

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

**CHAPTER 411
DIVISION 50**

ADULT FOSTER HOMES

**Licensure of Adult Foster Homes for Adults who are Older
or Adults with Physical Disabilities**

411-050-0437 *(Repealed 1/1/2007)*

411-050-0441 *(Repealed 1/1/2007)*

411-050-0442 *(Repealed 1/1/2007)*

411-050-0490 *(Repealed 9/1/2013)*

411-050-0499 *(Repealed 1/1/2011)*

411-050-0600 Purpose
(9/1/2013 Renumbered from 411-050-0401)

The purpose of the rules in OAR chapter 411, division 050 is to establish the minimum standards and procedures for adult foster homes that provide care and services for adults who are older or adults with physical disabilities in a home-like environment that is safe and secure. Adult foster homes provide necessary care and services through a cooperative relationship between the resident (or court-appointed guardian) and the resident's care providers that emphasizes the resident's independence. Adult foster home care and services are provided in a setting that protects and encourages resident dignity, choice, and decision-making while addressing the needs of the resident in a manner that supports and enables the residents to maximize their ability to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0602 Definitions

(Temporary Effective 1/1/2015 to 06/29/2015)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 050:

(1) "AAA" means an Area Agency on Aging, which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act that has responsibility for local administration of programs within the Department of Human Services. For the purpose of these rules, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes, including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Department regarding adult foster home license denial, revocation, suspension, non-renewal, and civil penalties.

(2) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).

(3) "Activities of Daily Living (ADL)" mean the personal, functional activities defined in OAR 411-015-0006 (Long-term Care Service Priorities for Individuals Served) required by an individual for continued well-being, which are essential for health and safety.

(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 adults who are not related to the licensee, resident manager, or floating resident manager, by blood, marriage, or adoption and who are 65 years of age or older or an adult with a physical disability. For the purpose of these rules, adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no resident thereof requires any element of care. "Facility" and "Home" are synonymous with "Adult Foster Home".

(5) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions

in the event the resident is no longer able to give directions regarding his or her wishes. The directive gives the resident the means to control his or her own health care in any circumstance. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).

(6) "Applicant" means a person who completes an application for an adult foster home license or who completes an application to become a resident manager, floating resident manager, or shift caregiver. "Applicant" is synonymous with "Co-applicant".

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210 (Criminal Records and Abuse Check for Providers).

(8) "Back-Up Provider" means a licensee, approved resident manager, or approved floating resident manager who does not live in the home, who has agreed to oversee the operation of an adult foster home, of the same license classification or level, in the event of an emergency.

(9) "Behavioral Interventions" mean those interventions that modify a resident's behavior or a resident's environment.

(10) "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 047.

(11) "Care" means the provision of assistance with activities of daily living to promote a resident's maximum independence and enhance the resident's quality of life. Care includes, but is not limited to, assistance with bathing, dressing, grooming, eating, money management, recreation, and medication management excluding assistance with self-medication.

(12) "Caregiver" means any person responsible for providing care and services to residents, including the licensee, resident manager, floating resident manager, shift caregivers, and any temporary, substitute, or supplemental staff, or other person designated to provide care and services to residents.

(13) "Care Plan" means a licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services are to be provided.

(14) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA).

(15) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(16) "Co-Applicant" is synonymous with "Applicant" as defined in this rule.

(17) "Co-Licensee" is synonymous with "Licensee" as defined in this rule.

(18) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care, and services. Compensation does not include the voluntary sharing of expenses between or among roommates.

(19) "Complaint" means an allegation of abuse, a violation of these rules, or an expression of dissatisfaction relating to a resident or the condition of an adult foster home.

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

(21) "Consumer" means an individual eligible for Medicaid services for whom case management services are provided by the Department.

(22) "Criminal Records and Abuse Check Rules" refers to OAR 407-007-0200 to 407-007-0370.

(23) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight.

(24) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.

(25) "Department" means the Department of Human Services.

(26) "Director" means the Director of the Department of Human Services or that person's designee.

(27) "Disability" means a physical, cognitive, or emotional impairment, which for an individual, constitutes or results in a functional limitation in one or more activities of daily living.

(28) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made that renders the licensee unable to operate the facility or renders the facility uninhabitable on a temporary, extended, or permanent basis.

(29) "Emergency Preparedness Plan" means a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.

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

(31) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes that the Director finds are equal or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

(32) "Facility" is synonymous with "Adult Foster Home" as defined in this rule.

(33) "Family Member" spouses in a legally recognized marriage or domestic partnership, natural parent, child, sibling, adopted child, adoptive parent, adoptive sibling, 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.

(34) "Final Point of Safety" means a designated assembly area located on a public sidewalk or street not less than 50 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency.

(35) "Floating Resident Manager" means an employee of the licensee, approved by the local licensing authority, who under the direction of the licensee, is directly responsible for the care of residents in one or more adult foster homes owned by that licensee. A floating resident manager is not required to live in any one adult foster home owned by his or her employer, except on a temporary basis, as directed by the licensee, when the regularly scheduled caregiver is unavailable.

(36) "Home" means the physical structure in which residents live. "Home" is synonymous with "Adult Foster Home" as defined in this rule.

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

(38) "House Policies" means the written and posted statements addressing house activities in an adult foster home.

(39) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity. Indirect ownership interest includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

(40) "Initial Point of Safety" means a designated area that has unobstructed direct access to a public sidewalk or street located not less than 25 feet away from an adult foster home where occupants of the home evacuate to

in the event of an emergency and for the purpose of conducting evacuation drills.

(41) "Investigative Authority" means the Office of Adult Abuse Prevention and Investigation, local Department offices, and Area Agencies on Aging that contract with the Department to provide adult protective services to adults who are older or adults with physical, mental, or developmental disabilities.

(42) "Legal Representative" means a person who has the legal authority to act for a resident.

(a) For health care decisions, the legal representative is a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or a power of attorney for health care.

(b) For financial decisions, the legal representative is a legal conservator, an agent under a power of attorney, or a representative payee.

(43) "Level" means the designation of ventilator-assisted care assigned to an adult foster home license based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(44) "Licensed Health Care Professional" means a person who possesses a professional medical license that is valid in Oregon. Examples include but are not limited to a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT), physician assistant (PA), or occupational therapist (OT).

(45) "Licensee" means the person who was issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The licensee of the adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor of the building is also the operator.

(46) "Limited Adult Foster Home" means a home that provides care and services for compensation to a specific individual who is unrelated to the

licensee but with whom the licensee has an established relationship of no less than one year.

(47) "Liquid Resource" means cash or those assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

(48) "Local Licensing Authority" means the local Department offices and Area Agencies on Aging that contract with the Department to perform specific functions of the adult foster home licensing process.

(49) "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 a person other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(50) "Occupant" means any person residing in or using the facilities of an adult foster home, including residents, licensees, resident manager, friends or family members, day care individuals, and room and board tenants. A floating resident manager who resides in an adult foster home on a temporary basis is considered an occupant.

(51) "Older" means any person at least 65 years of age.

(52) "Ombudsman" means the Oregon Long-Term Care Ombudsman or a designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of adult foster home residents.

(53) "Operator" is synonymous with "Licensee" as defined in this rule.

(54) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. Persons with an ownership or control interest mean a person or corporation that:

- (a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(55) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, a resident's body that the resident may not easily remove and that restricts freedom of movement or normal access to his or her body. Physical restraints include, but are not limited to, wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

(56) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, chiropractor, dentist, ophthalmologist, or other healthcare practitioner with prescribing authority.

(57) "Primary Caregiver" means a qualified licensee or resident manager, who lives in the home, personally provides care and services, and ensures the health and safety of residents a minimum of five consecutive days per week. More than one person who meets this criterion may be considered a primary caregiver as specified below:

(a) Co-licensees working three and four consecutive days and nights per week;

(b) Two approved resident managers working three and four consecutive days and nights per week; or

(c) A licensee and an approved resident manager working three and four consecutive days and nights per week.

(58) "P.R.N. (pro re nata)" means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(59) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager, floating resident manager, or shift caregiver). "Provider" does not include substitute caregivers or 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.

(60) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-050-0625 and OAR 411-050-0630, except for completing the training and testing requirements. (See OAR 411-050-0635)

(61) "Psychoactive Medications" mean various medications used to alter mood, anxiety, behavior, or cognitive processes. For the purpose of these rules, psychoactive medications include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.

(62) "Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(63) "Relative" means those persons identified as family members as defined in this rule.

(64) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to reside in a home if the person's visit is four weeks or greater.

(65) "Resident" means an adult who is older or an adult with a physical disability who is receiving room and board and care and services for compensation in an adult foster home on a 24-hour day basis.

(66) "Resident Manager" means an employee of the licensee, approved by the local licensing authority, who lives in the adult foster home, and is directly responsible for the care of the residents.

(67) "Resident Rights" or "Rights" means civil, legal, or human rights, including, but not limited to, those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739 and OAR 411-050-0655)

(68) "Residential Care" means the provision of care on a 24-hour day basis.

(69) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, and housekeeping to adults who are older or adults with physical disabilities and who do not need assistance with activities of daily living. Room and board facilities for two or more persons are required to register with the Department under the rules in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Adult foster homes with room and board tenants are not subject to OAR chapter 411, division 068.

(70) "Screening" means the evaluation process used to identify an individual's ability to perform activities of daily living and address health and safety concerns.

(71) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

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

(73) "Services" mean activities that help the residents develop skills to increase or maintain their level of functioning or assist the residents to perform personal care, activities of daily living, or individual social activities.

(74) "Shift Caregivers" mean caregivers who, by written variance of the local licensing authority, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(75) "Subject Individual" means:

(a) Any person 16 years of age or older, including:

(A) All licensed adult foster home providers and provider applicants;

(B) All persons intending to work in or currently working in an adult foster home, including, but not limited to, direct caregivers and individuals in training;

(C) Volunteers if allowed unsupervised access to residents; and

(D) Occupants, excluding residents, residing in or on the premises of the proposed or currently licensed adult foster home, including:

(i) Household members;

(ii) Room and board tenants; and

(iii) Persons visiting for four weeks or greater.

(b) "Subject Individual" does not apply to:

(A) Residents of the adult foster home or the residents' visitors;

(B) A person who lives or works on the adult foster home premises who does not:

(i) Have regular access to the home for meals;

(ii) Have regular use of the adult foster home's appliances or facilities; or

(iii) Have unsupervised access to the residents or the residents' personal property.

(C) A person providing services to the residents that is employed by a private business not regulated by the Department.

(76) "Substantial Compliance" means a level of compliance with these rules where any deficiencies pose no greater risk to resident health or safety than the potential for causing minor harm.

(77) "Substitute Caregiver" means any person other than the licensee, resident manager, floating resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of the Department.

(78) "Tenant" means any individual who is residing in an adult foster home who receives services, such as meal preparation, laundry, and housekeeping.

(79) "These Rules" mean the rules in OAR chapter 411, division 050.

(80) "Variance" means an exception from a regulation or provision of these rules in accordance with OAR 411-050-0642.

(81) "Ventilator Assisted Care" means the provision of mechanical assistance to replace spontaneous breathing. Devices used include, but are not limited to, mechanical ventilators, manual ventilators, and positive airway pressure ventilators.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 106.010, 443.001-004, 443.705-825, 443.875, 443.991

411-050-0605 License Required

(9/1/2013 Renumbered from 411-050-0405)

(1) Any facility that meets the definition of an adult foster home or limited adult foster home in OAR 411-050-0602 must first apply for and obtain a license from the local licensing authority or an exempt area county before providing care to any resident for compensation.

(2) A person or entity may not represent themselves as operating an adult foster home or accept placement of a resident without being licensed as an adult foster home.

(3) LIMITED ADULT FOSTER HOME. Any home that meets the definition of a limited adult foster home in OAR 411-050-0602 must first apply for and obtain a limited license from the local licensing authority before providing care. The license for a limited adult foster home is limited to the care of a specific resident and the licensee must make no other admissions. The resident receiving care is named on the license.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443. 001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0610 Initial License Application and Fees

(Amended 04/01/2014)

(1) The applicant must complete the Department's application form for the specific type of license requested and submit the application form to the local licensing authority with the non-refundable fee.

(a) The application is not complete until all of the required information is submitted to the local licensing authority. Incomplete applications are void after 60 calendar days from the date the local licensing authority receives the application form and non-refundable fee and the Department shall deny the application if not withdrawn.

(b) 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) The license application must include:

(a) Complete contact information for the applicant including:

(A) A mailing address if different from the proposed adult foster home; and

(B) A business address for electronic mail.

(b) Verification of attendance at a Department-approved orientation program conducted by the local licensing authority responsible for the licensing of the proposed adult foster home and successful completion of the Department's Ensuring Quality Care Course and examination. (See OAR 411-050-0625);

(c) The maximum resident capacity requested;

(d) Identification of:

(A) Any relatives needing care;

(B) The maximum number of any room and board tenants;

(C) The maximum number of day care individuals; and

(D) The names of any other occupants in the home.

(e) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Department. To request a Class 3 license, the license application must include:

(A) Proof of at least three years of full time experience providing direct care to adults who are older or adults with physical disabilities and who required full assistance in four or more of activities of daily living; and

(B) Current contact information from at least two licensed health care professionals who have direct knowledge of the applicant's abilities and past experience as a caregiver; or

(C) A copy of the applicant's current license as a health care professional in Oregon, if applicable.

(f) A Health History and Physician or Nurse Practitioner's Statement (form SDS 903) regarding the applicant's ability to provide care;

(g) FINANCIAL INFORMATION. A completed Financial Information Sheet (form SDS 448A).

(A) An applicant must have the financial ability and maintain sufficient liquid resources to pay the operating costs of an adult foster home for at least two months without solely relying on potential resident income.

(B) Documentation of two months of liquid resources must include:

(i) The Department's current Verification of Financial Resources form (SDS 0448F) completed and stamped or notarized by the applicant's financial institution; or

(ii) Documentation on letterhead of the applicant's financial institution, which includes:

(I) The last four digits of the applicant's account number;

(II) The name of the account holder and, if the account is not in the applicant's name, verification the applicant has access to the account's funds;

(III) The highest and lowest balances for each of the most recent three full months; and

(IV) The number of any non-sufficient fund (NSF) payments in each of the last three full months, if any; or

(iii) Demonstration of cash on hand equal to a minimum of two months of operating expenses.

(C) If an applicant uses income from another adult foster home to document possession of at least two months of operating expenses, the applicant must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of each home for at least two months without solely relying on potential resident income.

(h) If the home is leased or rented, a copy of the completed lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) The owner and landlord's name;

(B) Verification that the rent is a flat rate; and

(C) The signatures of the landlord and applicant and the date signed;

(i) If the applicant is purchasing or owns the home, verification of purchase or ownership;

(j) Documentation of the initiation of a background check or a copy of an approved background check for each subject individual as defined in OAR 411-050-0602;

(k) A current and accurate floor plan that indicates:

(A) The size of rooms;

(B) Which bedrooms are to be used by residents, the licensee, caregivers, for day care, and room and board tenants, as applicable;

(C) The location of all the exits on each level of the home, including emergency exits such as windows;

(D) The location of any wheelchair ramps;

(E) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms;

(F) The planned evacuation routes, initial point of safety, and final point of safety; and

(G) Any designated smoking areas in or on the adult foster home premises.

(I) If requesting a license to operate more than one home, a plan covering administrative responsibilities and staffing qualifications for each home;

(m) A \$20 per bed non-refundable fee for each non-relative resident;

(n) Three personal references for the applicant who are not family members as defined in OAR 411-050-0602. Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references;

(o) If the applicant intends to use a resident manager, floating resident manager, or shift caregivers, the Department's supplemental application (form SDS 448B) completed by the applicant, as appropriate; and

(p) Written information describing the operational plan for the adult foster home including:

(A) The use of substitute caregivers and other staff;

(B) A plan of coverage for the absence of the primary caregiver; and

(C) The name of a qualified back-up provider, approved resident manager, or approved floating resident manager who does not live in the home but has been oriented to the home. The applicant must also submit a signed agreement with the listed back-up provider and maintain a copy in the facility records.

