DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 325

24-HOUR RESIDENTIAL PROGRAMS AND SETTINGS FOR CHILDREN AND ADULTS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

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411-325-0010 Statement of Purpose
(Amended 06/29/2016)

(1) The rules in OAR chapter 411, division 325 prescribe standards, responsibilities, and procedures for 24-hour residential programs delivering home and community-based services to individuals with intellectual or developmental disabilities in 24-hour residential settings.

(2) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

(a) A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed.

(b) A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0020 Definitions and Acronyms
(Temporary Effective 09/01/2016 to 02/27/2017)

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 325:

(1) "24-Hour Residential Program" means the distinct method for the delivery of home and community-based services in a 24-hour residential setting by a provider certified and endorsed under the rules in OAR chapter 411, division 323.

(2) "24-Hour Residential Setting" means a residential home, apartment, or duplex licensed by the Department under ORS 443.410 in which home and community-based services are provided to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting.

(3) "Apartment" means "24-hour residential setting" as defined in this rule.

(4) "Appeal" means the process under ORS chapter 183 that a provider may use to petition a civil penalty.

(5) "Applicant" means a person, agency, corporation, or governmental unit who applies for a license to deliver home and community-based services in a 24-hour residential setting.

(6) "Board of Directors" means the group of people formed by the provider agency to set policy and give directions to a provider delivering supports to individuals in a community-based service setting. A board of directors may include local advisory boards used by multi-state organizations.

(7) "CDDP" means "Community Developmental Disabilities Program".

(8) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the delivery of services through an endorsed 24-hour residential program.

(9) "Competency Based Training Plan" means the written description of the process of the provider for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the mission of the provider; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency may be waived by a provider to accommodate the specific circumstances of a staff member.

(10) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(11) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential program or 24-hour residential setting because the Department has determined the provider or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(12) "Duplex" means "24-hour residential setting" as defined in this rule.

(13) "Educational Surrogate" means the person who acts in place of the parent of a child in safeguarding the rights of the child in the public education decision-making process:

(a) When the parent of the child cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the parent of the child or young adult student.

(14) "Endorsement" means the authorization to provide services in a 24-hour residential setting that is issued by the Department to a certified

provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(15) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the operation of a 24-hour residential program and the administration of services in a 24-hour residential setting.

(16) "Home" means "24-hour residential setting" as defined in this rule.

(17) "ICF/ID" means "Intermediate Care Facility for Individuals with Intellectual or Developmental Disabilities".

(18) "ISP" means "Individual Support Plan".

(19) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.

(20) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.

(21) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(22) "Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Nursing services differ from administrative nursing services.

(23) "OCCS" means the "Office of Client and Community Services".

(24) "OIS" means "Oregon Intervention System".

(25) "Oregon Core Competencies" means:

> (a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the mission of the provider; and

(b) The associated timelines in which newly hired staff must demonstrate the competencies.

(26) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(27) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license to operate a 24-hour residential program or 24-hour residential setting after the Department determines a provider or home is not in compliance with these one or more of these rules or the rules in OAR chapter 411, division 323.

(28) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet where extra or additional food is offered without the order of a physician, but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(29) "Suspension" means an immediate temporary withdrawal of the approval to operate a 24-hour residential program or 24-hour residential setting after the Department determines a provider or home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(30) "These Rules" mean the rules in OAR chapter 411, division 325.

(31) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0025 Program Management
(Amended 06/29/2016)

(1) CERTIFICATION, ENDORSEMENT, AND ENROLLMENT. To operate a 24-hour residential program, a provider must have:

(a) A certificate and an endorsement for a 24-hour residential program as set forth in OAR chapter 411, division 323;

(b) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(c) For each specific geographic service area where 24-hour residential services shall be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(2) INSPECTIONS AND INVESTIGATIONS. The provider must allow inspections and investigations as described in OAR 411-323-0040.

(3) MANAGEMENT AND PERSONNEL PRACTICES. The provider must comply with the management and personnel practices as described in OAR 411-323-0050.

(4) COMPETENCY BASED TRAINING PLAN. The provider must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(5) GENERAL STAFF QUALIFICATIONS. Any staff member providing direct assistance to individuals must:

(a) Have knowledge of the ISPs for all individuals and all medical, behavioral, and additional supports required by the individuals; and

(b) Have met the basic qualifications in the Competency Based Training Plan. The provider must maintain written documentation kept current that the staff member has demonstrated competency in areas identified by the Competency Based Training Plan as required by section (4) of this rule, and that is appropriate to their job description.

(6) CONFIDENTIALITY OF RECORDS. The provider must ensure all individuals' records are confidential as described in OAR 411-323-0060.

(7) DOCUMENTATION REQUIREMENTS. All entries required by these rules, unless stated otherwise must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050, 410.070, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0030 Issuance of License
(Amended 06/29/2016)

(1) No person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit shall establish, conduct, maintain, manage, or operate a 24-hour residential program without being licensed for each 24-hour residential setting.

(2) No license is transferable or applicable to any location, home, agency, management agent, or ownership other than that indicated on the application and license.

(3) The Department issues a license to an applicant found to be in compliance with these rules. The license is in effect for two years from the date issued unless revoked or suspended.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0040 Application for Initial License
(Amended 06/29/2016)

(1) At least 30 days prior to anticipated licensure, an applicant must submit an application and required non-refundable fee. The application is provided

by the Department and must include all information requested by the Department.

(2) The application must identify the number of beds the 24-hour residential setting is presently capable of operating at the time of application, considering existing equipment, ancillary service capability, and the physical requirements as specified by these rules. For purposes of license renewal, the number of beds to be licensed may not exceed the number identified on the license to be renewed unless approved by the Department.

(3) The initial application must include --

> (a) A copy of any lease agreements or contracts, management agreements or contracts, and sales agreements or contracts, relative to the operation and ownership of the home;
>
> (b) A floor plan of the home showing the location and size of rooms, exits, smoke alarms, and extinguishers; and
>
> (c) A copy of the Residency Agreement as described in OAR 411-325-0300.

(4) If a scheduled, onsite licensing inspection reveals that an applicant is not in compliance with these rules as attested to on the Licensing Onsite Inspection Checklist, the onsite licensing inspection may be rescheduled at the convenience of the Department.

(5) Applicants may not admit any individual to the home prior to receiving a written confirmation of licensure from the Department.

(6) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed or may deny or revoke the license.

(7) Any applicant or person with a controlling interest in an agency is considered responsible for acts occurring during, and relating to, the operation of such home for the purpose of licensing.

(8) The Department may consider the background and operating history of each applicant and each person with a controlling ownership interest when determining whether to issue a license.

