

Department of Human Resources
Senior and Disabled Services Division

Administrative Rules for Licensure of Adult Foster Homes



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ADULT FOSTER HOME RULES

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Licensure of Adult Foster Homes

411-50-400 Definitions

For the purpose of these rules, authorized under ORS 443.705 to 443.825, the following definitions apply:

- (1) "AAA" means a Type B Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of Division programs. For the purpose of this rule, AAAs contract with the Division to perform specific activities in relation to licensing AFHs including processing applications, conducting inspections and investigations, issuing licenses, establishing conditions on licenses, and making recommendations to the Senior and Disabled Services Division, regarding AFH license denial, revocation, suspension, non-renewal and civil penalties.
- (2) "Abuse" means any act or absence of action inconsistent with prescribed resident care. This includes but is not limited to:
 - (a) Physical assault such as hitting, kicking, scratching, pinching, choking or pushing;
 - (b) Neglect of care, including improper administration of medication(s), failure to seek appropriate medical care, inadequate changing of beds or clothes and failure to help with personal grooming;
 - (c) Denying meals, clothes, or aids to physical functioning;
 - (d) Use of derogatory or inappropriate names, phrases, or profanity; ridicule; harassment; coercion; threats; cursing; intimidation or inappropriate sexual comments;
 - (e) Sexual exploitation of residents including inappropriate physical contact between staff and residents, or failure of staff to discourage sexual advances of residents toward staff or other residents;
 - (f) Violating the rights guaranteed to the resident by the Bill of Rights in OAR 411-50-447;
 - (g) Using psychoactive medications or physical restraints, without a written order or contrary to a written order from a physician, Nurse Practitioner, or Christian Science practitioner; or to discipline or punish a resident; or for the convenience of the adult foster home;
 - (h) Financial exploitation which includes, but is not limited to, unreasonable rate

increases; borrowing from or loaning money to a resident; witnessing wills in which a provider, caregiver, or any member of their families is a beneficiary; adding a provider's name to a resident's bank account or other property; inappropriately expending a resident's personal funds; commingling a resident's funds with a provider's, a caregiver's or another resident's funds; perfecting or foreclosing a lien in violation of ORS Chapter 87 or acting as a resident's guardian, conservator, trustee or attorney-in-fact (under a power of attorney). See OAR 411-50-447;

- (i) Abandonment, including desertion or willful forsaking of a resident.
- (3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well-being including eating/nutrition, dressing, personal hygiene, mobility, toileting and behavior management.
- (a) "Independent" means the resident can perform the ADL without help;
 - (b) "Assistance" means the resident is able to help with an ADL, but cannot do it entirely alone;
 - (c) "Dependent" means the resident is unable to do any part of an ADL; it must be done entirely by someone else.
- (4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer elderly or physically disabled adults who are not related to the provider by blood or marriage. For the purpose of this rule, adult foster home does not include any house, institution, hotel or other similar living situation that supplies room and board only, or room only, or board only, if no resident thereof requires any element of care.
- (5) "Advance Directive" means the legal document signed by the resident giving instructions for health care should she/he no longer be able to give directions regarding her/his wishes. The directive gives the resident the means to continue to control her/his own health care in any circumstance.
- (6) "Applicant" means any person who completes an application for a license who is also the owner of the business.
- (7) "Behavioral Interventions" means those interventions which will modify the resident's behavior or the resident's environment.
- (8) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the Statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR Chapter 851, Division 45.

- (9) "Care" means the provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules. Care also means services that encourage maximum resident independence and enhance quality of life.
- (10) "Caregiver" means any person responsible for providing care and services to residents, including the provider; the resident manager; and any temporary, substitute or supplemental staff or other person designated to provide care and services to residents.
- (11) "Care Plan" means the provider's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services will be provided. The care plan is developed at the time of admission and is reviewed and updated at least semi-annually and when the condition of the resident changes.
- (12) "Classification" means a designation of license assigned to a provider based on the provider's and resident manager's qualifications if a resident manager is employed in the home.
- (13) "Client" means a resident in an adult foster home for whom the Division pays for care or for whom case management services are provided.
- (14) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a provider in exchange for room and board, care and services. Compensation does not include the voluntary sharing of expenses between or among roommates.
- (15) "Complaint" means an allegation that a provider has violated these rules or an expression of dissatisfaction relating to the condition of the adult foster home or the resident(s).
- (16) "Condition" means a provision attached to a new or existing license which limits or restricts the scope of the license or imposes additional requirements on the licensee.
- (17) "Day Care" means care, assistance, and supervision of a person who does not stay overnight.
- (18) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.
- (19) "Department" means the State of Oregon Department of Human Resources.
- (20) "Director" means the Director of the Department of Human Resources or that person's designee.
- (21) "Disabled" means a person with a physical, cognitive, or emotional impairment which, for

the individual, constitutes or results in a functional limitation in one or more activities of daily living.

- (22) "Division" means the Senior and Disabled Services Division (SDSD) of the Department of Human Resources. Division also includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.
- (23) "Elderly" or "Aged" means any person age 65 or older who is in need of care.
- (24) "Exception" means a variance from a regulation or provision of these rules, granted in writing by the Division, upon written application by the provider.
- (25) "Exempt Area" means a county where there is a county agency which provides similar programs for licensing and inspection of adult foster homes which the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and which the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules must be submitted to the Director for review and approval prior to implementation.
- (26) "Family Member", for the purposes of these rules, means husband or wife, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.
- (27) "Home" means the physical structure in which residents live, synonymous with adult foster home.
- (28) "Home-like" means an environment which promotes the dignity, security and comfort of residents through the provision of personalized care and services to encourage independence, choice, and decision-making by the residents.
- (29) "House Rules" mean written and posted rules governing house activities in an AFH which are developed by the provider and approved by the Division.
- (30) "Legal Representative" means a person who has the legal authority to act for the resident. On matters involving care, this is a legal guardian, a health care representative under an Advance Directive, or Power of Attorney for Health Care. On financial matters, this is a legal conservator, an agent under a power of attorney, or a representative payee.
- (31) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.
- (32) "Licensee" means the person(s) who applied for, was issued a license, and whose name(s) is on the license.

- (33) "Limited License" means a license issued to provide care to a specific individual. A provider with a limited license shall meet, at a minimum, the standards of a relative adult foster home and any additional training deemed necessary by the Division to meet the health, safety, and welfare needs of the individual.
- (34) "Liquid Resource" means cash or those assets that can readily be converted to cash, i.e., a life insurance policy that has a cash value or stock certificates.
- (35) "Neglect" (whether intentional, careless, or due to inadequate experience, training, or skill) means failure to provide care necessary to ensure the health, safety, and well-being of a resident; failure to follow the care plan; failure to make a reasonable effort to discover what care is necessary for the well-being of a resident; or failure to provide a safe and sanitary environment (see abuse definition).
- (36) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, which is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.
- (37) "Occupant" means anyone residing in or using the facilities of the adult foster home including residents, providers, resident managers, friends or family members, day care persons, and boarders.
- (38) "Ombudsman" means the State Long-Term Care Ombudsman or an individual designee appointed by the Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the AFH residents.
- (39) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident cannot easily remove and restricts freedom of movement or normal access to his/her body. Physical restraints include, but are not limited to, leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, any chair that prevents rising, and gerichairs. Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. When a resident requests a side rail (e.g. for the purpose of assisting with turning), the side rail is not considered a restraint.
- (40) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments which have been ordered by a qualified practitioner to be given as needed.
- (41) "Provider" means the person licensed to operate an adult foster home. The provider is responsible for the provision of room, board, care and services in the daily operation of the home. Applicant, provider, licensee, and operator are all synonymous terms. "Provider" does not include the owner or lessor of the building in which the adult foster

home is situated unless the owner or lessor is also the operator of the adult foster home.

- (42) "Provisional License" means a 60-day license issued to a qualified person in an unforeseen emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. A person must meet the standards of OAR 411-50-440 and OAR 411-50-443 except for completing the training and testing requirements.
- (43) "Psychoactive Medications" means various medications used to alter mood, anxiety, behavior or cognitive processes. For the purpose of these rules, they include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.
- (44) "Relative" means those persons specified in Section (26) of this rule.
- (45) "Relative Foster Home" means a home which provides care and services to only elderly or disabled adult family members aged 18 years or older of the provider who are eligible for Medicaid assistance from the Division.
- (46) "Reside" means for a person to make the home their residence on a frequent or continuous basis.
- (47) "Resident" means any person who is receiving room, board, care, and services for compensation in an adult foster home on a 24-hour basis.
- (48) "Residential Care" means the provision of care on a 24-hour basis.
- (49) "Resident Manager" means an employee of the provider who lives in the home and is directly responsible for the care of residents on a 24 hour per day basis.
- (50) "Resident Rights" or "Rights" means civil, legal or human rights, including but not limited to those rights listed in the AFH Bill of Rights (see ORS 443.739).
- (51) "Respite Resident" means a person who receives residential care for a period of 14 days or less or who only stays overnight.
- (52) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping for compensation to persons who do not need activities of daily living care services. Provisions for two or more persons require registration with the Division under OAR Chapter 411, Division 68.
- (53) "Self-Administration of Medication" means the act of a resident placing a medication in or on his/her own body. This means the resident manages and takes his or her own medications, in that the resident identifies the medication and the times and manners of administration, and places the medication internally or externally on his/her own body without assistance.

- (54) "Self-Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and be able to reach a point of safety on their own.
- (55) "Services" means activities which help the residents develop skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living or individual social activities.
- (56) "Shift Caregivers" means caregivers who, only by written exception of the Division, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours, in homes where there is no provider or resident manager living in the home.
- (57) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Senior and Disabled Services Division other than the provider or resident manager.

411-50-401 Purpose

The purpose of these rules is to establish standards and procedures for adult foster homes that provide care for elderly and disabled persons in a home-like environment that is safe and secure. The goal of adult foster care is to provide necessary care while emphasizing the resident's independence. This goal is reached through a cooperative relationship between the care provider and the resident (or legal guardian) in a setting that protects and encourages resident dignity, choice, and decision-making. Resident needs will be addressed in a manner that supports and enables the individuals to maximize abilities to function at the highest level of independence possible.

411-50-405 License Required

- (1) Any facility which meets the definition of an adult foster home as defined in OAR 411-50-400 must apply for and obtain a license from the Division or an exempt area county. An unlicensed adult foster home shall not admit a person needing care or services.
- (2) No person or entity shall represent themselves as operating an adult foster home or accept placement of a person without first being licensed.
- (3) (a) No person may be a provider, resident manager, shift caregiver, substitute caregiver or otherwise be employed by the provider or reside in or on the property of an adult foster home who has been:
 - (A) Convicted of one or more disqualifying crimes or has a disqualifying arrest pending disposition as defined in OAR Chapter 411, Division 09, which the Division determines are substantially related to the qualifications, functions, or duties of a caregiver or may otherwise endanger the health,

safety or rights of a resident; or

- (B) Found responsible for a disqualifying type of abuse. See OAR 411-50-415;
- (b) This provision does not apply to residents of the adult foster home or to persons who live or work on the property but do not access the home for meals or use of the appliances or facilities.
- (4) Any facility which meets the definition of a Relative Foster Home or requests a limited license status must have a limited license from the Division if receiving compensation from the Division. In order to qualify for a limited license and for compensation from the Division, the applicant/provider must submit a completed application and physician's statement, obtain a criminal record clearance, demonstrate a clear understanding of the resident's care needs, meet minimal fire safety compliance including the installation of smoke detectors and fire extinguishers, and obtain any relevant training deemed necessary by the Division to provide adequate care up to the full training requirements of the Division. A spouse is not eligible for compensation as an adult foster care provider. If services are provided to a relative without compensation from the Division, the home is not required to be licensed.