(4) After receipt of the completed application materials including the non-refundable fee, the local licensing authority must investigate the information submitted including pertinent information received from outside sources, inspect the home, and conduct a personal interview with the applicant.

(5) The Department shall deny the issuance of a license if cited violations from the home inspection are not corrected within the time frames specified by the local licensing authority.

(6) The applicant may withdraw his or her application at any time during the application process by written notification to the local licensing authority.

(7) An applicant whose license has been revoked, non-renewed, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied, shall not be granted a new license by the local licensing authority for a period of not less than one year from the date the action was final, or for a longer period if specified in the final order.

(8) All moneys collected under ORS 443.725 to 443.825 are paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

411-050-0615 Provider Enrollment Agreements, Contracts, and Refunds

(9/1/2013 Renumbered from 411-050-0435)

(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.

(a) An applicant or licensee who intends to care for residents who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Department, follow Department rules, and abide by the terms of the Agreement. The local licensing authority shall determine that the applicant, licensee, and any owner or officer of the corporation, as applicable, is not listed on the Office of Inspector General's or the U.S. General Services Administration's (System for Award Management) Exclusion Lists prior to approval of a Medicaid Provider Enrollment Agreement.

(b) An approved Medicaid Provider Enrollment Agreement does not guarantee the placement of individuals eligible for Medicaid services in the adult foster home.

(c) An approved Medicaid Provider Enrollment Agreement is valid for the length of the license unless earlier terminated by the licensee or the Department. A Medicaid Provider Enrollment Agreement must be completed, submitted, approved, and renewed with each licensing cycle.

(d) The rate of compensation established by the Department is considered payment in full. The licensee may not request or accept additional funds or in-kind payment from any source.

(e) An individual eligible for Medicaid services may not be admitted into an adult foster home unless and until:

(A) The Department has approved a Medicaid Provider Enrollment Agreement. The Department shall not issue a Medicaid payment to a licensee without a current license and an approved Medicaid Provider Enrollment Agreement in place;

(B) The individual eligible for Medicaid services has been screened according to OAR 411-050-0655; and

(C) The Department has authorized the placement. The authorization must be clearly documented in the resident's record with other required admission materials. (See OAR 411-050-0655)

(f) The Department shall not make payment for the date of a resident's move or for any time period thereafter.

(g) The licensee must enter into a written agreement with a resident who receives Medicaid services if the licensee charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.

(A) The written agreement must be consistent with the licensee's policy with private-pay residents and entered into at the time of the resident's admission or at the time the resident becomes eligible for Medicaid services.

(B) The licensee must give written notice to the resident and the resident's family or other representatives 30 calendar days prior to any increases, additions, or other modifications to the charges for storage.

(h) A licensee who elects to provide care for individuals eligible for Medicaid services is not required to admit more than one resident eligible for Medicaid services. However, if the licensee has an approved Medicaid Provider Enrollment Agreement, private-pay residents who become eligible for Medicaid services may not be asked to leave solely on the basis of Medicaid eligibility.

(i) The licensee or the Department may terminate a Medicaid Provider Enrollment Agreement according to the terms of the Agreement.

(j) The Department may terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to maintain substantial compliance with all related federal, state, and local laws, ordinances, and regulations; or

(B) The license to operate the adult foster home has been voluntarily surrendered, revoked, or non-renewed.

(k) The Department must terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to permit access by the Department, the local licensing authority, or the Centers for Medicare and Medicaid Services to any adult foster home licensed to and operated by the licensee;

(B) The licensee submits false or inaccurate information;

(C) Any person with five percent or greater direct or indirect ownership interest in the adult foster home did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the criminal records and abuse check rules in OAR 407-007-0200 to 407-007-0370;

(D) Any person with five percent or greater direct or indirect ownership interest in the adult foster home has been convicted of a criminal offense related to the person's involvement with Medicare, Medicaid, or Title XXI programs in the last 10 years; or

(E) Any person with an ownership or control interest, or who is an agent or managing employee of the adult foster home, fails to submit timely and accurate information on the Medicaid Provider Enrollment Agreement form.

(l) If the licensee submits notice of termination of the Medicaid Provider Enrollment Agreement, the licensee must:

(A) Simultaneously issue the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) to each resident eligible for Medicaid services in the licensee's adult foster home;

(B) Simultaneously issue written notification to all residents who pay with private funds; and

(C) Immediately update the house policies.

(m) If either the licensee or the Department terminates a Medicaid Provider Enrollment Agreement, a new Medicaid Provider Enrollment Agreement shall not be approved by the local licensing authority for a period of not less than 180 days from the date the licensee or the Department terminated the Agreement.

(n) DEATH OF RESIDENT ELIGIBLE FOR MEDICAID SERVICES WITH NO SURVIVING SPOUSE. The licensee must forward all personal incidental funds (PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of a resident eligible for Medicaid services with no surviving spouse. (See Limits on Estate Claims, OAR 461-135-0835)

(2) PRIVATE CONTRACT. A licensee who cares for residents who pay with private funds or individuals receiving only day care services must enter into a written contract with the resident or person paying for the resident's care. The written contract is the admission agreement. The written contract must be signed by all parties prior to the admission of the resident. A copy of the contract is subject to review by the local licensing authority prior to licensure and prior to the implementation of any changes to the contract.

(a) The contract must include but not be limited to:

(A) Services to be provided and the rate to be charged. A payment range may not be used unless the contract plainly states when an increase in rate may be expected based on a resident's increased care or service needs;

(B) Conditions under which the rates may be changed;

(C) The home's refund policy in instances of a resident's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move. The refund policy must be in compliance with section (3) of this rule;

(D) A statement indicating that the resident is not liable for damages considered normal wear and tear on the adult foster home and the adult foster home's contents;

(E) The home's policies on voluntary moves and whether or not the licensee requires written notification of a resident's intent to not return; and

(F) Any charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.

(b) The licensee may not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.

(c) The licensee must give a copy of the signed contract to the resident or the resident's representative and must retain the original signed contract and any amendments on the premises available for review.

(d) The licensee may not include any illegal or unenforceable provision in a contract with a resident and may not ask or require a resident to waive any of the resident's rights or licensee's liability for negligence.

(e) The licensee must give written notice to a private-pay resident and the resident's family or other representatives 30 calendar days prior to any general rate increases, additions, or other modifications of the rates. The licensee is not required to give 30 day written notice if the rate change is due to the resident's increased care or service needs and the agreed upon rate schedule in the resident's contract has specified charges for those changes.

(3) REFUNDS.

(a) If a resident dies, the licensee may not retain or require payment for more than 15 calendar days after the date of the resident's death, or the time specified in the licensee's contract, whichever is less.

(b) If a resident leaves an adult foster home for medical reasons and the resident or the resident's representative indicates the resident's intent to not return, the licensee may not retain or require payment for more than 15 calendar days after the date the licensee receives

notification from the resident or the resident's representative or the time specified in the licensee's contract, whichever is less.

(c) If a resident who has paid with private funds becomes eligible for Medicaid services, the licensee must accept payment from the Department from the date of eligibility forward as payment in full. The licensee must reimburse the resident or the resident's representative within 30 calendar days after the licensee receives payment from the Department for any private payment received after the resident became eligible for Medicaid services.

(d) The licensee must act in good faith to reduce the charge to a resident who has left the home, by seeking a new resident to fill the vacancy.

(e) The licensee must refund any unused advance payment to the resident, or the resident's representative as appropriate, within 30 calendar days after the resident dies or leaves the home.

(f) If the adult foster home closes or the licensee gives written notice for the resident to leave, the licensee waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

(g) 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 Department investigator, or due to conditions of imminent danger of life, health, or safety, the licensee may not charge the resident beyond the resident's last day in the home.

(h) The refund policies in these rules also apply to refunds for resident moves and transfers as described in OAR 411-050-0645.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.880, & 443.790
Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0620 Background Check
(9/1/2013 Renumbered from 411-050-0412)

(1) All subject individuals must have an approved background check prior to operating, working, training in, or living in a home. Licensees must maintain approval in accordance with these rules and the criminal records and abuse check rules, OAR 407-007-0200 to 407-007-0370:

(a) Annually;

(b) Prior to a subject individual's change in position (i.e., changing from substitute caregiver to resident manager); and

(c) Prior to working in another home, regardless of whether the employer was the same or not, unless section (2) of this rule applies.

(2) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual, excluding licensees, may be approved to work in multiple homes within the jurisdiction of the local licensing authority only when the subject individual is working in the same employment role. The indication of worksite location must be included by a qualified entity initiator for each subject individual to show the subject individual's intent to work at various adult foster homes within the local licensing authority's jurisdiction.

(3) On or after July 28, 2009, no licensee, licensee applicant, or employee of the licensee who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 shall be approved by the Department to provide care and services in an adult foster home. This rule does not apply to:

(a) An employee of the licensee who was hired prior to July 28, 2009 who continues employment in the same position; or

(b) Any subject individual who is an occupant of the home but is neither a licensee nor a caregiver.

(4) The licensee must have written verification from the local licensing authority that the required background checks have been completed and approved for all subject individuals. (See OAR 411-050-0645)

(5) All subject individuals must self-report to the licensee any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-

007-0290. The licensee must notify the Department or local licensing authority of self-reported information within 24 hours.

(6) The Department must provide for the expedited completion of a background check for the state of Oregon when requested by a licensed provider because of a demonstrated immediate staffing need.

Stat. Auth.: ORS 181.537, 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 181.537, 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0625 Qualification and Training Requirements

(Temporary Effective 1/1/2015 to 06/29/2015)

(1) APPLICANT AND LICENSEE QUALIFICATIONS. An adult foster home applicant and licensee must meet and maintain the requirements specified in this section. An adult foster home applicant and licensee must:

(a) Live in the home that is to be licensed at least five days and nights per week and function as the primary caregiver as defined in OAR 411-050-0602 unless:

(A) There is, or shall be upon licensure, an approved resident manager who lives in the home and works five consecutive days and nights per week as the primary caregiver; or

(B) There is, or shall be upon licensure, two approved primary caregivers who live in the home and work three and four consecutive days and nights per week respectively; or

(C) A variance for shift caregivers has been granted according to section (6) of this rule.

(b) Subsections (a)(A), (B), and (C) of this section are not intended to prohibit the occasional and temporary absence of the primary caregiver from the adult foster home;

(c) Be at least 21 years of age;

(d) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Department to provide 24-hour care for adults who are older or adults with physical disabilities. An applicant and licensee must have a statement from a physician, nurse practitioner, or physician assistant indicating that the applicant or licensee is physically, cognitively, and emotionally capable of providing care to residents. An applicant or licensee with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment, rehabilitation, or references regarding current condition;

(e) Have an approved background check annually in accordance with OAR 411-050-0620 and maintain that approval as required;

(f) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the residents and the residents' family members or representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), licensed health care professionals, case managers, Department and local licensing authority staff, and others involved in the care of the residents;

(g) Be able to respond appropriately to emergency situations at all times;

(h) Have a clear understanding of his or her responsibilities, knowledge of the residents' care plans, and the ability to provide the care specified for each resident; and

(i) Not be listed on the Office of Inspector General's or General Services Administration's Exclusion Lists.

(2) APPLICANT AND LICENSEE TRAINING REQUIREMENTS.

(a) Applicants and licensees must have the education, experience, and training to meet the requirements of the requested classification of the home (See OAR 411-050-0630).

(b) A potential applicant or applicant must complete the following training requirements prior to obtaining a license:

(A) Attend a Department-approved orientation program conducted by the local licensing authority responsible for the licensing of the proposed adult foster home;

(B) Attend the Department's Ensuring Quality Care Course and pass the examination to meet application requirements for licensure;

(i) Potential applicants and applicants who fail the first examination may take the examination a second time, however successful completion of the examination must take place within 90 calendar days of the end of the Department's Ensuring Quality Care Course.

(ii) Potential applicants and applicants who fail a second examination must retake the Department's Ensuring Quality Care Course prior to repeating the examination.

(C) Comply with the Department's January 1, 2015 student policies for the Department's Ensuring Quality Care Course; and

(D) Have current CPR and First Aid certification.

(i) Accepted CPR and First Aid courses must be provided or endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(ii) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(3) FINANCIAL REQUIREMENTS. A licensee applicant and licensee must have the financial ability and maintain sufficient liquid resources to pay the operating costs of the adult foster home for at least two months without solely relying on potential resident income.

(a) If an initial license applicant is unable to demonstrate the financial ability and resources required by this section, the Department may require the applicant to furnish a financial guarantee, such as a line of credit or guaranteed loan, to fulfill the requirements of this rule.

(b) If at any time there is reason to believe an applicant or licensee may not have sufficient financial resources to operate the home in compliance with these rules, the local licensing authority may request additional documentation, which may include verification of the applicant's or licensee's ability to readily access the requested funds. Circumstances that may prompt the request of additional financial information include, but are not limited to, reports of insufficient food, inadequate heat, or failure to pay employees, utilities, rent, or mortgage. Additional documentation of financial resources may include, but are not limited to:

(A) The Department's Verification of Financial Resources form (SDS 0448F) completed and stamped or notarized by the applicant's or licensee's financial institution;

(B) Documentation on letterhead of the applicant's or licensee's financial institution that includes:

(i) The last four digits of the applicant's or licensee's account number;

(ii) The name of the account holder, and if the account is not in the applicant's or licensee's name, verification the applicant or licensee has access to the account's funds;

(iii) The highest and lowest balances for each of the most recent three full months;

(iv) The number of any non-sufficient fund (NSF) payments in each of the last three full months, if any; and

(v) Signature of the banking institution's representative completing the form and date; or

(C) Demonstration of cash on hand equal to a minimum of two months of operating expenses.

(c) The local licensing authority must request the least information necessary to verify compliance with this section.

(4) RESIDENT MANAGER REQUIREMENTS. A resident manager must live in the home as specified in section (1)(a) of this rule and function as the primary caregiver under the licensee's supervision. A resident manager must meet and maintain the qualification and training requirements specified in sections (1)(a) through (2)(b)(D) of this rule. The local licensing authority shall verify all the requirements of these rules have been satisfied prior to approval of a resident manager.

(5) FLOATING RESIDENT MANAGER REQUIREMENTS.

(a) A floating resident manager must meet and maintain the qualification and training requirements specified in sections (1)(a) through (2)(b)(D) of this rule, except as indicated in (5)(b) of this rule.

(b) If the licensee has one or more homes within the jurisdiction of more than one local licensing authority, a currently approved floating resident manager is not required to complete the Department-approved orientation in more than one licensing authority's jurisdiction. This exception does not prohibit the local licensing authority within an exempt area from requiring the floating resident manager applicant to attend the local licensing authority's orientation.

(c) The floating resident manager must be oriented to each home prior to providing resident care in each home. Documentation of orientation to every home the floating resident manager works in must be available within each home as stated in section (7)(a)-(j) of this rule.

(d) Facility records in each of the homes a floating resident manager is assigned to work must maintain proof the floating resident manager has a current and approved background check.

(e) A floating resident manager may not be used in lieu of a shift caregiver, except on temporary basis, when the regular shift caregiver is unavailable due to circumstances, such as illness, vacation, or termination of employment.

(6) SHIFT CAREGIVER REQUIREMENTS.

(a) Shift caregivers may be used in lieu of a resident manager if granted a written variance by the local licensing authority. Use of shift caregivers detracts from the intent of a home-like environment, but may 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, each shift caregiver must meet or exceed the experience and training qualifications for the license classification requested.

