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults is considered an AFH. For the purpose of these rules, an AFH does not include facilities referenced in 443.715.

(6) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.

(7) "Applicant" means any individual or entity that makes an application for a license that is also the owner of the business.

(8) "Assessment" means an evaluation of an individual and the individual's level of functioning completed by a qualified provider and provides the basis for the development of the individual's residential care plan and person-centered service plan.

(9) "Authority" means the Oregon Health Authority or designee.

(10) "Behavioral Interventions" means interventions that modify the individual's behavior or the individual's environment.

(11) "Bill of Rights" means civil, legal, or human rights afforded to those individuals residing in an AFH that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the AFH Bill of Rights as outlined in OAR 309-040-0410.

(12) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47 and ORS 678.010 to 678.445.

(13) "Care" means the provision of but is not limited to services of room, board, services and assistance with ADLs, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum individual independence and enhance quality of life.

(14) "Caregiver" means the provider, resident managers, or substitute caregivers who provide services to an individual.

(15) "Case Manager" means an individual employed by a local, regional, or state allied agency approved by the Division to provide case management services and assist in the development of the personal care plan. Case manager's evaluate the appropriateness of services in relation to the consumer's assessed need and review the residential care plan every 180 days.

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

(17) "Community Mental Health Program (CMHP)" means the organization of all services for individuals with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse problems operated by or contractually affiliated with a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(18) "Compensation" means payments made by or on behalf of an individual to a provider in exchange for room and board, care and services, including services described in the individual's residential care plan and person-centered service plan

(19) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, or inaction, that is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.

(20) "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.

(21) "Contested Case Hearing" means a hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or the Division in response to an action, sanction, or notice of finding issued by the Division that would result in the loss of license of the provider or other sanctions that would adversely affect the license of the provider. The hearing group is composed of:

- (a) The provider and if the provider chooses, the provider's attorney;
- (b) The Division as represented by the Attorney General's Office; and
- (c) The Office of Administration Hearings Administrative Law Judge.

(22) "Contract" means a written agreement between a provider and the Division to provide room and board, care and services for compensation for individuals of a licensed AFH.

(23) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(24) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check and or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).

(25) "Day Care" means care and services in an AFH for an individual who is not an individual of the AFH. Children under the age of five living in the AFH are included in the licensed capacity of the home.

(26) "Declaration for Mental Health Treatment" means a document that states the individual's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.

(27) "Designated Representative" means:

(a) Any adult who is not the individual's paid provider, who:

(A) The individual has authorized to serve as his or her representative; or

(B) The individual's legal representative is authorized to serve as the individual's representative.

(b) The power to act as a designated representative is valid until the individual or the individual's legal representative modifies the authorization and notifies the Division of

the modification, the individual or the individual's representative notifies the provider that the designated representative is no longer authorized to act the individual's behalf, or there is a change in the legal authority upon which the designation was based. Notice shall include the individual's or the representative's signature as appropriate;

(c) An individual or the individual's legal representative is not required to appoint a designated representative; and

(d) For the purposes of these rules, the term individual shall be considered to include the individual's designated representative.

(28) "Director" means the Director of the Oregon Health Authority or designee.

(29) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the individual's residential care plan and person-centered service plan, regardless of outcome or attainment of goals described in the individual's individualized personal care plan. In addition, the discharge summary addresses individual's monies, financial assets and monies, medication and personal belongings at time of discharge.

(30) "Division" means the Health Systems Division of the Oregon Health Authority or designee.

(31) "Division Staff" means an employee of the Division, the Division's designee, or the designee of the local Community Mental Health Program.

(32) "Employee" means an individual employed by a licensed AFH and who receives wages, a salary, or is otherwise paid by the AFH for providing the service. The term also includes employees of other providers delivering direct services to an individual.

(33) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Division to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.

(34) "Family Member" means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(35) "HCB" means Home and Community Based.

(36) "Home" means the Adult Foster Home (AFH) and as indicated by the context of its use may refer to the one or more buildings and adjacent grounds on contiguous properties used in the operation of the AFH.

(37) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 4. HCBS are services provided in the individual's home or community.

(38) "Home-like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individuals.

(39) "House Rules" means the written standards governing house activities developed by the provider and approved by the Division. These standards may not conflict with the AFH Bill of Rights or other individual rights set out by these rules.

(40) "Incident Report" means a written description and account of any occurrence including but not limited to any injury, accident, acts of physical aggression, use of physical restraints, medication error, or any unusual incident involving an individual, the home, or provider.

(41) "Individual" means any individual being considered for placement or currently residing in a licensed home receiving residential, HCBS and other services regulated by these rules on a 24-hour basis except as excluded under ORS 443.400.

(42) "Individual Care Services" means services prescribed by a physician or other designated individual in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those AFH individuals who are Medicaid eligible, personal care services are funded under Medicaid.

(43) "Individually-Based Limitation" means a limitation to the qualities outlined in OAR 309-040-0393(1)(a) through (g), due to health and safety risks. An individually-based limitation is based on a specific assessed need and implemented only with the informed consent of the individual or the individual's legal representative as outlined in 309-040-0393.

(44) "Informed Consent" means:

(a) Options, risks, and benefits of the services outlined in these rules have been explained to an individual and, in a manner that the individual comprehends; and

(b) The individual consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.

(45) "Initial Residential Care Plan (IRCP)" means a written document developed for an individual, within 24 hours of admission to the home, that addresses the care and services to be provided for the individual during the first 30 days or less until the residential care plan can be developed.



(46) "Legal Representative" means an individual who has the legal authority to act for an individual and only within the scope and limits to the authority as designated by the court or other agreement. A legal representative may include the following:

(a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian; or

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative.

(c) For purposes of these rules, the term individual shall be considered to include the individual's legal representative.

(47) "Level One AFH" means an AFH licensed by the Division to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(48) "License" means a document issued by the Division to applicants who are determined by the Division to be in substantial compliance with these rules.

(49) "Licensed Medical Practitioner (LMP)" means any individual who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:

(a) Physician licensed to practice in the State of Oregon; or

(b) Nurse practitioner licensed to practice in the State of Oregon.

(50) "Licensee" means the individual or entity to whom a license is issued and whose name is on the license.

(51) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation that directly contracts with the Division to operate a CMHP for that county.

(52) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any individual with whom the official contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under 40.225 to 40.295.

(53) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any individual.

(54) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the individual's social, educational, or economic functioning. Medical diagnosis and classification shall be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-V). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."

(55) "Mistreatment" means the following behaviors, displayed by an employee, program staff, caregiver, provider or volunteer of an AFH when directed toward an individual:

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;

(b) "Financial Exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;

(D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to their room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short-term basis when an individual's presence would pose a risk to health or safety to themselves or others;

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an

individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

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

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual;

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(f) "Wrongful Restraint" means any use of a physical or chemical restraint except for the following:

(A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or

(B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming themselves or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(56) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources in accordance with OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).

(57) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.

(58) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.

(59) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to individuals other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(60) "Nursing Delegation" means that a registered nurse authorizes an unlicensed individual to perform special tasks for individuals in select situations and indicates that authorization in writing. The delegation process includes nursing assessment of an individual in a specific situation, evaluation of the ability of the unlicensed person, teaching the task, and ensuring supervision.

(61) "Person-Centered Service Plan" means written documentation that includes 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.

(62) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agent, and other individual designated by the Division to provide person-centered service planning for and with individuals.

(63) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching, and supervising care that promotes the person's optimum health and independence.

(64) "Program Staff" means an employee or individual who by contract with an AFH provides a service to an individual.

(65) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an AFH.

(66) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400.

(67) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS Chapter 678 and OAR Chapter 851.

(68) "Related" means the following relationships: spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(69) "Relative" means any individual identified as a family member.

(70) "Representative" means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.

(71) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual when the individual receives services from the provider.

(72) "Resident Manager" means an employee of the provider who is approved by the Division to live in the AFH and is responsible for the care and services of individuals on a day-to-day basis.

(73) "Residential Care" means the provision of room, board, and services that assist the individual in activities of daily living such as assistance with bathing, dressing, grooming, eating, medication management, money management, or recreation. Residential care includes 24-hour supervision; being aware of the individual's general whereabouts; monitoring the activities of the individual while on the premises of the AFH to ensure the individual's health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(74) "Residential Care Plan (RCP)" means a written plan outlining the care and services to be provided to an individual. The RCP is based upon the review of current assessment, referral, observations, individual preference, and input from members of the residential care plan team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the individual's recovery and independence.

(75) "Residential Care Plan Team (RCP Team)" means a group composed of the individual, the case manager or other designated representative, CMHP representative, the provider, resident manager, and others needed including the individual's legal guardian, representatives of all current service providers, advocates or others determined appropriate by the individual receiving services. If the individual is unable or does not express a preference, other appropriate team membership shall be determined by the RCP team members.

(76) "Residents' Bill of Rights" means the AFH residents have the rights set forth in ORS 443.739.

(77) "Respite Care" means the provision of room, board, care, and services in an AFH for a period of up to 14 days. Respite care for individuals shall be counted in the total licensed capacity of the home. Respite care is not crisis respite care.

(78) "Restraints" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.

(79) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.

(80) "Seclusion" means the involuntary confinement of an individual to a room or area where the individual is physically prevented from leaving.

(81) "Self-Administration of Medication" means the act of an individual placing a medication in or on the individual's own body. The individual identifies the medication and the times and manners of administration and placed the medication internally or externally on the individual's own body without assistance.

(82) "Self-Preservation" means in relation to fire and life safety the ability of individuals to respond to an alarm without additional cues and be able to reach a point of safety without assistance.

(83) "Services" means those activities that are intended to help the individual develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure the individual's access to necessary medical care, treatment, or services identified in the individual's personal care plan.

(84) "Substitute Caregiver" means any individual meeting the qualifications of a caregiver who provides care and services in an AFH under the Division's jurisdiction in the absence of the provider or resident manager. An individual may not be a substitute caregiver.

(85) "Unit" means the bedroom and other space of an individual residing in an AFH as agreed to in the residency agreement. Unit includes the following:

(a) Private single occupancy spaces; and

(b) Shared units with roommates as allowed by these rules.

(86) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of an individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of an individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(87) "Variance" means an exception from a regulation or provision of these rules granted in writing by the Division upon written application from the provider.

(88) “Volunteer” means a person who provides a service or who takes part in a service provided to individuals receiving services in an AFH or other provider, and who is not a paid employee of the AFH or other provider. The services shall be non-clinical unless the person has the required credentials to provide a clinical service.

Stat. Auth.: ORS 413.042, 413.032

Stats. Implemented: ORS 426.072 & 443.705 - 443.825

### **309-040-0307**

#### **Required Home-like Qualities**

This rule becomes effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).

(1) Each AFH shall have all of the following:

(a) The home shall be integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for an individual to:

(A) Seek employment and work in competitive integrated employment settings;

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The individual selects the AFH from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:

(A) Identified and documented in the individual’s person-centered service plan;

(B) Based on the individual's needs and preferences; and

(C) Based on the individual’s available resources for room and board.

(c) The AFH shall ensure individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

(d) The AFH shall optimize, but not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact;

(e) The AFH shall facilitate individual choice regarding services and supports and who provides the services and supports.