(9) When an application for initial licensure is made by an applicant who owns or operates other licensed homes or facilities in Oregon, the Department may deny the license if the applicant's existing home or facility is not, or has not been, in substantial compliance with the Oregon Administrative Rules.

(10) Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same management.

(11) A provider may not admit an individual whose service needs exceed the classification on the license of the home without prior written consent of the Department.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0050 License Expiration, Termination of Operations, and License Return
(Amended 12/28/2013)

(1) Unless revoked, suspended, or terminated earlier, each license to operate a residential home expires two years following the date of issuance.

(2) If the operation of a home is discontinued for any reason, the license is considered to have been terminated.

(3) Each license is considered void immediately if the operation of a home is discontinued by voluntary action of the licensee or if there is a change in ownership.

(4) The license must be returned to the Department immediately upon suspension or revocation of the license or when operation is discontinued.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0060 Conditions on License
(Amended 12/28/2014)

The Department may attach conditions to a license that limit, restrict, or specify other criteria for operation of a home. The type of condition attached to a license must directly relate to the risk of harm or potential risk of harm to individuals.

(1) The Department may attach a condition to a license upon a finding that:

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

(b) A threat to the health, safety, or welfare of an individual exists;

(c) There is reliable evidence of abuse, neglect, or exploitation;

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

(e) The provider is licensed to provide services for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that the Department may impose on a license include, but are not limited to:

(a) Restricting the total number of individuals to whom a provider may provide services;

(b) Restricting the total number of individuals within a licensed classification level based upon the capability and capacity of the provider and staff to meet the health and safety needs of all individuals;

(c) Restricting the type of support and services within a licensed classification level based upon the capability and capacity of the

provider and staff to meet the health and safety needs of all individuals;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training;

(f) Restricting the provider from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(g) Requiring additional documentation; or

(h) Restricting entry.

(3) The Department issues a written notice to the provider when the Department imposes conditions to a license. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation which warranted the condition has been remedied.

(4) The provider may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of conditions. The request for a hearing must be in writing.

(a) The provider must request a hearing within 21 days from the receipt of the written notice of conditions.

(b) In addition to, or in lieu of a hearing, a provider may request an administrative review as described in section (5) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the provider to a hearing.

(5) ADMINISTRATIVE REVIEW.

(a) In addition to the right to a hearing, a provider may request an administrative review by the Director of the Department for imposition of conditions. The request for an administrative review must be in writing.

(b) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of conditions. The provider may submit, along with the written request for an administrative review, any additional written materials the provider wishes to have considered during the administrative review.

(c) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the provider.

(d) The provider may request a hearing if the decision of the Department is to affirm the condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of conditions.

(6) The provider may send a written request to the Department to remove a condition if the provider believes the situation that warranted the condition has been remedied.

(7) Conditions must be posted with the license in a prominent location and be available for inspection at all times.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-443.455

411-325-0070 Renewal of License
(Amended 12/28/2013)

(1) A license is renewable upon submission of an application to the Department and the payment of the required non-refundable fee, except that no fee is required of a governmental owned home.

(2) Filing of an application and required fee for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application and fee are not submitted prior to the expiration date, the home or facility is treated as an unlicensed home subject to civil penalties as described in OAR 411-325-0460.

(3) The Department shall conduct a licensing review of the home prior to the renewal of the license. The review shall be unannounced, conducted 30-120 days prior to expiration of the license, and review compliance with these rules.

(4) The Department may not renew a license if the home is not in substantial compliance with these rules or if the State Fire Marshal or the State Fire Marshal's authorized representative has given notice of noncompliance pursuant to ORS 479.220.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0080 Mid-Cycle Review *(Repealed 1/6/2012)*

411-325-0090 Change of Ownership, Legal Entity, Legal Status, and Management Corporation
(Amended 12/28/2013)

(1) The service provider must notify the Department in writing of any pending change in ownership or legal entity, legal status, or management corporation.

(2) A new license is required upon change in ownership, legal entity, or legal status. The service provider must submit a license application and required fee at least 30 days prior to change in ownership, legal entity, or legal status.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0100 Inspections and Investigations
(Repealed 1/6/2012 – See OAR 411-323-0040)

411-325-0110 Variances
(Amended 06/29/2016)

(1) The Department may grant a variance to these rules based upon a demonstration by the provider that an alternative method or different approach provides equal or greater effectiveness and does not adversely impact the welfare, health, safety, or rights of the individuals or violate state or federal laws.

(2) The provider requesting a variance must submit a written application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to the services for an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The request for a variance is approved or denied by the Department. The decision of the Department is sent to the provider, the CDDP, and to all relevant Department programs or offices within 30 days from the receipt of the variance request.

(4) The provider may request an administrative review of the denial of a variance request. The Department must receive a written request for an administrative review within 10 business days from the receipt of the denial. The provider must send a copy of the written request for an administrative review to the CDDP. The decision of the Director is the final response from the Department.

(5) The duration of the variance is determined by the Department.

(6) The provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0120 Medical Services
(Amended 12/28/2014)

(1) The provider must have and implement written policies and procedures that maintain and protect the physical health of individuals. The policies and procedures must address the following:

(a) Individual health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if provided;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) INDIVIDUAL HEALTH CARE.

(a) An individual must receive care that promotes the health and well-being of the individual as follows:

(A) The provider must ensure the individual has a primary physician or health care provider whom the individual has chosen from among qualified providers;

(B) Provisions must be made for a secondary physician or clinic in the event of an emergency;

(C) The provider must ensure that an individual receives a medical evaluation by a qualified health care provider no fewer than every two years or as recommended by a physician;

(D) The provider must monitor the health status and physical conditions of the individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm;

(b) A written, signed order from a physician or qualified health care provider is required prior to the usage or implementation of all of the following:

(A) Prescription medications;

(B) Non-prescription medications except over the counter topical;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(c) The provider must implement the order of a physician or qualified health care provider.

(d) The provider must maintain records on each individual to aid physicians, licensed health professionals, and the provider in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, known allergies, and immunizations;

(B) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(C) A record of known hospitalizations and surgeries.

(3) MEDICATION.

(a) All medications must be:

(A) Kept in their original containers;

(B) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the written order of a physician or qualified health care provider; and

(C) Kept in a secured locked container and stored as indicated by the product manufacturer.

(b) All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of a physician or qualified health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For topical medications and treatments without the order of a physician or qualified health care provider, a transcription of the printed instructions from the package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (i.e., as needed) medication was administered;

(H) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(I) An explanation of any medication administration irregularity; and

(J) Documentation of any known allergy or adverse drug reaction.

(c) Self-administration of medication.

(A) The ISP for individuals who independently self-administer medications must include a plan for the periodic monitoring and review of the self-administration of medications.