(b) Shift caregivers must meet and maintain the qualification and training requirements specified in sections (1)(b) through (2)(b)(D) of this rule. The local licensing authority shall verify all the requirements of these rules have been satisfied prior to approval of a shift caregiver.

(7) CAREGIVER ORIENTATION. Prior to providing care to any resident, a resident manager, floating resident manager, and shift caregiver must be oriented to the home and to the residents by the licensee. Orientation must be clearly documented in the facility records. Orientation includes, but is not limited to:

(a) Location of any fire extinguishers;

(b) Demonstration of evacuation procedures;

(c) Instruction of the emergency preparedness plan;

(d) Location of resident records;

(e) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;

(f) Location of medications and the key for the medication cabinet;

(g) Introduction to residents;

(h) Instructions for caring for each resident;

(i) Delegation by a registered nurse for nursing tasks, if applicable;
and

(j) Policies and procedures related to Advance Directives. (See OAR 411-050-0645)

(8) EMPLOYMENT APPLICATION. An application for employment in any capacity in an adult foster home must include a question asking whether the person applying for employment has been found to have committed abuse. Employment applications must be retained for at least three years. (See OAR 411-050-0645)

(9) EXCLUSION VERIFICATION. A licensee must verify the resident manager and shift caregivers are not listed on either the Office of Inspector General's (<http://oig.hhs.gov>) or the General Services Administration's (<https://www.sam.gov>) Exclusion Lists prior to the resident manager or shift caregivers working or training in the home. Verification must be clearly documented in the facility records. (See also 411-050-0625(11)(h))

(10) TRAINING WITHIN FIRST YEAR OF INITIAL LICENSING OR APPROVAL. Within the first year of obtaining an initial license or approval, the licensee, resident manager, floating resident manager, and shift caregivers must complete the Six Rights of Safe Medication Administration and a Fire and Life Safety training as available. The Department or local licensing authority and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

(11) ANNUAL TRAINING REQUIREMENTS.

(a) Each year after initial licensure, the licensee, resident manager, floating resident manager, and shift caregivers must complete at least 12 hours of Department-approved training related to the care of adults who are older or adults with physical disabilities in an adult foster home setting. Up to four of those hours may be related to the business operation of the adult foster home.

(b) A licensee, resident manager, floating resident manager, and shift caregivers, as applicable, must maintain CPR certification.

(c) Registered nurse delegation or consultation, CPR certification and First Aid training, Ensuring Quality Care Course (not including EQC refresher courses), adult foster home orientation, Ventilator Assisted Care Course and skills competency checks, or consultation with an accountant do not count toward the required 12 hours of annual training.

(12) **SUBSTITUTE CAREGIVER REQUIREMENTS.** A substitute caregiver left in charge of the residents for any period of time, may not be a resident, and must at a minimum, meet the following qualifications prior to working or training in the home:

(a) Be at least 18 years of age;

(b) Have an approved background check annually in accordance with OAR 411-050-0620 and maintain that approval as required;

(c) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the residents and the residents' family members and representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), licensed health care professionals, case managers, Department and local licensing authority staff, and others involved in the care of the residents;

(d) Be able to respond appropriately to emergency situations at all times;

(e) Have a clear understanding of his or her responsibilities, have knowledge of the residents' care plans, and be able to provide the

care specified for each resident, including appropriate delegation or consultation by a registered nurse;

(f) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Department to provide care for adults who are older or adults with physical disabilities, as determined by reference checks and other sources of information;

(g) Have current CPR and First Aid certification within 30 calendar days of the start of employment.

(A) Accepted CPR and First Aid courses must be provided by or endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(B) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor endorsed by the American Heart Association, the American Red Cross, the American Safety and Health Institute, or MEDIC First Aid.

(h) Not be listed on the Office of Inspector General's or General Services Administration's Exclusion Lists. Licensees must verify the substitute caregiver is not listed on either the Office of Inspector General's (oig.hhs.gov) or the General Services Administration's (www.sam.gov) Exclusion Lists prior to the substitute caregiver working or training in the home. Verification must be clearly documented in the facility records.

(13) TRAINING REQUIREMENTS FOR SUBSTITUTE CAREGIVERS.

(a) A substitute caregiver must be oriented to the home and to the residents by the licensee or resident manager prior to the provision of care to any residents. Orientation includes, but is not limited to:

(A) Location of any fire extinguishers;

- (B) Demonstration of evacuation procedures;
- (C) Instruction of the emergency preparedness plan;
- (D) Location of resident records;
- (E) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;
- (F) Location of medications and the key for the medication cabinet;
- (G) Introduction to residents;
- (H) Instructions for caring for each resident;
- (I) Delegation by a registered nurse for nursing tasks if applicable; and
- (J) Education on the policies and procedures related to Advance Directives. (See OAR 411-050-0645)

(b) A substitute caregiver must complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W) and receive instruction in specific care responsibilities from the licensee, resident manager, or floating resident manager prior to working or training in the home. The Workbook must be completed by the substitute caregiver without the help of any others. The Workbook is considered part of the required orientation to the home and residents.

(A) The local licensing authority may grant a variance to the Caregiver Preparatory Training Study Guide and Workbook requirement for a substitute caregiver who:

- (i) Holds a current Oregon license as a health care professional, such as a physician, nurse practitioner, physician assistant, registered nurse, or licensed practical nurse; and

(ii) 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 adults who are older or adults with physical disabilities.

(B) A certified nursing assistant (CNA) or certified medical assistant (CMA) must complete the Caregiver Preparatory Training Study Guide and Workbook and have a certificate of completion signed by the licensee.

(c) A substitute caregiver routinely left in charge of an adult foster home for any period that exceeds 48 continuous hours is required to meet the education, experience, and training requirements of a resident manager as specified in this rule. A licensee may not leave a substitute caregiver or concurrent substitute caregivers routinely in charge of the home for any period that exceeds 48 continuous hours within one calendar week. This requirement is not intended to prevent a qualified substitute caregiver from providing relief care in the absence of the primary caregiver, such as for a one or two week vacation. In such an event, the licensee must arrange for the qualified back-up provider to be available as needed.

(14) If a licensee has demonstrated non-compliance with one or more of these rules, the Department may require, by condition, additional training in the deficient area.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

411-050-0630 Classification of Adult Foster Homes

(Amended 04/01/2014)

(1) The local licensing authority shall issue a Class 1, Class 2, or Class 3 adult foster home license only if the qualifications of the applicant, resident manager, floating resident manager, and shift caregivers, as applicable, fulfill the classification requirements of these rules.

(a) After receipt of the completed application materials, including the non-refundable fee, the local licensing authority must investigate the

information submitted including any pertinent information received from outside sources.

(b) The local licensing authority shall not issue a license if unsatisfactory references or a history of substantial non-compliance of the applicant within the last 24 months is verified.

(c) The local licensing authority may issue a Class 1 license if the applicant and resident manager, as applicable, complete the training requirements outlined in OAR 411-050-0625;

(d) The local licensing authority may issue a Class 2 license if the applicant, resident manager, and floating resident manager, as applicable, complete the requirements outlined in OAR 411-050-0625. In addition, these caregivers must each have the equivalent of two years of full time experience providing direct care to adults who are older or adults with physical disabilities;

(e) The local licensing authority may issue a Class 3 license if the applicant, resident manager, floating resident manager, and shift caregivers, as applicable, complete the training requirements outlined in OAR 411-050-0625 and have a current license as a health care professional in Oregon or possess the following qualifications:

(A) Have the equivalent of three years of full time experience providing direct care to adults who are older or adults with physical disabilities and who require full assistance in four or more activities of daily living; and

(B) Have references satisfactory to the Department. The applicant must submit current contact information from at least two licensed health care professionals who have direct knowledge of the applicant's ability and past experience as a caregiver.

(2) The Department may approve a licensee to care for residents requiring ventilator-assisted care. The licensee, resident manager, floating resident manager, or shift caregivers, as applicable, must meet the criteria for a Class 3 home according to section (1)(e) of this rule and comply with the

additional requirements for adult foster homes serving residents requiring ventilator assisted care outlined in OAR 411-050-0660.

(3) To change the classification of a licensed home, the licensee must complete a new initial application and submit the application form to the local licensing authority as outlined in OAR 411-050-0610.

(4) A licensee may only admit or continue to care for residents whose impairment levels are within the classification of the licensed home.

(a) A licensee with a Class 1 license may only admit residents who require assistance in no more than four activities of daily living.

(b) A licensee with a Class 2 license may provide care for residents who require assistance in all activities of daily living, but require full assistance in no more than three activities of daily living.

(c) A licensee with a Class 3 license may provide care for residents who require full assistance in four or more activities of daily living, but only one resident who requires bed-care or full assistance with all activities of daily living.

(5) A licensee must request, in writing, a variance from the local licensing authority if:

(a) A new resident wishes to be admitted whose impairment level exceeds the license classification;

(b) A current resident becomes more impaired, exceeding the license classification; or

(c) There is more than one resident in the home who requires full bed-care or full assistance with all activities of daily living not including cognition or behavior.

(6) The local licensing authority may grant a variance that allows the resident to be admitted or remain in the adult foster home. The local licensing authority must respond in writing within 30 calendar days after receipt of the licensee's written variance request. The licensee must prove the following criteria are met by clear and convincing evidence that:

- (a) It is the choice of the resident to reside in the home;
- (b) The licensee is able to provide appropriate care and service to the resident in addition to meeting the care and service needs of the other residents;
- (c) Additional staff is hired to meet the additional care requirements of all residents in the home as necessary;
- (d) Outside resources are available and obtained to meet the resident's care needs;
- (e) The variance shall not jeopardize the care, health, safety, or welfare of the residents; and
- (f) The licensee is able to demonstrate how all occupants shall be safely evacuated in three minutes or less.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705-443.825, 443.875, 443.991

411-050-0632 Capacity

(9/1/2013 Renumbered from 411-050-0408)

- (1) Residents must be limited to five adults who require care and are unrelated to the licensee and resident manager by blood, marriage, or adoption.
- (2) The number of residents permitted to reside in an adult foster home is determined by the ability of the staff to meet the care needs of the residents, the fire and life safety standards for evacuation, and compliance with the facility standards of these rules.
- (3) The licensee must demonstrate, to the local licensing authority's satisfaction, the ability to meet the needs of the residents in addition to caring for any children or relatives beyond the license capacity of the adult foster home.

(4) The local licensing authority's determination of maximum capacity must ensure:

(a) The ratio of at least one caregiver per five residents, including any day care individuals and others requiring care or supervision except as allowed under section (5) of this rule;

(b) Children over the age of five have a bedroom available that is separate from their parents;

(c) The well-being of the household, including any children or other family members, shall not be jeopardized; and

(d) The care needs of day care individuals shall be met.

(5) When a family member requires care in a home in which the licensee is the primary, live-in caregiver, a maximum capacity of five unrelated residents are allowed if the following criteria are met:

(a) The licensee must be able to demonstrate the ability to evacuate all occupants from the adult foster home within three minutes or less (See OAR 411-050-0650);

(b) The licensee must have sufficient, qualified staff and demonstrate the ability to provide appropriate care for all residents (See OAR 411-050-0645);

(c) There must be an additional 40 square feet of common living space for each person above the five residents (See OAR 411-050-0650);

(d) Bathrooms and bedrooms must meet the requirements of OAR 411-050-0650;

(e) The care needs of day care individuals must be within the classification of the license and any conditions imposed on the license; and

(f) The well-being of the household, including any children or other family members, shall not be jeopardized.

(6) If day care individuals are in the home, the licensee must have arrangements for the day care individuals to sleep in areas other than a resident's bed, a resident's private room, or space designated as common use, in accordance with OAR 411-050-0650.

(7) If room and board tenants are in the home, each tenant must have:

(a) An approved annual background check in accordance with OAR 407-070-0200 to 407-007-0370 (Criminal Records and Abuse Check Rules);

(b) A tenancy agreement as defined in OAR 411-068-0040 (Room and Board Facilities); and

(c) A copy of the current house policies signed and dated by the tenant.

(8) To change the capacity of a licensed home, the licensee must complete a new initial application and submit the application to the local licensing authority according to OAR 411-050-0610.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0635 Issuance

(9/1/2013 Renumbered from 411-050-0415)

(1) The local licensing authority must issue a license within 60 calendar days after the completed application materials have been received if the home and applicant are in compliance with these rules.

(a) The license specifies the type of license and includes:

- (A) The name of the licensee and the name of the resident manager or shift caregivers as applicable, who have met the requirements to operate the adult foster home;
- (B) The address of the premises to which the license applies;
- (C) The license classification and level if applicable;
- (D) The maximum number of residents; and
- (E) The expiration date.

(b) The license must be posted in a prominent place in the home and be available for inspection at all times. (See OAR 411-050-0645)

(2) The licensee must be given a copy of the Department's inspection report form as follows:

(a) INITIAL LICENSE. Form SDS 516 identifying any areas of non-compliance and a time frame for correction.

(b) RENEWAL LICENSE. Form SDS 517A and, if applicable, form SDS 517B citing any violations. The SDS 517B must specify a time frame for correction of each violation. The time frame for correction may not exceed 30 calendar days from the date of inspection.

(3) The licensee must post the most recent inspection reports in the entry of the home or an equally prominent place and must, upon request, provide a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian, or conservator of a resident.

(4) The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The conditions must be visibly posted with the license (See OAR 411-050-0686).

(5) The local licensing authority 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 these rules;

(b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825;

(c) The local licensing authority has completed an inspection of the adult foster home that demonstrates the home is in compliance with these rules;

(d) The Department has completed a background check in accordance with OAR 411-050-0620;

(e) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files;

(f) The local licensing authority has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse;

(g) The local licensing authority has verified the applicant is not listed on the Office of Inspector General's and General Services Administration's Exclusion Lists; and

(h) The applicant has demonstrated to the local licensing authority the financial ability and resources necessary to operate an adult foster home.

(6) A license is valid for one year unless revoked or suspended by the Department.

(7) In seeking an initial license, the burden of proof to establish compliance with ORS 443.705 to 443.825 and these rules is upon the applicant of the adult foster home.

(8) The local licensing authority shall not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain substantial compliance with the rules and regulations while operating his or her existing home or homes.

(9) PROVISIONAL LICENSE. Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the local licensing authority may issue a 60-day provisional license to a qualified person.

(a) A provisional license may be issued if the local licensing authority determines:

(A) An emergency situation exists after receiving notification that a licensed provider is no longer overseeing the operation of an adult foster home; or

(B) A new applicant has submitted an application and bed fee for a license to operate a currently licensed home and the applicant has demonstrated a good faith effort to submit a timely and complete application; and

(C) The application process cannot be completed prior to the expiration date of the current license; and

(D) It is in the best interests of the residents currently residing in the home.

(b) A person is considered qualified for a provisional license if he or she:

(A) Is at least 21 years of age;

(B) Has the necessary experience working with adults who are older or adults with physical disabilities to potentially qualify for the license classification of the home;

(C) Fully understands and has the ability to meet the residents' care needs; and

(D) Meets the requirements of a substitute caregiver as described in OAR 411-050-0625.

(c) A provisional license may be extended one time for a period of 30 calendar days if an applicant has demonstrated a good faith effort to

complete the application process and obtain the required qualifications and trainings.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0640 Renewal Application and Fees

(Temporary Effective 1/1/2015 to 06/29/2015)

(1) At least 60 calendar days prior to the expiration of a license, the local licensing authority must send a reminder notice and renewal application to the licensed provider. The local licensing authority must investigate any information in the renewal application and conduct an unannounced inspection of the adult foster home prior to the license renewal.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) RENEWAL APPLICATION REQUIREMENTS. To renew an adult foster home license, the licensee must complete the Department's Renewal Application form (SDS 448C) and submit the form to the local licensing authority with the non-refundable fee prior to the expiration date of the current license. Timely submission of the renewal application and non-refundable fee shall keep the license in effect until the local licensing authority or the Department takes action.