(2) The provider shall maintain the AFH as follows:

(a) The home shall be physically accessible to each individual;

(b) The provider shall provide the individual with a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable residency agreement;

(c) The provider shall provide and include in the residency agreement that the individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of the State of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the residency agreement shall provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes shall be substantially equivalent to the processes provided under landlord-tenant laws;

(d) The provider shall ensure that each individual has privacy in their own unit;

(e) The provider shall maintain units with entrance doors lockable by the individual and ensure that only the individual, the individual's roommate, and only appropriate staff, as described in the individual's person-centered service plan, have keys to access the unit;

(f) The provider shall ensure that individuals sharing units have a choice of roommates;

(g) The provider shall provide that individuals have the freedom to decorate and furnish their unit as agreed to within the Residency Agreement;

(h) The provider shall permit each individual to have visitors of their choosing at any time;

(i) The provider shall ensure each individual has the freedom and support to control their own schedule and activities;

(j) The provider shall ensure each individual has the freedom and support to have access to food at any time.

(3) The provider shall take reasonable steps to ensure that the program maintains the qualities identified in this rule. Failure to take reasonable steps may include, but is not limited to, failure to:

(a) Maintain a copy of the person-centered service plan at the home;



(b) Cooperate or provide necessary information to the person-centered service plan coordinator; or

(c) Attend or schedule a person-centered planning meeting when necessary.

(4) When a provider is unable to ensure the qualities as outlined in section (2)(d) through (2)(j) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the individual's consent through the process outlined in OAR 309-040-0393. The provider may not apply an individually-based limitation until the limitation is approved and documented as required by OAR 309-040-0393.

Stat. Auth.: ORS 413.042, 413.032

Stats. Implemented: ORS 413.085, 443.705 - 443.825 **309-040-0310**

### **License Required**

(1) License Required. In accordance with ORS 443.725, every provider of Adult Foster Care shall be licensed by the Division before opening or operating an AFH.

(a) The provider shall live in the home that is to be licensed or hire a resident manager to live in the home.

(b) There must be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH under the jurisdiction of the Division.

(2) Placement. An AFH may not accept placement of an individual without first being licensed by the Division.

(3) Unlicensed AFH. No individual shall be placed in an AFH that is not licensed.

(4) Criminal History Check Requirements. Providers, resident managers, substitute caregivers, volunteers, and occupants over the age of 16, excluding individuals, shall have documentation of an approved criminal history background check in accordance with ORS 181A.200, 443.735 and OAR 943-007-0001 through 0501.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0315**

#### **License Application and Fees**

(1) A completed, written application shall be submitted by the applicant on forms supplied by the Division. The application is not complete until all information is received

by the Division. Incomplete applications are void 60 days after initial receipt by the Division.

(2) An applicant shall submit a separate application for each location operated as an AFH.

(3) The application shall include the following:

(a) The maximum capacity requested and a written statement describing family members needing care, individuals who receive respite care, individuals who receive day care, or individuals who receive room and board;

(b) A written statement from an LMP regarding the mental and physical ability of the applicant to provide care to individuals and to operate the AFH. If the applicant employs a resident manager, the applicant shall provide a written statement from a physician or a LMP regarding the mental and physical ability of the resident manager to operate the AFH and to provide care to individuals;

(c) A completed financial information form provided by the Division. The applicant shall demonstrate to the Division the applicant's financial ability and the resources necessary to operate the AFH. Financial ability shall include but is not limited to providing the Division with a list of unsatisfied judgments, pending litigation, and unpaid taxes and notifying the Division regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required, the Division may require the applicant to furnish a financial guarantee as a condition of initial licensure in accordance with ORS 443.735(3)(e);

(d) A completed Facility Provider Enrollment Application;

(e) A signed letter of support from the Local Mental Health Authority or designee for the applicant to be licensed to operate the AFH;

(f) Documentation of a Criminal History Check approval in accordance with OAR 943-007-0001 through 0501 for the provider, the resident manager, caregivers, volunteers and other occupants over the age of 16, excluding individuals, and other persons as defined in ORS 443.735;

(g) A floor plan of the AFH showing the location and size of rooms, exits, secondary emergency egress, smoke detectors and fire extinguishers, and evidence of compliance with facility safety requirements as outlined in OAR 309-040-0370;

(h) A completed AFH Self-Inspection Guide; and

(i) Each application must be accompanied by a fee of \$20 per bed requested for license.

(4) The Division shall determine compliance with these rules based on receipt of the completed application material and fees, a review of information submitted, an investigation of information submitted, an inspection of the AFH, and interviews with the provider determined by the Division and other individuals as identified by the Division.

(5) The applicant may withdraw the application at any time during the application process by notifying the Division in writing.

(6) An applicant whose license has been revoked or voluntarily surrendered, following a receipt of Notice of Intent to Revoke or Notice of Intent of Non-Renewal from the Division, or whose application has been denied by the Division for reasons relating to but not limited to criminal convictions, civil proceedings against the applicant, or substantiated allegations of abuse by the applicant, may not be permitted to submit an application for one year from the date that the revocation, surrender, or denial is made final. A longer period may be specified in the order revoking or denying the license.

(7) Enforcement of Home and Community-Based Required Qualities:

(a) An AFH licensed on or after July 1, 2016, shall be in full compliance with all requirements under these rules at the time of initial licensure;

(b) An AFH licensed prior to July 1, 2016, shall come into compliance with applicable rules as follows:

(A) All AFH's shall be in full compliance with all applicable rules no later than January 1, 2017;

(B) For those rules designated by the Division to become effective July 1, 2016, the provider must make measurable progress towards compliance with those rules. The Division may not issue sanctions or penalties for failure to meet those rules effective July 1, 2016, or those obligations imposed by OAR chapter 411, division 4, until January 1, 2017, if the provider demonstrates measurable progress towards compliance.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0320**

#### **Classification of AFHs**

(1) The Division licenses Level 1 AFHs. Level 1 AFHs provide care and services to individuals with severe and persistent mental illness who may also have limited medical conditions.

(2) A Level 1 AFH license may be issued by the Division based upon a determination that an AFH is in substantial compliance with these rules and a review of the

qualifications of the provider and the resident manager if applicable, and is in compliance with the OAR 309-040-0300 through 0455 and has met the training requirements set forth in OAR 309-040-0335.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0325**

#### **Capacity**

(1) The Division shall determine the number of individuals permitted to reside in an AFH based on the ability of the caregiver to meet the care needs of the individuals, the fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum licensed capacity shall include consideration of total household composition including children. Sleeping requirements for children are:

(a) Sleeping arrangements for children in care shall be safe and appropriate, based on the child's age, gender, special needs, behavior, and history of abuse and neglect;

(b) Each child in care shall have a safe and adequate bed in which to sleep.

(2) Limiting Capacity. The following limits apply:

(a) The number of individuals is limited to five;

(b) Respite care individuals are included in the licensed capacity of five;

(c) Day care individuals are included in the licensed capacity of five;

(d) Adult family members of the provider or resident manager who need care are included in the licensed capacity of five; and,

(e) Child family members of the provider or resident manager who need care may be included in the licensed capacity of five.

(3) If the number of individuals who receive care exceeds the ability of the provider to meet the care, health, life, and safety needs of the individuals, the Division may reduce the AFH licensed capacity.

(4) The Division may place conditions, restrictions, or limitations on the AFH license as necessary to maintain the health, life, and safety of the individual.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0330**

#### **Zoning for Adult Foster Homes**

(1) An AFH is a residential use of property for zoning purposes. Under ORS 197.665, an AFH is a permitted use in any residential zone that allows a single family dwelling and in any commercial zone that allows a single family dwelling.

(2) No city or county may impose any zoning requirement on the establishment and maintenance of an AFH in residential or commercial zones that is more restrictive than that imposed on a single-family dwelling in the same zone.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0335**

#### **Training Requirements for Providers, Resident Managers, and Substitute Caregivers**

(1) All providers, resident managers, and substitute caregivers shall satisfactorily meet all educational requirements established by the Division. Providers and staff may not provide care to any individual prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety, and welfare of the individual. Required course work and necessary skills may include, but are not limited to, physical caregiving; screening for care and service needs; appropriate behavior towards individuals with physical, cognitive, and emotional disabilities; emergency procedures; medication management; personal care products; food preparation; home environment and safety procedures; residents' rights; issues related to architectural accessibility; and mandatory abuse reporting.

(2) The provider, resident manager, and substitutive caregivers shall be able to understand and communicate in oral and written English in accordance with ORS 443.730.

(3) Training for all providers, resident managers, and substitute caregivers shall comply with ORS 443.738. The provider shall satisfactorily pass any testing requirements established by the Division before being licensed or becoming a resident manager or substitute caregiver. The test shall be completed by the caregiver without the help of any other individual. The provider, resident manager, and substitute caregiver shall have the ability to, but not be limited to, understand and respond appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, and individuals' preferences and conflicts.

(4) The Division may make exceptions to the training requirements for individuals appropriately licensed medical care professionals in Oregon or who possess sufficient

education, training, or experience to warrant an exception. The Division may not make any exceptions to the testing requirements.

(5) In accordance with ORS 443.738, the Division may permit a person who has not completed the training or passed the required test to act as a resident manager until the training and testing are completed or for 60 days, whichever is shorter, if the Division determines that an unexpected and urgent staffing need exists. The provider shall notify the Division of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the individual meets the requirements for a substitute caregiver for the AFH, and that the provider shall provide adequate supervision.

(6) The provider or resident manager shall maintain current documentation of the training and testing of substitute caregivers including but not limited to:

(a) Documentation of criminal history check in compliance with OAR 943-007-0001 through 0501;

(b) Documentation that a substitute caregiver has successfully completed the training required by the Division;

(c) Documentation that the provider has trained the caregiver to meet the routine and emergency needs of the individuals;

(d) Documentation that the provider has oriented the caregiver to the individuals in the AFH, their care needs and skills training, personal care plan, and the physical characteristics of the AFH.

(7) The Division shall require a minimum of twelve hours of training annually directly related to the care and services for individuals with mental illness. The provider, resident manager, and substitute caregiver of an AFH must complete required training and document the training in the provider, resident manager, and substitute caregiver's training records. The training is in addition to any orientation that is attended by applicants prior to licensing and shall include, but is not limited to:

(a) Understanding and recognizing severe and persistent mental illness;

(b) Mandatory abuse reporting;

(c) Medication management, dispensing, and documentation;

(d) Incident report writing;

(e) Individual rights;

(f) AFH emergency planning;

(g) Fire safety;

(h) Complaints and grievances; and

(i) Cardiopulmonary Resuscitation (CPR) and First Aid.

(8) The Division may require the provider, resident manager, or substitute caregiver to obtain additional training, whether or not the twelve-hour annual training requirement has already been met.

(9) Providers, resident managers, or substitute caregivers who perform delegated or assigned nursing care services as part of the residential care plan shall receive training and appropriate monitoring from a registered nurse on performance and delivery of those services.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0340**

#### **Issuance of a License**

(1) Applicants shall be in substantial compliance with these rules ORS 443.705 through 443.825 before the Division shall issue a license if cited deficiencies are not corrected within time frames specified by the Division, the application may be denied. The license shall include but is not limited to the name of the applicant, name of the AFH, address of the home to which the license applies, the maximum number of individuals, resident manager if applicable, conditions, if applicable, license number, payment received, effective date and expiration date, and the signature of the assistant administrator of the Division. The license shall be visibly posted in the AFH and available for inspection at all times.

(2) The Division may attach conditions to the license that limit, restrict, or specify other criteria for operation of the AFH. Conditions to a license may include but are not limited to care of a specifically identified individual. The conditions shall be posted with the license in the AFH and be available for inspection at all times.

(3) Each provider shall report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. Changes include but are not limited to changes in the AFH name, owner entity, resident manager, telephone number, or mailing address, and staffing changes if those changes are significant or impact the health, safety, or well-being of individuals.

(4) When an AFH is sold, the prospective new owner shall apply for a license in accordance with OAR 309-040-0315 if the new owner intends to operate an AFH.

(5) An AFH license is not transferable or applicable to any location or individuals other than those specified on the license.

(6) A license is valid for one year from the effective date on the license unless sooner revoked or suspended.