(B) The provider must ensure that individuals able to self-administer medications keep the medications in a secure locked container unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(d) PRN (i.e., as needed) orders are not allowed for psychotropic medication.

(e) Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by a health care provider, from a single pharmacy which maintains a medication profile for the individual;

(B) Maintaining information about the desired effects and side effects of each medication;

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and

(D) Documentation in the record for an individual of the reason all medications are not provided through a single pharmacy.

(f) All unused, discontinued, outdated, recalled, and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of the medication. A written record of the disposal of the medication must be maintained and include documentation of:

(A) Date of disposal;

(B) Description of the medication, including dosage strength and amount being disposed;

(C) Individual for whom the medication was prescribed;

(D) Reason for disposal;

(E) Method of disposal;

(F) Signature of the person disposing of the medication; and

(G) For controlled medications, the signature of a witness to the disposal.

(4) DIRECT NURSING SERVICES. When direct nursing services are provided to an individual, the provider must:

(a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(5) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a provider in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

(6) When the medical, behavioral, or physical needs of an individual change to a point that they may not be met by the provider, the services coordinator must be notified immediately and notification must be documented.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-443.455

411-325-0130 Food and Nutrition
(Amended 06/29/2016)

(1) The provider must support the freedom of the resident to have access to his or her personal food at any time. Limitations may only be used when there is a health or safety risk, as described in OAR 411-325-0430 and OAR 411-004-0040, and when a written informed consent is obtained.

(2) Three nutritious meals and two snacks must be provided. Meals must be offered daily at times consistent with those in the community.

(a) Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA) and include fresh fruit and vegetables when in season, unless otherwise specified in writing by a physician.

(b) Food preparation must include consideration of cultural and ethnic backgrounds, as well as, the food preferences of individuals. Special consideration must be given to individuals with chewing difficulties and other eating limitations as described in section (3) of this rule.

(c) If an individual misses or plans to miss a meal at a scheduled time, or requests an alternate mealtime, an alternative meal must be made available. Individuals are not restricted to specific mealtimes and are encouraged to choose when, where, and with whom to eat.

(d) Provision of food beyond the required three meals and two snacks are the responsibility of the individual.

(3) MODIFIED OR SPECIAL DIETS. For an individual with a physician or health care provider ordered modified or special diet, the provider must:

(a) Have menus for the current week that provide food and beverages that consider the preferences of the individual and are appropriate to the modified or special diet; and

(b) Maintain documentation that identifies how modified or special diets are prepared and served to individuals.

(4) Unpasteurized milk and juice or home canned meats and fish may not be served or stored in the home.

(5) Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days must be maintained on the premises.

(6) Food must be stored, prepared, and served in a sanitary manner.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0140 Physical Environment
(Amended 06/29/2016)

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be kept in good repair, clean, and free from odors. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting.

(2) The interior and exterior must be well and safely maintained and accessible according to the needs of the individuals.

(3) The water supply and sewage disposal must meet the requirements of the current rules of the Oregon Health Authority governing domestic water supply.

(4) A public water supply must be utilized if available. If a non-municipal water source is used, a sample must be collected yearly by the provider, sanitarian, or a technician from a certified water-testing laboratory. The water sample must be tested for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(5) Septic tanks or other non-municipal sewage disposal systems must be in good working order.

(6) Incontinence garments must be disposed of in closed containers.

(7) The temperature within the home must be maintained within a normal comfort range. During times of extreme summer heat, the provider must make reasonable effort to keep individuals comfortable using ventilation, fans, or air conditioning.

(8) Screening for workable fireplaces and open-faced heaters must be provided.

(9) All heating and cooling devices must be installed in accordance with current building codes and maintained in good working order.

(10) Handrails must be provided on all stairways.

(11) Yard and exterior steps must be accessible and appropriate to the needs of the individuals.

(12) Swimming pools, hot tubs, saunas, or spas must be equipped with safety barriers or devices designed to prevent accidental injury and unsupervised access.

(13) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of current rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and may not present a danger or health risk to individuals or guests.

(14) All measures necessary must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects.

(15) The interior and exterior of the residence must be kept free of litter, garbage, and refuse.

(16) Any work undertaken at a residence, including, but not limited to demolition, construction, remodeling, maintenance, repair, or replacement

must comply with all applicable state and local building, electrical, plumbing, and zoning codes appropriate to the individuals served.

(17) Providers must comply with all applicable legal zoning ordinances pertaining to the number of individuals receiving services at the home.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0150 General Safety
(Amended 06/29/2016)

(1) All toxic materials, including, but not limited to poisons, chemicals, rodenticides, and insecticides must be:

(a) Properly labeled;

(b) Stored in the original container separate from all foods, food preparation utensils, linens, and medications; and

(c) Stored in a locked area unless the Risk Tracking records for all individuals residing in the home document that there is no risk present.

(2) All flammable and combustible materials must be properly labeled, stored, and locked in accordance with state fire code.

(3) For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.

(4) Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) Hot water in bathtubs and showers may not exceed 120 degrees Fahrenheit. Other water sources, except the dishwasher, may not exceed 140 degrees Fahrenheit.

(6) Bedrooms.

(a) Bedrooms on ground level must have at least one window that opens from the inside without special tools that provides a clear opening of not less than 821 square inches, with the least dimension not less than 22 inches in height or 20 inches in width. Sill height may not be more than 44 inches from the floor level. Exterior sill heights may not be greater than 72 inches from the ground, platform, deck, or landing. There must be stairs or a ramp to ground level. Those homes previously licensed having a minimum window opening of not less than 720 square inches are acceptable unless through inspection it is deemed that the window opening dimensions present a life safety hazard.

(b) Bedrooms must have 60 square feet per individual with beds located at least three feet apart.

(c) If an individual chooses to share a bedroom with another individual, the individuals must be afforded an opportunity to have a choice of roommates.

(d) Single Action Locks.

(A) A 24-hour residential setting licensed on or after January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys.

(B) A 24-hour residential setting licensed prior to January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys by September 1, 2018.

(C) Limitations may only be used when there is a health or safety risk and when a written informed consent is obtained as described in OAR 411-325-0430 and OAR 411-004-0040.

(7) Operative flashlights, at least one per floor, must be readily available to staff in case of emergency.

(8) First-aid kits and first-aid manuals must be available to staff within each home in a designated location. First aid kits must be locked if, after

evaluating any associated risk, items contained in the first aid kit present a hazard to individuals living in the home. First aid kits containing any medication including topical medications must be locked.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0160 Program Management and Personnel Practices
(Repealed 1/6/2012 – See OAR 411-323-0050)

411-325-0170 Staffing Requirements
(Amended 06/29/2016)

(1) Each residence must provide staff appropriate to the number of individuals served as follows:

(a) Each home serving five or fewer individuals must provide at a minimum one staff on the premises when individuals are present;

(b) Each home serving five or fewer individuals in apartments must provide at a minimum one staff on the premises of the apartment complex when individuals are present;

(c) Each home serving six or more individuals must provide a minimum of one staff on the premises for every 15 individuals during awake hours and one staff on the premises for every 15 individuals during sleeping hours, except residences licensed prior to January 1, 1990; and

(d) Each home serving children, for any number of children, must provide at a minimum one awake night staff on the premises when children are present.