411-50-408 Capacity

- (1) Residents shall be limited to five persons unrelated to the provider by blood or marriage and who require care.
- (2) Respite residents are included in the licensed limit of the home.
- (3) The number of residents permitted to reside in an AFH will be determined by the ability of the staff to meet the care needs of the residents, the fire safety standards for evacuation, and compliance with the physical structure standards of these rules. Determination of maximum capacity must include consideration of total household composition including children and relatives requiring care and supervision. In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents.
- (4) When there are relatives requiring care, day care residents, or room and board occupants, the allowable number of unrelated residents may continue to be the maximum capacity of five if the following criteria are met:
 - (a) The provider can demonstrate the ability to evacuate all occupants within three minutes;
 - (b) The provider has adequate staff and has demonstrated the ability to provide appropriate care for all residents;

- (c) There is an additional 40 square feet of common living space for each person above the five residents;
- (d) Bedrooms and bathrooms meet the requirements of these rules;
- (e) The care needs of the additional persons are within the classification of the license and any conditions imposed on the license;
- (f) The well-being of the household including any children or other family members will not be jeopardized; and
- (g) If day care persons are in the home, they must have arrangements for sleeping in areas other than a resident's bed or a resident's private room or space designated as common use.

411-50-410 License Application and Fees

- (1) The application shall be completed and submitted by the person responsible for the operation of the home (business) and shall be in writing on Form SDS 448, Part I, provided by the Division. The application is not complete until all of the required application information is submitted to the Division. Incomplete applications are void after 60 days from the date the application form and fee are received by the licensing office. Failure to provide accurate information may result in the denial of the application.
- (2) A separate application is required for each location where an adult foster home is to be operated.
- (3) An application for a home which has a resident manager shall include information about that person on a separate Form SDS 448, Part II.
- (4) The application shall include:
 - (a) The maximum resident capacity requested, relatives needing care, respite residents, board and room occupants, and day care persons. The application shall also include the number of any other occupants;
 - (b) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Division;
 - (c) A physician's statement regarding ability to provide care (Form SDS 903);
 - (d) A completed financial information sheet, Form SDS 448A;

- (A) The applicant shall submit a budget for operating the home including payroll expenses; and
 - (B) If the home is leased or rented, the name of the owner and landlord and verification that the rent is a flat rate must be included. The financial information shall not become part of the public file;
- (e) A signed criminal record authorization (Form SDS 303) for each person who will have regular contact with the residents, including the provider(s), the resident manager, caregivers, and other occupants over the age of 16 (excluding residents). Providers shall obtain information regarding criminal history and out-of-state residency through their employee applications;
 - (f) A floor plan of the house showing location and size of rooms, exits, wheelchair ramps if applicable, smoke detectors and extinguishers;
 - (g) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;
 - (h) A \$20 per bed non-refundable fee for each non-relative resident;
 - (i) Application references must be three non-relatives that have current knowledge of the applicant's character and capabilities;
 - (j) If the provider uses a resident manager, a written plan on coverage for resident manager absences must be submitted;
 - (k) Use of shift caregivers may be used in lieu of a resident manager if granted a written exception by the Division. Use of shift caregivers detract from the intent of a home-like environment, but will be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs such as those with Alzheimer's Disease, AIDS, or head injuries. If shift caregivers are used, they must meet the standards of a resident manager and the classification of the home; and
 - (l) Written information describing the planned operation of the adult foster home, including the use of substitute caregivers and other staff.
- (5) After receipt of the completed application materials and fee, the Division shall investigate the information submitted, inspect the home, and conduct a personal interview with the applicant to determine compliance with these rules. Applicants must attend a local orientation program prior to being licensed as offered by the local licensing authority.

- (6) If cited deficiencies from the inspection are not corrected within the time frames specified by the Division, the application shall be denied.
- (7) The applicant may withdraw his/her application at any time during the application process by notifying the Division.
- (8) An applicant whose license has been revoked, voluntarily surrendered during a revocation/non-renewal process, or whose application has been denied shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial is final, or for a longer period if specified in the order revoking or denying the license.

411-50-415 Issuance

- (1) The Division shall issue a license within 60 days after the completed application materials have been received if the home and provider are in compliance with these rules. The license shall state the name of the resident manager, the names of all providers who own the adult foster home (business), the address of the premises to which the license applies, the classification for which the applicant is qualified, the maximum number of residents and the expiration date. The license shall be posted in the home and be available for inspection at all times.
- (2) The provider will be given a copy of the inspection reports (Forms SDS 517 and 517A), identifying any areas of non-compliance and specifying a time frame for correction, but no later than 60 days from date of inspection. The provider shall post the most recent inspection reports available in the entry or equally prominent place and shall, upon request, provide a copy of the information to each resident of, or person applying for admission to the home, or the legal representative, guardian or conservator of the resident or applicant.
- (3) The Division may attach conditions to the license which limit, restrict or specify other criteria for operation of the home. The conditions must be posted with the license (see OAR 411-50-483).
- (4) A limited license may be issued to a provider for the care of a specific person(s). No other admissions will be made by a provider with this limitation. A provider with a limited license must meet, at a minimum, the requirements of licensure for a relative adult foster home and may be subject to the requirements for the Standards and Practices for Care and Services (OAR 411-50-447).
- (5) The Division shall not issue an initial license unless:
 - (a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the Division;

- (b) The Division has completed an inspection of the adult foster home;
 - (c) The Division has completed a criminal records check on the applicant and any occupant, other than a resident, 16 years of age or older who will be residing in or employed by the adult foster home. See section (15) of this rule;
 - (d) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and
 - (e) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the adult foster home.
- (6) If a resident manager (or shift caregiver) changes during the period the license covers, the provider must notify the Division immediately and identify who will be providing care. The provider must submit a request for a change of resident manager to the Division along with a completed resident manager application (Form SDS 448, Part II); a criminal record authorization (Form SDS 303); and payment of a \$10 fee. Upon a determination the applicant meets the requirements of a resident manager and the applicant has received the Division's required training and passed the test, a revised license will be issued with the name of the new resident manager. The classification of the home will be reevaluated based on the qualifications of the new resident manager and changed accordingly (see OAR 411-50-440).
- (7) If the Division determines an unexpected and urgent staffing situation exists, the Division may permit, in writing, a person who has not completed the training or passed the test to act as a resident manager until training and testing are completed or for 60 days, whichever is shorter. The provider must notify the Division of the situation and provide a satisfactory explanation of the inability to find a qualified resident manager, that the person is 21 years of age and meets the requirements for a substitute caregiver for the adult foster home, and that the provider will provide adequate supervision.
- (8) A license to operate an adult foster home is not transferable and does not apply to any location or person(s) other than the location and the person(s) indicated on the license application obtained from the Division.
- (9) The provider shall inform real estate agents, prospective buyers, lessees, and transferees in all written communication including advertising and disclosure statements that the license to operate an adult foster home is not transferable and shall refer them to the Division for information about licensing.
- (10) When a home is to be sold or otherwise transferred to another provider (owner), the new provider must apply for and obtain a license prior to the transfer of operation of the home.

- (11) A license is valid for one year unless sooner revoked or suspended.
- (12) In seeking an initial license, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the Division.
- (13) The Division shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing home or homes and has the ability to provide care to the residents of those homes that is substantially free from abuse and neglect.
- (14) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home. A person would be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.
- (15) Criminal Record Clearance
 - (a) Persons who have been convicted of one or more crimes that, as determined by rules of the Division, are substantially related to the qualifications, functions or duties of a provider, resident manager, substitute caregiver or other household member of an adult foster home shall be prohibited from operating, working in, or residing in an adult foster home. The provider may not hire, retain in employment, or allow to be an occupant of an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse. The provider shall include questions regarding criminal history and out of state residency on their employee applications;
 - (b) The criminal records check under these rules shall consist of:
 - (A) A check for a criminal record in the State of Oregon; and
 - (B) A national criminal records check if:
 - (i) The applicant or other person has resided in another state within the previous five years;
 - (ii) The applicant or other person has disclosed the existence of a criminal conviction; or
 - (iii) A criminal records check in Oregon discloses the existence of a criminal record in another jurisdiction;

- (c) The Division shall provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

411-50-420 Renewal

- (1) At least 60 days prior to the expiration of a license, a reminder notice and application for renewal will be sent by the Division to the currently licensed provider. Submittal of a renewal application prior to the expiration date will keep the license in effect until the Division takes action. If the renewal application and fee are not submitted prior to the expiration date, the home will be treated as an unlicensed facility subject to Civil Penalties (OAR 411-50-487).
- (2) Information similar to that required for a new application (OAR 411-50-410), including a physician's statement each third year (sooner if there appears to be health concerns) and criminal record clearance. The financial information sheet is not required if this information has not changed. Verification of current CPR certification for the provider and resident manager is also required.
- (3) The Division may investigate any information in the renewal application and shall conduct an unannounced inspection of the adult foster home prior to the license renewal.
- (4) The provider will be given a copy of the inspection reports (Forms SDS 517 and 517A) citing any deficiencies and a time frame for correction, which shall be no longer than 60 days from the date of inspection.
- (5) The Division will require the home to correct deficiencies relating to the health, safety, and welfare of residents prior to issuing the renewal license. If cited deficiencies are not corrected within the time frame specified by the Division, the renewal application shall be denied.
- (6) The Division shall not renew a license unless:
 - (a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the Division;
 - (b) The Division has completed an inspection of the adult foster home;
 - (c) The Division has completed a criminal records check on the applicant and any occupant, other than a resident, 16 years of age or older who will be residing in or employed by the adult foster home provider (see OAR 411-50-415);
 - (d) The provider/resident manager may continue to work in the home pending the national criminal records check providing that the Oregon criminal record check

was clear and no convictions were self disclosed; and

- (e) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678.
- (7) In seeking a renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the Division.
- (8) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the Division to establish noncompliance with ORS 443.705 to 443.825 and the rules of the Division.

411-50-430 Exceptions

- (1) A provider or applicant must apply in writing to the Division for an exception from a provision of these rules. The provider must prove to the Division by clear and convincing evidence that such an exception does not jeopardize the care, health, welfare or safety of the residents. Evidence will indicate that all residents' needs can be met and all occupants can be evacuated within three minutes.
- (2) Notwithstanding section (1) of this rule, no exception shall be granted from a regulation or provision of these rules pertaining to the standards and practices, inspections of the facility, resident rights, and inspection of the public files. Exceptions related to fire and life safety shall not be granted by the Division without prior consultation with the State Fire Marshal or its designee.
- (3) An exception, if approved, will be granted in writing. Each exception will be reviewed at each renewal period.
- (4) Residents whose care needs exceed the licensed classification of the home shall not be admitted without prior approval of the Division.