(a) The renewal application is not complete until all of the required application information is submitted to the local licensing authority.

(b) A renewal application remaining incomplete at the time of license expiration or failure to provide accurate information on the renewal application shall result in the denial of the application.

(4) The license renewal application must include:

(a) Complete contact information for the licensee, including:

(A) A mailing address if different from the adult foster home;
and

(B) A business address for electronic mail, if applicable.

(b) The maximum resident capacity;

(c) Identification of:

(A) Any relatives needing care;

(B) The maximum number of any room and board tenants;

(C) The maximum number of day care individuals; and

(D) The names of any other occupants in the home.

(d) A Health History and Physician or Nurse Practitioners' Statement (form SDS 0903). The Health History and Physician or Nurse Practitioners' Statement must be updated every third year or sooner if there is reasonable cause for health concerns;

(e) FINANCIAL INFORMATION FOR THE HOME'S FIRST LICENSE RENEWAL. A completed Financial Information Worksheet (form SDS 0448A) demonstrating the financial ability to maintain sufficient liquid resources to pay the home's operating costs for at least two months;

(f) If the home is leased or rented, a copy of the current signed and dated lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) The owner and landlord's name;

(B) Verification that the rent is a flat rate; and

(C) Signatures and date signed by the landlord and applicant, as applicable;

(g) Documentation of a current approved background check for each subject individual as described in OAR 411-050-0620;

(h) A \$20 per bed non-refundable fee for each non-relative resident;

(i) If the licensee intends to use a resident manager, floating resident manager, or shift caregivers, the Department's supplemental application (form SDS 448B) completed by the applicant or applicants, as appropriate;

(j) Written information describing the operational plan for the adult foster home, including:

(A) The use of substitute caregivers and other staff;

(B) A plan of coverage for the absence of the resident manager or the shift caregivers, if applicable; and

(C) The name of a qualified back-up licensee, approved resident manager, or floating resident manager who does not live in the home but has been oriented to the home. The licensee must submit a signed agreement with the listed back-up provider annually and maintain a copy in the facility records.

(k) Proof of required continuing education credits as specified in OAR 411-050-0625.

(5) LATE RENEWAL REQUIREMENTS (UNLICENSED ADULT FOSTER HOME). The home shall be treated as an unlicensed facility, subject to civil penalties, if the required renewal information and fee are not submitted to the local licensing authority prior to the license expiration date and residents remain in the home. (See OAR 411-050-0685)

(6) The local licensing authority shall provide the licensee a copy of the Department's inspection report, (form SDS 517A and, if applicable, form SDS 517B) citing any violations and specifying a time frame for correction. The time frame for correction of violations may not exceed 30 calendar days from the date of inspection.

(7) The Department shall deny a renewal application if cited violations are not corrected within the time frame specified by the local licensing authority.

(8) The local licensing authority shall not renew a license unless the following requirements are met:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and these rules, including any applicable conditions and other final orders of the Department;

(b) The local licensing authority has completed an inspection of the adult foster home;

(c) The Department has completed a background check in accordance with OAR 411-050-0620;

(d) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files;

(e) The local licensing authority has determined the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the licensee or any nursing assistant employed by the licensee has been responsible for abuse; and

(f) The local licensing authority has determined the licensee is not listed on the Office of Inspector General's and General Services Administration's Exclusion Lists.

(9) In seeking the renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof to establish compliance with ORS 443.705 to 443.825 and these rules is upon the licensee.

(10) In seeking the renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof to establish noncompliance with ORS 443.705 to 443.825 and these rules is upon the Department.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

411-050-0642 Variances

(Amended 04/01/2014)

(1) An applicant or licensee may request a variance to the provisions of these rules. The variance request must be in writing and must include clear and convincing evidence that:

- (a) The requested variance does not jeopardize the care, health, welfare, or safety of the residents and all of the residents' needs shall be met; and
- (b) All residents, in addition to other occupants in the home, may be evacuated in three minutes or less.

(2) VARIANCES NOT ALLOWED. Notwithstanding section (1) of this rule, no variance shall be granted by the local licensing authority from a regulation or provision of these rules pertaining to:

- (a) Resident capacity as described in OAR 411-050-0632;
- (b) Minimum age of licensee and any caregivers as described in OAR 411-050-0625;
- (c) The training requirements of a licensee and all other caregivers except as allowed for provisional licenses as described in OAR 411-050-0635, or when a substitute caregiver holds an Oregon health care professional license as described in OAR 411-050-0625;
- (d) Standards and practices for care and services as described in OAR 411-050-0655);
- (e) Inspections of the facility as described in OAR 411-050-0670; or
- (f) Background checks as described in OAR 411-050-0620.

(3) The local licensing authority shall not grant a variance request to any rule that is inconsistent with Oregon Revised Statutes.

(4) The local licensing authority shall not grant a variance request related to fire and life safety without prior consultation with the Department.

(5) In making a determination to grant a variance, the local licensing authority must consider the licensee's history of compliance with rules governing adult foster homes or other long-term care facilities for adults who are older or adults with physical disabilities in Oregon and any other jurisdiction, if appropriate. The local licensing authority must determine that the variance is consistent with the intent and purpose of these rules prior to granting the variance. (See OAR 411-050-0600) The local licensing authority must respond in writing within 30 days of receiving a request for a variance. The written response must include the frequency of renewal.

(6) A variance is not effective until granted in writing by the local licensing authority. Variances are reviewed pursuant to these rules. If applicable, the licensee must re-apply for a variance at the time of license renewal or more often if determined necessary by the local licensing authority.

(7) In seeking a variance, the burden of proof that the requirements of these rules have been met is upon the applicant or licensee.

(8) If a variance to any provision of these rules is denied, the applicant or licensee may request a meeting with the local licensing authority.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

411-050-0645 Operational Standards

(Temporary Effective 1/1/2015 to 06/29/2015)

(1) GENERAL PRACTICES.

(a) A licensee must own, rent, or lease the home to be licensed, however, the local licensing authority may grant a variance to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the adult foster home

is located, the licensee may 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 may not allow the owner, landlord, or lessor to interfere with the admission, transfer, or voluntary or involuntary move of any resident in the adult foster home unless the owner, landlord, or lessor is named on the license.

(b) Each adult foster home must meet:

(A) All applicable local business license, zoning, building, and housing codes;

(B) The Fair Housing Act; and

(C) State and local fire and safety regulations for a single-family residence.

(c) ZONING. Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.

(d) COOPERATION AND ACCESS. The licensee must cooperate with the Department, Centers for Medicare and Medicaid Services (CMS), and local licensing and investigative personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(A) Department, CMS, local licensing, and investigative personnel must be provided access to all resident and facility records and may conduct private interviews with residents.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records and, with written permission from the resident or the resident's legal representative, may have access to resident records. (See OAR 114-005-0030)

(e) CONFIDENTIALITY. Information related to residents must be kept confidential, except as may be necessary in the planning or provision

of care or medical treatment, or related to an inspection, investigation, or sanction action under these rules.

(f) **TRANSPORTATION.** A licensee must arrange for or provide appropriate transportation for residents when needed.

(g) **STAFFING STANDARDS.** The licensee must have qualified caregivers, including awake caregivers as necessary, sufficient in number to meet the 24-hour needs of each resident in addition to caring for any children or relatives beyond the license capacity of the adult foster home.

(A) A licensee may not employ a resident manager, floating resident manager, or shift caregiver who does not meet or exceed the qualifications, training, and classification standards for the adult foster home as described in OAR 411-050-0625 and 411-050-0630; and

(B) A licensee may not employ or allow any caregiver to train or work in the home who is on the Office of Inspector General's or General Services Administration's Exclusion Lists.

(h) **ABSENCE OF A PRIMARY CAREGIVER.** If a primary caregiver is absent from the home for 10 days or more, the licensee must notify the local licensing authority in writing at least seven days prior to the primary caregiver's absence or immediately upon knowing of the absence. Notification must state the reason for and anticipated length of the absence. The licensee must also submit a staffing plan to the local licensing authority, signed by the back-up provider, demonstrating coverage that meets the needs of the residents during the primary caregiver's absence.

(i) **CHANGE OF PRIMARY CAREGIVER.** If a primary caregiver changes during the period the license covers, the licensee must notify the local licensing authority within 24 hours and identify who is providing care.

(A) If a licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in primary

caregiver, the licensee must submit an updated plan of 24-hour coverage to the local licensing authority within seven days.

(B) If a resident manager, floating resident manager, or shift caregiver changes, the licensee must submit a request for a change of resident manager, floating resident manager, or shift caregiver, as applicable, to the local licensing authority along with:

(i) The Department's supplemental application form (SDS 448B) completed by the resident manager applicant, floating resident manager applicant, or shift caregiver applicant;

(ii) A completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903) for the new applicant;

(iii) Documentation of the initiation of or a copy of an approved background check; and

(iv) A \$10 non-refundable fee.

(C) When there is a change in primary caregiver, an approved floating resident manager may assume the responsibilities of the live-in, primary caregiver until a new primary caregiver is employed. If a new primary caregiver is not employed within 60 calendar days, the floating resident manager must be designated as the home's resident manager and the licensee must notify the local licensing authority of the change in status.

(D) The local licensing authority shall issue a revised license when there is a change in a primary caregiver who is identified on the license.

(j) **UNEXPECTED AND URGENT STAFFING NEED.** If the local licensing authority determines an unexpected and urgent staffing need exists, the local licensing authority may authorize a person who has not completed the Department's current Ensuring Quality Care Course and passed the current examination to act as a resident

manager or shift caregiver until training and testing are completed, or for 60 calendar days, whichever period is shorter. The licensee must notify the local licensing authority of the unexpected and urgent staffing need in writing and satisfactorily demonstrate:

(A) The licensee's inability to live in the home and act as the primary caregiver;

(B) The licensee's inability to find a qualified resident manager or shift caregiver, as applicable; and

(C) The proposed staff person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(k) **RESPONSIBILITY.** A licensee is responsible for the supervision, training, and overall conduct of all caregivers, family members, and friends when acting within the scope of their employment, duties, or when present in the home.

(l) **SEXUAL RELATIONS.** Sexual relations between residents and any employee of the adult foster home, licensee, or any member of the licensee's household or family is prohibited unless a pre-existing relationship existed.

(m) **COMMUNICATION.**

(A) Applicants for an initial license must obtain and provide to the local licensing authority a current, active business address for electronic mail prior to obtaining a license.

(B) A licensee must notify the local licensing authority within 24 hours upon a change in the home's business address for electronic mail;

(C) A licensee must notify the local licensing authority, the residents and the resident's family members, legal representatives, and case managers, as applicable, of any change in the telephone number for the licensee or the adult foster home within 24 hours of the change.

(D) A licensee must notify the local licensing authority in writing prior to any change of the licensee's residence or mailing address.

(2) SALE OR LEASE OF EXISTING ADULT FOSTER HOMES AND TRANSFER OF LICENSES.

(a) A license is not transferable and does not apply to any location or person other than the location and person indicated on the license obtained from the local licensing authority.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication, including advertising and disclosure statements, that the license to operate the adult foster home is not transferable and the licensee must refer them to the local licensing authority for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the local licensing authority prior to the transfer of operation of the home.

(d) The licensee must promptly notify the local licensing authority in writing about the licensee's intent to close or convey the adult foster home to another person. The licensee must provide written notice to the residents and the residents' representatives and case managers, as applicable, according to section (13)(a) of this rule.

(e) The licensee must inform a person intending to assume operation of an existing adult foster home that the residents currently residing in the home must be given at least 30 calendar days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed

by the local licensing authority at a level appropriate to the care needs of the residents in the home.

(3) FORECLOSURE.

(a) A licensee must provide written notification to the local licensing authority within 10 calendar days after receipt of any notice of default, or any notice of potential default, with respect to a real estate contract, trust deed, mortgage, or other security interest affecting any property occupied or used by the licensee.

(b) The licensee must provide a copy of the notice of default or warning of potential default to the local licensing authority.

(c) The licensee must provide written updates to the local licensing authority at least every 30 days until the default or warning of potential default has been resolved and no additional defaults or potential defaults have been declared and no additional warnings have been issued. Written updates must include:

(A) The current status on what action has been or is about to be taken by the licensee with respect to the notice received;

(B) The action demanded or threatened by the holder of the security interest; and

(C) Any other information reasonably requested by the local licensing authority.

(d) The licensee must provide written notification within 24 hours to the local licensing authority upon final resolution of the matters leading up to or encompassed by the notice of default or the notice warning of potential default.

(e) If the subject default property is licensed as an adult foster home, the licensee must provide written notification of the following within 24 hours to the local licensing authority, and all the residents and the residents' representatives, if applicable, regarding:

(A) The filing of any litigation regarding such security interest, including the filing of a bankruptcy petition by or against the licensee or an entity owning any property occupied or used by the licensee;

(B) The entry of any judgment with respect to such litigation;

(C) The passing of the date 40 days prior to any sale scheduled pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee; and

(D) The sale, pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee.

(4) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA's) My Plate and include fresh fruit and vegetables when in season.

(b) Meals must reflect consideration of a resident's preferences and cultural and ethnic background. This does not mean the licensee must prepare multiple, unique meals for the residents at the same time.

(c) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families.

(A) Meal substitutions for scheduled menu items in compliance with section (4)(a) of this rule are acceptable and must be documented on, or attached to, the weekly menu.

(B) The licensee must maintain the weekly menus for a minimum of the 12 most recent months during which the home has conducted business.

(d) There must be no more than a 14-hour span between the evening and morning meals. Snacks do not substitute for a meal in determining the 14-hour span. Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(e) Food may not be used as an inducement to control the behavior of a resident.

(f) Home-canned foods must be processed according to the guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(g) Special consideration must be given to a resident with chewing difficulties and other eating limitations. Special diets must be followed, as prescribed in writing, by the resident's physician, nurse practitioner, or physician assistant.

(h) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Storage and food preparation areas must be free from food that is spoiled or expired.

(i) The household utensils, dishes, glassware, and household food may not be stored in bedrooms, bathrooms, or living areas.

(j) Meals must be prepared and served in the home where the residents live. Payment for meals eaten away from the home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibility of the licensee. Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(k) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(l) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors, and in good repair.

(5) TELEPHONE.

(a) The home must have a working landline and corded telephone with a listed number that is separate from any other number the home has, such as, but not limited to, internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If a licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as the phone line complies with the requirements of these rules. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(b) The licensee must make a telephone that is in good working order available and accessible for the residents use with reasonable accommodation for privacy during telephone conversations. A resident with a hearing impairment, to the extent the resident may not hear a normal telephone conversation, must be provided with a telephone that is amplified with a volume control or a telephone that is hearing aid compatible.

(c) Restrictions on the use of the telephone by the residents must be specified in the written house policies and may not violate the residents' rights. Individual restrictions must be well documented in the resident's care plan.

(6) FACILITY RECORDS.

(a) Facility records must be kept current, maintained in the adult foster home, and made available for review upon request. Facility records include, but are not limited to:

(A) Proof the licensee and all subject individuals have a background check approved by the Department as required by OAR 411-050-0620;

(B) Proof the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0625, including:

(i) Proof of required continuing education. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of Department-approved classroom hours;

(ii) Completed certificates to document the substitute caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook and to document the resident manager, floating resident manager, and shift caregivers, as applicable, completion and passing of the Department's Ensuring Quality Care Course and examination;

(iii) Documentation of orientation to the adult foster home for the resident manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable;

(iv) Employment applications and the names, addresses, and telephone numbers of all caregivers employed or used by the licensee; and

(v) Verification that all caregivers are not listed on the Office of Inspector General's or General Services Administration's Exclusion Lists.