(7) Applicants shall be in substantial compliance with these rules before a license is issued. If cited deficiencies are not corrected within the time frames specified by the Division, the license shall be denied.

(8) The Division may not issue an initial license unless:

(a) The applicant and the AFH are in compliance with ORS 443.705 to 443.825 and the rules of the Division;

(b) The Division has completed an inspection of the AFH. If cited deficiencies are not corrected within the time frames specified by the Division, the application shall be denied;

(c) The Division has received an approved criminal history records check on the applicant, resident manager, substitute caregiver, and any occupant (other than an individual) 16 years of age or older or is identified in ORS 443.735 and who will be residing in or employed by the AFH, as identified in OAR chapter 943 division 007 and any other rules established by the Division.

(9) The applicant shall demonstrate to the Division the financial ability and resources necessary to operate the AFH. The demonstration of financial ability shall include, but is not be limited to, providing the Division with a list of any unsatisfied judgments, pending litigation and unpaid taxes, and notifying the Division regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required in this section, the Division may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(10) If a resident manager leaves during the period of the license, the provider shall notify the Division immediately and identify a plan for providing care to the individuals. The provider shall submit a completed resident manager application on forms supplied by the Division that include a copy of the documentation of criminal history background check and approval in accordance with OAR chapter 943, division 007, a physician statement, and payment of a \$10 fee. If the original plan includes changing the resident manager during the license renewal process, the \$10 is not applicable.

(11) Upon receipt of the completed resident manager application and Division approval, a revised license may be issued in accordance with ORS 443.738(1) through (4).

(12) Notwithstanding any other provision of ORS 443.735, 443.725, or 443.738, the Division may issue a 60-day provisional license to a qualified individual if the Division



determines that an emergency situation exists after being notified that the licensed provider of an AFH is no longer overseeing operation of the AFH.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0345**

#### **Renewal**

(1) The provider shall submit a completed renewal application and the required fee at least 165 days prior to the expiration date of the license. If the renewal application is not received by the Division within the time period described, the provider shall request the application from the Division or the County Mental Health partner. If the completed renewal application and fee are not submitted prior to the expiration date, the AFH shall be treated as an unlicensed home subject to civil penalties.

(2) The renewal application must include the same information and fee as required for a new application, except that a physician's statement and financial information form are not required if the Division can reasonably assume this information has not changed.

(3) The Division may require the applicant to submit a current, within six months, physician's statement and a current, within six months, criminal history check if investigation by the Division for license renewal indicates that it is necessary.

(4) The Division shall investigate any information in the renewal application and shall conduct an inspection of the AFH.

(5) The provider shall be given a formal written report from the inspection citing any deficiencies and a time frame for correction that does not exceed 30 days from the date of the inspection report unless otherwise noted in the inspection report.

(6) The AFH provider shall correct cited deficiencies prior to issuing a renewed license. If cited deficiencies are not corrected within the time frame specified by the Division, the renewal application shall be denied and administrative sanctions may be imposed.

(7) The Division may not renew a license unless:

(a) The applicant and the AFH are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The Division has completed an inspection of the AFH;

(c) The Division has completed a criminal records check, as required by ORS 181.536 through 181.537, 443.735 and OAR chapter 943, division 007, on the applicant and any occupant, other than an individual, 16 years of age or older or is identified in ORS

443.735(5)(a)(b), (6)(a)(b)(c) and who will shall be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFH provider.

(8) The provider, resident manager, substitute caregiver, or volunteer or individual residing in the AFH may continue to work or reside in the home pending the national criminal records check provided that the Oregon criminal record check was clear and no convictions were self-disclosed in accordance with OAR chapter 943, division 007.

(9) A criminal records check shall be completed for the applicant and any occupant, other than an individual, 16 years of age or older who shall be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFH provider if the Division believes there is reason to justify a new criminal history check in accordance with OAR chapter 943, division 007.

(10) An AFH provider seeking initial licensing or that has been in operation for less than 24 months has the burden of proof to establish compliance with ORS 443.705 to 443.825 and the Division rules.

(11) The burden of proof shall be upon the Division to establish compliance with ORS 443.705 to 443.825 and the Division rules if an AFH provider is seeking renewal of a license and has been in continuous operation for more than 24 months.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0350**

#### **Variance**

(1) A provider or applicant may apply to the Division for a variance from a provision of these rules. The provider shall provide justification that a variance does not jeopardize the health, life, or safety of the individuals and would not violate or compromise an applicable ORS.

(2) The Division may not grant a variance from a regulation or provision of these rules pertaining to the license capacity of the AFH; inspections of the AFH; civil, legal, and human rights; and inspection of the public files. The Division may not grant a variance related to fire and life safety without prior consultation with the local fire authority or designee.

(3) A provider or applicant may apply to the Division for a variance specific to each individual under ORS 443.725, subject to the following requirements:

(a) The variance is effective only for the specific individual who has been assessed and meets the safety requirements prescribed by the Division. This assessment shall become part of the individual's RCP;

(b) A variance allowing a specific individual to be in the AFH alone may not exceed four hours in a 24-hour period;

(c) No variance allows a provider to leave an individual alone in the AFH between the hours of 11 p.m. to 6 a.m.; and

(d) Twenty-four hour per day care shall continue for any individual that does not qualify to be in the AFH alone.

(4) Variances shall be granted or denied in writing. All variances granted shall be reviewed with each license renewal under OAR 309-040-0345. A variance granted to one AFH provider or a variance granted regarding a specific individual does not constitute a precedent for any other AFH provider, applicant, or individual.

(5) The AFH provider or applicant may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Division. The Division shall make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Division shall be final.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0355**

#### **Contracts**

(1) Providers who care for public assistance individuals must enter into a contract with the Division and comply with Division rules governing reimbursement for services and refunds.

(2) Providers who care for private paying individuals must enter into a signed contract with the individual or person paying for care. This contract shall include, but is not limited to, an RCP, a schedule of rates, conditions under which the rates may be changed, and the AFH's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) The provider shall provide a 30-day prior written notification to private pay individuals of increases, additions, and other modifications to the rates. Unless the change is due to a medical emergency resulting in a greater level of care, in which case the provider shall give notice within ten days of the change.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

**309-040-0360**

**Qualifications for AFH Providers, Resident Managers, and Other Caregivers**

(1) An AFH provider must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the AFH to be licensed, unless an approved resident manager lives in the AFH;

(c) Provide evidence satisfactory to the Division regarding experience, training, knowledge, interest, and concern in providing care to persons with severe and persistent mental illness. Evidence may include, but is not limited to the following:

(A) Certified nurse's aide training;

(B) Nursing home, hospital, or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Division approved training;

(E) Experience in caring for individuals with severe and persistent mental illness at home; and

(F) Home management skills.

(d) Possess the physical health and mental health determined necessary by the Division to provide 24-hour care for adults who are mentally ill. Applicants shall have a statement from a physician on a Division approved form that they are physically and mentally capable of providing care;

(e) Undergo a criminal history check in accordance with OAR chapter 943 division 007 and be found eligible for licensure by the Division. The Division shall evaluate and verify information regarding criminal history;

(f) Provide evidence of sufficient financial resources to operate an AFH for at least two months, unless the application is for renewal of an AFH that is already in operation. A credit reference check may be required;

(g) Be literate and capable of understanding written and oral orders and communicating with individuals, physicians, case managers, and appropriate others and be able to respond appropriately to emergency situations at all times;

(h) If transporting individuals by motorized conveyance, shall have a current driver's license in compliance with the Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(2) The resident manager shall meet the provider qualifications listed in section (1)(a) through (h) of this rule. A resident manager applicant may work in the home pending outcome of the national criminal history check, if the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization.

(3) Substitute caregivers left in charge of an individual for any period of time shall have access to individual records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be subject to a criminal history check. A substitute caregiver may work in the home pending outcome of the national criminal history check providing the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization;

(c) Be able to communicate orally and in writing with individuals, physicians, case managers, and appropriate others;

(d) Know fire safety and emergency procedures;

(e) Have a clear understanding of job responsibilities, have knowledge of RCPs, and be able to provide the care specified for each individual;

(f) Be able to meet the requirements of a resident manager when left in charge of an AFH for 30 days or longer;

(g) Not be an individual; and

(h) If transporting individuals by motorized conveyance, shall have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(4) The provider may not hire or continue to employ a resident manager or substitute caregiver who does not meet the requirements of this rule.

(5) A provider shall supervise and train resident managers and substitute caregivers and monitor their general conduct when acting within the scope of their employment or duties.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

## **309-040-0365**

### **Facility Standards**

(1) In order to qualify for or maintain a license, an AFH shall meet the following provisions:

(a) Demonstrate compliance with Oregon Structural Specialty Code (OSSC) and Oregon Fire Code: and

(b) Maintain up-to-date documentation verifying they meet applicable local business license, zoning, and building and housing codes and state and local fire and safety regulations. It is the duty of the provider to check with local government to be sure all applicable local codes have been met;

(c) For AFH's established on or after October 1, 2004, meet all applicable state building, mechanical, and housing codes for fire and life safety. The AFH shall be inspected for fire safety by an inspector designated by the Division using the recommended standards established by the State Fire Marshal for facilities housing one to five persons. Refer to Appendix I of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Division, a request for fire inspection shall be made to the State Fire Marshal;

(d) The building and furnishings shall be clean and in good repair and grounds shall be maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting. There shall be no accumulation of garbage, debris, rubbish, or offensive odors;

(e) Stairways shall be provided with handrails. A functioning light shall be provided in each room, stairway, and exit way; incandescent light bulbs shall be protected with appropriate covers. Yard and exterior steps shall be accessible to individuals;

(f) The heating system shall be in working order. Areas of the AFH used by individuals shall be maintained at no less than 68 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider shall make a reasonable effort to make the individuals comfortable using available ventilation or fans;

(g) There shall be at least 150 square feet of common space and sufficient comfortable furniture in the AFH to accommodate the recreational and socialization needs of the occupants at one time. Common space shall not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space is required if wheelchairs are to be accommodated;

(h) Pools and hot tubs shall be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(2) Any accessibility improvements made to accommodate an identified individual shall be in accordance with the specific needs of the individual and comply with Chapter 11 of the building code.

(3) An AFH shall have an accessible outdoor area that shall be made available to individuals.

(4) Storage of a reasonable size for an individual's belongings beyond that of the individual's unit shall be made available:

(a) All yard maintenance equipment shall be maintained in a locked storage if such equipment poses a safety threat;

(b) A locked storage area for individual medications separate from food, laundry, and toxic or hazardous materials shall be made accessible to all caregivers. For individuals who are self-medicating, the provider shall make a secured locked box available to assure the safety of all occupants of the home;

(c) A locked storage area separate from food and medications shall be designated when there are toxic or hazardous materials on the premises.

(5) All equipment shall be clean and in good repair, provide individual privacy, and shall have but is not limited to, the following:

(a) A finished interior, a mirror, an operable window or other means of ventilation, and a window covering;

(b) Tubs or showers, toilets and sinks. A sink shall be located near each toilet. A toilet and sink shall be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There shall be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(c) Hot and cold water in sufficient supply to meet the needs of individuals for personal hygiene. Hot water temperature sources for bathing areas shall not exceed 120 degrees Fahrenheit;

(d) Shower enclosures with nonporous surfaces. Glass shower doors shall be tempered safety glass. Shower curtains shall be clean and in good condition. Non-slip floor surfaces shall be provided in tubs and showers;

(e) Grab bars for toilets, tubs, or showers for safety as required by an individual's disability;

(f) The AFH may not be designed to allow an individual or employee to walk through another individual's bedroom to get to a bathroom. Individuals shall have barrier-free access to toilet and bathing facilities with appropriate fixtures.