411-50-435 Rates and Contracts

- (1) Providers who care for Division clients must enter into a contract with the Division and follow Division rules and contract terms. The Division cannot make a service payment to a licensed provider without a valid contract in place. In addition:
 - (a) The rate of compensation established by the Division is considered payment in full;
 - (b) Division service payments for the current month will be issued at the beginning

of the following month;

- (c) The Division will not make payment for the date of discharge or for any time period thereafter;
 - (d) If the provider is a Medicaid contract holder for that home, private pay residents who become eligible for Medicaid cannot be asked to leave for that reason; and
 - (e) Medicaid contracts may be terminated with a 30-day written notice by either party.
- (2) Providers who care for private paying residents must enter into a signed contract/admission agreement with the resident or person paying for care. A copy of this agreement is subject to review prior to licensure by the Division. This contract/admission agreement shall include, but not be limited to:
- (a) Services to be provided;
 - (b) Schedule of rates for services and conditions under which the rates can be changed;
 - (c) The home's policy on refunds at the time of hospitalization, death, discharge, transfer to a nursing facility or other care facility, or voluntary move and any charges for storage of a resident's belongings after leaving the home. Discharge and refund policy shall be in compliance with OAR 411-50-437; and
 - (d) The provider shall not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.
- (3) The provider shall not include any illegal or unenforceable provision in a contract with a resident and shall not ask or require a resident to waive any of the resident's rights or provider's liability for negligence.
- (4) Prior to admitting a private paying individual to an adult foster home, the facility shall advise the individual seeking admission of the availability of Long Term Care Assessment services provided through the Division or Certified Assessment Program.
- (5) The facility shall certify on Form SDS 913 provided by the Division that the individual has been advised of their right to receive a long term care assessment. The facility shall maintain a copy of the form in the individual's client record and make a copy available to the Division upon request.
- (6) Thirty days prior to any general increases, additions, or other modifications of the rates, the provider shall give written notice of the proposed changes to private residents and their family or other representatives unless the change is due to the resident's increased

care or service needs and the rate schedule in the resident's contract/admission agreement has specified charges for changes in resident impairment levels and/or services.

- (7) Residents shall not be liable for damages considered normal wear and tear.

411-50-437 Refunds

- (1) If a resident dies or leaves an adult foster home for medical reasons and the resident or their representative indicates in writing the intent to not return, the provider shall not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the resident has left the adult foster home.
- (2) The provider has an obligation to act in good faith to reduce the charge by seeking a new resident to fill the vacancy.
- (3) The provider shall refund any advance payments to the resident/representative within 30 days after the resident dies or leaves the home.
- (4) If the home closes, the provider waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.
- (5) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Division investigator or due to conditions of imminent danger of life, health or safety, the provider shall not charge the resident beyond the resident's last day in the home. Upon receipt of a complaint of abuse or neglect the Division shall commence an investigation.
- (6) The provider may charge a reasonable fee for storage of the resident's belongings beyond the 15 days if the contract/admission agreement includes fees for storage.
- (7) Refund policies shall also apply to the moves, transfers and discharges section of OAR 411-50-447.

411-50-440 Qualifications for Providers, Resident Managers and Other Caregivers

- (1) An adult foster home provider shall meet the following qualifications:
 - (a) Be at least 21 years of age;
 - (b) Live in the home which is to be licensed, unless a resident manager lives in the home;
 - (c) Provide evidence satisfactory to the Division regarding education, experience, and training to meet requirements of the requested classification levels (see OAR

411-50-443);

- (d) Possess physical health, mental health, good judgment and good personal character determined necessary by the Division to provide 24-hour care for adults who are physically disabled or elderly. Applicants must have a statement from a physician or other qualified practitioner indicating they are physically, cognitively, and emotionally capable of providing care to residents. Applicants with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment/rehabilitation or references regarding current condition;
 - (e) Must pass a criminal record clearance under OAR Chapter 411, Division 09 and are required to sign a criminal record authorization, Form SDS 303;
 - (f) Be literate and demonstrate the understanding of written and oral orders and communicating in English with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times; and
 - (g) The applicant must have the financial ability and shall provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential resident income. The applicant shall provide the Division with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The Division may require or permit the applicant to provide a current credit report to satisfy this requirement. The Division shall not issue an initial license to an applicant who has been adjudged bankrupt more than once. If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens or unpaid taxes, the Division shall require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims. If the applicant is unable to demonstrate the financial ability and resources required by this subsection, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.
- (2) The resident manager or shift caregiver shall meet the provider qualifications listed in subsections (l)(a) through (f) of this rule. A resident manager applicant may work in the home pending outcome of the national criminal record check, if the Oregon criminal record check was clear and no convictions were self disclosed on the criminal record authorization (Form SDS 303).
- (3) Substitute Caregivers, other than the provider or resident manager, or any other person left in charge of residents for any period of time shall meet the following qualifications:

- (a) Be at least 18 years of age;
- (b) The caregiver must pass a criminal record clearance under OAR Chapter 411, Division 09 and is required to sign a criminal record authorization (Form SDS 303). See OAR 411-50-415;
- (c) The substitute caregiver may work in the home pending the national criminal records check providing the Oregon criminal records check was clear and no convictions were self disclosed;
- (d) Be literate and demonstrate the understanding of written and oral orders and communicating in English with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times;
- (e) Have a clear understanding of job responsibilities, have knowledge of residents' care plans and be able to provide the care specified for each resident's needs including appropriate delegation or consultation by a registered nurse;
- (f) Not be a resident; and
- (g) Possess physical health, mental health, good judgment, and good personal character necessary to provide care for adults who are elderly or disabled, as determined by reference checks and other sources of information.

411-50-441 Training Requirements for Providers and Resident Managers

- (1) In addition to prior education and experience, all providers and resident managers must complete the following training requirements:
 - (a) The Division's Basic Training Course shall be completed by both the provider and resident manager, which includes taking and passing an examination on course work and necessary skills. Required course work and necessary skills will include but are not limited to demonstrations and practice in physical caregiving, screening for care and service needs, appropriate behavior towards residents with physical, cognitive and emotional disabilities and issues related to architectural accessibility. The examination shall evaluate the ability to understand and respond appropriately to emergency situations, changes in medical conditions, physician's orders, medication management and professional instructions, nutritional needs, resident's preferences and conflicts. Failure to obtain a passing score on the Basic Training Examination may result in denial or non-renewal of a license pursuant to OAR 411-50-480;
 - (A) Currently licensed providers and resident managers who have completed

the Basic Training Course but have not previously passed the Basic Training Examination shall do so at or before the time of license renewal. Providers and resident managers failing to obtain a passing score on the Basic Training Examination shall be given one more opportunity to take the examination within 60 days of the first test;

- (i) If a provider fails the examination a second time, a license condition restricting admission will be imposed. The provider will be referred to SDSD Central Office for license revocation/non-renewal. If a provider demonstrates special circumstances (e.g. language barrier or test anxiety), SDSD Central Office may develop an alternate means of testing that individual. If the provider fails to demonstrate special circumstances or fails to pass an alternate test, as developed by the Division, the provider's license shall be revoked;
 - (ii) If a resident manager fails the examination a second time, his/her status as a resident manager shall terminate. A condition on the license restricting admissions shall be imposed until a qualified resident manager is hired and working in the home. The current resident manager may continue working as a resident manager for a period not to exceed 30 days to ease the transition. The current resident manager may continue working after that 30-day period only if he/she met the qualifications of a substitute caregiver. If the resident manager demonstrates special circumstances (e.g. language barrier or test anxiety), that person may be referred to SDSD Central Office where an alternate means of testing that individual may be developed. If the resident manager fails to demonstrate special circumstances or fails to pass an alternate test as developed by SDSD Central Office, the local office will terminate his/her resident manager status and put the above procedure into effect;
- (B) All provider and resident manager applicants shall complete the Division's Basic Training Course and pass the Examination prior to becoming a licensed provider or a qualified resident manager. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application will be denied;
- (b) (A) A resident manager applicant who has not completed the Basic Training Course must complete the Caregiver Preparatory Training Course approved by the Division before providing care to any resident. The Caregiver Preparatory Training Course will include emergency procedures, medication management, personal care procedures, food preparation, home environment and safety procedures, and residents' rights;

- (B) If the Division determines an unexpected and urgent staffing situation exists, the Division may, in writing, permit a person who has not completed the Basic Training or passed the test to act as a resident manager until training and testing are completed or for 60 days, whichever is shorter. The provider must notify the Division of the unforeseen situation and demonstrate that he/she is unable to find a qualified resident manager, that the person is 21 years of age and meets the requirements for a substitute caregiver for the adult foster home and the provider will provide adequate supervision;
 - (c) Each subsequent year following the Basic Training Course, providers and resident managers are required to take at least ten hours of Division approved ongoing training related to care of elderly and disabled persons. Registered nurse delegation or consultation does not count towards the ten hours; and
 - (d) Within the first year after obtaining an initial license the provider and resident manager must complete a Basic First Aid course, CPR (cardiopulmonary resuscitation) course, and attend an annual Fire and Life Safety training as available and coordinated by the Division and Office of the State Fire Marshal.
- (2) If a provider is not in compliance with one or more of these rules or the class for which they are licensed, the Division may require by condition additional training in the deficient area, whether or not the other training requirements have been met.
 - (3) Documentation of training shall be kept in the facility's records including the date of training, subject matter, name of agency or organization providing training and number of classroom hours.

411-50-442 Training Requirements for Substitute Caregivers

- (1) A substitute caregiver left in charge of the home in the provider's or resident manager's absence for any length of time must complete the Caregiver Preparatory Training Course (Study Guide and Workbook) approved by the Division prior to giving care. The training shall include a review of the Study Guide by the caregiver as part of the orientation to the home and residents. The Workbook shall then be completed by the caregiver without the help of any other person.
- (2) In addition, substitute caregivers left in charge of a home for multiple 24-hour periods during a month or for any period that exceeds 48 hours, may be required to meet the education, experience and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home.
- (3) Substitute caregivers working in the home while providers or resident managers are

present must receive instruction in specific care responsibilities from the provider/resident manager prior to giving care, and in addition must complete the Caregiver Preparatory Training Course as a part of their on-the-job instruction.

- (4) The Division may grant an exception to the training requirements in section (1) of this rule for a substitute caregiver who holds a current Oregon license or certificate as a health care professional such as a physician, registered nurse, licensed practical nurse or certified nursing assistant (CNA); or who demonstrates the ability to provide adequate care to residents based on similar training or at least one year of experience providing direct care to elderly, disabled or dependent adults. The substitute caregiver must still pass an examination as applicable.
- (5) The provider must orient any substitute caregiver to the home and to the residents, including location of fire extinguisher; demonstration of evacuation procedures; location of residents' records; location of telephone numbers for the residents' physicians, the provider and other emergency contacts; location of medications and key for medication cabinet; introduction to residents; instructions for caring for each resident; and delegation by a registered nurse for nursing tasks if applicable.
- (6) The provider/resident manager shall keep documentation of the training and orientation of substitute caregivers.