(2) A home is granted an exception to the staffing requirements in sections (1)(a), (1)(b), and (1)(c) for adults to be home alone when the following conditions have been met:

(a) No more than two adults are to be left alone in the home at any time without on-site staff supervision;

(b) The amount of time any adult individual may be left alone may not exceed five hours within a 24-hour period and an adult individual may not be responsible for any other adult individual or child in the home or community;

(c) An adult individual may not be left home alone without staff supervision between the hours of 11:00 P.M. and 6:00 A.M.;

(d) The adult individual has a documented history of being able to do the following safety measures or there is a documented ISP team decision agreeing to an equivalent alternative practice:

(A) Independently call 911 in an emergency and give relevant information after calling 911;

(B) Evacuate the premises during emergencies or fire drills without assistance in three minutes or less;

(C) Knows when, where, and how to contact the provider in an emergency;

(D) Before opening the door, check who is there;

(E) Answer the door appropriately;

(F) Use or understands to not use small appliances, sharp knives, kitchen stove, and microwave safely if not used safely;

(G) Self-administer medications, if applicable;

(H) Safely adjust water temperature at all faucets; and

(I) Safely take a shower or bathe without falling.

(e) There is a documented ISP team decision annually noting team agreement that the adult individual meets the requirements of subsection (d) of this section.

(3) If at any time an adult individual is unable to meet the requirements in section (2)(d)(A)-(I) of this rule, the provider may not leave the adult

individual alone without supervision. In addition, the provider must notify services coordinator for the adult individual within one working day and request that the ISP team meet to address the ability of the adult individual to be left alone without supervision.

(4) Each home must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0180 Individual Summary Sheets
(Amended 12/28/2014)

The provider must maintain a current one to two page summary sheet for each individual receiving services from the provider. The record must include:

(1) The name of the individual and his or her current and previous address, date of entry into the home, date of birth, gender, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number (if applicable), and guardianship status; and

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

> (a) The legal or designated representative, family, and other significant person of the individual (as applicable), and for a child, the parent and educational surrogate (if applicable);
>
> (b) The primary care provider and clinic preferred by the individual;
>
> (c) The dentist preferred by the individual;
>
> (d) The identified pharmacy preferred by the individual;
>
> (e) The school, day program, or employer of the individual (if applicable);

(f) The services coordinator of the individual and Department representative for Department direct contracts; and

(g) Other agencies and representatives providing services and supports to the individual.

(3) For children under the age 18, any court ordered or legal representative authorized contacts or limitations must also be included on the individual summary sheet.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455

411-325-0185 Emergency Information
(Amended 12/28/2014)

(1) A provider must maintain emergency information for each individual receiving services from the home in addition to the individual summary sheet described in OAR 411-325-0180.

(2) The emergency information must be kept current and must include:

(a) The name of the individual;

(b) The name, address, and telephone number of the provider;

(c) The address and telephone number of the home where the individual lives;

(d) The physical description of the individual, which may include a picture and the date the picture was taken, and identification of:

(A) The race, gender, height, weight range, hair, and eye color of the individual; and

(B) Any other identifying characteristics that may assist in identifying the individual if the need arises, such as marks or scars, tattoos, or body piercings.

(e) Information on the abilities and characteristics of the individual including:

(A) How the individual communicates;

(B) The language the individual uses or understands;

(C) The ability of the individual to know and take care of bodily functions; and

(D) Any additional information that may assist a person not familiar with the individual to understand what the individual may do for him or herself.

(f) The health support needs of the individual, including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

(C) Health issues that a person needs to know when taking care of the individual;

(D) Special dietary or nutritional needs, such as requirements around the textures or consistency of foods and fluids;

(E) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(F) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(G) Physical limitations that may affect the ability of the individual to communicate, respond to instructions, or follow directions; and

(H) Specialized equipment needed for mobility, positioning, or other health-related needs.

(g) The emotional and behavioral support needs of the individual, including:

(A) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(B) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(h) Any court ordered or legal representative authorized contacts or limitations;

(i) The supervision requirements of the individual and why; and

(j) Any additional pertinent information the provider has that may assist in the care and support of the individual if a natural or man-made disaster occurs.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-443.455

411-325-0190 Incident Reports and Emergency Notifications
(Amended 12/28/2013)

(1) An incident report, as defined in OAR 411-325-0020, must be placed in an individual's record and include:

(a) Conditions prior to or leading to the incident;

(b) A description of the incident;

(c) Staff response at the time; and

(d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) A copy of all unusual incident reports must be sent to the individual's services coordinator within five working days of the unusual incident. Upon request of the individual's legal representative, copies of unusual incident

reports must be sent to the legal representative within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of unusual incident reports may not be provided to an individual's legal representative when the report is part of an abuse or neglect investigation.

(3) The service provider must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR chapter 407, division 045.

(a) When an abuse investigation has been initiated, the Department or the Department's designee must provide notice to the service provider according to OAR chapter 407, division 045.

(b) When an abuse investigation has been completed, the Department or the Department's designee must provide notice of the outcome of the investigation according to OAR chapter 407, division 045.

(c) When a service provider receives notification of a substantiated allegation of abuse of an adult as defined in OAR 407-045-0260, the service provider must provide written notification immediately to:

(A) The person found to have committed abuse;

(B) Residents of the home;

(C) Residents' services coordinators; and

(D) Residents' legal representatives.

(d) The service provider's written notification must include:

(A) The type of abuse as defined in OAR 407-045-0260;

(B) When the allegation was substantiated; and

(C) How to request a copy of the redacted Abuse Investigation and Protective Services Report.

(e) The service provider must have policies and procedures to describe how the service provider implements notification of substantiated abuse as listed in subsections (3)(c) and (d) of this section.

(4) In the case of a serious illness, injury, or death of an individual, the service provider must immediately notify:

(a) The individual's legal representative or conservator, parent, next of kin, designated representative, or other significant person;

(b) The CDDP; and

(c) Any agency responsible for, or providing services to, the individual.

(5) In the case of an individual who is away from the residence without support beyond the time frames established by the ISP team, the service provider must immediately notify:

(a) The individual's legal or designated representative or nearest responsible relative (as applicable);

(b) The local police department; and

(c) The CDDP.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0200 Transportation
(Amended 12/28/2013)

(1) Service providers, including employees and volunteers who own or operate vehicles that transport individuals, must:

(a) Maintain the vehicle in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

(c) Maintain or assure insurance coverage including liability, on all vehicles and all authorized drivers; and

(d) Carry a first aid kit in the vehicle.