(g) If there are non-ambulatory individuals, alternative arrangements shall be appropriate to meet the non-ambulatory individual's needs for maintaining good personal hygiene.

(h) Individuals shall have appropriate racks or hooks for drying bath linens.

(6) All furniture and furnishings shall be clean and in good repair. Units for all household occupants shall have been constructed as a bedroom when the home was built or remodeled under permit; be finished, with walls or partitions of standard construction that go from floor to ceiling, and a door which opens directly to a hallway or common use room without passage through another unit or common bathroom; be adequately ventilated, heated, and lighted with at least one operable window that meets fire egress regulations. (*See* Section R310 Emergency Escape and Rescue Openings in the Oregon Residential Specialty Code.) All units shall include a minimum of 70 square feet of usable floor space for each individual or 120 square feet for two individuals, have no more than two persons per room, and allow for a minimum of three feet between beds. In addition, the provider shall ensure that:

(a) Each unit has a lockable entrance door for the individual's privacy:

(A) The locking device shall release with a single-action lever on the inside of the unit and open to a hall or common-use room;

(B) The provider shall provide each individual with a personalized key that operates only the door to his or her unit door from the corridor side;

(C) The provider shall maintain a master key to access all of the units that is quickly available to the provider or resident manager and documented in the individual's person-centered service plan;

(D) The provider may not disable or remove a lock to a unit without first obtaining consent from the individual through the individually-based limitations process outlined in OAR 309-040-0393; and

(E) Section (6) is effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(b) Providers, resident managers, or their family members may not sleep in areas designated as living areas or share units with individuals;



(c) In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents;

(d) Units shall be on ground level for individuals who are non-ambulatory or have impaired mobility;

(e) Individual units shall be in close enough proximity to alert the provider or resident manager to night time needs or emergencies or be equipped with a call bell or intercom.

(7) AFH's established on or after October 1, 2004, shall meet all applicable state building, residential, fire, mechanical, and housing codes for fire and life safety. The AFH shall be inspected for fire safety by an inspector designated by the Division using the recommended standards established by the State Fire Marshal for facilities housing one to five individuals. Refer to Appendix I of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Division, a request for fire inspection shall be made to the State Fire Marshal.

(8) Special hazards such as the following:

(a) Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers, or safety containers and secured to prevent tampering by individuals or others. Firearms on the premises of an AFH shall be stored in a locked cabinet. The firearms cabinet shall be located in an area of the home that is not readily accessible to individuals, and all ammunition shall be stored in a separate, locked location;

(b) Smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons, and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.

(9) All furniture and furnishings shall be clean and in good repair. There shall be at least 150 square feet of common space and sufficient comfortable furniture in the AFH to accommodate the recreational and socialization needs of the occupants at one time. Common space may not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space shall be required if wheelchairs are to be accommodated.

(10) All equipment shall be clean and in good repair. Laundry facilities shall be separate from food preparation and other individual use areas. The provider shall maintain the following:

(a) Locked storage area for chemicals that pose a safety threat to individuals or family members;

(b) Sufficient, separate storage and handling space to ensure that clean laundry is not contaminated by soiled laundry;

(c) Outlets, venting, and water hookups according to State Building Code requirements; and

(d) Washing machines shall have a minimum rinse temperature of 140 degrees Fahrenheit.

(11) All equipment shall be clean and in good repair. The provider shall maintain an area for dry storage, not subject to freezing, in cabinets or a separate pantry with a minimum of one week's supply of staple foods. The provider shall maintain the following:

(a) Sufficient refrigeration space maintained at 45 degrees Fahrenheit or less and freezer space maintained at 0 degree Fahrenheit or less for a minimum of two days' supply of perishable foods;

(b) A dishwasher with a minimum final rinse of 140 degrees Fahrenheit;

(c) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(d) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(e) Stove and oven equipment for cooking and baking needs;

(f) Storage for a mop and other cleaning tools and supplies used for food preparation, dining, and adjacent areas. Such cleaning tools shall be maintained separately from those used to clean other parts of the home; and

(g) Dining Space where meals are served shall be provided to seat all individuals at the same seating.

(12) Details and Finishes:

(a) The building and furnishings shall be clean and in good repair, and grounds shall be maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting;

(b) Locks used on doors to individuals' units shall be in good repair with an interactive lock to release with operation of the inside door handle and be master keyed from the corridor side and comply with the requirements established by OAR 309-040-0365(6)(a) and its subsections. Exit doors may not have locks that prevent evacuation except as

permitted by Section 1008.1.8 of the building code. An exterior door alarm or other acceptable system may be provided for security purposes and alert the provider when individuals or others enter or exit the home.

(c) Handrails. Handrails shall be secured on all stairways.

(13) The heating system shall be in working order:

(a) Areas of the AFH used by individuals shall be maintained at no less than 68 degrees Fahrenheit during daytime hours and no less than 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider shall make reasonable effort to make the residents comfortable using available ventilation or fans;

(b) All toilets and shower rooms shall be ventilated by a mechanical exhaust system or operable window;

(c) Design and installation of fireplaces, furnaces and wood stoves shall meet standards of the Oregon Mechanical and Residential Specialty Code and have annual inspections to assure no safety hazard exists;

(d) Hot water temperatures shall be maintained within a range of 110¼ to 120 degrees Fahrenheit. Hot water temperatures for washing machines and dishwashers shall be at least 140 degrees Fahrenheit.

(14) All electrical systems shall meet the standards of the Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices shall be properly wired and in good repair:

(a) When not fully grounded, GFI-type receptacles or circuit breakers as an acceptable alternative may protect circuits in individual areas;

(b) Circuit breakers or non-interchangeable circuit-breaker-type fuses in fuse boxes shall be used to protect all electrical circuits;

(c) A sufficient supply of electrical outlets shall be provided to meet individual and staff needs without the use of extension cords or outlet expander devices;

(d) A functioning light shall be provided in each room, stairway, and exit way. Lighting Fixtures shall be provided in each individual bedroom and bathroom with a light switch near the entry door and in other areas as required to meet task illumination needs;

(e) Incandescent light bulbs shall be protected with appropriate covers.

(15) All plumbing shall meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures shall be properly installed and in good repair.

(16) Pools, hot tubs, and ponds shall be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(17) Telephones:

(a) A telephone shall be available and accessible 24 hours a day for individuals' use for incoming and outgoing calls in the AFH;

(b) Emergency telephone numbers for the local CMHP, Police, Fire, Medical, Poison Control, provider, and other emergencies shall be posted by the individuals' telephone. The posting shall include the name, address, and telephone number of the AFH, telephone numbers for making complaints or a report of alleged abuse to the local CMHP, the Division, the Office of Adult Abuse Prevention and Investigations and the Oregon Advocacy Center;

(c) AFH telephone numbers shall be listed in the local telephone directory;

(d) The provider may establish reasonable rules governing telephone use to ensure equal access by all individuals. Each individual or guardian (as applicable) shall be responsible for payment of long distance phone bills where calls were initiated by the individual, unless otherwise mutually agreed arrangements have been made.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0370**

#### **Safety**

(1) The provider shall train all program staff in staff safety procedures prior to beginning their first regular shift. All individuals shall be trained in individual safety procedures as soon as possible during their first 72 hours of residency.

(2) Emergency Procedures:

(a) An emergency evacuation procedure shall be developed, posted, and rehearsed with occupants. A record shall be maintained of evacuation drills. Drills shall be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes:

(A) Drills shall be held at least once every 30 days;

(B) One drill practice shall be held at least once every 90 days during individual's nighttime sleeping hours between 10 p.m. and 6 a.m. Fire drill records shall be maintained for three years and include date, time for full evacuation, safety equipment checked (to

include fire extinguishers, smoke detectors, secondary egress points, flashlights, and furnace filters), comments on the drill results, and names of individuals requiring assistance for evacuation;

(b) The residential care plan must document that within 24 hours of arrival, each new individual has received an orientation to basic safety and has been shown how to respond to a fire alarm and how to exit from the AFH in an emergency;

(c) The provider shall demonstrate the ability to evacuate all individuals from the facility within three minutes. If there are problems in demonstrating this evacuation time, the Division may apply conditions to the license that include, but may not be limited to, reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license;

(d) The provider shall provide to the Division, maintain as current, and post a floor plan on each floor containing room sizes, location of each individual's bed, fire exits, resident manager or provider's sleeping room, smoke detectors, fire extinguishers and escape routes. A copy of this drawing shall be submitted with the application and updated to reflect any change;

(e) There shall be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including a basement.

(3) A written disaster plan shall be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, and floods. The plan shall be posted by the phone and immediately available to the employees. The plan shall specify temporary and long-range habitable shelter where staff and individuals shall reside if the AFH becomes uninhabitable.

(4) Non-toxic cleaning supplies shall be used whenever available. Poisonous and other toxic materials shall be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation capability categories are based upon the ability of the individuals and staff as a group to evacuate the facility or relocate from a point of occupancy to a point of safety:

(a) Documentation of an individual's ability to safely evacuate from the facility shall be maintained in the individual's personal care plan;

(b) Individuals experiencing difficulty with evacuating in a timely manner shall be provided assistance from staff and offered environmental and other accommodations, as practical. Under these circumstances, the provider shall consider increasing staff levels, changing staff assignments, offering to change the individual's room assignment, arranging for special equipment, and taking other actions that may assist the individual;

(c) Individuals who still cannot evacuate the home safely in the allowable period of time of three minutes must be assisted with transferring to another program with an evacuation capability designation consistent with the individual's documented evacuation capability;

(d) Written evacuation records shall be retained for at least three years. Records shall include documentation made at the time of the drill, specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(6) All stairways, halls, doorways, passageways, and exits from rooms and from the home shall be unobstructed.

(7) At least one 2A-10BC rated fire extinguisher shall be in a visible and readily accessible location on each floor, including basements, and shall be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose;

(8) Approved smoke detector systems or smoke alarms shall be installed according to Oregon Residential Specialty Code and Oregon Fire Code requirements. These alarms shall be tested during each evacuation drill. The provider shall provide approved signal devices for individuals with disabilities who do not respond to the standard auditory alarms. All of these devices shall be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction. Ceiling placement of smoke alarms or detectors is recommended. Alarms shall be equipped with a device that warns of low battery when battery operated. All smoke detectors and alarms shall be maintained in functional condition;

(9) Special hazards:

(a) Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by individuals and vandals. Firearms on the premises of an AFH must be stored in a locked cabinet. The firearms cabinet shall be located in an area of the home that is not readily accessible to clients, and all ammunition must be stored in a separate, locked location;

(b) Smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons, and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.

(10) Sprinkler systems, if used, shall be installed in compliance with the Oregon Structural Specialty Code and Oregon Fire Code and maintained in accordance with rules adopted by the State Fire Marshal.

(11) First aid supplies shall be readily accessible to staff. All supplies shall be properly labeled.

(12) Portable heaters are a recognized safety hazard and may not be used, except as approved by the State Fire Marshal, or authorized representative.

(13) A safety plan shall be developed and implemented to identify and prevent the occurrence of hazards. Hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0375**

#### **Sanitation**

(1) The water supply in the home shall meet the requirements of the current Authority rules governing domestic water supplies:

(a) A municipal water supply shall be utilized if available;

(b) When the home is not served by an approved municipal water system, and the home qualifies as a public water system according to OAR 333-061-0020(94) Authority rules for public water systems, then the provider shall comply with the OAR chapter 333. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly and nitrate at least annually and reported to the Division. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards. Public notice shall be given whenever a violation of the water quality standards occurs, and records of water testing shall be retained according to Division requirements.

(2) All floors, walls, ceilings, windows, furniture, and equipment shall be kept in good repair, clean, neat, and orderly.