411-50-443 Classification of Adult Foster Homes

- (1) A Class I, Class II, or Class III license will be issued by the Division based upon the qualifications of the provider and the resident manager if there is one, and compliance with the requirements of OAR Chapter 411, Division 50.
 - (a) A Class I license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-50-441;
 - (b) A Class II license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-50-441 and each has the equivalent of two years' full time experience in providing direct care to elderly or disabled persons;
 - (c) A Class III license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-50-441; and
 - (A) Is a health care professional such as a registered nurse, licensed practical nurse (LPN), pharmacist, doctor, occupational therapist, or physical therapist; or
 - (B) Each has the equivalent of three years' full time experience in providing

direct care to elderly or disabled persons who are dependent in four or more ADLs; and

- (C) Each can provide current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experience as a caregiver.
- (2) A provider with a Class I license may only admit residents who need assistance in up to four activities of daily living (ADLs). A Class I provider may administer routine oral medications. All residents must be in stable medical conditions.
 - (3) A provider with a Class II license may provide care for residents who require assistance in all activities of daily living, but are not dependent in more than three activities of daily living. A Class II provider may request an exception to provide care to a Level III resident.
 - (4) A provider with a Class III license may provide care for residents who are dependent in four or more activities of daily living, except that no more than one bed-care or totally dependent person may be in residence at one time.
 - (5) Providers may only admit or continue to care for residents whose impairment levels are within the classification level of the home. A provider may request in writing an exception to care for a more impaired resident, or request a reclassification of the license if:
 - (a) A new resident wishes to be admitted whose impairment level exceeds the license classification level; or
 - (b) A current resident becomes more impaired, exceeding the license classification level; or
 - (c) There is more than one totally dependent or bed care resident in the home.
 - (6) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home if the provider proves the following criteria are met by clear and convincing evidence:
 - (a) It is the choice of the resident to reside in the home; and
 - (b) The provider is able to provide appropriate care of the resident in addition to the care of the other residents; or
 - (c) Additional staff is hired to meet the additional care requirements of all residents in the home; or

- (d) Outside resources are available and obtained to meet the resident's care needs; and
 - (e) The exception will not jeopardize the care, health, safety or welfare of the residents; and
 - (f) The three-minute fire evacuation standard for all occupants can be met.
- (7) A licensee may request a change in license classification during the year. The request must be in writing. A response will be made within 60 days.
- (8) A provider may not employ a resident manager who does not meet or exceed the experience and training classification standard for the adult foster home.

411-50-445 Facility Standards

In order to qualify for or maintain a license, an adult foster home shall comply with the following provisions:

(1) General Conditions

- (a) Each adult foster home shall meet all applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations for a single family residence;
- (b) The building and furnishings shall be clean and in good repair. Grounds shall be well maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting. There shall be no accumulation of garbage, debris, rubbish or offensive odors;
- (c) Interior and exterior stairways shall be provided with handrails. Adequate lighting, based on the needs of the individual, shall be provided in each room, stairway, and exitway; incandescent light bulbs shall be protected with appropriate covers. Yard, approved exits and exterior steps shall be accessible and appropriate to the condition of the residents;
- (d) The heating system shall be in working order. Areas of the home used by residents shall be maintained at a comfortable temperature. Recommended minimum temperatures are no less than 68 degrees during the day and 60 degrees during sleeping hours. Frail elderly may require warmer temperatures or additional clothing or bedding to be comfortable. During times of extreme summer heat, the provider will make reasonable effort to make the residents comfortable using available ventilation or fans;
- (e) There shall be at least 150 square feet of common living space and sufficient

furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space shall not be located in an unfinished basement or garage(s) unless such space was constructed for that purpose or has otherwise been legalized under permit. There shall be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space will be required for each day care person, board and room occupant, or relative receiving care for remuneration who exceeds the limit of five;

- (f) Interior doorways used by residents must be wide enough to accommodate wheelchairs/walkers if used by residents;
- (g) Providers must be able to provide or arrange for appropriate resident transportation;
- (h) Providers shall not permit residents to use swimming or other pools, hot tubs, saunas, or spas on the premises without supervision and physician orders. Swimming pools, hot tubs, spas, or saunas shall not be accessible to residents in care without supervision. They shall also be equipped with safety barriers and devices designed to prevent accidental injury;
- (i) There shall be current readily available basic first-aid supplies and a first-aid manual; and
- (j) Providers must own, rent or lease the home to be licensed. Exceptions may be granted by the local licensing authority to churches, hospitals, non-profit associations or similar organizations. If a licensed provider rents or leases the premises where the adult foster home is located, the provider shall not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located shall not allow the owner to interfere with the admission, discharge or transfer of any resident in the adult foster home unless the owner is a provider or co-provider on the license.
- (k) Ventilator Dependent Resident Care
 - (A) Providers intending to care for ventilator dependent residents shall, in addition to the standards set forth in these rules, meet the following requirements and shall not admit any such resident without approval by the Division:
 - (i) Have in the home an interconnected smoke detection system with battery back-up;
 - (ii) Have a functioning emergency back-up generator adequate to maintain electrical service for resident needs until regular service is restored;
 - (iii) Have a primary care physician identified for each resident being considered for admission;
 - (iv) Retain the services of Registered Nurses to work in the home who are trained in the care of ventilator dependent persons. RN services include, but are not limited to, the provision of medical consultation for and supervision of resident care, skilled nursing care as needed and delegation of nursing care to caregivers;
 - (v) Develop individual resident care plans with the consulting RN which shall address the expected frequency of nursing supervision, consultation and direct service intervention;

- (vi) Have physician, RN and respiratory therapist consultation services available on a 24 hour basis and for in home visits as appropriate. The provider shall call the appropriate medical professional to attend to the emergent care needs of the resident;
- (vii) Demonstrate the provision of adequate care and services for ventilator dependent residents for a minimum of one year before requesting approval for or accepting ventilator dependent residents in any additional home; and
- (B) The license application process shall be jointly conducted by the local licensing authority and the Senior and Disabled Services Division Central Office. The SDSD Central Office has the final decision making authority for homes having ventilator dependent residents; and
- (C) Providers shall not have more than three residents who are either dependent in four or more activities of daily living or ventilator dependent without prior approval by the Division.

(2) Sanitation

- (a) A public water supply shall be utilized if available. If a non-municipal water source is used, a sample shall be collected by the licenser or sanitarian and tested at the provider's expense for coliform bacteria yearly and records shall be retained for three years; corrective action shall be taken to ensure potability;
- (b) Septic tanks or other non-municipal sewage disposal system shall be in good working order. Commodes shall be emptied frequently and incontinence garments will be disposed of in closed containers;
- (c) Garbage and refuse shall be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal;
- (d) Prior to laundering, soiled linens and clothing shall be stored in closed containers in an area separate from food storage, kitchen and dining areas. Special pre-wash attention shall be given to soiled and wet bed linens;
- (e) Sanitation for household pets and other domestic animals shall be adequate to prevent health hazards. Proof of rabies or other vaccinations required by a licensed veterinarian shall be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to residents or guests;
- (f) There will be adequate control of insects and rodents including screens on doors and windows that are used for ventilation;
- (g) Universal precautions for infection control should be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids; and
- (h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for

disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal shall be according to local regulations and resources (ORS 459.386 through 459.405).

(? Bathrooms

Bathrooms shall:

- (a) Provide individual privacy and have a finished interior, with a door which opens to a hall or common use room; a mirror; an openable window or other means of ventilation; and a window covering. No person shall walk through another person's bedroom to get to a bathroom;
- (b) Be clean and free of objectionable odors (including the commodes used in resident rooms);
- (c) Have tubs or showers, toilets and sinks in good repair. A sink shall be located near each toilet, and a toilet and sink provided on each floor with resident rooms. There shall be at least one toilet, one sink, and one tub or shower for each six household occupants (including residents, day care persons, board and room occupants, provider and provider's family excluding children under two years old);
- (d) Have hot and cold water at each tub, shower, and sink in sufficient supply to meet the needs of the residents. Hot water temperature in bathing areas shall be supervised for persons unable to regulate water temperature;
- (e) Have nonporous surfaces for shower enclosures; glass shower doors shall be tempered safety glass. Shower curtains shall be clean and in good condition. Non-slip floor surfaces shall be provided in tubs and showers;
- (f) Have grab bars for toilets, tubs, and/or showers for resident's safety and have barrier-free access to toilet and bathing facilities; and
- (g) Have adequate supplies of toilet paper and soap for each bathroom provided by the operator. Residents shall be provided with individual towels and wash cloths which are laundered in hot water at least weekly or more often if necessary. Residents shall have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in dispenser shall be provided for residents' use.

(4) Bedrooms

- (a) Bedrooms for all household occupants shall have been constructed as a bedroom when the home was built, or remodeled under permit; be finished with walls or partitions of standard construction which go from floor to ceiling; have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom; be adequately ventilated, heated and lighted with at least one openable window which meets fire regulations (see subsection (7)(d) of this rule); be at least 70 square feet of usable floor space for each resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and have no more than two persons per room;
- (b) Providers, resident managers or family members shall not sleep in areas designated as living areas, nor share bedrooms with residents;
- (c) There shall be an individual bed at least 36 inches wide for each resident consisting of a

mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed shall have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases shall be laundered at least weekly, and more often if soiled. Waterproof mattress covers will be used for incontinent residents. Day care persons may use a cot or rollaway bed if bedroom space is available which meets the requirements of subsection (4)(a) of this rule. Resident beds may not be used by day care persons;

- (d) Each bedroom shall have sufficient separate, private dresser and closet space for each resident's clothing and personal effects including hygiene and grooming supplies. Residents shall be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space. Drapes or shades for windows shall be in good condition and allow privacy for residents;
- (e) Bedrooms shall be on ground level for residents who are non-ambulatory, have impaired mobility, or are cognitively impaired. Residents on the second floor or in the basement must demonstrate their self-preservation capability to self exit or barricade, i.e., close the door or stop smoke from coming under the door; and
- (f) Resident bedrooms shall be in close enough proximity to the provider to alert the provider to night time needs or emergencies, or shall be equipped with a call bell or intercom. Intercoms shall not violate the resident's right to privacy and must have the capability of being turned off by or at the resident's request. Use of interior video monitors detracts from a home-like environment and providers shall not use them in resident bedrooms, bathrooms or living areas, unless requested by the resident.

(5) Meals

- (a) Three nutritious meals will be served daily at times consistent with those in the community. Each daily menu will include food from the five basic food groups and fresh fruit and vegetables in season. There shall be no more than a 14-hour span between the evening meal and breakfast. Nutritious snacks and liquids shall be offered to fulfill each resident's nutritional requirements. Consideration shall be given to residents' cultural and ethnic background in food preparation. Special consideration must be given to residents with chewing difficulties and other eating limitations. Food shall not be used as an inducement to control the behavior of a resident;
- (b) Menus for the coming week shall be prepared and posted weekly in a location accessible to residents and families. Meal substitutions in compliance with subsection 5(a) of this rule and with resident approval are acceptable;
- (c) Home-canned foods must be processed according to the latest guidelines of the Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized;
- (d) Special diets are to be followed as prescribed in writing by the resident's physician/nurse practitioner;
- (e) Adequate storage shall be available to maintain food at a proper temperature, including a properly working refrigerator;

- (f) Utensils, dishes, glassware and food stuffs shall not be stored in bedrooms, bathrooms, or living areas;
- (g) Meals shall be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the provider (restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing by choice are the responsibility of the resident;
- (h) Utensils, dishes and glassware shall be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sanicycle is recommended; and
- (i) Food preparation areas and equipment (utensils and appliances) shall be clean, free of offensive odors and in good repair.

(6) Telephone

- (a) A telephone available and accessible for residents' use in a reasonable accommodation for privacy for incoming and outgoing calls shall be provided in the home where residents live. Residents with hearing impairments (to the extent that they cannot hear over a normal phone) shall be provided with a telephone that is amplified with a volume control or is hearing aid compatible. The telephone number must be a listed number;
- (b) Emergency telephone numbers shall be posted by the telephone including an emergency number to reach a provider who does not live in the home. Telephone numbers for making complaints to the Ombudsman and the local Division office must also be posted; and
- (c) Restrictions and limitations on the use of the telephone by residents are to be specified in the written house rules and shall not violate residents' rights. Individual restrictions must be specified in the care plan.