(C) Copies of notices sent to the local licensing authority pertaining to changes in the resident manager, floating resident manager, shift caregiver, or other primary caregiver;

(D) Proof of required vaccinations for animals on the premises;

(E) Well water tests, if required, according to OAR 411-050-0650. Test records must be retained for a minimum of three years;

(F) Agreements and specialized contracts with the Department, copies of the adult foster home's private-pay contracts, any contracts with residents eligible for Medicaid services, such as an agreement pertaining to storage fees after leaving the home, and any other contracts, such as contracts with room and board tenants or individuals receiving day care services; and

(G) Records of evacuation drills according to OAR 411-050-0650, including the date, time of day, evacuation route, length of time for evacuation of all occupants, names of all residents and occupants, and which residents and occupants required assistance. The records must be kept at least three years.

(b) REQUIRED POSTED ITEMS. The following items must be posted in one location in the entryway or other equally prominent place in the home where residents, visitors, and others may easily read them:

(A) The adult foster home license;

(B) Conditions attached to the license, if any;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0650;

(D) The Residents' Bill of Rights;

(E) The home's current house policies that have been reviewed and approved by the local licensing authority;

(F) The Department's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Department's inspection forms (form SDS 517A and if applicable, form SDS 517B), including how corrections were made since the last annual inspection;

(I) The Department's notice pertaining to the use of any intercoms, monitoring devices, and video cameras that may be used in the adult foster home; and

(J) A weekly menu according to section (4) of this rule.

(c) POST BY PHONE. Emergency telephone numbers, including the contact number for at least one back-up provider who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee must be readily visible and posted by a central telephone in the adult foster home.

(7) RESIDENT RECORDS.

(a) An individual resident record must be developed, kept current, and readily accessible on the premises of the home for each individual admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) A complete initial screening assessment and general information form (SDS 902) as described in OAR 411-050-0655;

(B) Documentation on form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment;

(C) Documentation that the licensee has informed all residents of the right to formulate an Advance Directive;

(D) FINANCIAL INFORMATION:

(i) Detailed records and receipts if the licensee manages or handles a resident's money. The Resident Account Record (form SDS 713) or other expenditure forms may be used if the licensee 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

and be initialed by the person making the entry. Receipts must document all deposits and purchases of \$5 or more made on behalf of a resident.

(ii) Contracts signed by residents or the residents' representatives may be kept in a separate file but must be made available for inspection by the local licensing authority.

(E) Medical and legal information, including, but not limited to:

(i) Medical history, if available;

(ii) Current prescribing practitioner orders;

(iii) Nursing instructions, delegations, and assessments, as applicable;

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less. (Older records may be stored separately); and

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Health Care Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.

(F) A complete, accurate, and current care plan;

(G) A copy of the current house policies and the current Residents' Bill of Rights, signed and dated by the resident or the resident's representative;

(H) SIGNIFICANT EVENTS. A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident, including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident;

(I) NARRATIVE OF RESIDENT'S PROGRESS. Narrative entries describing each resident's progress must be documented at least weekly and maintained in each resident's individual record. All entries must be signed and dated by the person writing them; and

(J) Non-confidential information or correspondence pertaining to the care needs of the resident.

(b) ACCESS TO RESIDENT RECORDS.

(A) Resident records must be readily available at the adult foster home to residents, the residents' authorized representatives or other legally authorized persons, all caregivers working in the home, and the Department, the local licensing authority, the investigative authority, case managers, and the Centers for Medicare and Medicaid Services (CMS) for the purpose of conducting inspections or investigations.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. A Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative. (See OAR 114-005-0030)

(c) RECORD RETENTION. Records, including any financial records for residents, must be kept for a period of three years from the date the resident left the home.

(d) CONFIDENTIALITY. In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 411, division 005 (Privacy of Protected Information).

(8) HOUSE POLICIES. House policies must be in writing and a copy given to the resident and the resident's family or representative at the time of admission and at the time the screening and assessment is conducted. A signed copy of the house policies must be obtained at the time of

admission and placed in the resident's record. House policies must be consistent with the practices of the licensee, staff, occupants, and visitors of the home. House policies established by the licensee must:

- (a) Include any restrictions the adult foster home may have on the use of alcohol, tobacco, pets, visiting hours, dietary restrictions, or religious preferences;
- (b) Indicate the home's policy regarding the presence and use of legal marijuana on the premises;
- (c) Include a schedule of meal times;
- (d) Include the home's policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board is refundable;
- (e) Include a clear and precise statement of any limitation to the implementation of Advance Directives on the basis of conscience. This rule does not apply to medical professional or hospice orders for administration of medications. The statement must include:
 - (A) A description of conscientious objections as they apply to all occupants of the adult foster home;
 - (B) The legal authority permitting such objections under ORS 127.505 to 127.660; and
 - (C) Description of the range of medical conditions or procedures affected by the conscientious objection. (See OAR 411-050-0655)
- (f) Not be in conflict with the Residents' Bill of Rights, the family atmosphere of the home, or any of these rules;
- (g) Be reviewed and approved by the local licensing authority prior to the issuance of a license and prior to implementing any changes; and

(h) Be posted with the required posted items, in a location where they are easily seen and read by residents and visitors as described in section (7) of this rule.

(9) RESIDENT MOVES AND TRANSFERS. The Department encourages licensees to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves out of an adult foster home for any reason, the licensee must submit copies of pertinent information from the resident's record to the resident's new place of residence at the time of move. Pertinent information must include at a minimum:

(A) Copies of current prescribing medical practitioner's orders for medications, current medication sheets, and an updated care plan; and

(B) Documentation of actions taken by the adult foster home staff, resident, or the resident's representative pertaining to the move or transfer.

(b) A licensee must immediately document voluntary and involuntary moves or transfers from the adult foster home in the resident's record as events take place. (See sections (11) and (12) of this rule)

(10) VOLUNTARY MOVES AND TRANSFERS.

(a) If a resident eligible for Medicaid services or the resident's representative gives notice of the resident's intent to leave the adult foster home, or the resident leaves the home abruptly, the licensee must promptly notify the resident's case manager.

(b) A licensee must obtain prior authorization from the resident, the resident's legal representative, and case manager, as applicable, prior to the resident's:

(A) Voluntary move from one bedroom to another in the adult foster home;

(B) Voluntary transfer from one adult foster home to another home that has a license issued to the same person; or

(C) Voluntary move to any other location.

(c) Notifications and authorizations of voluntary moves and transfers must be documented and available in the resident's record.

(d) The licensee remains responsible for the provision of care and services until the resident has moved from the home.

(11) INVOLUNTARY MOVES AND TRANSFERS.

(a) A resident may only be moved involuntarily to another room within the adult foster home, transferred to another adult foster home operated by the same licensee for a temporary or permanent stay, or moved from the adult foster home for the following reasons:

(A) Medical reasons. The resident has a medical or nursing condition that is complex, unstable, or unpredictable that exceeds the level of care and services the facility provides;

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0650;

(C) Welfare of the resident or other residents;

(i) The resident exhibits behavior that poses an imminent danger to self or others, including acts that result in the resident's arrest or detention;

(ii) The resident engages in behavior or action that repeatedly and substantially interfere with the rights, health, or safety of the residents or others; or

(iii) The resident engages in illegal drug use or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care or failure to make payment for room and board;

(E) The adult foster home has had its license revoked, not renewed, or the license was voluntarily surrendered by the licensee;

(F) The home was not notified prior to the resident's admission, or learns following the resident's admission, that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(G) The licensee's Medicaid Provider Enrollment Agreement or specialized contract is terminated (pertains only to residents eligible for Medicaid); or

(H) The resident engages in the use of medical marijuana in violation of the home's written policies or contrary to Oregon Law under the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

(b) MANDATORY WRITTEN NOTICE. A resident may not be moved involuntarily from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary or permanent stay without a minimum of 30 calendar days' written notice. The notice must be delivered in person to the resident and must be delivered in person or sent by registered or certified mail to the resident's legal representative, guardian, or conservator, and a copy must be immediately submitted to the resident's case manager, as applicable. Where a resident lacks capacity and there is no legal representative, a copy of the notice must be immediately submitted to the State Long Term Care Ombudsman. The written notice must:

(A) Be on the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901);

(B) Be completed by the licensee; and

(C) Include the following information:

- (i) The resident's name;
- (ii) The reason for the proposed move or transfer, including the specific reasons the facility is unable to meet the resident's needs;
- (iii) The date of the proposed change;
- (iv) The location to which the resident is going, if known;
- (v) A notice of the right to hold an informal conference and hearing;
- (vi) The name, address, and telephone number of the person giving the notice; and
- (vii) The date the notice is issued.

(c) LESS THAN 30 DAYS' WRITTEN NOTICE. A licensee may give less than 30 calendar days' written notice in specific circumstances as identified in paragraphs (A) to(C) below, but must do so as soon as possible using the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901). The notice must be given in person to the resident, the resident's representative, guardian, conservator, and a copy must be immediately submitted to the resident's case manager, as applicable. The reasons for the notice must be fully documented in the resident's record. The licensee remains responsible for the provision of care and services until the resident has moved from the home. A licensee may give less than 30 calendar days' notice ONLY if:

(A) Undue delay in moving the resident would jeopardize the health, safety, or well-being of the resident, including:

- (i) The resident has a medical emergency that requires the immediate care of a level or type the adult foster home is unable to provide.
- (ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home and the licensee determines he or she is no longer able to meet the needs of the resident; or

(C) The home was not notified prior to the resident's admission, or learns following the resident's admission, the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(i) In the event a resident is given notice of an involuntary move due to (11)(c)(C) of this rule, the notice may be given without reasonable advance notice.

(ii) The resident shall be given the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) as stated in (11) of this rule.

(12) **RESIDENT HEARING RIGHTS.** A resident, who has been given formal notice of an involuntary move or refused the right of return or re-admission, is entitled to an informal conference and hearing prior to the involuntary move or transfer as follows:

(a) **INFORMAL CONFERENCE.** The local licensing authority must hold an informal conference as promptly as possible after the request is received. The local licensing authority must send written notice of the time and place of the conference to the licensee 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 licensee, and a representative from an adult foster home association or SEIU if requested by the licensee. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the local licensing authority must document the outcome in writing and no administrative hearing is needed.

(b) **ADMINISTRATIVE HEARING.** If a resolution is not reached as a result of the informal conference, the resident or the resident's representative may request an administrative hearing. If the resident

is being moved or transferred with less than 30 calendar days' notice according to section (11)(c) of this rule, the hearing must be held within seven business days of the move or transfer. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

(13) CLOSURE OF ADULT FOSTER HOMES.

(a) A licensee must notify the local licensing authority prior to the voluntary closure, proposed sale, or transfer of ownership of the home, and give the residents and the residents' families, representatives, and case managers, as appropriate, a minimum of 30 calendar days' written notice on the Department's form (SDS 901) according to section (11) of this rule.

(b) In circumstances where undue delay might jeopardize the health, safety, or well-being of residents, licensees, or staff, written notice must be given as soon as possible, according to section (11)(c).

(c) A licensee must surrender the physical license to operate an adult foster home to the local licensing authority at the time of the adult foster home's closure.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.705-795, 443.880
Stats. Implemented: ORS 197.660-670, 441.373, 443.001-004, 443.705-825, 443.875, 443.991

411-050-0650 Facility and Safety Standards *(Amended 04/01/2014)*

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

(1) GENERAL CONDITIONS.

(a) INTERIOR AND EXTERIOR PREMISES. The building and furnishings, patios, decks, and walkways, as applicable, must be clean and in good repair. The interior and exterior premises must be

well maintained and accessible according to the individual needs of the residents. There must be no accumulation of garbage, debris, rubbish, or offensive odors. Walls, ceilings, and floors must be of such character to permit washing, cleaning, or painting, as appropriate.

(b) ADDRESS. The address numbers of the adult foster home must be placed on the home in a position that is legible and clearly visible from the street or road fronting the property. Address numbers must be a minimum of 4 inches in height, made of reflective material, and contrast with their background.

(c) LIGHTING. Adequate lighting, based on the needs of the occupants, must be provided in each room, stairway, and exit way. Incandescent light bulbs and florescent tubes must be protected with appropriate covers.

(d) TEMPERATURE. The heating system must be in working order. Areas of the home used by the residents must be maintained at a comfortable temperature. Minimum temperatures during the day must be not less than 68 degrees, no greater than 85 degrees, and not less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in each resident's care plan.

(A) During times of extreme summer heat, the licensee must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.

(B) If the facility is air-conditioned, the system must be functional and the filters must be cleaned or changed as needed to ensure proper maintenance.

(C) If the licensee is unable to maintain a comfortable temperature for the residents during times of extreme summer heat, air conditioning or another cooling system may be required.

(e) COMMON USE AREAS. Common use areas for the residents must be accessible to all residents. There must 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 may not be located in an unfinished basement or garage unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space is required for each day care individual, room and board tenant, or relative receiving care for remuneration that exceeds the limit of five.

(f) VIDEO MONITORS. Use of video monitors detracts from a home-like environment and the licensee may not use video monitors in any area of the home that would violate a resident's privacy unless requested by the resident or the resident's legal representative. The licensee may not ask the resident or the resident's legal representative to waive the resident's right to privacy as a condition of admission to the home.

(2) SANITATION AND PRECAUTIONS.

(a) NON-MUNICIPAL WATER SOURCE. A public water supply must be utilized if available. If a non-municipal water source is used, the licensor, a sanitarian, or a technician from a certified water-testing laboratory must collect a sample annually or as required by the Department. The water sample must be tested for coliform bacteria. Water testing and any necessary corrective action to ensure water is suitable for drinking must be completed at the licensee's expense. Water testing records must be retained for three years.

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

(c) COMMODES AND INCONTINENCE GARMENTS. Commodes used by residents must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(d) WATER TEMPERATURE. A resident who is unable to safely regulate the water temperature must be supervised.

(e) LAUNDRY. Prior to laundering, soiled linens and clothing must be stored in closed containers in an area that is separate from food storage, kitchen, and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(f) Garbage and refuse must be suitably stored in readily cleanable, rodent-proof, covered containers, pending weekly removal.

(g) VENTILATION. All doors and windows that are used for ventilation must have screens in good condition.

(h) INFECTION CONTROL. Standard precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(i) DISPOSAL OF SHARPS. Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After use, disposable syringes and needles, scalpel blades, and other sharp items must be placed in a puncture-resistant, red container for disposal. The puncture-resistant container must be located as close as practical to the use area. Disposal must be made according to local regulations and resources (ORS 459.386 to 459.405).

(j) FIRST AID. Current, basic first-aid supplies and a first-aid manual must be readily available in the home.

(k) PESTS. Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects, and rodents).

(l) PETS OR OTHER ANIMALS. Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures

must be under control and not present a danger to the residents or guests.

(m) SAFETY BARRIERS. Patios, decks, walkways, swimming pools, hot tubs, spas, saunas, water features, and stairways, as appropriate, must be equipped with safety barriers designed to prevent injury. Resident access to or use of swimming or other pools, hot tubs, spas, or saunas on the premises must be supervised.