(3) Each bathtub, shower, lavatory, and toilet shall be kept clean, in good repair, and regularly sanitized.

(4) Kitchen sinks may not be used for the disposal of cleaning wastewater.

- (5) Soiled linens and clothing shall be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.
- (6) All necessary measures shall be taken to prevent rodents and insects from entering the home. Should pests be found in the home, appropriate action shall be taken to eliminate them.
- (7) The grounds of the facility shall be kept orderly and reasonably free of litter, unused articles, and refuse.
- (8) Garbage and refuse receptacles shall be clean, durable, watertight, insect and rodent proof, and shall be kept covered with tight-fitting lids. All garbage and solid waste shall be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality.
- (9) All sewage and liquid wastes shall be disposed of in accordance with the Plumbing Code to a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes shall be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines and septic tanks or other non-municipal sewage disposal systems, where applicable, shall be maintained in good working order.
- (10) Biohazard waste shall be disposed of in compliance with the rules of the Department of Environmental Quality.
- (11) Precautions shall be taken to prevent the spread of infectious or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards:
- (a) In accordance with OAR 437-002-0368 through 2226 of the Oregon Occupational Safety and Health Code, program staff shall employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other blood borne pathogens;
  - (b) Bathroom facilities shall be equipped with an adequate supply of toilet paper, soap, and towels.
- (12) If pets or other household animals exist at the home, sanitation practices shall be implemented to prevent health hazards:
- (a) These animals shall be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations shall be maintained on the premises;
  - (b) Animals not confined in enclosures shall be under control and maintained in a manner that does not adversely impact individuals or others.



Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

**309-040-0380**

**Individual Furnishings**

(1) Bedrooms and Units:

(a) Bedrooms for all household occupants and units for individuals shall have been constructed as a bedroom when the home was built or remodeled under permit; be finished with walls or partitions of standard construction that go from floor to ceiling and a door that opens directly to a hallway or common use room without passage through another bedroom or unit or common bathroom; be adequately ventilated, heated and lighted with at least one operable window that meets the requirements of Section R310 of the Oregon Residential Specialty Code; have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals and have no more than two individuals per room;

(b) Providers, resident managers, or their family members may not sleep in areas designated as living areas, or share bedrooms or units with individuals;

(c) There shall be an individual bed for each individual consisting of a mattress in good condition and springs at least 36 inches wide. Cots, rollaway, bunks, trundles, couches, and folding beds may not be used for individuals. Each bed shall have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases shall be laundered at least weekly, and more often if necessary. Waterproof mattress covers shall be used for incontinent individuals. Day care individuals may not use individual beds;

(d) Each unit shall have sufficient separate, private dresser and closet space for each individual's clothing and personal effects, including hygiene and grooming supplies. Individuals shall be allowed to keep and use reasonable amounts of personal belongings and to have private, secure storage space. Drapes or shades for windows shall be in good condition and provider privacy for individuals;

(e) Units shall be on ground level for individuals who are non-ambulatory or have impaired mobility;

(f) Units shall be in close enough proximity to the provider to alert the provider to night time needs or emergencies or be equipped with a call bell or intercom.

(2) Each individual shall be assisted in obtaining personal hygiene items in accordance with individual needs. Items shall be stored in a clean and sanitary manner and may be purchased with the individual's personal allowance. Personal hygiene items include, but

are not limited to, a comb or hairbrush, a toothbrush, toothpaste, menstrual supplies (if needed), towels, and washcloths.

(3) Sufficient supplies of soap, shampoo, and toilet paper for all individuals shall be provided.

(4) An adequate supply of furniture for individual use in the living room, dining room, and other common areas shall be maintained in good condition.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0385**

#### **Food Services**

(1) Three nutritious meals shall be served daily at times consistent with those in the community. Meals shall be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid or as directed by a prescriber. Consideration shall be given to cultural and ethnic backgrounds of individuals in food preparation.

(2) An order from an LMP must be obtained for each individual who for health reasons is on a modified or special diet. These diets shall be planned in consultation with the individual.

(3) Menus shall be prepared at least one week in advance and provide a sufficient variety of foods served in adequate amounts for each individual at each meal and adjusted for seasonal changes. Records of menus as served shall be filed and maintained in the AFH for three years. Individual preferences and requests shall be considered in menu planning. Religious and vegetarian preferences must be reasonably accommodated.

(4) Meals shall be prepared and served in the facility where the individuals live. Payment for meals eaten away from the AFH for the convenience of the provider (e.g. restaurants, senior meal sites) shall be paid for by the provider. Meals and snacks as part of an individual recreational outing shall be paid for by the individual. Food preparation areas shall be clean, free of obnoxious odors, and in good repair.

(5) The provider shall maintain adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days at the setting. An emergency supply of potable water shall be available such that the provider maintains seven gallons of water per individual.

(6) Food shall be stored, prepared, and served in accordance with the Authority's Food Sanitation Rules:

- (a) All working refrigerators and freezers shall have a thermometer in working order;
- (b) Food storage areas and equipment shall be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.
- (7) Equipment shall be maintained in a safe and sanitary manner. Utensils, dishes, and glassware shall be maintained in a sufficient number to accommodate the licensed capacity of the AFHs. Utensils, dishes, and glassware shall be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanitation cycle is recommended.
- (8) The provider shall support the individual's right to access food at any time. The provider may only apply an individually-based limitation when there is a threat to the health and safety of an individual or others, and the provider complies with the requirements outlined in OAR 309-040-0393. This section is effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).
- (9) If an individual misses a meal at a scheduled time, an alternative meal shall be made available.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0390**

#### **Standards and Practices for Care and Services**

- (1) There shall be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH in accordance with ORS 443.725(3).
- (2) Medications and Prescriber's Orders:
  - (a) There shall be a copy of a medication, treatment, or therapy order signed by a physician, nurse practitioner, or other licensed prescriber in the individual's file for the use of any medications, including over the counter medications, treatments, and other therapies.
  - (b) A provider, resident manager, or substitute caregiver shall dispense medications, treatments, and therapies as prescribed by a physician, nurse practitioner, or other licensed prescriber. Changes to orders for the dispensing and administration of medication or treatment may not be made without a written order from a physician, nurse practitioner, or other licensed prescriber. A copy of the medication, treatment, or therapy order shall be maintained in the individual's record. The provider, resident manager, or substitute caregiver shall promptly notify the individual's case manager of any request for a change in individual's orders for medications, treatments, or therapies;

(c) Each individual's medications shall be clearly labeled with the pharmacist's label or the manufacturer's originally labeled container and kept in a locked location. The provider or provider's family medication shall be stored in a separate locked location. All medication for pets or other animals shall be stored in a separate locked location. Unused, outdated, or recalled medications may not be kept in the AFH and shall be disposed in a manner to prevent diversion into the possession of people other than for whom it was prescribed. The provider shall document disposal of all unused, outdated, and or recalled medication on individuals' drug disposal forms;

(d) Medications may not be mixed together in another container prior to administration except as packaged by the pharmacy or by physician order;

(e) A written medication administration record (MAR) for each individual shall be kept of all medications administered by the program staff to that individual, including over the counter medications. The MAR shall indicate name of medication, dosage and frequency of administration, route or method, dates and times given, and be immediately initialed by the caregiver dispensing using only blue or black indelible ink. Treatments, therapies, and special diets shall be immediately documented on the medication administration record including times given, type of treatment or therapy, and initials of the caregiver giving it using only blue or black indelible ink. The medication administration record shall have a legible signature for each set of initials using only blue or black indelible ink;

(f) The MAR shall include documentation of any known allergy or adverse reactions to a medication and documentation and an explanation of why a PRN medication was administered and the results of such administration;

(g) For any individual who is self-administering medication, the individual's record shall include the following documentation:

(A) That the individual has been trained for self-administering of prescribed medication or treatment or that the prescriber has provided documentation that training for the individual is unnecessary;

(B) That the individual is able to manage his or her own medication regimen, and the provider shall keep medications stored in an area that is inaccessible to others and locked;

(C) Of retraining when there is a change in dosage, medication, and time of delivery;

(D) Of review of self-administration of medication as part of the residential care plan process; and

(E) Of a current prescriber order for self-administration of medication.

(h) Injections may be self-administered by the individual or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or providers who have been trained and are monitored by a

physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047. Documentation regarding the training or delegation shall be maintained in the individual's record;

(3) Nursing tasks may be delegated by a registered nurse to providers and other caregivers only in accordance with administrative rules of the Board of Nursing chapter 851, division 47. This includes but is not limited to the following conditions:

(a) The registered nurse has assessed the individual's condition to determine there is not a significant risk to the individual if the provider or other caregiver performs the task;

(b) The registered nurse has determined the provider or other caregiver is capable of performing the task;

(c) The registered nurse has taught the provider or caregiver how to do the task;

(d) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;

(e) The registered nurse provides written instructions for the provider or caregiver to use as a reference;

(f) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other individuals or taught to other care providers;

(g) The registered nurse has determined the frequency for monitoring the provider or caregiver's delivery of the delegated task; and

(h) The registered nurse has documented a residential care plan for the individual including delegated procedures, frequency of registered nurse follow-up visits, and signature and license number of the registered nurse doing the delegating.

(4) The initial residential care plan shall be developed within 24 hours of admission to the AFH.

(5) This section and its subsections are effective July 1, 2016 and enforceable as described in OAR 309-040-0315(7):

(a) During the initial 30 calendar days following the individual's admission to the AFH, the provider shall continue to assess and document the individual's preferences and care needs. The provider shall complete and document the assessment and care plan in an RCP within 30 days after admission unless the individual is admitted to the AFH for crisis-respite services;

(b) An RCP is an individualized plan intended to implement and document the provider's delivery of services as well as any individualized limitations contained within the person-

centered service plan and identifies the goals to be accomplished through those services. The RCP shall describe the individual's needs, preferences, capabilities, and what assistance the individual requires for various tasks;

(c) The provider shall develop the RCP based upon the findings of the individual assessment with participation of the individual and through collaboration with the individual's primary mental health treatment provider and the person-centered service plan coordinator. With consent of the individual, family members, representatives from involved agencies, and others with an interest in the individual's circumstances may be invited to participate in the development of the RCP. The provider shall have proper, prior authorization from the individual or the individual's representative prior to such contact;

(d) The RCP shall adequately consider and facilitate the implementation of the individual's person-centered service plan by addressing the following:

(A) Address the implementation and provision of services by the provider consistent with the obligations imposed by the person-centered service plan;

(B) Identify the individual's service needs, desired outcomes, and service strategies to advance all areas identified in the person-centered service plan, the individual's physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation, as well as any other area of concern or the other goals set by the individual;

(e) The RCP shall be signed by the individual, the provider, or the provider's designee, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan;

(f) The provider shall review and update each individual's RCP every six months and when an individual's condition changes. The review shall be documented in the individual's record at the time of the review and include the date of the review and the provider's signature. If an RCP contains many changes and becomes less legible, the provider shall write a new care plan;

(g) The provider shall attach the RCP to the person-centered service plan.

(6) A person-centered service plan shall be completed in the following circumstances:

(a) A person-centered service plan coordinator under contract with the Division shall complete a person-centered service plan with each individual pursuant to OAR 411-004-0030. The provider shall make a good faith effort to implement and complete all elements the provider is responsible for implementing as identified in the person-centered service plan;

(b) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible;

(c) The person-centered service plan shall be developed by the individual and, as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the individual's representative;

(d) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant exceptions when it determines that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area;

(e) For private pay individuals, a person-centered service plan may be developed by the individual, or, as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers shall assist private pay individuals in developing person-centered service plans when no alternative resources are available. Private pay individuals are not required to have a written person-centered service plan.