(7) Safety

- (a) Buildings shall meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home shall be inspected for fire safety by the State Fire Marshal's Office at the request of the licensing authority or Division staff using the standards in this rule;
- (b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, shall be installed in accordance with all applicable fire and life safety codes. Such equipment shall be used and maintained properly and be in good repair. Providers who do not have a permit verifying proper installation

of an existing woodstove shall need to have the woodstove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around woodstoves to prevent residents with ambulation or confusion problems from coming in contact with the stove. Unvented portable oil, gas or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction;

- (c) Extension cord wiring shall not be used in place of permanent wiring;
- (d) Hardware for all exit doors and interior doors shall have simple hardware which cannot be locked against exit and shall have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more residents who have impaired judgment and are known to wander away from their place of residence must have an activated alarm system to alert a caregiver of an unsupervised exit by a resident;
- (e) Bedrooms shall have at least one window or exterior door readily openable from the inside without special tools and which provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height shall not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress which can be used by residents. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee. Smoking is not permitted in any bedroom including that of a resident, provider, resident manager, caregiver, boarder, or family member;
- (f) Construction:
 - (A) Buildings will be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials shall not exceed Class III (76-200) and smoke density shall not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exitway is composed of readily combustible such as acoustical tile or wood paneling, such material must be treated with an approved intumescent surface coating. Exception: Buildings supplied with an approved automatic sprinkler system;

- (B) Mobile home units must have been built since 1976 and designed for use as a home rather than a travel trailer. The units shall have a manufacturer's label permanently affixed on the unit itself which states it meets the requirements of the Department of Housing and Urban Development (HUD). The required label shall read as follows:

"As evidence by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

- (C) If such a label is not evident and the provider believes the unit meets the required specifications, he/she must take the necessary steps to secure and provide verification of compliance from the manufacturer; and
- (D) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated any further;
- (g) At least one fire extinguisher classed as 2A-10BC shall be in a visible and readily accessible location on each floor, including basements, and shall be checked at least once a year by a qualified workman who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose;
- (h) Smoke detectors shall be installed in accordance with the manufacturer's listing and be installed in each bedroom, in hallways or access areas that adjoin bedrooms, family room or main living area where residents congregate, any interior designated smoking area, and in basements. In addition, in two-story houses, smoke detectors must be installed at the top of the stairway to the second floor. Ceiling placement of smoke detectors is recommended. Detectors shall be equipped with a device that warns of low battery when battery operated or with a battery back-up if hard wired. All smoke detectors are to be maintained in functional condition. Bedrooms used by hearing impaired occupants who cannot hear a regular smoke alarm must be equipped with a visual/audio or vibration alerting smoke alarm as appropriate;
- (i) All smoke detectors shall contain a sounding device or interconnected to other detectors to provide, when actuated, an alarm which is audible in all sleeping rooms;
- (j) The provider shall maintain exits, detectors and extinguishers in functional condition. If there are more than two violations in maintaining battery operated

detectors in working condition, hard-wiring of the detectors into the electrical system may be required;

- (k) Flammable and combustible liquids and hazardous materials shall be safely and properly stored in original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals. Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not readily accessible to clients;
- (l) Cleaning supplies, medical sharps containers, poisons and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food preparation and storage areas, dining areas, and medications;
- (m) An emergency evacuation plan shall be developed, posted and rehearsed with occupants. All caregivers shall be required to demonstrate the ability to evacuate all residents from the facility within three minutes to the closest point of safety which is exterior to, and away from the structure. A record shall be maintained of evacuation drills. Drills will be held at least once every 90 days, with at least one drill practice per year occurring during sleeping hours. Records of drills shall be maintained for three years and include date, time for full evacuation, and names of residents requiring assistance for evacuation;
- (n) Within 24 hours of arrival, any new resident or caregiver shall be shown how to respond to a fire alarm, shown how to participate in an evacuation drill from the home in an emergency, and receive an orientation to basic fire safety. New caregivers will also be oriented in how to conduct a fire drill;
- (o) Providers and all caregivers shall demonstrate the ability to evacuate all occupants from the dwelling within three minutes. If there are problems in demonstrating this evacuation time, conditions may be applied to the license which include, but are not limited to, reduction of residents under care, additional staffing, or increased fire protection. Continued problems will be grounds for revocation or non-renewal of the license;
- (p) The provider shall provide, keep updated and post a floor plan containing room sizes, location of each resident's bedroom, fire exits, resident manager or provider's sleeping room, smoke detectors and fire extinguishers. A copy of this drawing shall be submitted with the application and updated to reflect any change;
- (q) Providers shall not place residents who are unable to walk without assistance or not capable of self-preservation in a basement, split-level, second story or other area that does not have an exit at ground level. Such residents shall be given first floor rooms. Stairs shall have a riser height of between 6-8 inches and tread width of between 8 - 10 ½ inches. Stories above the second floor shall not be used for

sleeping purposes. Lifts or elevators are not an acceptable substitute for resident's capability to ambulate stairs;

- (r) All common use areas of the house and exitways must be barrier free and corridors and hallways shall be a minimum of 32 inches wide or as approved by the authority having jurisdiction. Any bedroom window identified as an exit shall be free of any obstacles, at least the width of the window, that would interfere with it being an exit. There shall be a wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. Wheelchair ramps shall have non-skid surfaces, handrails, and have a maximum slope of 1 inch rise in each 12 inches of distance. The maximum rise for any run shall be 30 inches. Wheelchair ramps approved prior to April 1, 1996 are accepted. Providers may need to bring existing ramps into revised compliance if necessary to meet the needs of new residents or current residents with increased care needs;
- (s) There must be a second safe means of egress. Providers whose sleeping rooms are above the first floor may be required to demonstrate a fire exit drill from that room, using the secondary egress, at the time of licensure, renewal, or inspection;
- (t) Adult foster homes located more than five miles distance from the nearest fire station or those of unusual construction characteristics may be required to have a complete fire alarm system meeting the requirements of the NFPA 72A and 72E and with approved automatic reporting to the local jurisdiction providing fire protection;
- (u) There shall be at least one plug-in rechargeable flashlight available on each floor for emergency lighting;
- (v) Smoking regulations shall be adopted to allow smoking only in designated areas. Smoking shall be prohibited in sleeping rooms, rooms where oxygen is used, or in garages where flammable materials are stored. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted;
- (w) Providers whose homes are located in areas where there is a danger of natural disasters which require rapid evacuation such as forest fires, flash floods, or tsunami waves must be aware of community resources for evacuation assistance.

411-50-447 Standards and Practices for Care and Services

(1) Screening

- (a) Prior to admission of a resident, the provider shall conduct and document a screening to determine that the prospective resident's care needs do not exceed the license classification. The screening shall evaluate the ability of the prospective

resident to evacuate the home within three minutes along with all occupants of the home. The screening shall also determine if the provider and caregivers can meet the prospective resident's needs in addition to meeting the needs of the other residents of the home. The screening shall include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information as needed to assure the person's care needs can be met; and

- (b) The screening interview process shall include interviews with the prospective resident, her/his family, prior care providers, and case manager as appropriate. The interview should also include as necessary, any physician, nurse practitioner, registered nurse, pharmacist, therapist or other health/mental health professional involved in the care of the resident. A copy of the screening document shall be given to the prospective resident or her/his representative. Should the prospective resident become a resident in the home, a copy of the screening document shall be placed in the resident record.

(2) Admission

- (a) Upon admission to the home, the provider shall obtain and document general information regarding the resident. The information shall include names, addresses, and telephone numbers of relatives, significant persons, case managers, and medical/mental health providers. The record shall also include the date of admission and, if available, the resident's Social Security and medical insurance numbers, birth date, prior living facility and mortuary;
- (b) By the time of admission, the provider shall have made every effort to obtain physician/nurse practitioner orders for medications, treatments, therapies and special diets. Any telephone orders must be followed with written signed orders. A physician, nurse practitioner, or pharmacist review of the resident's preferences for over-the-counter medications and home remedies shall also be obtained at that time. The provider shall also obtain and place in the record any medical information available including history of accidents, illnesses, impairments or mental status that may be pertinent to the resident's care;
- (c) At the time of admission, the provider shall ask for copies of the following documents if the resident has them: Advance Directive, letters of guardianship, or letters of conservatorship. The copies shall be placed in a prominent place in the resident record and sent with the resident when transferred for medical care; and
- (d) At the time of admission, the provider shall discuss with the resident and/or her/his representative the Adult Foster Home Resident Bill of Rights, if the home

is a Medicaid provider, and written house rules. The discussion shall be documented by having the resident sign the house rules and the Residents' Bill of Rights (Form SDS 305A) and filed in the resident's record.

(3) Assessment and Care Plan

- (a) During the initial 14 days following the resident's admission to the home, the provider shall continue the assessment process which includes documenting the resident's preferences and care needs. The assessment shall include observations of the resident and the review of information obtained from the screening assessment process;
- (b) Based on the assessment, the initial care plan shall be completed by the provider and documented within the initial 14 day period. The care plan shall describe the resident's needs and preferences, the resident's capabilities and what assistance the resident requires for various tasks. The care plan shall also include by whom, when and how often care and services will be provided. Specific information shall include:
 - (A) Ability to perform activities of daily living (ADLs);
 - (B) Special equipment used by the resident;
 - (C) Communication needs: hearing, vision, sign language, non-English speaking, and speech along with any aids used;
 - (D) Night Needs;
 - (E) Medical or physical health problems relevant to care and services;
 - (F) Cognitive, emotional, or physical disabilities or impairments relevant to care and services;
 - (G) Treatments, procedures or therapies;
 - (H) Registered nurse consultation;
 - (I) Behavioral interventions;
 - (J) Social/spiritual/emotional needs including lifestyle preferences, activities, and significant others involved;
 - (K) Emergency exit ability including assistance and equipment needed;

(L) Any use of physical restraints or psychoactive medications; and

(M) Dietary needs and preferences;

(c) The care plan shall be reviewed and updated every six months and as the resident's condition changes. A review note with the date and reviewer's signature shall be documented in the record at the time of the review. If the care plan contains many changes and becomes less legible, a new care plan shall be written.