(3) BATHROOMS. Bathrooms must:

(a) Provide individual privacy and have a finished interior with a door that opens to a hall or common-use room. If a bedroom includes a private bathroom, the door for the private bathroom must open to the bedroom. No person must have to walk through another person's bedroom to access a bathroom;

(b) Be large enough to accommodate the individual needs of the residents and any equipment that may be necessary;

(c) Have a mirror, a window that opens or other means of ventilation, and a window covering for privacy;

(d) Be clean and free of objectionable odors;

(e) Have bathtubs, showers, toilets, and sinks in good repair. A sink must be located near each toilet and a toilet and sink must be available for the resident's use on each floor with resident rooms. There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants (including residents, day care individuals, room and board tenants, the licensee, and the licensee's family);

(f) Have hot and cold water at each bathtub, shower, and sink in sufficient supply to meet the needs of the residents;

(g) Have nonporous surfaces for shower enclosures. Glass shower doors, if applicable, must be tempered safety glass, otherwise, shower curtains must be clean and in good condition;

- (h) Have non-slip floor surfaces in bathtubs and showers;
- (i) Have grab bars for each toilet, bathtub, and shower to be used by the residents for safety;
- (j) Have barrier-free access to toilet and bathing facilities; and
- (k) Have adequate supplies of toilet paper and soap supplied by the licensee. Residents must be provided with individual towels and washcloths that are laundered in hot water at least weekly or more often if necessary. Residents must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in a dispenser must be provided for the residents' use.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must:

(A) Have been constructed as a bedroom when the home was built, or remodeled under permit;

(B) Be finished with walls or partitions of standard construction that go from floor to ceiling;

(C) Have a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom. The bedroom door must be large enough to accommodate the occupant of the room and any mobility equipment that may be needed by the resident;

(D) Be adequately ventilated, heated, and lighted with at least one window that opens and meets the requirements in section (5)(e) of this rule;

(E) Be at least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and

(F) Have no more than two occupants per room. (See also OAR 411-050-0632 pertaining to a child's bedroom.) This rule is not intended to prohibit a child five years of age or younger from occupying their parent's bedroom.

(b) The licensee, any other caregivers, and family members may not sleep in areas designated as living areas or share a bedroom with a resident. This rule is not intended to prohibit a caregiver or other person of the resident's choosing from temporarily staying in the resident's room when required by the resident's condition.

(c) There must be a 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 must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Waterproof mattress covers must be used for incontinent residents. Day care individuals may use a cot or rollaway bed if bedroom space is available that meets the requirements of section (4)(a) of this rule. A resident's bed may not be used by a day care individual.

(d) Each resident's bedroom must have separate, private dresser and closet space sufficient for the resident's clothing and personal effects including hygiene and grooming supplies. A resident must be provided private, secure storage space to keep and use reasonable amounts of personal belongings. A licensee may not use a resident's bedroom for storage of items, supplies, devices, or appliances that do not belong to the resident.

(e) Drapes or shades for bedroom windows must be in good condition and allow privacy for the residents.

(f) A resident who is non-ambulatory, has impaired mobility, or is cognitively impaired must have a bedroom with a safe, second exit at ground level. A resident with a bedroom above or below the ground floor must demonstrate their capability for self-preservation.

(g) Resident bedrooms must be in close enough proximity to the licensee or caregiver in charge to alert the licensee or caregiver in charge to resident nighttime needs or emergencies, or the bedrooms must be equipped with a functional call bell or intercom within the residents' abilities to operate. Intercoms may not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request.

(h) Bedrooms used by the licensee, resident manager, shift caregiver, and substitute caregiver, as applicable, must be located in the adult foster home and must have direct access to the residents through an interior hallway or common use room.

(5) SAFETY.

(a) FIRE AND LIFE SAFETY. Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home may be inspected for fire safety by the State Fire Marshal's Office, or the State Fire Marshal's designee, at the request of the local licensing authority or the Department using the standards in these rules, as appropriate.

(b) HEAT SOURCES. All heating equipment, including but not limited to wood stoves, pellet stoves, and fireplaces must be installed in accordance with all applicable state and local building and mechanical codes. Heating equipment must be in good repair, used properly, and maintained according to the manufacturer's or a qualified inspector's recommendations.

(A) A licensee who does not have a permit verifying proper installation of an existing woodstove, pellet stove, or gas fireplace must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth, Patio, and Barbeque Association member and follow their recommended maintenance schedule.

(B) Fireplaces must have approved and listed protective glass screens or metal mesh screens anchored to the top and bottom of the fireplace opening.

(C) The local licensing authority may require the installation of a non-combustible, heat-resistant, safety barrier 36 inches around a woodstove to prevent residents with ambulation or confusion problems from coming in contact with the stove.

(D) 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 State Fire Marshal or the State Fire Marshal's designee. A heater must be directly connected to an electrical outlet and may not be connected to an extension cord.

(c) EXTENSION CORDS AND ADAPTORS. Extension cord wiring and multi-plug adaptors may not be used in place of permanent wiring. UL-approved, re-locatable power taps (RPTs) with circuit breaker protection and no more than six electrical sockets are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPT must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(d) LOCKS AND ALARMS. Hardware for all exit doors and interior doors must be readily visible, have simple hardware that may not be locked against exit, and have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted. If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(e) WINDOWS. Bedrooms must have at least one window or exterior door that leads directly outside, readily opens from the inside without special tools, and provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 24 inches in height or 20 inches in width. If the interior sill height of the window is more than 44 inches from the floor level, approved steps or other aids to the window exit that the occupants are capable of using must be provided. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with interior sill heights of no more

than 48 inches above the floor may be accepted when approved by the State Fire Marshal or the State Fire Marshal's designee.

(f) CONSTRUCTION. Interior and exterior doorways must be wide enough to accommodate the mobility equipment used by the residents such as wheelchairs and walkers. All interior and exterior stairways must be unobstructed, equipped with handrails on both sides, and appropriate to the condition of the residents. (See also section (5)(q) of this rule)

(A) Buildings must 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 index of finished materials may not exceed 200 and the smoke developed index may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(i) MANUFACTURED HOMES. A manufactured home (formerly mobile homes) must have been built since 1976 and designed for use as a home rather than a travel trailer. The manufactured home must have a manufacturer's label permanently affixed on the unit itself that states the manufactured home meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced 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."

(ii) If such a label is not evident and the licensee believes the manufactured home meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the home's manufacturer.

(iii) Manufactured homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(B) STRUCTURAL CHANGES. The licensee must notify the local licensing authority in writing at least 15 calendar days prior to any remodeling, renovations, or structural changes in the home that require a building permit. Such activity must comply with local building, sanitation, utility, and fire code requirements applicable to a single-family dwelling (see ORS 443.760(1)). The licensee must forward all required permits and inspections, an evacuation plan as described in section (5)(k) of this rule, and a revised floor plan as described in section (5)(o) of this rule to the local licensing authority within 30 calendar days of completion.

(g) FIRE EXTINGUISHERS. At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted in a location visible and readily accessible to any occupant of the home on each floor, including basements. Fire extinguishers must be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(h) CARBON MONOXIDE AND SMOKE ALARMS.

(A) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the manufacturer's instructions. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(i) If bedrooms are located in multi-level homes, carbon monoxide alarms must be installed on each level including the basement.

(ii) Carbon monoxide alarms may be hard-wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with a battery back-up. Battery operated carbon monoxide alarms must be equipped with a device that warns of a low battery.

(iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(B) SMOKE ALARMS. Smoke alarms must be installed in accordance with the manufacturer's instructions in each bedroom, in hallways or access areas that adjoin bedrooms, the family room or main living area where occupants congregate, any interior designated smoking area, and in basements. In addition, smoke alarms must be installed at the top of all stairways in multi-level homes.

(i) Ceiling placement of smoke alarms is recommended.

(ii) Battery operated smoke alarms or hard-wired smoke alarms with a battery backup must be equipped with a device that warns of a low battery.

(iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(C) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when actuated, an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake

occupants when all bedroom doors are closed. Intercoms and room monitors may not be used to amplify alarms.

(D) The licensee must test all carbon monoxide alarms and smoke alarms in accordance with the manufacturer's instructions at least monthly (per NFPA 72). Testing must be documented in the facility records. The licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(i) COMBUSTIBLES AND FIREARMS. Flammables, combustible liquids, and other combustible materials must be safely and properly stored in their original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals.

(A) Oxygen and other gas cylinders in service or in storage must be adequately secured to prevent the cylinders from falling or being knocked over;

(B) No smoking signs must be visibly posted where oxygen cylinders are present;

(C) Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not accessible to the residents; and

(D) Ammunition must be secured in a locked area separate from the firearms.

(j) HAZARDOUS MATERIALS. Cleaning supplies, medical sharps containers, poisons, insecticides, and other hazardous materials must be properly stored in their original, properly labeled containers in a safe area that is not accessible to residents or near food preparation or food storage areas, dining areas, or medications.

(k) EVACUATION PLAN. An emergency evacuation plan must be developed and revised as necessary to reflect the current condition of the residents in the home. The evacuation plan must be rehearsed with all occupants.

(l) ORIENTATION TO EMERGENCY PROCEDURES. Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a smoke alarm, shown how to participate in an emergency evacuation drill, and receive an orientation to basic fire safety. New caregivers must also be oriented in how to conduct an evacuation.

(m) EVACUATION DRILL. An evacuation drill must be held at least once every 90 calendar days, with at least one evacuation drill per year conducted during sleeping hours. The evacuation drill must be clearly documented, signed by the caregiver conducting the drill, and maintained according to OAR 411-050-0645.

(A) The licensee and all other caregivers must:

(i) Be able to demonstrate the ability to evacuate all occupants from the facility to the initial point of safety within three minutes or less. The initial point of safety must:

(I) Be exterior to and a minimum of 25 feet away from the structure;

(II) Have direct access to a public sidewalk or street; and

(III) Not be in the backyard of a home unless the backyard directly accesses a public street or sidewalk.

(ii) Be able to demonstrate the ability to further evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less. The final point of safety must:

(I) Be a minimum of 50 feet away from the structure;
and

(II) Located on a public sidewalk or street;

(B) Conditions may be applied to a license if the licensee or caregivers demonstrate the inability to meet the evacuation times described in this section. Conditions may include but are not limited to reduced capacity of residents, additional staffing, or increased fire protection. Continued problems are grounds for revocation or non-renewal of the license.

(n) FLOOR PLAN. The licensee must develop a current and accurate floor plan that indicates:

(A) The size of rooms;

(B) Which bedrooms are to be used by residents, the licensee, caregivers, for day care, and room and board tenants, as applicable;

(C) The location of all the exits on each level of the home, including emergency exits such as windows;

(D) The location of wheelchair ramps;

(E) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms;

(F) The planned evacuation routes, initial point of safety, and final point of safety; and

(G) Any designated smoking areas in or on the adult foster home's premises.

(o) RESIDENT PLACEMENT. A resident, who is unable to walk without assistance or not capable of self-preservation, may not be placed in a bedroom on a floor without a second ground level exit. (See also section (4)(f) of this rule)

(p) STAIRS. Stairs must have a riser height of between 6 to 8 inches and tread width of between 8 to 10.5 inches. Lifts or elevators are not an acceptable substitute for a resident's capability to ambulate stairs. (See also section (5)(f) of this rule)

(q) EXIT WAYS. All exit ways must be barrier free and the corridors and hallways must be a minimum of 36 inches wide or as approved by the State Fire Marshal or the State Fire Marshal's designee. Interior doorways used by the residents must be wide enough to accommodate wheelchairs and walkers if used by residents and beds if used for evacuation purposes. Any bedroom window or door identified as an exit must remain free of obstacles that would interfere with evacuation.

(r) RAMPS. There must be at least one wheelchair ramp from a minimum of one exterior door if an occupant of the home is non-ambulatory. A licensee may be required to bring existing ramps into revised compliance if necessary to meet the needs of new residents or current residents with increased care needs. Wheelchair ramps must comply with the Americans with Disabilities Act (ADA) and must:

(A) Have the least possible slope with a maximum slope of 1 inch rise in each 12 inches of distance;

(B) Have a maximum rise for any run of 30 inches;

(C) Have a minimum clear width of 36 inches;

(D) Have landings with a minimum clear length of 60 inches at the top and bottom of each ramp and each ramp run;

(E) Have handrails on both sides of the ramp if the ramp has a rise of 6 inches or more or a run of 72 inches or more.

Handrails must:

(i) Be continuous or must extend 12 inches beyond the top and bottom of the ramp segment;

(ii) Have a clear space of 1 1/2 inches between the handrail and the wall;

(iii) Mounted between 34 and 38 inches above the ramp surface; and

(iv) Rounded at the ends or returned smoothly to the floor, wall, or post.

(F) Have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp if the ramp or landing has a drop off. Curbs must be a minimum of 2 inches high;

(G) Be designed so water does not accumulate on walking surfaces; and

(H) Have non-skid surfaces.

(s) EMERGENCY EXITS. There must be a second safe means of exit from all sleeping rooms. A provider whose sleeping room is above the first floor may be required to demonstrate at the time of licensure, renewal, or inspection, an evacuation drill from the provider's sleeping room using the secondary exit.

(t) FLASHLIGHT. There must be at least one plug-in, rechargeable flashlight in good functional condition available on each floor of the home for emergency lighting.

(u) SMOKING. If smoking is allowed in a home, the licensee must adopt house policies that restrict smoking to designated areas.

(A) Smoking is prohibited in:

(i) Any bedroom including that of the residents, licensee, resident manager, any other caregiver, occupant, or visitor;

(ii) Any room where oxygen is used; and

(iii) Anywhere flammable materials are stored.

(B) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(v) EMERGENCY PREPAREDNESS PLAN. A licensee must develop and maintain a written emergency preparedness plan for the protection of all occupants in the home in the event of an emergency or disaster.

(A) The written emergency plan must:

(i) Include an evaluation of potential emergency hazards including but not limited to:

(I) Prolonged power failure or water or sewer loss;

(II) Fire, smoke, or explosion;

(III) Structural damage;

(IV) Hurricane, tornado, tsunami, volcanic eruption, flood, or earthquake;

(V) Chemical spill or leak; and

(VI) Pandemic.

(ii) Include an outline of the caregiver's duties during an evacuation;

(iii) Consider the needs of all occupants of the home including but not limited to:

(I) Access to medical records necessary to provide services and treatment;

(II) Access to pharmaceuticals, medical supplies, and equipment during and after an evacuation; and

(III) Behavioral support needs.

(iv) Include provisions and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff; and

(v) Planned relocation sites.

(B) The licensee must notify the Department or the local licensing authority of the homes status in the event of an emergency that requires evacuation and during any emergent situation when requested.

(C) The licensee must re-evaluate the emergency preparedness plan at least annually and whenever there is a significant change in the home.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

411-050-0655 Standards and Practices for Care and Services

(Temporary Effective 1/1/2015 to 06/29/2015)

(1) SCREENING AND ASSESSMENT.

(a) Prior to admission, the licensee must conduct and document a screening to determine if a prospective resident's care needs exceed the license classification of the home. The screening must:

(A) Evaluate the ability of the prospective resident to evacuate the home within three minutes along with all the occupants of the home;

(B) Determine if the licensee and caregivers are able to meet the prospective resident's needs in addition to meeting the needs of the other residents of the home; and

(C) 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 prospective resident's care needs shall be met.

(b) The screening process must include interviews with the prospective resident and the prospective resident's family, prior care providers, and case manager, as appropriate. The licensee must also interview, as necessary, any physician, nurse practitioner, physician assistant, registered nurse, pharmacist, therapist, or mental health or other licensed health care professional involved in the care of the prospective resident. A copy of the screening document must be:

(A) Given to the prospective resident or the prospective resident's legal representative; and

(B) Placed in the resident's record if admitted to the home; or

(C) Maintained for a minimum of three years if the prospective resident is not admitted to the home.

(c) If the Department or AAA knows that a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805 is applying for admission to an adult foster home, the Department or AAA shall notify the home of the person's status as a sex offender.

(d) The licensee may refuse to admit a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805.