(2) When transporting, the driver must ensure that all individuals use seat belts. Individual car or booster seats must be used for transporting all children as required by law. When transporting individuals in wheel chairs, the driver must ensure that wheel chairs are secured with tie downs and that individuals wear seat belts.

(3) Drivers operating vehicles that transport individuals must meet applicable Department of Motor Vehicles requirements as evidenced by a driver's license.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0210 Individual/Family Involvement Policy
(Repealed 1/6/2012 – See OAR 411-323-0060)

411-325-0220 Individual Furnishings
(Amended 06/29/2016)

(1) Bedroom furniture must be provided or arranged for each individual and include:

(a) A bed including a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, a waterproof mattress cover if the individual is incontinent, and a pillow;

(b) A private dresser or similar storage area for personal belongings that is readily accessible to the individual; and

(c) A closet or similar storage area for clothing that is readily accessible to the individual.

(2) Individuals must have the freedom to decorate and furnish his or her own bedroom as agreed to within the Residency Agreement.

(3) Two sets of linens must be provided or arranged for each individual and include:

(a) Sheets and pillowcases;

(b) Blankets appropriate in number and type for the season and the comfort of the individual; and

(c) Towels and washcloths.

(4) Each individual must be assisted in obtaining personal hygiene items in accordance with individual needs and items must be stored in a sanitary and safe manner.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0230 Emergency Plan and Safety Review
(Amended 12/28/2014)

(1) Providers must provide the emergency plan and safety review requirements as described in this rule.

(2) EMERGENCY PLANNING.

(a) Providers must post the following emergency telephone numbers in close proximity to all phones used by staff.

(A) The telephone numbers of the local fire, police department, and ambulance service, if not served by a 911 emergency services; and

(B) The telephone number of the executive director, emergency physician, and additional people to be contacted in the case of an emergency.

(b) If an individual regularly accesses the community independently, the provider must provide the information to the individual about appropriate steps to take in an emergency, such as emergency

contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(3) Providers must develop, maintain, update, and implement a written emergency plan for the protection of all individuals in the event of an emergency or disaster.

(a) The emergency plan must:

(A) Be practiced at least annually. The emergency plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise.

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the home, such as a pandemic or an earthquake.

(C) Include provisions and sufficient supplies, such as sanitation supplies, to shelter in place, when unable to relocate, for at least three days under the following conditions:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food or supplies; and

(iv) Staff unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of staff during evacuation, transporting, and housing of individuals, including instructions to staff to notify the Department, local office, or designee of the plan to evacuate or the evacuation of the home as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the home;

(iv) A method that provides a person unknown to the individual the ability to identify each individual by name and to identify the name of the supporting provider for the individual; and

(v) A method for tracking and reporting to the Department, local office, or designee, the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals, including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheets described in OAR 411-325-0180 and the emergency information described in OAR 411-325-0185 and other information necessary to obtain care, treatment, food, and fluids for the individuals.

(ii) Continued access to life-sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(b) The provider must instruct and provide training about the duties and responsibilities for implementing the emergency plan to all staff.

(c) The provider must re-evaluate and revise the emergency plan at least annually or when there is a significant change in the home.

(d) The emergency plan summary must be sent to the Department annually and upon change of ownership.

(e) Applicable parts of the emergency plan must coordinate with each applicable employment provider to address the possibility of an emergency or disaster during work hours.

(4) A documented safety review must be conducted quarterly to ensure that each home is free of hazards. The provider must keep the quarterly safety review reports for three years and must make them available upon request by the CDDP or the Department.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-443.455

411-325-0240 Assessment of Fire Evacuation Assistance
(Amended 12/28/2013)

(1) The service provider must assess, within 24 hours of an individual's entry to the home, the individual's ability to evacuate the home in response to an alarm or simulated emergency.

(2) The service provider must document the level of assistance needed by each individual to safely evacuate the home and the documentation must be maintained in the individual's entry records.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0250 Fire Drill Requirements and Fire Safety
(Amended 12/28/2013)

(1) The service provider must conduct unannounced evacuation drills when individuals are present, one per quarter each year with at least one drill per year occurring during the hours of sleep. Drills must occur at different times during day, evening, and night shifts with exit routes being varied based on the location of a simulated fire.

(2) Written documentation must be made at the time of the fire drill and kept by the service provider for at least two years following the drill. Fire drill documentation must include:

(a) The date and time of the drill or simulated drill;

(b) The location of the simulated fire and exit route;

(c) The last names of all individuals and staff present on the premises at the time of the drill;

(d) The type of evacuation assistance provided by staff to individuals' as specified in each individual's safety plan;

(e) The amount of time required by each individual to evacuate or staff simulating the evacuation; and

(f) The signature of the staff conducting the drill.

(3) Smoke alarms or detectors and protection equipment must be inspected and documentation of inspections maintained as recommended by the local fire authority or State Fire Marshal.

(4) The service provider must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0260 Individual Fire Evacuation Safety Plans
(Amended 12/28/2013)

(1) For individuals who are unable to evacuate the residence within the required evacuation time or who with concurrence of the ISP team request not to participate in fire drills, the service provider must develop a written fire safety and evacuation plan that includes the following:

(a) Documentation of the risk to the individual's medical, physical condition, and behavioral status;

(b) Identification of how the individual evacuates his or her residence, including level of support needed;

(c) The routes to be used to evacuate the residence to a point of safety;

(d) Identification of assistive devices required for evacuation;

(e) The frequency the plan is to be practiced and reviewed by the individual and staff;

(f) The alternative practices;

(g) Approval of the plan by the individual's legal or designated representative (as applicable), case manager, and the service provider's executive director; and

(h) A plan to encourage future participation.

(2) The service provider must maintain documentation of the practice and review of the safety plan by the individual and the staff.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0270 Fire Safety Requirements for Homes on a Single Property or on Contiguous Property Serving Six or More Individuals
(Amended 06/29/2016)

(1) The home must provide safety equipment appropriate to the number and level of individuals served and meet the requirements of the State of Oregon Structural Specialty and Fire Code as adopted by the state:

(a) Each home housing six or more, but fewer than 11 individuals or each home that houses five or fewer individuals, but is licensed as a single facility due to the total number of individuals served per the license or meets the contiguous property provision, must meet the requirements of a SR 3.3 occupancy and must:

(A) Provide and maintain permanent wired smoke alarms from a commercial source with battery back-up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor;

(B) Provide and maintain a 13D residential sprinkler system as defined in the National Fire Protection Association standard; and

(C) Have simple hardware for all exit doors and interior doors that may not be locked against exit that has an obvious method of operation. Hasps, sliding bolts, hooks and eyes, double key deadbolts, and childproof doorknobs are not permitted. Any other deadbolts must be single action release so as to allow the door to open in a single operation.