(4) Standards for Medications, Treatments and Therapies

(a) The provider and caregivers shall demonstrate an understanding of each resident's medication administration regimen. The reason the medication is used, medication actions, any specific instructions and common side effects should be referenced by medication resource material available at the facility;

(b) The provider shall obtain and place a written signed order in the resident's record for any medications, dietary supplements, treatments, and/or therapies which have been prescribed by the physician/nurse practitioner. Orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. Changes may not be made without a physician/nurse practitioner's order and the physician/nurse practitioner must be notified if a resident refuses to consent to an order. Order changes obtained by telephone must be followed-up with written signed orders. Attempts to obtain the written changes must be documented in the resident's record. Over-the-counter medications or home remedies requested by the resident shall be reviewed by the resident's physician/nurse practitioner or pharmacist as part of developing the care plan and at time of care plan review;

(c) Prescription medications ordered to be given "as needed" or "p.r.n." must have additional directions which show what the medication is for and specifically when, how much and how often it may be administered. These written directions may be given by a physician, nurse practitioner, registered nurse or pharmacist;

(d) Psychoactive Medications

(A) A provider shall not request a psychoactive medication to treat a resident's behavioral symptoms without a consultation from the physician, nurse practitioner, registered nurse or mental health professional. The consultation shall include a discussion of alternative measures to medication use including behavioral interventions. These medications may be used only after documenting all other alternative considerations and only when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Psychoactive medications shall never be

given to discipline a resident or for the convenience of the adult foster home. Psychoactive medications as defined in these rules may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use;

- (B) The provider and all caregivers shall know the specific reasons for the use of the psychoactive medication for an individual resident, the common side effects and when to contact the physician, nurse practitioner, or mental health professional regarding those side effects. All caregivers shall also know the behavioral interventions to be used along with the medication; and
- (C) The frequency of the reassessment of the psychoactive medication use shall be determined by the individual completing the initial assessment;
- (e) Each resident's medication container shall be clearly labeled with the pharmacist's label or be in the original labeled container or bubble pack and shall be kept in a locked, central location, separate from that of the provider or the provider's family. Residents shall not have access to medications of the provider or other household members. Over-the-counter medications in stock bottles (with original labels) may be used in the home. Unused, outdated or discontinued medications shall not be kept in the home and shall be disposed of according to the pharmacist's recommendations. Disposal of medications shall be documented on the medication administration record or in the resident's record;
- (f) The provider may set up each resident's medications for up to seven days in advance (excluding p.r.n. medications) by using a closed container manufactured for that purpose. If used, each resident shall have her/his own container with divisions for the days and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route (if other than oral) and description of the medications. The container shall be stored in the medication locked area;
- (g) A current, written medication administration record shall be kept for each resident and shall identify all of the medications administered by the caregiver to that resident, including over-the-counter medications and prescribed dietary supplements. The record shall indicate the medication name, dosage, route (if other than oral), the date and time to be given. The record shall be immediately initialed at the time of administration by the person giving the medications. Treatments and therapies must be immediately documented on the medication administration record showing times given, type of treatment or therapy, and initials of the person performing the procedure. The medication administration record shall contain a legible signature which identifies each set of initials;

- (h) A discontinued or changed medication order shall be marked and dated on the medication administration record as discontinued. The new order shall be written on a new line showing the date of order. If a resident misses or refuses a medication, treatment or therapy the initials must be circled and a brief but complete explanation shall be recorded on the back of the medication record. As needed (p.r.n.) medication shall be documented with the time, dose, the reason the medication was given, and the outcome;
- (i) Residents must have a physician/nurse practitioner's written order of approval to self-medicate. Persons able to handle their own medical regimen will keep medications in their own room in a small storage area that can be locked. The provider shall notify the physician/nurse practitioner should the resident show signs of no longer being able to self-medicate safely;
- (j) Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident or administered by a relative of the resident, or an Oregon licensed registered nurse. A licensed practical nurse can also give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Board of Nursing rules may give subcutaneous injections. Intramuscular and intravenous injections cannot be delegated;
- (k) Physical Restraints
 - (A) A written signed order from the physician/nurse practitioner or Christian Science practitioner shall be obtained and placed in the resident record. The order shall include specific parameters including type, circumstances and duration of the use of the restraint. There shall be no p.r.n. (as needed) orders for restraints;
 - (B) Physical restraints may be used only after a physician/nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist assessment, consideration and documentation of all other alternatives, and only when required to treat a resident's medical symptoms, or to maximize a resident's physical functioning. If, following the assessment and trial of other measures, it is determined that a restraint is necessary, the least restrictive restraint shall be used and as infrequently as possible. All physical restraints must allow for quick release at all times;
 - (C) The provider shall place the restraint assessment in the resident record. The assessment shall include procedural guidance for the correct use of the restraint, alternative less restrictive measures which shall be used in place of the restraint whenever possible, and dangers and precautions related to

the use of a restraint;

- (D) The frequency for reassessment of the physical restraint use shall be determined by the prescriber based on the recommendations made in the initial assessment. The reassessment may be performed by the physician/nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupation therapist;
- (E) Physical restraints may only be used with the resident's or resident legal representative's consent which will be documented in the resident's record;
- (F) Physical restraints may not be used for discipline of a resident or for the convenience of the adult foster home;
- (G) Residents physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, exercised or provided range of motion during this period;
- (H) Physical restraint use at night is discouraged and shall be limited to unusual circumstances. If used, the restraint shall be of the design to allow freedom of movement with safety. The frequency of night monitoring for resident safety and need for assistance shall be determined in the assessment;
- (I) Side rails used to keep a resident in bed are considered restraints. Side rails or half rails, which are requested by the resident, to allow the resident to easily get in and out of bed or improve functioning are not considered restraints;
- (J) Physical restraint use shall be recorded on the care plan showing why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive alternative measures planned during the assessment and cautions for maintaining safety while restrained shall also be recorded on the care plan; and
- (K) Use of restraints shall not impede the three minute evacuation of all household members.

(5) Registered Nurse Consultation

- (a) The provider shall obtain medical professional consultation/assessment to meet the care needs of the resident as required in these rules. A registered nurse consultation shall be obtained when a skilled nursing care task (such as insulin

injections, blood sugar monitoring and new ostomy care) has been ordered by a physician or other qualified practitioner. The provider shall consider the benefit of a registered nurse consultation under the following conditions:

- (A) When the resident has a medical/physical/health concern or behavioral symptoms which may benefit from a nursing assessment and provider education;
 - (B) Use of physical restraints when not assessed, taught and reassessed (as discussed in subsection (4)(k) of this rule) by the physician/nurse practitioner, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist;
 - (C) Use of psychoactive medications when not assessed, taught and reassessed (as discussed in subsection (4)(d) of this rule) by the physician/nurse practitioner or mental health practitioner; and
 - (D) When care procedures have been ordered, which are new for a specific resident and/or the provider;
- (b) The registered nurse may determine that a nursing care task is to be taught utilizing the delegation process. The care provider shall not teach another individual the delegated task and shall not perform the task for another resident without further delegation.

(6) Resident Care

- (a) Care and supervision of residents shall be in a home-like atmosphere and shall be appropriate to the needs, preferences, age and condition of the individual resident. The training of the provider or staff will be appropriate to the age, care needs and condition of the residents. Providers and resident managers will be required to meet the requirements for training according to the class for which they are licensed. Additional staff may be required if day care or respite residents are in the home;
- (b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider shall cooperate with the plan and ensure that it is implemented as instructed;
- (c) The provider is responsible for promptly informing the resident's physician/nurse practitioner, family, legal representative and case manager of changes in the health status of the resident. Changes in the resident condition shall be documented and appropriate medical assistance obtained;

- (d) In the event of a serious medical emergency, the provider/staff shall call 911 or the appropriate emergency number for their community. The physician/nurse practitioner, family or resident representative and the case manager (when applicable) shall also be called. The provider shall have copies of Advance Directives, Do Not Resuscitate (DNR) orders and/or pertinent medical information available when emergency personnel arrive;
- (e) Providers shall not inflict, or tolerate to be inflicted, abuse or punishment; financial exploitation; or neglect of resident(s);
- (f) Providers shall exercise reasonable precautions against any conditions which could threaten the health, safety or welfare of residents;
- (g) A caregiver must be present and available at the home at all times when residents are in the home. A resident shall not be left in charge in lieu of a caregiver;
- (h) Providers shall make available at least six hours of activities per week which are of interest to the residents, not including television and movies. Information regarding activity resources is available from the Division. Activities shall be oriented to individual preferences as indicated in the resident's care plan. Documentation of resident activity participation shall be recorded in the resident's records;
- (i) Providers or caregivers shall be directly involved with residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the provider shall demonstrate how regular positive contact will occur;
- (j) If the provider manages or handles a resident's money, a separate account record shall be maintained in the resident's name. The provider shall not under any circumstances commingle, borrow from, or pledge any funds of a resident. Personal Incidental Funds (PIF) for Division clients are to be used at the discretion of the client for such things as clothing, tobacco, and snacks (not part of daily diet). Providers/caregivers shall not accept gifts from residents through undue influence or accept gifts of substantial value. Providers or caregivers shall not influence, solicit from or suggest to any resident that they or their family give the caregiver or the caregiver's family money or property for any purpose. The caregiver or the caregiver's family shall not accept gifts of substantial value or loans from the resident or the resident's family; and
- (k) A provider is responsible for the supervision, training and overall conduct of resident managers and other caregivers when acting within the scope of their employment, duties, or when present in the home.

(7) Resident Records

- (a) An individual resident record shall be developed, kept current, and available on the premises for each person admitted to the adult foster home. The record shall contain the following information:
 - (A) Initial screening assessment;
 - (B) General information;
 - (C) Documentation on Form SDS 913 that the provider has informed private pay residents of the availability of a long term care assessment;
 - (D) Medical information, including:
 - (i) Medical history, if available;
 - (ii) Current physician/nurse practitioner orders;
 - (iii) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less; and
 - (iv) Guardianship letters, Oregon Directive to Physicians and/or a Power of Attorney for Health Care, if applicable;
 - (E) Care plan;
 - (F) Copies of the current written house rules and current Residents' Bill of Rights, signed by the resident or his/her representative;
 - (G) A written report of all significant incidents relating to the health or safety of a resident including how and when the incident occurred, who was involved, what action was taken by provider/staff and the outcome to the resident;
 - (H) Narrative entries describing the resident's progress shall be documented at least once a week, dated and signed by the person writing them; and
 - (I) Non-confidential information or correspondence pertaining to the care needs of the resident;
- (b) Resident records maintained by the provider shall be readily available at the adult foster home for all caregivers and to representatives of the Division conducting

inspections or investigations, as well as to residents, their authorized representative or other legally authorized persons. The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative (OAR 114-05-030);

- (c) Records shall be kept for a period of three years. If a resident moves or the adult foster home closes, copies of pertinent information shall be transferred to the resident's new place of residence. Pertinent information shall include at a minimum, copies of current medication sheets, and an updated care plan; and
- (d) In all other matters pertaining to confidential records and release of information, providers shall be guided by the principles and definitions described in OAR Chapter 411, Division 05. A copy of these rules will be made available by the Senior and Disabled Services Division upon request.

(8) Financial Records

Financial records shall be maintained on the premises with the facility records;

- (a) Contracts with the Division, resident, relatives, or person(s) paying for care;
- (b) Division financial planning sheets (Form SDS 512), if pertinent; and
- (c) Resident account record (Form SDS 713) or other expenditure form if the provider manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident. Purchases of \$5 or more made on behalf of a resident must be documented by receipts.

(9) Residents' Bill of Rights

Providers, their families and employees of the home shall guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Division shall be explained and a copy given to residents at admission. The Bill of Rights states each resident has the right to:

- (a) Be treated as an adult with respect and dignity;
- (b) Be informed of all resident rights and all house rules;
- (c) Be encouraged and assisted to exercise constitutional and legal rights including the right to vote;

- (d) Be informed of their medical condition and the right to consent to or refuse treatment;
- (e) Receive appropriate care and services and prompt medical care as needed;
- (f) Be free from mental and physical abuse;
- (g) Complete privacy when receiving treatment or personal care;
- (h) Associate and communicate privately with any person of choice and send and receive personal mail unopened;
- (i) Have access to and participate in activities of social, religious, and community groups;
- (j) Have medical and personal information kept confidential;
- (k) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;
- (l) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not used for discipline or convenience;
- (m) Manage own financial affairs unless legally restricted;
- (n) Be free from financial exploitation. The provider shall not charge or ask for application fees or non-refundable deposits or solicit, accept or receive money or property from a resident other than the amount agreed to for services;
- (o) A written agreement regarding services to be provided and the rates to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home;
- (p) Not to be transferred or moved out of the adult foster home without 30 days' written notice and an opportunity for a hearing. A provider may transfer a resident only for medical reasons or for the welfare of the resident or other residents, or for nonpayment;
- (q) A safe and secure environment;
- (r) Be free of discrimination in regard to race, color, national origin, sex, or religion; and

(s) Make suggestions or complaints without fear of retaliation.