(e) **REQUIRED DISCLOSURES.** The licensee must disclose the home's policies and practices to a prospective resident or the prospective resident's legal representative, as applicable, including:

(A) **HOUSE POLICIES.** The licensee must provide a copy of the house policies and disclose any policies that may limit the prospective resident's activities or preferences while living in the adult foster home. Examples include, but are not limited to, the use of tobacco or alcohol, pets, religious practices, dietary restrictions, and the use of intercoms and monitors. The licensee must disclose the home's policy regarding the legal

presence and use of medical marijuana. (See OAR 411-050-0645);

(B) CONTRACT. The licensee must provide a copy of any contract a prospective resident or the prospective resident's legal representative may be asked to sign;

(C) MEDICAID ENROLLMENT STATUS. The licensee must inform a prospective resident or the prospective resident's representative if the home serves individuals eligible for Medicaid services; and

(D) LONG-TERM CARE ASSESSMENT. The licensee must inform a prospective private-pay resident or the prospective resident's representative, if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee must document on the Department's form (SDS 913) that the prospective private-pay resident has been advised of the right to receive a long-term care assessment. The licensee must maintain a copy of the form in the resident's record upon admission and make a copy available to the Department upon request.

(2) PRIOR TO ADMISSION.

(a) The licensee must obtain and document general information regarding a resident prior to the resident's admission. The information must include the names, addresses, and telephone numbers of the resident's relatives, significant persons, case managers, and medical or mental health providers. The information must also include the date of admission and, if available, the resident's medical insurance information, birth date, prior living facility, and mortuary;

(b) Prior to admission, the licensee must obtain and place in the resident's record:

(A) Prescribing practitioner's written or verbal orders for medications, treatments, therapies, and special diets, as applicable. Any verbal orders must be followed with written

orders within seven calendar days of the resident's admission. Attempts to obtain written orders must be documented in the resident's record;

(B) Prescribing practitioner or pharmacist review of the resident's preferences for over-the-counter medications and home remedies; and

(C) Any medical information available, including the resident's history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care.

(c) The licensee must ask for copies of the resident's Advance Directive, Physician's Order for Life Sustaining Treatment (POLST), and proof of court-appointed guardianship or conservatorship, if applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care;

(d) The licensee must provide written information to the resident or the resident's representative about the resident's right to make decisions concerning Advance Directives and the resident's right to accept or refuse medical care. The licensee must provide:

(A) A written copy of the adult foster home's policies regarding implementation of Advance Directives; and

(B) A clear and precise statement of limitation if the licensee is not able to implement an Advance Directive on the basis of conscience that includes:

(i) Identification of the state legal authority under ORS 127.625 permitting a conscientious objection; and

(ii) Descriptions of medical conditions or procedures affected by the licensee's conscientious objection.

(e) The licensee must review the Residents' Bill of Rights and the home's current house policies with the resident and the resident's legal representative, as appropriate. The discussion must be

documented by having the resident sign and date a copy of the house policies that have been approved by the local licensing authority and the current Residents' Bill of Rights (form SDS 305A). A copy of the signed house policies and Residents' Bill of Rights must be maintained in the resident's record.

(3) CARE PLAN.

(a) During the initial 14 calendar days following the resident's admission to the home, the licensee must continue to assess and document the resident's preferences and care needs. The assessment and care plan must be completed by the licensee and documented within the initial 14-day period. The care plan must describe the resident's needs, preferences, and capabilities, and what assistance the resident requires for various tasks. The resident's care plan must also include:

(A) By whom, when, and how often care and services shall be provided;

(B) The resident's ability to perform activities of daily living (ADLs);

(C) Special equipment needs;

(D) Communication needs (examples may include, but are not limited to, hearing or vision needs, such as eraser boards or flash cards, or language barriers, such as sign language or non-English speaking);

(E) Night needs;

(F) Medical or physical health problems, including physical disabilities, relevant to care and services;

(G) Cognitive, emotional, or other impairments relevant to care and services;

(H) Treatments, procedures, or therapies;

(I) Registered nurse consultation, teaching, delegation, or assessment;

(J) Behavioral interventions;

(K) Social, spiritual, and emotional needs, including lifestyle preferences, activities, and significant others involved;

(L) The ability to exit in an emergency, including assistance and equipment needed;

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

(N) Dietary needs and preferences.

(b) The licensee must review and update each resident's care plan every six months or as a resident's condition changes. The review must be documented in the resident's record at the time of the review and include the date of the review and the licensee's signature. If a care plan contains many changes and becomes less legible, a new care plan must be written.

(4) REGISTERED NURSE CONSULTATION.

(a) RN CONSULTATION AND ASSESSMENT. A licensee must obtain a medical professional consultation and assessment to meet the care needs of a resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task, as defined by the Oregon State Board of Nursing, has been ordered by a physician or other licensed health care professional.

(b) A licensee must also request a registered nurse consultation under the following conditions:

(A) When a resident has a health concern or behavioral symptoms that may benefit from a nursing assessment and provider education;

(B) When written parameters are needed to clarify a prescribing practitioner p.r.n. order for medication and treatment (See section (5)(g) of this rule);

(C) Prior to the use of physical restraints when not assessed, taught, and reassessed, according to section (5)(m) of this rule, by a physician, nurse practitioner, physician assistant, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist;

(D) Prior to requesting psychoactive medications to treat behavioral symptoms or the use of new psychoactive medications when not assessed, taught, and reassessed according to section (5)(h) of this rule, by a physician, nurse practitioner, physician assistant, or mental health practitioner; and

(E) When care procedures are ordered that are new for a resident, the licensee, or other caregivers.

(c) RN DELEGATIONS. A registered nurse may determine a nursing care task be taught utilizing the delegation process. RN delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 851, division 047)

(d) Documentation of nurse consultations, delegations, assessments, and reassessments must be maintained in the resident's record and made available to the Department upon request.

(5) STANDARDS FOR MEDICATIONS, TREATMENTS, AND THERAPIES.

(a) MEDICATIONS. The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen. Medication resource material must be readily available at the home and include the reason a medication is used, any specific instructions, the medication's actions, and common side effects.

(b) WRITTEN ORDERS. The licensee must obtain and place a signed order in the resident's record for any medications, dietary

supplements, treatments, or therapies that have been ordered by a prescribing practitioner. The written orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. The prescribing practitioner must be notified if the resident refuses to consent to an order.

(A) CHANGED ORDERS. Changes to a written order may not be made without a prescribing practitioner order. The prescribing practitioner must be notified if the resident refuses to consent to the change order. Changes to medical orders obtained by telephone must be followed-up with signed orders within seven calendar days. Changes in the dosage or frequency of an existing medication require a new properly labeled and dispensed medication container. If a new properly labeled and dispensed medication container is not obtained, the change must be written on an auxiliary label attached to the medication container, not to deface the existing original pharmacy label, and must match the new medication order. Attachment of the auxiliary label must be documented in the residents' record. (See section (5)(f)(D) of this rule)

(B) DOCUMENTATION OF CHANGED ORDERS. Attempts to obtain the signed written changes must be documented and readily available for review in the resident's record. The resident's medications, including medications that are prescribed, over-the-counter medications, and home remedies, must be reviewed by the resident's prescribing practitioner or pharmacist at least annually. The review must be in writing, include the date of the review, and contain the signature of the prescribing practitioner or a pharmacist.

(c) MEDICATION SUPPLIES. The licensee must have all currently prescribed medications, including p.r.n. medications, and all prescribed over-the-counter medications available in the home for administration. Refills must be obtained prior to depletion of current medication supplies. Attempts to order refills must be documented in the resident's record.

(d) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee who implements a hospice, home health, or other licensed medical professional-generated order must:

(A) Have a copy of the hospice, home health, or licensed medical professional document that communicates the written order;

(B) Transcribe the order onto the medication administration record (MAR);

(C) Implement the order as written; and

(D) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(e) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). A licensee must allow a resident to receive hospice services. The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:

(A) Have a copy of the hospice or home health document that communicates the written order; and

(B) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(f) MEDICATION ADMINISTRATION RECORD (MAR). A current, written medication administration record (MAR) must be kept for each resident and must:

(A) List the name of all medications administered by a caregiver, including over-the-counter medications and prescribed dietary supplements. The MAR must identify the dosage, route, and the date and time each medication or supplement is to be given;

(B) Identify any treatments and therapies administered by a caregiver. The MAR must indicate the type of treatment or therapy and the time the procedure must be performed;

(C) Be immediately initialed by the caregiver administering the medication, treatment, or therapy as it is completed. A resident's MAR must contain a legible signature that identifies each set of initials;

(D) Document changed and discontinued orders immediately showing the date of the change or discontinued order. A changed order must be written on a new line with a line drawn to the start date and time; and

(E) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the caregiver administering the medication, treatment, or therapy must be circled, and a brief, but complete, explanation must be recorded on the back of the MAR.

(g) P.R.N. MEDICATIONS. Prescription medications ordered to be given "as needed" or "p.r.n." must have specific parameters indicating what the medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(A) P.R.N. DOCUMENTATION. As needed (p.r.n) medications must be documented on the resident's MAR with the time, dose, the reason the medication was given, and the outcome.

(B) P.R.N. ADVANCE SET-UP. As needed (p.r.n.) medications may not be included in any advance set-up of medication.

(h) PSYCHOACTIVE MEDICATIONS.

(A) A licensee is not required to request an evaluation of a resident's use of a psychoactive medication if the resident is admitted to the home and the resident has been prescribed the

psychoactive medication for a condition that is currently monitored by a physician, nurse practitioner, physician assistant, or mental health professional and the written order for the psychoactive medication is in the resident's record.

(B) If a resident is admitted to a home with no documented history as to the reason for taking a psychoactive medication, or if the licensee requests medical professional intervention to address behavioral symptoms, the licensee must request a physician, nurse practitioner, physician assistant, or mental health professional evaluate the resident's need for the psychoactive medication and the intended effect of the medication, common side effects, and circumstances for reporting. The evaluation request must be documented in the resident's record and include:

(i) A probable cause of the resident's behavior;

(ii) Behavioral and environmental interventions to be used instead of or in addition to psychoactive medication, if applicable. Alternative interventions must be tried as instructed by a licensed medical professional and the resident's response to the alternative interventions must be documented in the resident's record prior to administering a psychoactive medication; and

(iii) A plan for reassessment by the resident's prescribing physician, nurse practitioner, physician assistant, or mental health professional.

(C) The prescription and order for a psychoactive medication must specify the dose, frequency of administration, and the circumstance for use (i.e., specific symptoms). The licensee and all caregivers must be aware of and comply with these parameters.

(D) The licensee and all caregivers must know the intended effect of a psychoactive medication for a particular resident and the common side effects, as well as the circumstances for

reporting to the resident's physician, nurse practitioner, physician assistant, or mental health professional.

(E) The resident's care plan must identify and describe the behavioral symptoms for which psychoactive medications are prescribed and a list of all interventions, including behavioral, environmental, and medication.

(F) Psychoactive medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) **MEDICATION CONTAINERS, STORAGE, AND DISPOSAL.**

(A) **MEDICATION CONTAINERS.** Each of the resident's prescribed medication containers, including bubble packs, must be clearly labeled by the pharmacy. All medications, including over-the-counter medications, must be in the original container. Medications stored in advanced set up containers are required to be labeled as described in this rule.

(B) **OVER-THE-COUNTER MEDICATIONS.** Over-the-counter medication purchased for a specific resident's use must be marked with the resident's name. Over-the-counter medications in stock bottles (with original labels) may be used for multiple residents in the home and must be clearly marked as the house supply.

(C) **STORAGE OF RESIDENT MEDICATION.** All resident medications, including over-the-counter medications, must be kept in a locked, central location that is cool, clean, dry, not subject to direct sunlight, and separate from medications belonging to the licensee, caregivers, and all other non-residents. Medications requiring refrigeration must also be locked and stored separately from non-resident medications. Residents may not have access to medications belonging to the licensee, caregivers, or other household members.

(D) **STORAGE OF NON-RESIDENT MEDICATION.** All non-resident medications must be kept locked and separate from resident medications.

(E) DISPOSAL OF MEDICATION. Outdated, discontinued, recalled, or contaminated medications, including over-the-counter medications, may not be kept in the home and must be disposed of within 10 calendar days of expiration, discontinuation, or the licensee's knowledge of a recall or contamination. A licensee must contact the local DEQ waste management company in their area for instructions on proper disposal of unused or expired medications.

(i) The disposal of a resident's medication must be documented in the resident's record and the documentation must be readily available in the resident's record.

(ii) The disposal of a controlled substance must be documented in the resident's record and the disposal must be witnessed by a caregiver who is 18 years of age or older.

(iii) DOCUMENTATION OF DISPOSAL. Documentation regarding the disposal of medications and controlled substances must include:

(I) The date of disposal;

(II) Description of the medication, (i.e., name, dosage, and amount being disposed);

(III) Name of the resident for whom the medication was prescribed;

(IV) Reason for disposal;

(V) Method of disposal;

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

(VII) For controlled substances, the signature of the caregiver who witnessed the disposal according to this rule.

(j) **ADVANCED SET-UP.** The licensee may set-up each resident's medications for up to seven calendar days in advance (excluding p.r.n. medications) by using a closed container manufactured for the advanced set-up of medications. If used, each resident must have his or her own container with divisions for the days of the week 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, and description of each medication. The container must be stored in the locked area with the residents' medications.

(k) **SELF-ADMINISTRATION OF MEDICATION.** A licensee must have a prescribing practitioner written order of approval for a resident to self-medicate. A resident able to handle his or her own medical regimen may keep their medications in their own room in a lockable storage area or device. Medications must be kept locked except those medications on the residents' own person. The licensee must notify the prescriber of the medication if the resident shows signs of no longer being able to self-medicate safely.

(l) **INJECTIONS.** Subcutaneous, intramuscular, and intravenous injections may be self-administered by a resident if the resident is fully independent in the task or may be administered by a relative of the resident or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (OAR 851-047-0000 to 851-047-0040) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated.

(m) **PHYSICAL RESTRAINTS.** Physical restraints may only be used when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Physical restraints may only be used after a written assessment is completed as described below and all alternatives have been exhausted. Licensees and caregivers may

use physical restraints in adult foster homes only in compliance with these rules, including the Residents' Bill of Rights listed in section (7) of this rule. Prior to the use of any type of physical restraint, the following must be completed:

(A) ASSESSMENT. A written assessment must be obtained from the resident's physician, nurse practitioner, physician assistant, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist that includes consideration of all other alternatives.

(B) ORDERS. If it is determined that a physical restraint is necessary following the assessment and trial of other measures, the least restrictive restraint must be used and as infrequently as possible. The licensee must obtain a written order from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner prior to the use of a physical restraint. The written order must include specific parameters, including the type of physical restraint, circumstances for use, and duration of use, including:

- (i) Procedural guidance for the use of the physical restraint;
- (ii) The frequency for reassessment;
- (iii) The frequency and procedures for nighttime use; and
- (iv) Dangers and precautions for using the physical restraint.

(C) Physical restraints may not be used on an as needed (p.r.n.) basis in an adult foster home.

(D) CONSENT. Physical restraints must not be used without first obtaining the written consent of the resident or the resident's legal representative.

(E) DOCUMENTATION. If it is determined a physical restraint is necessary following the assessment and trial of other

measures, the written order for the use of a physical restraint must be documented in the resident's care plan explaining 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 the resident's safety while restrained must also be recorded in the resident's care plan. The resident's record must include:

- (i) The completed assessment as described in this rule;
- (ii) The written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner;
- (iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint; and
- (iv) The reassessments completed by a medical professional as described above in subsection (B) of this rule.

(F) DAYTIME USE. A resident 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, and provided exercise or range-of-motion exercises during this period. The use of restraints, restraint release, and activities that occurred during the release period must be documented in the resident's record.

(G) NIGHTTIME USE. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint must be of a design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any kind must not be used to keep a resident in bed.