(b) Each home housing 11 or more, but fewer than 17 individuals must meet the requirements of a SR 3.2 occupancy.

(c) Each home housing 17 or more individuals must meet the requirements of a SR 3.1 occupancy.

(2) The number of individuals receiving services may not exceed the licensed capacity, except that one additional individual at a time may receive community living supports. Community living supports may not violate the safety and health sections of these rules. Relief care may not be provided to any individual for more than 14 consecutive days.

(3) The provider may not admit individuals functioning below the level indicated on the license for the home.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0280 Fire Safety Requirements for Homes or Duplexes Serving Five or Fewer Individuals
(Amended 06/29/2016)

(1) The home or duplex must be made fire safe.

(a) A second means of egress must be provided.

(b) A class 2A10BC fire extinguisher that is easily accessible must be provided on each floor in the home or duplex.

(c) Permanent wired smoke alarms from a commercial source with battery back up in each bedroom and at a point centrally located in the corridor or area giving access to each separate sleeping area and on each floor must be provided and maintained.

(d) A 13D residential sprinkler system in accordance with the National Fire Protection Association Code must be provided and maintained. Homes or duplexes rated as "Prompt" facilities per Chapter 3 of the 2000 edition NFPA 101 Life Safety Code are granted an exception from the residential sprinkler system requirement.

(e) Hardware for all exit doors and interior doors must be simple hardware that may not be locked against exit and must have an obvious method of operation. Hasp, sliding bolts, hooks and eyes, double key deadbolts, and childproof doorknobs are not permitted. Any other deadbolts must be single action release so as to allow the door to open in a single operation.

(2) A home or duplex is granted an exception to the requirements in sections (1)(c) and (d) of this rule under the following circumstances:

(a) All individuals residing in the home or duplex have demonstrated the ability to respond to an emergency alarm with or without physical assistance from staff to the exterior and away from the home or duplex in three minutes or less, as evidenced by three or more consecutive documented fire drills;

(b) Battery operated smoke alarms with a 10 year battery life and hush feature have been installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes or duplexes at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be mounted as per the manufacturer's instructions. Alarms must be equipped with a

device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition; and

(c) A written fire safety evacuation plan is implemented that assures that staff assist all individuals in evacuating the premises safely during an emergency or fire as documented by fire drill records.

(3) The number of individuals receiving services at the home or duplex may not exceed the maximum capacity of five individuals, including an individual receiving community living supports. Relief care may not be provided to any individual for more than 14 consecutive days. Community living supports may not violate the safety and health sections of these rules.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0290 Fire Safety Requirements for Apartments Serving Five or Fewer Individuals
(Amended 06/29/2016)

(1) The apartment must be made fire safe by:

(a) Providing and maintaining in each apartment, battery-operated smoke alarms with a 10-year life in each bedroom and in a central location on each floor;

(b) Providing first floor occupancy apartments. Individuals who are able to exit in three minutes or less without assistance may be granted a variance from the first floor occupancy requirement;

(c) Providing a class 2A10BC portable fire extinguisher easily accessible in each apartment;

(d) Providing access to telephone equipment or intercom in each apartment usable by the individual receiving services; and

(e) Providing constantly usable unblocked exits from the apartment and apartment building.

(2) The number of individuals receiving services at the apartment may not exceed the maximum capacity of five individuals, including an individual receiving community living supports. Relief care may not be provided to any individual for more than 14 consecutive days. Community living supports may not violate the safety and health sections of these rules.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0300 Residency Agreements, Individual Rights, Complaints, Notification of Planned Action, and Hearings
(Amended 06/29/2016)

(1) RESIDENCY AGREEMENTS.

(a) The provider must enter into a written Residency Agreement with each individual specifying, at a minimum, the following:

(A) The rights and responsibilities of the individual and the provider; and

(B) The eviction process, notice requirements, and appeal rights available to each individual.

(b) The Residency Agreement may not violate the rights of an individual as stated in OAR 411-318-0010.

(c) The Residency Agreement may not be in conflict with any of these rules, the certification and endorsement rules in OAR chapter 411, division 323, or the home and community-based services and settings rules in OAR chapter 411, division 004.

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement may be subject to review by the Department or the designee of the Department.

(e) The provider must review and provide a copy of the Residency Agreement to each individual and the legal representative of the individual, as applicable, at the time of entry and annually or as changes occur. The reviews must be documented by having the

individual, or the legal representative of the individual, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the record for the individual.

(2) INDIVIDUAL RIGHTS.

(a) A provider must protect the rights of individuals described in OAR 411-318-0010 and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to an individual and the legal or designated representative of the individual.

(c) The individual rights apply to all individuals eligible for or receiving developmental disabilities services. A parent or guardian may place reasonable limitations on the rights of a child.

(3) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(4) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(5) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0310 Rights: Confidentiality of Records
(Repealed 1/6/2012 – See OAR 411-323-0060)

411-325-0320 Informal Complaints and Formal Grievances
(Repealed 12/28/2014)

411-325-0330 Medicaid Fair Hearings
(Repealed 12/28/2014)

411-325-0340 Behavior Support
(Amended 12/28/2013)

(1) The service provider must have and implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) A decision to develop a plan to alter a person's behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the service provider.

(3) The service provider must conduct a functional behavioral assessment of the behavior that is based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior, including (as applicable) frequency, duration, and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, including the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric condition; or

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) The Behavior Support Plan must include:

(a) An individualized summary of the individual's needs, preferences, and relationships;

(b) A summary of the function of the behavior, as derived from the functional behavioral assessment;

(c) Strategies that are related to the function of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies, including environmental modifications and arrangements;

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with (OIS);

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the Behavior Support Plan, including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Providers must maintain the following additional documentation for implementation of a Behavioral Support Plan:

(a) Written evidence that the individual and the individual's parent (if applicable), legal or designated representative (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

(6) The service provider must inform each individual, and as applicable the individual's parent or legal or designated representative, of the behavior support policy and procedures at the time of entry to the home and as changes occur.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0350 Protective Physical Intervention
(Amended 12/28/2013)

(1) A service provider must only employ protective physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;

(b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection ordered by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure or for the individual's protection during the time that a medical condition exists.

(2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying OIS training must be maintained in the staff person's personnel file.

(3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of a protective physical intervention technique must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Use of protective physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the service provider's executive director or the executive director's designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Submit an incident report to the CDDP services coordinator or other Department designee (if applicable) and the individual's legal

representative (if applicable), no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if emergency protective physical intervention is used more than three times in a six-month period.