(10) House Rules

A copy of the house rules shall be given to and discussed with residents and their families at the time of admission. House rules shall include any restrictions or limitations on use of tobacco or alcohol, use of telephones, use of intercoms, meal schedules, pets, and visitations, and must not be in conflict with the residents' Bill of Rights or the family atmosphere of the home. House rules are subject to review and approval by Division staff prior to licensure. The current house rules shall be posted and a copy submitted to the Division.

(11) Moves, Transfers and Discharges

(a) (A) A resident may not be involuntarily moved from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary stay without 30 days' written notice to the resident on the resident move, transfer or discharge notice, Form SDS 901, and the resident's legal representative, guardian, conservator and case manager (if the resident has one). The notice shall state the reasons for the move or transfer and the resident's right to object to the move or transfer, except where undue delay might jeopardize the health, safety or well-being of the resident or others. Residents may be moved or transferred for only the following reasons:

- (i) Medical reasons;
- (ii) Welfare of the resident or other residents;
- (iii) Behavior which poses an imminent danger to self, others or caregivers;
- (iv) Behavior which substantially interferes with the orderly operation of the home;
- (v) Failure to make payment for care;
- (vi) The home has had its license revoked, not renewed, or voluntarily surrendered; or
- (vii) The resident's care needs exceed the ability (taking into account the provider's own health) or classification of the provider;

(B) (i) If the resident has a medical emergency, the provider may give less

than 30 days' advance notice, but shall give the written notice as soon as possible under the circumstances. This includes situations in which the resident is hospitalized or is temporarily out of the home and the provider refuses to allow the resident to return to the home;

- (ii) "Medical emergency" means a change in medical condition that requires immediate care of a level or type that the provider is unable to provide or behavior that poses an imminent danger to the resident or to other residents or people living in the home; and
 - (iii) The written notice shall include the resident's name; the reason for the proposed transfer, discharge or move; the date of the proposed change; the location to which the resident is going; the right to have the Division hold an informal conference and hearing; the name, address and telephone number of the person giving the notice; and the date of the notice;
- (b) A person who is to be involuntarily transferred, or refused the right of return or readmission, shall be entitled to an informal conference and hearing as provided in this rule;
- (A) The Division will hold an informal conference as promptly as possible after the request is received. The Division shall send written notice of the time and place of the conference to the provider and all persons entitled to the notice. Participants may include the resident, and at the resident's request, a family member, case manager, Ombudsman, legal representative of the resident; the provider; and a representative from the provider association if the provider requests it. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, the Division will document it in writing and no formal hearing will be held. If a resolution is not reached at the end of the informal conference, the resident or resident representative may request a formal hearing;
 - (B) The resident shall have the right to an administrative hearing prior to an involuntary transfer or discharge. If the resident is being transferred or discharged for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the transfer or discharge. The provider shall hold a space available for the resident pending receipt of an administrative order. ORS 441.605(4) and the rules thereunder governing transfer notices and hearings for residents of long term care facilities shall apply to adult foster homes.

(12) Closing

Providers shall notify the Division prior to a voluntary closure of a home, proposed sale or transfer of ownership and give residents, families, and case managers for Division clients 30 days' written notice except in circumstances where undue delay might jeopardize the health, safety or well-being of residents, providers or staff. If a provider has more than one home, residents cannot be shifted from one house to another house without the same period of notice unless prior written approval is given and agreement obtained from residents, family members and case managers.

(13) General Practices

- (a) The adult foster home license, attached conditions to the license if applicable, the Residents' Bill of Rights, floor plan that indicates the fire evacuation route, house rules, the Division's inspection form, Ombudsman Poster, and the Division's procedure for making complaints shall be conspicuously posted in the entryway or other equally prominent place where they can be seen by residents and others;
- (b) The provider shall cooperate with Division personnel in inspections, complaint investigations, planning for client care, application procedures and other necessary activities. Division personnel have access to all resident and facility records and may conduct private interviews with residents. The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to resident records with written permission from the resident and facility records relevant to caregiving;
- (c) Information related to resident(s) shall be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation or sanction action under these rules; and
- (d) The provider shall abide by the terms of these Administrative Rules, OAR Chapter 411, Division 50.

411-50-450 Inspections

- (1) The Division shall conduct an inspection of an adult foster home:
 - (a) Prior to issuance of a license;
 - (b) Prior to annual renewal of a license the Division will conduct an unannounced inspection;
 - (c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or

- (d) Anytime the Division has probable cause to believe a home has violated a regulation or provision of these Administrative Rules or is operating without a license.
- (2) The Division may conduct inspections:
 - (a) Any time such inspections are authorized by these Administrative Rules and any other time the Division considers it necessary to determine if a home is in compliance with these Administrative Rules or with conditions placed upon the license;
 - (b) To determine if cited deficiencies have been corrected; and
 - (c) For the purpose of routine monitoring of the residents' care.
- (3) State or local fire inspectors shall be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the Division.
- (4) Division staff shall have full access and authority to examine and copy facility and resident records, including but not limited to, admission agreement, private pay resident contracts/admission agreements, and accounts. The Division staff will also have access to inspect the physical premises, including the buildings, grounds, equipment and any vehicles relating to licensing and complaint investigations in the adult foster home.
- (5) Division staff shall have authority to interview the provider, resident manager, staff, and residents. Interviews shall be confidential and conducted privately. The provider shall furnish the names, addresses, and telephone numbers of the substitute caregivers employed or used by the provider to the Division upon request of the Division.
- (6) Providers must authorize resident managers and substitute caregivers to permit entrance by Division staff for the purpose of inspection, investigation, and other duties within the scope of Division authority.
- (7) The Division has authority to conduct inspections with or without advance notice to the provider, staff, or a resident of the home. The Division shall not give advance notice of any inspection if the Division believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these Administrative Rules.
- (8) If Division staff is not permitted access or inspection, a search warrant may be obtained.
- (9) The inspector shall respect the private possessions of residents, providers and staff while conducting an inspection.
- (10) The Division shall maintain current information on all licensed adult foster homes and

shall make the non-confidential information available to prospective residents and other interested members of the public at local Division offices or Area Agencies on Aging licensing offices throughout the state.

- (a) The information shall include:
 - (A) The location of the adult foster home and the name and mailing address of the provider if different;
 - (B) A brief description of the physical characteristics of the home;
 - (C) The license and license classification of the home and the date the provider was first licensed to operate that home;
 - (D) The date of the last licensing inspection including any fire inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;
 - (E) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings of and actions taken by the Division and responses from the provider or complainant;
 - (F) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the Division involving the home; and
 - (G) Whether care is provided primarily by the licensed provider, a resident manager or other arrangement;
- (b) Any list of adult foster homes maintained or distributed by the Division or a local licensing office shall include the number of substantiated complaint reports for each of the adult foster homes for the lesser of the preceding five years or the period beginning January 1, 1992.

411-50-455 Complaints

- (1) The Division shall furnish each adult foster home with a Complaint Notice which must be posted in a conspicuous place and which states the telephone number of the Division and the Ombudsman and the procedure for making complaints.
- (2) Any person who believes these Administrative Rules have been violated may file a complaint with the Division.
- (3) The Division will investigate and act on complaints as quickly as possible. The primary purpose of the prompt response is to protect the residents and correct the situation.

Investigations of complaints alleging injury, abuse or neglect shall be completed as soon as possible and all investigations will be completed within 60 days unless there is a concurrent criminal investigation that requires additional time.

- (4)
 - (a) The adult foster home provider shall not retaliate against any resident after the resident or someone acting on his/her behalf has filed a complaint by increasing charges; decreasing services, rights or privileges; threatening to increase charges or decrease services, rights or privileges; by taking or threatening to take any action to coerce or compel the resident to leave the facility or by abusing or threatening to harass or abuse a resident in any manner;
 - (b) Any complainant, witness or employee of a facility shall not be subject to any retaliation by a provider for making a report or being interviewed about a complaint or being a witness, including restriction of access to the home or a resident or, if an employee, to dismissal or harassment; and
 - (c) The complainant shall have immunity from any civil or criminal liability with respect to the making or content of a complaint made in good faith. Immunity under this subsection does not protect self-reporting providers from liability for the underlying conduct that is alleged in the complaint.
- (5) Standards will be followed for investigations related to abuse, neglect, or injury.
 - (a) The Division will cause an investigation within two hours if a complaint alleges that a resident has been injured, abused or neglected and that any resident's health or safety is in imminent danger or that the resident has died or been hospitalized due to abuse or neglect;
 - (b) The Division will cause an investigation to begin by the end of the next working day if circumstances exist which could result in the injury, abuse, or neglect and that the circumstances could place the resident's health or safety in imminent danger;
 - (c) An unannounced on-site visit will be conducted;
 - (d) All available witnesses identified by any sources as having personal knowledge relevant to the complaint shall be interviewed. Interviews shall be confidential and conducted in private. The investigator shall interview the provider and shall advise the provider of the nature of the complaint and give the provider an opportunity to submit relevant information to the investigator;
 - (e) All evidence and physical circumstances that are relevant and material to the complaint shall be observed;

- (f) Immediate protection shall be provided. The provider shall correct any substantiated problem immediately;
 - (g) A report will be written within 60 days of receipt of a complaint which includes the investigator's personal observations, a review of documents and records, a summary of all witness statements, and a conclusion; and
 - (h) Reports indicating the need for a sanction by either the local licensing authority or the Division shall be referred to the appropriate office for corrective action immediately upon completion of the investigation.
- (6) (a) The Division, through its local offices, will mail a copy of the investigation report to the following people within seven days of the completion of the investigation:
- (A) The complainant (unless the complainant requests anonymity);
 - (B) The resident(s) involved and any persons designated by the resident(s) to receive the information;
 - (C) The provider; and
 - (D) The Long-Term Care Ombudsman:
- (b) The report shall protect as confidential the identity of the resident, the complainant, and any witnesses; and
 - (c) The report shall be accompanied by a notice informing such persons of the right to give additional information about the content of the report to the Division's local office within seven days of receipt.
- (7) The SDSA unit/Type B AAA shall review the responses and reopen the investigation if additional evidence of a violation is received. A copy of the entire report must be sent to the Division upon completion of the investigation report, whether or not the investigation report concludes the complaint is substantiated.
- (8) The Division shall take appropriate corrective action within 60 days from completion of the investigation report.
- (9) Providers who acquire substantiated complaints pertaining to the health, safety or welfare of residents may be assessed civil penalties, may have conditions placed on their licenses, and/or may have their licenses suspended, revoked or not renewed.
- (10) (a) A record shall be maintained by the Division of all complaints and any action taken on the complaint, indexed by the name of the provider, and shall:

- (A) Be placed into the public file. (Any information regarding the investigation of the complaint shall not be filed in the public file until the investigation has been completed.) The investigation reports, including copies of the responses (with confidential information deleted), shall be available to the public at the local Senior and Disabled Services Division office or the Type B Area Agency on Aging licensing office along with other public information regarding the adult foster home;
 - (B) Protect the privacy of the complainant and the resident; and
 - (C) Treat the names of the witnesses as confidential information.
- (b) Any person may inspect and purchase a photocopy of the public complaint files maintained by the Division upon requesting an appointment to do so.