(7) A person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process includes the following:

(a) Is driven by the individual;

(b) Includes people chosen by the individual;

(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;

(e) Reflects the cultural considerations of the individual;

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the individual's representative;

(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:

(A) Discussing the concerns of the individual and determining acceptable solutions;

(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;

(C) Utilizing any available greater community conflict resolution resources;

(D) Referring concerns to the Office of the Long-Term Care Ombudsman; or

(E) For Medicaid recipients, following existing, program-specific grievance processes.

(h) Offers choices to the individual regarding the services and supports the individual receives and from whom, and records the alternative HCB settings that were considered by the individual;

(i) Provides a method for the individual to request updates to the person-centered service plan for the individual;

(j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;

(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;

(L) Includes any services that are self-directed, if applicable;

(m) Includes, but is not limited to, individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;

(n) Includes risk factors and plans to minimize any identified risk factors; and

(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual, participants in the person-centered service planning process, and all individuals responsible for the implementation of the person-centered service plan, including the provider, as described below in section (8)(a)(O) of this rule. The person-centered service plan is distributed to the individual, and other people involved in the person-centered service plan as described below in section (8)(d) of this rule.

(8) Required Contents of person-centered service plan:

(a) When the provider is required to develop the person-centered service plan, the provider shall ensure that the plan includes the following:

(A) HCBS and setting options based on the needs and preferences of the individual, and for residential settings, the available resources of the individual for room and board;



(B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater community;

(C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;

(E) The strengths and preferences of the individual;

(F) The service and support needs of the individual;

(G) The goals and desired outcomes of the individual;

(H) The providers of services and supports, including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People who are important in supporting the individual;

(L) The person responsible for monitoring the person-centered service plan;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services. ;

(N) The written informed consent of the individual:

(O) Signatures of the individual , participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (c) of this section;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(b) When the provider is not required to develop the person-centered service plan but provides services to the individual, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator or other

persons developing the plan to fulfill the characteristics described in part (a) of this section;

(c) The individual decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers shall have access to the portion of the person-centered service plan that the provider is responsible for implementing;

(d) The person-centered service plan is distributed to the individual and other people involved in the person-centered service plan as described above in subsection (c) of this section;

(e) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-040-0393 when an individual's rights under OAR 309-040-0410(2)(b) through (i) may not be met due to threats to the health and safety of the individual or others;

(f) The person-centered service plan shall be reviewed and revised:

(A) At the request of the individual:

(B) When the circumstances or needs of the individual change; or

(C) Upon reassessment of functional needs as required every 12 months.

(9) Because it may not be possible to assemble complete records and develop a person-centered service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan under these rules, but shall, at a minimum, develop an initial care plan as required by section (7) of these rules to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in section (11)(b) of this rule.

(10) The provider shall develop an individual record for each individual. The provider shall keep the individual record current and available on the premises for each individual admitted to the AFH. The provider shall maintain an individual record consistent with the following requirements:

(a) The record shall include:

(A) The individual's name, previous address, date of entry into AFH, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid or Medicare numbers where applicable, guardianship status, and;

(B) The name, address, and telephone number of:

(i) The individual's legal representative, designated representative, family, advocate, or other significant person;

(ii) The individual's preferred primary health provider, designated back up health care provider or clinic;

(iii) The individual's preferred dentist;

(iv) The individual's day program or employer, if any;

(v) The individual's case manager; and

(vi) Other agency representatives providing services to the individual.

(C) Individual records shall be available to the Authority conducting inspections or investigations as well as to the individual or the individual's representative;

(D) Original individual records shall be kept for a period of three years after discharge when an individual no longer resides in the AFH;

(E) In all other matters pertaining to confidential records and release of information, providers shall comply with ORS 179.505.

(b) Medical Information:

(A) History of physical, emotional and medical problems, accidents, illnesses or mental status that may be pertinent to current care;

(B) Current orders for medications, treatments, therapies, use of restraints, special diets and any known food or medication allergies;

(C) Completed medication administration records from the license review period;

(D) Name and claim number of medical insurance, and any pertinent medical information such as hospitalizations, accidents, immunization records including previous TB tests, incidents or injuries affecting the health, safety or emotional well-being of any individual.

(c) Individual Account Record:

(A) Individual's Income Sources;

(B) Refer to individual's residential care plan with supporting documentation from the income sources to be maintained in the individual's individual record;

(C) The individual or the individual's representative shall agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy shall be

given to the individual, the individual's representative, and the original in the individual's individual record;

(D) Individual's record of discretionary funds.

(d) If an individual maintains custody and control of his or her discretionary funds, then no accounting record is required;

(e) If a designee of the AFH maintains custody and control of an individual's discretionary fund, a signed and dated account and balance sheet shall be maintained with supporting documentation for expenditures \$10 and greater. The AFH designee shall have specific written permission to manage an individual's discretionary fund;

(f) The provider shall maintain a copy of the written house rules with documentation that the provider discussed the house rules with the individual;

(g) A written incident report of any unusual incidents relating to the AFH including but not limited to individual care. The incident report shall include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the individual. In compliance with HIPAA rules, only the individual's name may be used in the incident report. Separate reports shall be written for each individual involved in an incident. A copy of the incident report shall be submitted to the CMHP within five working days of the incident. The original shall be placed in the individual's individual record.

(h) Any other information or correspondence pertaining to the individual;

(i) Progress notes shall be maintained within each individual's record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes as identified in the individual's personal care plan. A progress note shall be entered in the individual's record at least once each month.

(11) Residents' Bill of Rights:

(a) The provider shall guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider shall post a copy of the Residents' Bill of Rights in a location that is accessible to individuals, individuals' representatives, parents, guardians, and advocates. The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representative, parent, guardian, and advocate along with a description of how to exercise these rights;

(b) The provider shall explain and document in the individual's file that a copy of the Residents' Bill of Rights was given to each individual at admission and is posted in a conspicuous place including the name and phone number of the office to call to report complaints.

(12) Providers, resident managers, or substitute caregivers may not use physical restraints for individuals receiving personal care services authorized or funded through the Division.

(13) The provider shall:

(a) Conspicuously post the State license and Abuse and Complaint poster where it can be seen by individuals;

(b) Cooperate with Division personnel or designee in complaint investigation procedures, abuse investigations, and protective services, planning for individual care, application procedures, and other necessary activities, and allow access of Division personnel to the AFH, its individuals, and all records;

(c) Give care and services, as appropriate to the age and condition of the individual and as identified on the RCP. The provider shall ensure that physicians' orders and those of other medical professionals are followed and that the individual's physicians and other medical professionals are informed of changes in health status or if the individual refuses care;

(d) House Rules:

(A) The provider shall develop reasonable written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on refunds in case of departure, hospitalization, or death;

(B) The provider shall discuss house rules with the individual and families at the time of arrival and be posted in a conspicuous place in the facility. The provider shall maintain written documentation in the individual record that the provider discussed the house rules with the individual along with a copy of the house rules;

(C) House rules are subject to review and approval by the Division and may not violate individual's rights as stated in ORS 430.210;

(D) House rules may not restrict or limit the individual rights under OAR 309-040-0410(2). This subsection is effective July 1, 2016, and enforceable according to 309-040-0315(7).

(e) In the provider's absence, the provider shall have a resident manager or substitute caregiver on the premises to provide care and services to individuals. For absences greater than 72 consecutive hours, the CMHP shall be notified of the name of the substitute caregiver for the provider or resident manager;

(f) A provider, resident manager, or substitute caregiver shall be present in the home at all times;

- (g) Allow and encourage individuals to exercise all civil and human rights accorded to other citizens;
  - (h) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of individuals;
  - (i) Provide care and services as agreed to in the RCP;
  - (j) Keep information related to individuals confidential as required under ORS 179.050;
  - (k) Ensure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the Division or CMHP;
  - (L) Not admit individuals who are clients of Aging and People with Disabilities without the express permission of the Division;
  - (m) Notify the Division prior to a closure and give individuals, the individuals' representative, families, and CMHP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH, an individual may not be shifted from one AFH to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and CMHP;
  - (n) Exercise reasonable precautions against any conditions that could threaten the health, safety, or welfare of individuals;
  - (o) Immediately notify the appropriate RCP Team members (in particular the CMHP representative and family or guardian) if: the individual has a significant change in medical status; the individual has an unexplained or unanticipated absence from the AFH; the provider becomes aware of alleged or actual abuse of the individual; the individual has a major behavioral incident, accident, illness, hospitalization; the individual contacts or is contacted by the police; or the individual dies, and follow-up with an incident report.
- (14) The provider shall write an incident report for any unusual incident and forward a copy of the incident report to the CMHP within five working days of the incident. Any incident that is the result of or suspected of being abuse shall be reported to the Office of Investigations and Training within 24 hours of occurrence.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

**309-040-0393**

### **Individually-Based Limitations**

This rule becomes effective on July 1, 2016, and enforceable according to OAR 309-040-0315(7).

(1) When the home-like qualities described below create a threat to the health and safety of an individual or others, a provider may seek to apply individually-based limitation through the process described in this rule. A provider may not otherwise limit the following home-like qualities without a valid individually-based limitation:

- (a) The freedom and support to access food at any time;
- (b) Have visitors of the individual's choosing at any time;
- (c) Have a unit entrance door that is lockable by the individual with only appropriate program staff having access;
- (d) Choose a roommate when sharing a unit;
- (e) Furnish and decorate the individual's unit as agreed to in the Residency Agreement;
- (f) The freedom and support to control the individual's schedule and activities; and
- (g) Privacy in the individual's unit.

(2) Minimum Requirements for Applying Individually-Based Limitation: A provider may only apply an individually-based limitation if:

- (a) The quality threatens the health or safety of the individual or others;
- (b) The individually-based limitation is supported by a specific assessed need;
- (d) The individual consents;
- (e) The limitation is directly proportionate to the specific assessed need; and
- (f) The individually-based limitation will not cause harm to the individual.

(3) The provider shall demonstrate and document that the individually-based limitation meets the requirements of section (2) of this rule and that the conditions described below exist in the person-centered service plan. The provider shall submit and sign a provider-created form that includes the following:

- (a) The specific and individualized assessed need justifying the individually-based limitation;
- (b) The positive interventions and supports used prior to consideration of any individually-based limitation;

- (c) Documentation that the provider or other entities have tried other less intrusive methods but did not work;
- (d) A clear description of the limitation that is directly proportionate to the specific assessed need;
- (e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;
- (f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;
- (g) The informed consent of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and
- (h) An assurance that the interventions and support do not cause harm to the individual.

(4) The provider shall:

- (a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in section (3) of this rule. The form shall be signed by the individual.
- (b) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and
- (c) Request review of the individually-based limitation by the person-centered service plan coordinator when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed, but no less than annually.

(5) The qualities and obligations described in sections (1)(b)-(g) do not apply to an individual receiving crisis-respite services, and a provider is not required to seek an individually-based limitation for such an individual to comply with these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

**309-040-0394**

### **Residency Agreement**

This rule became effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).



(1) The provider shall enter into a written residency agreement with each individual or the individual's representative residing at the AFH consistent with the following:

(a) The written residency agreement shall be signed by the provider and the individual or the individual's representative prior to or at the time of admission;

(b) The provider shall provide a copy of the signed agreement to the individual or the individual's representative and shall retain the original signed agreement within the individual's individual record;

(c) The provider shall give written notice to an individual and the individual's representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and

(d) The provider shall update residency agreements at least annually and also when social security rates change or an individual's finances change such that the amount paid for room and board changes.