(5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances described in section (7) of this rule. The report must include:

(a) The name of the individual to whom the protective physical intervention was applied;

(b) The date, type, and length of time the protective physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the staff member applying the protective physical intervention;

(f) The name and position of the staff witnessing the protective physical intervention;

(g) The name and position of the person providing the initial review of the use of the protective physical intervention; and

(h) Documentation of an administrative review including the follow-up to be taken to prevent a recurrence of the incident by the service provider's executive director or the executive director's designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) A copy of the incident report must be forwarded within five working days of the incident to the CDDP services coordinator and the individual's legal representative (when applicable).

(a) The services coordinator or the Department designee (when applicable) must receive complete copies of incident reports.

(b) Copies of incident reports may not be provided to a legal representative or other service providers when the report is part of an abuse or neglect investigation.

(c) Copies provided to a legal representative or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(d) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the CDDP services coordinator or other Department designee (if applicable) within one working day of the incident.

(7) Behavior data summary.

(a) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

(A) There is no injury to the individual or others;

(B) The intervention utilized is not a protective physical intervention;

(C) There is a formal written functional assessment and a written Behavioral Support Plan;

(D) The individual's Behavior Support Plan defines and documents the parameters of the baseline level of behavior;

(E) The protective physical intervention technique and the behavior for which the protective physical intervention techniques are applied remain within the parameters outlined in the individual's Behavior Support Plan and the OIS curriculum;

(F) The behavior data collection system for recording observations, interventions, and other support information critical to the analysis of the efficacy of the Behavior Support

Plan is also designed to record the items described in sections (5)(a)-(c) and (e)-(h) of this rule; and

(G) There is written documentation of an ISP team decision that a behavior data summary has been authorized for substitution in lieu of incident reports.

(b) A copy of the behavior data summary must be forwarded every 30 days to the CDDP services coordinator or other Department designee (if applicable) and the individual's legal representative (if applicable).

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0360 Psychotropic Medications and Medications for Behavior
(Amended 12/28/2014)

(1) Psychotropic medications and medications for behavior must be:

(a) Prescribed by a physician or health care provider through a written order; and

(b) Monitored by the prescribing physician or health care provider, ISP team, and provider for desired responses and adverse consequences.

(2) When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care provider using the Department Balancing Test Form (form SDS 4110) or by inserting the required form content into forms maintained by the provider. Providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(3) The provider must keep signed copies of the Balancing Test Forms required in section (2) of this rule in the medical record for the individual for seven years.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-443.455

411-325-0370 Individuals' Personal Property
(Amended 12/28/2013)

(1) The service provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or legal representative decision.

(2) The record must include:

(a) The description and identifying number, if any;

(b) Date of inclusion in the record;

(c) Date and reason for removal from the record;

(d) Signature of staff making each entry; and

(e) A signed and dated annual review of the record for accuracy.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0380 Handling and Managing Individuals' Money
(Amended 12/28/2013)

(1) The service provider must have and implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

(a) The individual to manage his or her own funds unless the ISP documents and justifies limitations to self-management;

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

(d) Taking into account an individual's interests and preferences.

(2) For those individuals not yet capable of managing their own money, as determined by the ISP Risk Tracking Record or the individual's legal representative, the service provider must prepare and maintain an accurate written record for each individual of all money received or disbursed on behalf of or by the individual. The record must include:

(a) The date, amount, and source of income received;

(b) The date, amount, and purpose of funds disbursed; and

(c) Signature of the staff making each entry.

(3) The service provider must reimburse the individual any funds that are missing due to theft or mismanagement on the part of any staff member of the home or for any funds within the custody of the service provider that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0390 Entry, Exit, and Transfer
(Amended 06/29/2016)

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters a 24-hour residential setting is subject to eligibility as described in this section.

(a) To be eligible for services in a 24-hour residential setting, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OCCS Medical;

(C) Be determined eligible for:

(i) Developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080; or

(ii) Services for Aging and People with Disabilities as described in OAR chapter 411, division 015.

(D) Meet the level of care for an ICF/ID, nursing facility, or hospital; and

(E) Be an individual who is not receiving other Department-funded in-home or community living support.

(b) Individuals receiving Medicaid Title XIX (OHP) under OCCS medical coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if they were requesting these services under OSIPM, including the rules regarding:

(A) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300; and

(B) The equity value of a home which exceeds the limits as set forth in OAR 461-145-0220.

(3) ENTRY.

(a) ENTRY MEETING. A provider must participate in an entry meeting prior to the onset of services to an individual.

(b) Prior to or upon an entry, a provider must demonstrate efforts to acquire the following individual information from the referring CDDP:

(A) A copy of the eligibility determination document;

(B) A statement indicating the safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most recent needs assessment. If the needs of the individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if available);

(H) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual (if applicable);

(I) Written documentation that the individual is participating in out of residence activities, including public school enrollment for individuals less than 21 years of age;

(J) Written documentation to explain why preferences or choices of the individual may not be honored at that time; and

(K) A copy of the most recent Behavior Support Plan and assessment, ISP or Service Agreement, Nursing Service Plan, and Individualized Education Program (if available).

(c) If an individual is being admitted from the family home of the individual and the information required in subsection (b) of this section is not available, the provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

(4) VOLUNTARY TRANSFERS AND EXITS.

(a) A provider must promptly notify a services coordinator if an individual gives notice of the intent to exit or abruptly exits services.

(b) A provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(d) A provider is responsible for the provision of services until an individual exits the home.

(5) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) A provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered or the license for the home is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. A provider must not reduce services, transfer, or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right of the individual to a hearing as described in subsection (e) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

(c) A provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a reduction, transfer, or exit.

(d) A provider is responsible for the provision of services until an individual exits the home.

(e) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the provider must reserve the room of the individual until receipt of the Final Order.

(6) EXIT MEETING. A provider must participate in an exit meeting before any decision to exit an individual is made if required by the case management entity.

(7) TRANSFER MEETING.A provider must participate in a transfer meeting before any decision to transfer an individual is made if required by the case management entity.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0400 Grievance of Entry, Exit and Transfer
(Repealed 12/28/2014)

411-325-0410 Community Living Supports
(Amended 06/29/2016)

(1) All individuals considered for community living supports must:

(a) Be referred by the CDDP, Brokerage, or Department; and

(b) Not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) Relief care services may not be provided for more than 14 consecutive days to a single individual.

(3) Exit meetings are waived for individuals receiving community living supports.

(4) Individuals receiving community living supports do not have appeal rights regarding entry, exit, or transfer.