411-50-460 Procedures for Correction of Violations

- (1) If, as a result of an inspection or investigation, the Division determines that abuse has occurred, the provider must be notified verbally to immediately cease the abusive act. The Division will follow-up with a written confirmation of the warning to cease the abusive act and will include notification that further sanctioning may be imposed.
- (2) If an inspection or investigation indicates a violation of the rules other than abuse, the Division shall notify the provider in writing of violations of these rules.
- (3) The notice of violation shall state the following:
 - (a) A description of each condition that constitutes a violation;
 - (b) Each regulation that has been violated;
 - (c) Except in cases of imminent danger, a specific time frame for correction, but no later than 60 days after receipt of the notice;
 - (d) Sanctions that may be imposed against the home for failure to correct the violations;
 - (e) Right to contest the violations if an administrative sanction is imposed; and
 - (f) The right to request an exception as provided in OAR 411-50-430.
- (4) At any time after receipt of a notice of violation or an inspection report, the licensee or the Division may request a conference. The conference shall be scheduled within (10) days of a request by either party.

- (5) The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of these Administrative Rules.
- (6) The request by a licensee or the Division for a conference shall not extend any previously established time limit for correction.
- (7) The licensee shall notify the Division of correction of violations no later than the date specified in the notice of violation.
- (8) The Division may conduct a reinspection of the home after the date the Division receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.
- (9) For violations that present an imminent danger to the health, safety or welfare of residents, the notice of violation shall order the licensee to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division shall inspect the home after the 24-hour period to determine if the violations have been corrected as specified in the notice of violation.
- (10) If residents are in immediate danger, the license may be immediately suspended and arrangements made to move the residents.
- (11) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division shall institute one or more administrative sanctions.

411-50-465 Administrative Sanctions

- (1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:
 - (a) Attachment of conditions to a license;
 - (b) Civil penalties;
 - (c) Denial, suspension, revocation, or non-renewal of license; and/or
 - (d) Reclassification of a license.
- (2) If the Division imposes an administrative sanction, it shall serve a notice of administrative sanction upon the licensee personally, by certified mail, or by registered mail.
- (3) The notice of administrative sanction shall state:

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

411-50-480 Denial, Revocation or Non-Renewal of License

- (1) The Division shall deny, revoke, or refuse to renew a license where it finds:
 - (a) There has been substantial non-compliance with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of caring for residents in an adult foster home;
 - (b) The applicant or provider has been convicted of one or more crimes described in OAR Chapter 411, Division 09, which the Division determines are substantially related to the qualifications, functions, or duties of a caregiver;
 - (c) The provider employs caregivers, allows household members, or any other person (excluding the residents) to reside in the adult foster home who have been convicted of one or more crimes as described in OAR Chapter 411, Division 09, which the Division determines are related to the potential care, health, safety and/or rights of the residents; or
 - (d) The applicant or provider falsely represents that they have not been convicted of a crime.
- (2) The Division may deny, revoke, or refuse to renew an adult foster home license if the applicant or provider:
 - (a) Submits incomplete or untrue information to the Division;

- (b) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, termination of utility services due to failure to pay bill(s);
- (c) Has a prior denial, suspension, revocation or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state/county;
- (d)
 - (A) Is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse or neglect of the residents, creating a threat to the residents or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents;
 - (B) For purposes of this subsection, an applicant or provider is "associated with" a person as described in paragraph (2)(d)(A) of this rule if the applicant or provider:
 - (i) Resides with the person;
 - (ii) Employs the person in the foster home;
 - (iii) Receives financial backing from the person for the benefit of the foster home;
 - (iv) Receives managerial assistance from the person for the benefit of the foster home;
 - (v) Allows the person to have access to the foster home; or
 - (vi) Rents the adult foster home from the person;
- (e) Has threatened the health, safety, or welfare of any resident;
- (f) Has abused, neglected, or exploited any resident;
- (g) Has a medical or psychiatric problem which interferes with the ability to provide foster care;
- (h) Has had a prior sanction imposed due to the operation of an unlicensed adult foster home;

- (i) Has reference(s) on the initial application indicating that the applicant does not possess the good judgment or character deemed necessary by the Division;
 - (j) Fails to correct a deficiency within the specified time frame allowed;
 - (k) Refuses to allow access and inspection;
 - (l) Fails to comply with a final order of the Division to correct a violation of the Administrative Rules for which an administrative sanction has been imposed such as a License Condition;
 - (m) Fails to comply with a final order of the Division imposing an administrative sanction, including the imposition of a Civil Penalty;
 - (n) Fails to pass the Basic Training Course Examination; or
 - (o) Has previously surrendered a license while under investigation or administrative sanction during the last three years.
- (3) If a license is revoked or not renewed, the licensee shall be entitled to a hearing preceding the effective date of the revocation or non-renewal if the licensee requests a hearing in writing within 21 days after receipt of the notice. If no written request for a timely hearing is received, the Division will issue the final order by default. The Division may designate its file as the record for purposes of default.
- (4) A license subject to revocation will remain valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.
- (5) If an initial license is denied, the applicant shall be entitled to a hearing if the applicant requests a hearing in writing within 60 days of the receipt of the notice. If no written request for a hearing is timely received, the Division will issue a final order by default. The Division may designate its file as the record for purposes of default.
- (6) If a license is revoked or not renewed, the Division may arrange for residents to move for their protection.

411-50-481 Suspension of License

- (1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if the Division finds that the abuse, neglect or exploitation causes an immediate threat to any of the residents.
- (2) The licensee may request a review of the decision to immediately suspend a license by

submitting a request, in writing, within 10 days of the notice and order of suspension. Within 10 days of receipt of the licensee's request for a review, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, including any written documentation submitted by the licensee within that time frame. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension shall be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days.

- (3) If a license is suspended, the Division may arrange for residents to move for their protection.

411-50-483 Conditions

- (1) Conditions may be attached to a license and take effect immediately upon receipt. The type of condition attached to a license must directly relate to a risk of harm or potential risk of harm to residents. Conditions may be attached upon a finding that:
 - (a) Information on the application or initial inspection requires a condition to protect the health and safety of residents;
 - (b) There exists a threat to the health, safety, and welfare of a resident;
 - (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 care for a specific person(s) only and further placements will not be made into that home.
- (2) If conditions are imposed on a licensee, a copy will also be sent to SDDS Central Office. Examples of conditions which may be imposed on a licensee include:
 - (a) Restricting the total number of residents based upon the capacity of the provider to meet the health and safety needs of the residents;
 - (b) Restricting the number and impairment level of residents allowed within a licensed classification level based upon the capacity of provider and staff to meet the health and safety needs of all residents;
 - (c) Reclassifying the level of residents that can be served if the care needs exceed the provider's ability to meet the resident's care needs;

- (d) Requiring additional staff or staff qualifications to meet the resident's care needs;
 - (e) Requiring additional training of provider/staff to meet specific resident care needs;
 - (f) Restricting admissions or the use of a resident manager due to failure to pass the Basic Training Examination as required per OAR 411-50-441;
 - (g) Restricting admissions when there is a threat to the current residents of the home and admitting new residents would compound that threat; and
 - (h) Restricting a provider from allowing persons on the premises who may be a threat to resident safety or welfare.
- (3) In accordance with OAR 411-50-465, the provider must be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.550. A provider must request a hearing in writing within 21 days from the receipt of the notice. Conditions shall take effect immediately and are a final order of the Division unless later rescinded through the hearings process.
- (4) In addition to, or in-lieu of, a contested case hearing, a provider may request a review by the Division of conditions imposed by the AAAs or SDSD local offices. The review does not diminish the provider's right to a hearing.
- (5) Conditions may be imposed for the extent of the licensure period (one year) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on the attachment to the license. If the provider believes the situation that warranted the condition has been remedied, the provider may request the condition be removed.

411-50-485 Criminal Penalties

- (1) Operating an adult foster home without a license is punishable as a Class C misdemeanor (ORS 443.991(3)).
- (2) Refusing to allow access and inspection of a home by Division staff or state or local fire inspection is a Class B misdemeanor.
- (3) The Division may commence an action to enjoin operation of an adult foster home:
 - (a) When an adult foster home is operated without a valid license; or
 - (b) After notice of revocation or suspension has been given and a reasonable time for

placement of individuals in other facilities has been allowed.

411-50-487 Civil Penalties

- (1) Civil penalties, not to exceed \$100 per violation to a maximum of \$250, may be assessed for a general violation of these rules.
- (2) Mandatory penalties up to \$500 shall be assessed for falsifying resident or facility records or causing another to do so.
- (3) A mandatory penalty of \$250 shall be imposed for failure to have either the provider, qualified resident manager, or qualified substitute caregiver on duty 24 hours per day in the adult foster home.
- (4) The Division shall impose a civil penalty of not less than \$250 nor more than \$500 on a provider who admits a resident knowing that the resident's care needs exceed the license classification of the provider if the admission places the resident or other residents at risk of harm.
- (5) Civil penalties of a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.
- (6) In addition to any other liability or penalty provided by law, the Division may impose a penalty for any of the following:
 - (a) Operating the home without a license;
 - (b) The number of residents exceeds the licensed capacity;
 - (c) The provider fails to achieve satisfactory compliance with the requirements of these Administrative Rules within the time specified, or fails to maintain such compliance;
 - (d) The home is unable to provide adequate level of care to residents;
 - (e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home;
 - (f) The provider fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or
 - (g) The provider fails to obtain a criminal record clearance prior to employing a caregiver in the home.
- (7) A civil penalty may be imposed for violations other than those involving health, safety, or welfare of a resident and protection from retaliation of an employee who makes a complaint if the provider fails to correct the violation as stated in subsections (7)(a) and (7)(b) of this rule; and

- (a) A reasonable time has been prescribed for elimination of the violation not to exceed 30 days after first notice of violation; or
 - (b) Where more than 30 days are required to correct the violation, such time is specified in a plan of correction and found acceptable by the Division;
 - (c) The following rules relate to health, safety or welfare of residents and protection from retaliation for making a complaint:

411-50-0440 (1)(e) and (f) and (3)(b) and (c); 411-50-443 (2) through (6) and (8); 411-50-445; 411-50-447 (1) through (11); and 411-50-455 (4).
- (8) Any civil penalty imposed under this section shall become due and payable ten days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice shall be delivered in person, or sent by registered or certified mail and shall include:
- (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 to request a hearing.
- (9) The person to whom the notice is addressed shall have 10 days from the date of receipt of the notice in which to make written application for a hearing. If a written request for a hearing is not timely received, the Division shall issue a final order by default.
- (10) All hearings shall be conducted according to the applicable provisions of ORS 183.310 to 183.550.
- (11) In imposing a civil penalty, the administrator shall consider the following factors:
- (a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;
 - (b) Any prior violations of statutes, rules or orders pertaining to the facility;
 - (c) The economic and financial conditions of the person incurring the penalty;
 - (d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents;
 - (e) The degree of harm to resident(s).
- (12) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may

be entered assessing a civil penalty.

- (13) Unless the penalty is paid within 10 days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person. The Division may also initiate a Notice of Revocation for failure to comply with a final order.
- (14) Civil Penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.
- (15) All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund.

411-50-490 Zoning for Adult Foster Homes

Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.