(2) The residency agreement shall include, but is not limited to, the following:

(a) The room and board rate describing the estimated public and private pay portions of the rate:

(A) Where an individual's social security or other funding is not active at the time of admission to the program, the program shall prepare the room and board agreement based upon the estimated benefit to be received by the individual; and

(B) If, when funding is later activated, actual income of the individual varies from the estimated income noted on the residency agreement, the agreement shall be updated and re-signed by all the applicable parties.

(b) Services and supports to be provided in exchange for payment of the room and board rate;

(c) Conditions under which the provider may change the rates;

(d) The provider's refund policy in instances of an individual's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the home;

(e) A statement indicating that the individual is not liable for damages considered normal wear and tear;

(f) The provider's policies on voluntary moves and whether or not the provider requires written notification of a non-Medicaid individual's intent to not return;

(g) The potential reasons for involuntary termination of residency in compliance with this rule and individual's rights regarding the eviction and appeal process as outlined in OAR 309-040-0410;

(h) Any policies the provider may have on the use of alcohol, cannabis, and illegal drugs of abuse;

(i) Smoking policies in compliance with the Tobacco Freedom Policy established by the Division;

(j) Policy addressing pet and service animals. The provider may not restrict animals that provide assistance or perform tasks for the benefit of an individual with a disability. Such animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.

(k) Policy regarding the presence and use of legal medical and recreational marijuana at the home;

(L) Schedule of meal times. The provider may not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal consistent with OAR 411-050-0645);

(m) Policy regarding refunds for individuals eligible for Medicaid services, including prorating partial months, and if the room and board is refundable;

(n) Any house rules or social covenants required by the provider that may be included in the agreement or as an addendum;

(o) Statement informing the individual of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), which may not be limited without the informed, written consent of the individual and include the right to:

(A) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws;

(B) The freedom and support to access food at any time;

(C) To have visitors of the individual's choosing at any time;

(D) Have a lockable door in the individual's unit that may be locked by the individual;

(E) Choose a roommate when sharing a unit;

(F) Furnish and decorate the individual's unit according to the Residency Agreement;

(G) The freedom and support to control the individual's schedule and activities; and

(H) Privacy in the individual's unit.

(3) The provider may not propose or enter into a residency agreement that:

(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits;

(b) Includes any illegal or unenforceable provision or asks or requires the individual to waive any of the individual's rights or the licensee's liability for negligence; or

(c) Conflicts with individual rights or these rules.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0395**

#### **Standards for Admission, Transfers, Respite, Discharges, and Closures**

(1) Each individual referred for placement in an AFH may select and choose from available service settings.

(2) A provider may only admit an individual with a referral from, or the prior written approval of the CMHP or the Division. At the time of the referral, a provider shall be given complete information about the case history of the individual as it relates to behavior, skill level, medical status, or other relevant information. The provider may deny admission of any individual if the provider believes the individual cannot be managed effectively in the AFH, or for any other reason not specifically prohibited by this rule. AFHs may not be used as a site for foster care for children, adults from other agencies, or any type of shelter or day care without the written approval of the CMHP or the Division.

(3) Transfers:

(a) An individual may not be transferred by a provider to another AFH or moved out of the AFH without 30 days advance written notice to the individual, the individual's representative, guardian, or conservator, and the CMHP;

(b) The written notice shall state the reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070 and the individual's right to a hearing as provided in ORS 443.738(11)(b);

(c) Except where undue delay might jeopardize the health, safety, or well-being of the individual or other individuals, a provider shall only transfer an individual for the following reasons:

- (A) Behavior that poses a significant danger to the individual or others;
- (B) Failure to make payment for care;
- (C) The AFH has had its license revoked, not renewed, or voluntarily surrendered; or
- (D) The individual's care needs exceed the ability of the provider.

(d) Individuals who object to the transfer shall be given the opportunity for a hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, a family member, and a CMHP staff member.

(4) Providers may not exceed the licensed capacity of the AFH. However, respite care of no longer than two weeks duration may be provided an individual if the addition of the respite individual does not cause the total number of residents to exceed five. Thus, a provider may exceed the licensed number of residents by one respite individual for two weeks or less if approved by the CMHP or the Division, and if the total number of residents does not exceed five.

(5) Discharge:

(a) A provider may only discharge an individual for the reasons stated in section (3) of this rule. The provider shall give at least 30 days written notice to an individual and the Division before termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or others;

(b) The provider shall promptly notify the CMHP or Division if an individual gives notice or plans to leave the AFH or if an individual abruptly leaves.

(6) Providers shall notify the Division prior to a voluntary closure of an AFH and give individuals, families, and the CMHP 30 days' written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of an individual, provider, or caregiver. If a provider has more than one AFH, an individual cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CMHP.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

**309-040-0400**

### **Inspections**

(1) The Division shall conduct an inspection of an AFH:

- (a) Prior to issuance of a license;
  - (b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or
  - (c) Anytime the Division has probable cause to believe that an AFH has violated a regulation or provision of these rules or is operating without a license.
- (2) The Division or CMHP may conduct inspections of an AFH:
- (a) Anytime such inspections are authorized by these rules and any other time the Division or CMHP considers it necessary to determine if an AFH is in compliance with these rules or with conditions placed upon the license;
  - (b) To determine if cited deficiencies have been corrected; and
  - (c) For the purpose of monitoring of the individuals' care.
- (3) State or local fire inspectors shall be permitted access to enter and inspect the AFH regarding fire safety upon request of the Division or CMHP.
- (4) The Division and CMHP shall have full access to examine AFH records and accounts, including individual records and accounts, and to inspect the physical premises, including the buildings, grounds, equipment, and any vehicles.
- (5) The Division or CMHP staff shall be permitted to interview the provider, resident manager, caregiver, and individuals. Interviews are confidential conducted in private and are confidential except as considered public record under ORS 430.763.
- (6) Providers shall authorize resident managers and substitute caregivers to permit entrance by the Division or CMHP staff for the purpose of inspection and investigation.
- (7) The Division or CMHP staff shall conduct inspections with or without advance notice to the provider, staff, or an individual of the AFH. The Division or CMHP may not give advance notice of any inspection if notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.
- (8) If the Division or CMHP staff is not permitted access or inspection, a search warrant may be obtained.
- (9) The inspector shall respect the private possessions and living area of individuals, providers, and caregivers while conducting an inspection.
- (10) Completed reports on inspections, except for confidential information, shall be available to the public upon written request to the Division or CMHP during business hours.

(11) For individuals receiving services authorized or funded by the Division, the Division shall investigate allegations of abuse as defined in ORS 430.735 to 430.765.

(12) When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Division or its designee has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator, or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions must be taken.

(13) The Division or its designee shall complete an abuse investigation and protective services report in accordance with OAR 943-045-0250 through 0370.

(14) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without Division approval to determine if any other personnel actions are necessary.

(15) Upon completion of the investigation report according to OAR 943-045-0320, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider. The provider shall implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(16) A provider may not retaliate against any person who reports in good faith suspected abuse or against the individual with respect to the report.

(17) In accordance with ORS 430.755 any provider who retaliates against any person because of a report of suspected abuse or neglect may be liable according to 430.755, in a private action to that person for actual damages and, in addition, a penalty in accordance with 443.775(10) notwithstanding any other remedy provided by law. The authority of the director to impose civil penalties and the factors to be considered shall be in accordance with 443.790.

(18) In accordance with OAR 943-045-0340 Adverse Action, any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by a community facility,

community program, or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to the following:

- (a) Discharge or transfer from the AFH except for clinical reasons;
- (b) Discharge from or termination of employment;
- (c) Demotion or reduction in remuneration for services; or
- (d) Restriction or prohibition of access to the community facility or its residents.

(19) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0405**

#### **Procedures for Correction of Violations**

(1) At any time after receipt of a notice of violations or an inspection report, the licensee or the Division may request a conference in writing. The conference shall be scheduled within ten days of a request by either party. The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the rules. The written request by a licensee or the Division for a conference shall not extend any previously established time limit for correction.

(2) The licensee shall notify the Division of correction of violations in writing no later than the date specified in the notice of violation.

(3) If, after inspection of the AFH, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more of the following actions:

(a) Imposition of an administrative sanction that may include revocation, suspension, placement of conditions on the license, or non-renewal of a license as deemed appropriate by the Division;

(b) Filing of a criminal complaint.

(4) If an individual is in serious and immediate danger, the license may be immediately suspended or revoked and arrangements made to move the individual.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

**309-040-0410**

**Residents' Bill of Rights, Complaints, and Grievances**

(1) Residents' Bill of Rights:

(a) The provider shall guarantee Residents' Bill of Rights as described in ORS 443.739 and help residents exercise them;

(b) The provider shall post the Residents' Bill of Rights in a location that is prominent and accessible to individuals, individuals' representatives, parents, guardians, and advocates. The posted rights shall include the telephone number of the office to call to report complaints;

(c) The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representatives, parents, guardians, and advocates along with a description of how to exercise these rights;

(d) Upon admission to the AFH:

(A) The provider shall explain the Residents' Bill of Rights to each individual and to individuals' representatives, parents, guardians, and advocates; and

(B) The provider shall document in the individual's file that a copy of the Residents' Bill of Rights is given to each individual and to individuals' representatives, parents, guardians, and advocates.

(e) The Residents' Bill of Rights state that each resident has the right to:

(A) Be treated as an adult with respect and dignity;

(B) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote and be informed of all house rules;

(C) Receive appropriate care and services and prompt medical care as needed. Be informed of the individual's medical condition and the right to consent to or refuse treatment;

(D) Adequate personal privacy and privacy to associate and communicate privately with any individual of choice, such as family members, friends, advocates, and legal, social service, and medical professionals; send and receive personal mail unopened; engage in telephone conversations; and have medical and personal information kept confidential;



- (E) Have access to and participate in activities of social, religious, and community groups;
- (F) Be able to keep and use a reasonable amount of personal clothing and belongings and to have a reasonable amount of private, secure storage space.
- (G) Be free of discrimination in regard to race, color, national origin, sex, religion, sexual orientation, or disability;
- (H) Manage financial affairs unless legally restricted. Be free from financial exploitation. The provider may not charge or ask for application fees or nonrefundable deposits and may not solicit, accept, or receive money or property from an individual other than the amount agreed to for services;
- (I) A safe and secure environment;
- (J) Written notices prior to rate increases and evictions;
- (K) A written agreement regarding services to be provided and agreed upon rates;
- (L) Voice suggestions, complaints, or grievances without fear of retaliation;
- (M) Freedom from training, treatment, chemical or physical restraints except as agreed to in writing in an individual's RCP. Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;
- (N) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to residents in an age appropriate manner;
- (O) An opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;
- (P) Freedom from punishment. Behavior intervention programs shall be approved in writing on the individual's RCP;
- (Q) Freedom from abuse and neglect;
- (R) The opportunity to contribute to the maintenance and normal activities of the household;
- (S) Access and opportunity to interact with persons with or without disabilities;
- (T) The right not to be transferred or moved out of the AFH without 30 days' advance written notice and an opportunity for a hearing as described in ORS 443.738 and OAR 411-088-0080. A provider may transfer or discharge an individual only for medical

reasons including a medical emergency described in ORS 443.738, or for the welfare of the individual or other residents, or for nonpayment; and

(U) Utilize advance directives. Advance directives shall be explained to each individual upon admission. If the individual does not already have any advance directive or directives, he or she shall be given an opportunity to complete them. If any advance directives are completed by the individual, the provider shall document these directives in the individual's record; if the individual declines to file any advance directives, this declination shall be documented in the individual's record;

(V) As used in this section, the term "advance directive" has the meaning given under ORS 127.505, and includes the "Declaration for Mental Health Treatment" under ORS 127.700 through 127.737.