(5) A provider certified and endorsed under OAR chapter 411, division 323 to operate a 24-hour residential program does not require an endorsement under OAR chapter 411, division 450 to deliver community living supports when the community living supports are in or based out of a 24-hour residential setting licensed under these rules. Unless as part of a recreational outing, a provider endorsed to operate a 24-hour residential program may not deliver community living supports away from the licensed 24-hour residential setting.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0420 Crisis Services
(Repealed 06/29/2016)

411-325-0430 Individual Support Plan
(Amended 06/29/2016)

(1) The following information must be collected and summarized by the provider prior to an ISP meeting:

> (a) One page profile reflecting, at a minimum, information gathered by the provider at the setting where the individual receives services;
>
> (b) Person-centered Information reflecting, at a minimum, information gathered by the provider at the setting where the individual receives services; and
>
> (c) Information about known, identified serious risks.

(2) The following information must be developed by the provider and shared with the case manager and the individual, or if applicable the legal or designated representative of the individual, as directed by the ISP or Service Agreement.

(a) Implementation strategies, such as action plans, for desired outcomes or goals.

(b) Necessary protocols or plans that address health, behavioral, safety, and financial supports.

(c) A summary of the provider risk management strategies in place, including title of document, date, and where the document is located.

(d) A Nursing Service Plan, if applicable.

(e) Other documents required by the ISP team.

(3) When desired by the individual, the provider must participate in the ISP team meetings.

(4) A provider must agree in writing to implement the portion of the ISP for which the provider is responsible for implementing. Agreement may be recorded by a signature on the ISP or a Service Agreement.

(5) The provider must maintain a copy of the ISP or Service Agreement provided the CDDP.

(6) The provider must maintain documentation of implementation of each support and services specified in sections (2)(a) to (2)(e) of this rule in the ISP for the individual. This documentation must be kept current and be available for review by the individual, the legal representative of the individual, CDDP, and Department representatives.

(7) Individually-Based Limitations.

(a) For an initial or annual ISP authorized to begin on or after March 1, 2017, the provider must identify any individually-based limitations to the following freedoms:

(A) Support and freedom to access the individual's personal food at any time;

(B) Visitors of the individual's choosing at any time;

(C) A lock on the individual's bedroom, lockable by the individual;

(D) Choice of a roommate, if sharing a bedroom;

(E) Freedom to furnish and decorate the individual's bedroom as the individual chooses in accordance with the Residency Agreement; and

(F) Freedom and support to control the individual's schedule and activities.

(b) All individually-based limitations must be included in the ISP no later than February 28, 2018.

(c) An individually-based limitation to any freedom in subsection (a) of this section must be supported by a specific assessed need due to threats to the health and safety of the individual or others. The provider must incorporate and document all applicable elements identified in OAR 411-004-0040, including:

(A) The specific and individualized assessed need justifying the individually-based limitation;

(B) The positive interventions and supports used prior to any individually-based limitation;

(C) Less intrusive methods that have been tried, but did not work;

(D) A clear description of the condition that is directly proportionate to the specific assessed need;

(E) Regular reassessment and review to measure the ongoing effectiveness of the individually-based limitation;

(F) Established time limits for periodic review of the individually-based limitation to determine if the individually-based limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(G) The informed consent of the individual or, as applicable, the legal representative 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.

(8) The provider must maintain documentation of implementation of each support and services specified in the ISP or Service Agreement for the individual. This documentation must be kept current and be available for review by the individual, the legal representative of the individual, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0440 Children's Direct Contracted Services
(Amended 12/28/2013)

Any documentation or information required for children's direct contracted developmental disability services to be submitted to the CDDP services coordinator must also be submitted to the Department's residential services coordinator assigned to the home.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0450 Conditions
(Repealed 1/6/2012 – See OAR 411-325-0060)

411-325-0460 Civil Penalties
(Amended 06/29/2016)

(1) For purposes of imposing civil penalties, 24-hour residential settings licensed under ORS 443.400 to 443.455 and ORS 443.991(2) are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) The Department issues the following schedule of penalties applicable to 24-hour residential settings as provided for under ORS 441.705 to 441.745:

(a) Violations of any requirement within any part of the following rules may result in a civil penalty up to $500 per day for each violation not to exceed $6,000 for all violations for any licensed 24-hour residential setting within a 90-day period:

(A) 411-325-0025(3), (4), (5), (6), and (7);

(B) 411-325-0120(2), and (4);

(C) 411-325-0130;

(D) 411-325-0140;

(E) 411-325-0150;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), and (3);

(J) 411-325-0230;

(K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;

(L) 411-325-0300, 0340, and 0350;

(M) 411-325-0360; and

(N) 411-325-0380.

(b) Civil penalties of up to $300 per day per violation may be imposed for violations of any section of these rules not listed in subsection (a)(A) to (a)(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential setting where such surveys are conducted by an employee of the Department. Penalties assessed under this section of this rule may not exceed $6,000 within a 90-day period.

(3) Monitoring occurs when a 24-hour residential setting is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department considers the following factors:

(a) The past history of the provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes or rules pertaining to 24-hour residential settings;

(c) The economic and financial conditions of the provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or well-being of individuals.

(5) Any civil penalty imposed under ORS 443.455 and 441.710 becomes due and payable when the provider incurring the penalty receives a notice in writing from the Director of the Department. The notice referred to in this section of this rule is sent by registered or certified mail and includes:

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

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

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

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

(6) The person representing the provider to whom the notice is addressed has 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.

(7) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(8) If the provider notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.

(9) If, after a hearing, the provider is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Director of the Department considers proper and consistent with individual health and safety.

(11) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) A violation of any general order or Final Order pertaining to a 24-hour residential setting issued by the Department is subject to a civil penalty in the amount of not less than $5 and not more than $500 for each and every violation.

(13) Judicial review of civil penalties imposed under ORS 441.710 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0470 License Denial, Suspension, Revocation, and Refusal to Renew
(Amended 12/28/2013)

(1) The Department shall deny, suspend, revoke, or refuse to renew a license where the Department finds there has been substantial failure to comply with these rules or where the State Fire Marshal or the State Fire Marshal's representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) The Department shall suspend the home license where imminent danger to health or safety of individuals exists.

(3) The Department shall deny, suspend, revoke, or refuse to renew a license where it finds that a provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension, or denial is done in accordance with the rules of the Department and ORS chapter 183.

(5) Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application constitutes grounds for denial or revocation of the license.

(6) The Department shall deny, suspend, revoke, or refuse to renew a license if the licensee fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455

411-325-0480 Criminal Penalties
(Amended 12/28/2013)

(1) Violation of any provision of ORS 443.400 to 443.455 is a Class B misdemeanor.

(2) Violation of any provision of ORS 443.881 is a Class C misdemeanor.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455