(2) Additional Rights for Individuals:

(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule;

(b) Have visitors of the individual's choosing at any time and the freedom to visit with guests within the common areas of the program and the individual's sleeping room;

(c) The freedom and support to control one's own schedule and activities including but not limited to: Accessing the community without restriction;

(d) Access to community resources including recreation, religious services, agency services, employment and day programs, unless such access is legally restricted;

(e) Have a lockable door in the individual's bedroom that may be locked by the individual;

(f) Choose a roommate when sharing a bedroom;

(g) Furnish and decorate the individual's bedroom according to the residency agreement;

(h) The freedom and support to control the individual's schedule and activities;

(i) Privacy in the individual's bedroom;

(j) Section (2) of these rules and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).

(3) The qualities and obligations described in section 3(b)(c)(d)(e)(h) of this rule do not apply to an individual receiving crisis-respite services, and a provider need not seek an individually-based limitation for such an individual to comply with these rules.

- (4) The provider shall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider or an AFH caregiver, except where expressly allowed under these rules.
- (5) Any person who believes these rules have been violated may file a complaint with the Division or CMHP. The Division or CMHP may investigate any complaint or grievance regarding the AFH.
- (6) The Division or CMHP shall furnish each AFH with a Complaint and Grievance Notice that the provider shall post in a conspicuous place stating the telephone number of the Division and the CMHP and the procedure for making complaints or grievances.
- (7) A copy of all AFH complaints or grievances shall be maintained by the Division. All complaints or grievances and actions taken on the complaint or grievance, indexed by the name of the provider, shall:
- (a) Be placed into the public file at the Division. Information regarding the investigation of the complaint or grievance may not be filed in the public file until the investigation has been completed;
  - (b) Protect the privacy of the complainant or grievant and the individual; and
  - (c) Treat the names of the witnesses as confidential information.
- (8) Providers who acquire substantiated complaints or grievances pertaining to the health, safety, or welfare of individuals may have their licenses suspended, revoked, or not renewed or may have conditions placed on the license.
- (9) The AFH provider, resident manager, or caregiver may not retaliate in any way against any individual after a complaint or grievance has been filed with the Division. Retaliation may include, but is not limited to the following:
- (a) Increasing charges or threatening to increase charges;
  - (b) Decreasing or threatening to decrease services, rights, or privileges;
  - (c) Threatening to increase charges or decrease services, rights, or privileges;
  - (d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH; or
  - (e) Abusing, harassing, or threatening to abuse or harass an individual in any manner.
- (10) A complainant, grievant, witness, or caregiver of an AFH may not be subject to retaliation by a provider or resident manager or substitute caregiver for making a report or being interviewed about a complaint or being a witness. Retaliation may include, but is

not limited to, caregiver dismissal or harassment or restriction of access to either the AFH or an individual.

(11) The complainant has immunity from any civil or criminal liability with respect to the making or content of a complaint or grievance made in good faith.

(12) Any individual may inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Division upon written request subject to the Division's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests.

Stat. Auth.: ORS 443.735

Stats. Implemented: ORS 127.700 - 127.737 & 443.705 - 443.825

### **309-040-0415**

#### **Administrative Sanctions and Conditions**

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

- (a) Attachment of conditions to a license;
- (b) Civil penalties;
- (c) Denial, suspension, revocation, or non-renewal of license.

(2) If the Division imposes an administrative sanction, it shall serve a Notice of Intent of the administrative sanction upon the licensee personally or by certified mail.

(3) The notice of administrative sanction shall state the following:

- (a) Each sanction imposed;
- (b) A short and plain statement of each condition or act that constitutes a violation;
- (c) Each statute or rule allegedly violated;
- (d) A statement of the licensee's right to a contested case hearing;
- (e) A statement of the authority and jurisdiction under which the hearing is to be held;
- (f) A statement that the Division files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

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

(4) If an administrative sanction is imposed for reason other than abuse, neglect, or exploitation, a hearing shall precede it if the licensee requests the hearing in writing within 60 days after receipt of the notice pursuant to ORS Chapter 183.

(5) If a licensee fails to request in writing a hearing within 60 days, the Notice of Administrative Sanction shall become a Final Order of the Division by default.

(6) The Division may immediately suspend, revoke, or not renew a license for a substantiated finding of abuse, neglect, or exploitation of an individual. The licensee may submit a request in writing for a contested case hearing within 60 days of the notice of intent of suspension, revocation, or non-renewal.

(7) When a license is denied, suspended, revoked, or not renewed, the Division shall work with the CMHP to arrange for individuals to move for their protection.

(8) Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals, pending further action by the Division;

(b) There exists a threat to the health, safety, and welfare of an individual, pending further action by the Division or Division designee;

(c) There is reliable evidence of abuse of an adult, pending further action by the Division;

(d) The AFH is not being operated in compliance with these rules, pending further action by the Division; or

(e) The provider is licensed to care for a specific individual only, and further placements may not be made to the AFH.

(9) Conditions that may be imposed on a licensee include but are not limited to the following:

(a) Restricting the maximum capacity of the AFH;

(b) Restricting the number and impairment level of individuals allowed based upon the capacity of the caregivers to meet the health and safety needs of all residents;

(c) Requiring an additional caregiver or caregiver qualifications;

(d) Requiring additional training of caregivers;

- (e) Requiring additional documentation as deemed necessary by the Division;
  - (f) Restricting a provider from opening an additional AFH; or
  - (g) Suspending admissions to the AFH.
- (10) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.
- (11) In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing.
- (12) Conditions may be imposed for the extent of the license period (one year), extended to the next license period, or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.
- (13) Hearing rights are in accordance with ORS 183.411 to 183.550.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0420**

#### **Denial, Suspension, Revocation or Non-renewal of License**

- (1) Causative Action. The Division may deny, suspend, revoke, or refuse to renew a license where it finds:
- (a) There has been substantial failure to comply with these rules or when there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of individuals in an AFH; or
  - (b) The applicant or provider has been convicted of one or more crimes described in the Criminal Record Check:
    - (A) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked, or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation, or refusal to renew was due in any part to abuse of an adult, creating a threat to the individuals, or failure to possess physical health, mental health, or good personal character;

(B) If the denial, suspension, revocation, or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Division by clear and convincing evidence of the ability and fitness to operate an AFH. If the applicant or provider does not meet this burden, then the Division may deny, suspend, revoke, or refuse to renew the license;

(C) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked, or refused to be renewed due to abuse of an adult or failure to possess physical health, mental health, or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the individuals;

(D) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the AFH;

(iii) Receives financial backing from the person for the benefit of the AFH;

(iv) Receives managerial assistance from the person for the benefit of the AFH; or

(v) Allows the person to have access to the AFH.

(E) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.

(2) The Division may deny, suspend, revoke, or refuse to renew an AFH license if the applicant or provider:

(a) Submits fraudulent or untrue information to the Division;

(b) Has a history of or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bills;

(c) Has a prior denial, suspension, revocation, or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state or county;

(d) Has threatened the health, safety, or welfare of any individual;

(e) Has a substantiated finding of abuse of an adult;

- (f) Has a medical or psychiatric problem, which interferes with the ability to provide care;
- (g) Refuses to allow access and inspection;
- (h) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed; or
- (i) Fails to comply with a final order of the Division imposing an administrative sanction;
- (j) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider, resident manager, substitute caregiver, or volunteer of the AFH.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0425**

#### **Removal of Residents**

- (1) The Division may order the removal of individuals from an AFH to an alternative placement on the following grounds:
  - (a) When a violation of these rules is not corrected after time limit specified in notice;
  - (b) There is a violation of an individual's rights;
  - (c) The number of individuals currently in the AFH exceeds the maximum licensed capacity of the AFH;
  - (d) The AFH is operating without a license; or
  - (e) There is evidence of abuse of an adult that presents a serious and immediate danger to individuals.
- (2) The CMHP shall provide the individual assistance in locating and visiting alternative placements, if needed, and has the right to contest the move as provided in ORS 443.738(11)(b) and OAR 411-088-0080.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0430**

#### **Conditions**



(1) Attachment to License. Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(b) There exists a threat to the health, safety, and welfare of an individual;

(c) There is reliable evidence of abuse of an adult;

(d) The AFH is not being operated in compliance with these rules; or

(e) The provider is licensed to care for a specific individual only and further placements may not be made to the AFH.

(2) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.

(3) In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing.

(4) Conditions may be imposed for the extent of the license period (one year), extended to the next license period or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions may be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0435**

#### **Criminal Penalties**

(1) Operating an AFH without a license is punishable as a Class C misdemeanor.

(2) Refusing to allow any of the following is punishable as a Class B misdemeanor:

(a) Division access to the AFH for inspection or investigation;

(b) Division access to individuals in order to interview individuals privately or to review records; or

(c) State and local fire inspector access to the AFH regarding fire safety.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0440**

#### **Civil Penalties**

(1) Civil penalties for other than substantiated allegations of abuse shall not exceed \$100 per violation with a maximum of \$250 and may be assessed for violation of these rules with the exception of substantiated abuse findings.

(2) Civil penalties of a maximum of \$1000 per occurrence may be assessed for each substantiated abuse finding.

(3) In addition to any other liability or penalty, the Division may impose a penalty for any of the following:

(a) Operating an AFH without a license;

(b) Exceeding the number of residents identified on the license;

(c) The provider fails to achieve satisfactory compliance with the requirements of these rules within the time specified or fails to maintain such compliance;

(d) The AFH is unable to provide an adequate level of care to individuals;

(e) There is retaliation or discrimination against an individual, the individual's representative, family, employee, or any other person for making a complaint against the AFH;

(f) The provider fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out an individual's care plan; or

(g) Other violations are found on two consecutive inspections of an AFH after a reasonable amount of time has been allowed for the elimination of the violations.

(4) Any civil penalty imposed under this section shall become due and payable when the provider incurring the penalty receives a notice in writing from the Division. The notice shall be sent by registered or certified mail and includes the following:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(5) The provider to whom the notice is addressed shall have 60 days from the date of the notice of intent in which to make written application for a hearing.

(6) All hearings shall be conducted according to the applicable provisions of ORS Chapter 183.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0445**

#### **Public Information**

(1) The Division shall maintain current information on all licensed AFHs and make that information available to prospective individuals, individuals' representatives, their families, and other interested members of the public.

(2) The information shall include the following:

(a) The location of the AFH;

(b) A brief description of the physical characteristics of the home;

(c) The name and mailing address of the provider;

(d) The license classification of the home and the date the provider was first licensed to operate that home;

(e) The date of the last inspection, the name and telephone number of the office that performed the inspection, and a summary of the findings;

(f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the Division;

(g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and

(h) Whether care is provided primarily by the licensed provider, a resident manager, or other arrangement.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0450**

#### **Adjustment, Suspension, or Termination of Payment**

(1) The Division or CMHP may adjust, suspend, or terminate payment to a provider when any of the following conditions occur:

- (a) The provider's AFH license is revoked, suspended, or terminated;
  - (b) Upon a finding that the provider is failing to deliver any service as agreed to in the RCP; or
  - (c) When funding, laws, regulations, or the Division or CMHP priorities change such that funding is no longer available, redirected to other purposes, or reduced;
  - (d) The individual's service needs change;
  - (e) The individual is absent without providing notice to the provider for five or more consecutive days;
  - (f) The individual is determined to be ineligible for services;
  - (g) The individual moves, with or without notice, from the AFH; the provider shall be paid only through the last day of the individual's occupancy.
- (2) The Division or CMHP is under no obligation to maintain the AFH at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825

### **309-040-0455**

#### **Enjoinment of AFH Operation**

The Division may commence an action to enjoin the operation of an AFH pursuant to ORS 443.775(5):

- (1) When an AFH is operated without a valid license; or
- (2) After notice of revocation, non-renewal, or suspension has been given, a reasonable time for placement of individuals in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 443.705 - 443.825