(H) If any physical restraints are used in an adult foster home, the restraints must allow for quick release at all times. Use of

restraints may not impede the three-minute evacuation of all occupants of the home.

(l) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

(6) RESIDENT CARE.

(a) Care and supervision of residents must be in a home-like atmosphere. The training of the licensee and caregivers and care and supervision of residents must be appropriate to the age, care needs, and conditions of the residents in the home (See OAR 411-050-0625). Additional staff may be required if, for example, day care individuals are in the home or if necessary to safely evacuate the residents and all occupants from the home as required by OAR 411-050-0650.

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure the plan is implemented as instructed.

(c) NOTIFICATION. The licensee must notify emergency personnel, the resident's physician, nurse practitioner, physician assistant, registered nurse, family representative, and case manager, as applicable, under the following circumstances:

(A) EMERGENCIES (MEDICAL, FIRE, POLICE). In the event of an emergency, the licensee, or caregiver with the resident at the time of the emergency must first call 911 or the appropriate emergency number for their community. This does not apply to a resident with a medical emergency who practices Christian Science;

(i) If a resident is receiving hospice services, the caregivers must follow the written instructions for medical emergencies from the hospice nurse.

(ii) If a resident has a completed Physician's Orders for Life-Sustaining Treatment (POLST) or other legal

documents, such as an Advance Directive or Do Not Resuscitate (DNR) order, copies of the documents must be made available to the emergency personnel when they arrive.

(B) HOSPITALIZATION. In the event the resident is hospitalized;

(C) HEALTH STATUS CHANGE. When the resident's health status or physical condition changes; and

(D) DEATH. Upon the death of the resident.

(d) The licensee shall not inflict, or tolerate to be inflicted, abuse or punishment, financial exploitation, or neglect of the residents.

(e) The licensee must exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of the residents.

(f) A qualified caregiver must always be present and available at the home when a resident is in the home. A resident may not be left in charge in lieu of a caregiver.

(g) ACTIVITIES. The licensee must make available at least six hours of activities per week that are of interest to the residents, not including television and movies. Information regarding activity resources is available from the local licensing authority. Activities must be oriented to individual preferences as indicated in the resident's care plan (See section (3)(a)(J) of this rule). Documentation of the activities offered to each resident and the resident's participation in those activities must be recorded in the resident's records.

(h) DAY CARE. Prior to the admission of each day care individual, the licensee must:

(A) Conduct and document a screening as described in section (1)(a) of this rule;

(B) Obtain current medical professional orders as described in section (5)(b) of this rule if medications are to be administered and the necessary delegations, as applicable; and

(C) Develop and maintain a current, written medication administration record (MAR) as described in section (5)(f) of this rule if medications are to be administered.

(i) **DIRECT INVOLVEMENT OF CAREGIVERS.** The licensee or caregivers must be directly involved with the residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between the caregivers and residents and among residents, the licensee must demonstrate how regular positive contact occurs.

(j) **RESIDENT MONEY.** If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee may not under any circumstances commingle, borrow from, or pledge any of a resident's funds. The licensee may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece, or nephew. Nothing in this rule may be construed to prevent the licensee or the licensee's employee from acting as a representative payee for the resident. (See also OAR 411-020-0002 and ORS 127.520)

(A) Personal incidental funds (PIF) for individuals eligible for Medicaid services must be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet).

(B) The licensee and other caregivers may not accept gifts from the residents through undue influence or accept gifts of substantial value. Caregivers and family members of the caregivers may not accept gifts of substantial value or loans from the resident or the resident's family. The licensee or other caregivers may not influence, solicit from, or suggest to any of the residents or the residents' legal representatives that the residents or the residents' legal representatives give the

caregiver or the caregiver's family money or property for any purpose.

(C) The licensee may not subject the resident or the resident's representative to unreasonable rate increases.

(k) The licensee and other caregivers may not loan money to the residents.

(7) RESIDENTS' BILL OF RIGHTS. The licensee, the licensee's family, and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Department must be explained and a copy given to each resident at the time of admission. The Residents' 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 policies;
- (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, services, and prompt medical care as needed;
- (f) Be free from 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 to be used for discipline or convenience;

(m) Manage their own financial affairs unless legally restricted;

(n) Be free from financial exploitation. The licensee may 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 licensee must give 30 days' written notice before any change in the rates or the ownership of the home;

(p) Not be transferred or moved out of the adult foster home without 30 calendar days' written notice and an opportunity for a hearing. A licensee may transfer a resident only for medical reasons, 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, gender, sexual orientation, or religion;

(s) Make suggestions or complaints without fear of retaliation; and

(t) Be free of discrimination in regard to the execution of an Advance Directive, Physician's Order for Life-Sustaining Treatment (POLST), or Do Not Resuscitate (DNR) orders.

Stat. Auth.: ORS 127.520, 410.070, 441.373, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, 443.991, 443.373

411-050-0660 Qualifications and Requirements for Ventilator-Assisted Care

(Amended 04/01/2014)

Adult foster homes that provide ventilator-assisted care for residents must meet the following requirements in addition to the other requirements set forth in these rules:

(1) **LICENSE REQUIRED.** A person or entity may not represent themselves as operating an adult foster home that provides ventilator-assisted care or accept placement of an individual requiring ventilator-assisted care without being licensed as a ventilator-assisted care adult foster home.

(2) **APPLICATION.** An applicant or licensee must meet and maintain compliance with OAR 411-050-0610.

(a) To apply for a license to provide ventilator-assisted care, an applicant or licensee must complete the Department's ventilator-assisted care application form (SDS 448V) and submit the application with the required information and nonrefundable fee as outlined in OAR 411-050-0610(3) and (4) to the local licensing authority.

(b) To renew a license to provide ventilator-assisted care, a licensee must complete the Department's ventilator-assisted care application form (SDS 448V) and submit the application with the required information and nonrefundable fee as outlined in OAR 411-050-0640(3) to the local licensing authority.

(c) Applications are processed according to OAR 411-050-0610 and 411-050-0640.

(d) Applications must be approved by the Department prior to the issuance of a ventilator-assisted care license.

(3) **QUALIFICATIONS AND TRAINING.** An applicant, licensee, and all other caregivers must meet and maintain compliance with OAR 411-050-0625. In addition:

(a) The applicant, licensee, resident manager, floating resident manager, or shift caregivers, as applicable, must demonstrate one year of full-time experience in providing ventilator-assisted care.

(b) The applicant or licensee, as applicable, must have experience operating a Class 3 adult foster home in substantial compliance with these rules for at least one year.

(c) An applicant for an adult foster home providing ventilator-assisted care must be the primary caregiver and live in the home where ventilator-assisted care is to be provided for a minimum of one year from the date the initial ventilator-assisted care license is issued. The licensee may employ a resident manager to be the primary live-in caregiver after providing ventilator-assisted care for the one year period. The resident manager must be approved by the local licensing authority and the Department.

(d) The applicant, licensee, and all other caregivers must successfully complete the Department's approved training pertaining to ventilator-assisted care and other training as required. Training is required on an annual basis and must be completed by the licensee, resident manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable, prior to approval of a renewed ventilator-assisted care license.

(4) CLASSIFICATION. An applicant for a ventilator-assisted care license must possess the minimum qualifications outlined in section (3) of this rule. The applicant and licensee must meet and maintain compliance with OAR 411-050-0630. The local licensing authority shall issue a Level A, Level B, or Level C ventilator-assisted care adult foster home license to qualified applicants.

(a) A licensee with a Level C ventilator-assisted care license may admit a maximum of one resident who requires ventilator-assisted care. The local licensing authority may issue a Level C license if the applicant has:

(A) Satisfied the requirements described in section (3) above;
and

(B) Successfully operated a Class 3 home in substantial compliance with these rules for a period of not less than one year.

(b) A licensee with a Level B ventilator-assisted care license may admit a maximum of three residents who require ventilator-assisted care. The local licensing authority may issue a Level B license if the licensee has:

(A) Satisfied the requirements described in section (3) above; and

(B) Successfully operated and provided ventilator-assisted care in their Level C home in substantial compliance with these rules for a period of not less than one year; or

(C) The applicant or licensee, as applicable, has a current license as a health care professional in Oregon.

(c) A licensee with a Level A ventilator-assisted care license may admit a maximum of five residents who require ventilator-assisted care. The local licensing authority may issue a Level A license if the licensee has:

(A) Satisfied the requirements described in section (3) above; and

(B) Successfully operated and provided ventilator-assisted care in their Level B home in substantial compliance with these rules for a period of not less than one year.

(5) CAPACITY. An applicant and licensee must meet and maintain compliance with OAR 411-050-0632. The number of residents permitted to reside in a ventilator-assisted care adult foster home is determined by the level of the home, the ability of the staff to meet the care needs of the residents, the fire and life safety standards, and compliance with these rules. A licensee may only admit or continue to provide ventilator-assisted care for residents according to the level of the home's license. A licensee

may admit other residents who do not require ventilator-assisted care within the approved license capacity listed on the home's license.

(6) OPERATIONAL STANDARDS. A licensee must meet and maintain compliance with OAR 411-050-0645. In addition:

(a) A minimum of two qualified and approved caregivers must be on site and available to meet the routine and emergency care and service needs of the residents 24 hours a day. A minimum of one of the two qualified and approved caregivers must be awake during nighttime hours.

(b) All caregivers must demonstrate competency in providing ventilator-assisted care.

(c) All caregivers must be able to evacuate the residents and any other occupants of the home within three minutes or less.

(d) The applicant and licensee must have a satisfactory system in place to ensure the caregivers are alert to the 24-hour needs of residents who may be unable to independently call for assistance.

(e) All caregivers must know how to operate the back-up generator without assistance and be able to demonstrate how to operate the back-up generator upon request by the Department or local licensing authority.

(7) FACILITY STANDARDS. An applicant and licensee must meet and maintain compliance with OAR 411-050-0650. In addition:

(a) The residents' bedrooms must be a minimum of 100 square feet, or larger if necessary, to accommodate the standard requirements of OAR 411-050-0650, the needs of the resident, and the equipment and supplies necessary for the care and services needed by individuals requiring ventilator-assisted care.

(b) Homes that provide ventilator-assisted care for residents must have a functional, emergency back-up generator. The generator must be adequate to maintain electrical service for resident needs until regular service is restored. Hard wired, back-up generators must be

installed by a licensed electrician. Back-up generators must be tested monthly and the test must be documented in the facility records.

(c) The home must have a functional, interconnected carbon monoxide and smoke alarm system with back-up batteries.

(d) The home must have a functional sprinkler system and maintenance of the sprinkler system must be completed as recommended by the manufacturer. A home that does not have a functional sprinkler system but was approved to provide ventilator-assisted care prior to September 1, 2013, must install a functional whole-home sprinkler system no later than July 31, 2015.

(e) Each resident's bedroom must have a mechanism in place that enables the resident to summon a caregiver's assistance when needed. The mechanism must be within the abilities of the resident to use. The summons must be audible in all areas of the adult foster home.

(8) STANDARDS AND PRACTICES FOR CARE AND SERVICES.

Licensees must meet and maintain compliance with OAR 411-050-0655. In addition:

(a) The licensee must conduct and document a thorough screening of a prospective resident on the Department's form (SDS 902).

(b) Prior to admitting a resident requiring ventilator care to the adult foster home, the licensee must obtain preauthorization from the Department.

(c) The licensee must have a primary care physician identified for each resident being considered for admission.

(d) The licensee must retain the services of a registered nurse (RN) consultant to work in the home who is licensed by the State of Oregon and trained in the care of individuals requiring ventilator-assisted care. RN services include but are not limited to the provision of medical consultation and supervision of resident care, skilled nursing care as needed, and delegation of nursing care to caregivers. When the licensee is an RN, a back-up RN licensed by the State of

Oregon and trained in the care of individuals requiring ventilator-assisted care must be identified and available to provide nursing services in the absence of the licensee.

(e) The licensee must develop individual care plans for each resident with the RN consultant addressing the expected frequency of nursing supervision, consultation, and direct service intervention. The RN consultation must be documented on the resident's completed care plan with the RN's signature and date signed.

(f) The licensee must have physician, RN, and respiratory therapist consultation services, all licensed by the State of Oregon and trained in the care of individuals requiring ventilator-assisted care available on a 24-hour basis and for in-home visits as appropriate. The licensee must call the appropriate medical professional to attend to the emergent care needs of the residents.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 410.070, 443.001-004, 443.705-825, 443.875, 443.991

411-050-0662 Qualifications and Requirements for Limited Adult Foster Homes

(Adopted 9/1/2013)

(1) To qualify for a limited adult foster home license the applicant or licensee must submit:

(a) A completed application for initial or renewal limited licenses;

(b) The Department's Health History and Physician's or Nurse Practitioner's Statement that indicates the applicant or licensee is physically, cognitively, and emotionally capable of providing care to a specific adult who is older or who has a physical disability and with whom the applicant has an established relationship of not less than one year. The Health History and Statement must be submitted initially and every third year or sooner if there is reasonable cause for health concerns;

- (c) Documentation of the initiation of a background check or copy of an approved background check for each subject individual;
 - (d) Completion of the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W); and
 - (e) A \$20 non-refundable fee. If the licensee requests and is granted a variance from the capacity limitation of one resident, a \$20 per bed non-refundable fee for each non-relative resident is required.
- (2) The applicant or licensee must demonstrate a clear understanding of the resident's care needs.
- (3) The applicant or licensee must live in the home that is to be licensed.
- (4) The applicant or licensee must own, rent, or lease the home in which care is being provided. The applicant or licensee must provide verification of proof of ownership or a copy of the signed and dated rental or lease agreement as applicable.
- (5) A caregiver must be available at all times, 24 hours a day, 7 days a week, when the resident is in the home. The caregiver must have the knowledge and ability to meet the resident's care needs. All caregivers must:
- (a) Have an approved background check according to the Criminal Records and Abuse Check rules (OAR 407-007-0200 through 407-007-0370) prior to working in the home;
 - (b) Complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W); and
 - (c) Be at least 18 years of age.
- (6) The licensee must notify the local licensing authority if the licensee shall be absent from the home 10 days or more and the resident shall be remaining in the home during the absence. The licensee must also submit a staffing plan to the local licensing authority demonstrating coverage during the absence that meets the needs of the resident.

(7) The resident's bedroom must be in close enough proximity to the licensee or caregiver in charge to alert him or her to nighttime needs or emergencies, or the bedroom must be equipped with a functional call bell or intercom within the resident's abilities to operate.

(8) The licensee and caregiver must have a complete understanding of the resident's medications. The licensee must have a copy of current prescribing practitioner orders including, if applicable, written authorization for self-administration of medications.

(9) Medications must be stored in their original labeled container except when stored in a 7-day closed container manufactured for advanced set-up of medications.

(10) The licensee and caregiver must place used, disposable syringes and needles, and other sharp items in a puncture-resistant, red container designed for disposal of sharp items. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(11) The licensee, the licensee's family, and employees of the home must guarantee not to violate the Residents' Bill of Rights as outlined in OAR 411-050-0655.

(12) The licensee must have a copy of any Advance Directive, Physician Order for Life-Sustaining Treatment (POLST), and Do Not Resuscitate (DNR) orders.

(13) The home must have a working landline and corded telephone. If the licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(14) CONSTRUCTION. Interior and exterior doorways used by a resident must be wide enough to accommodate wheelchairs and walkers if used by the resident. Interior and exterior stairways must be unobstructed, equipped with handrails, and appropriate to the condition of the resident.

(15) Hardware for all exit doors and interior doors must be readily visible and have simple hardware that may not be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted. If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(16) Buildings must 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 may not exceed 200 and the smoke developed index may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(a) MANUFACTURED HOMES. Manufactured home (formerly mobile homes) units must have been built since 1976 and designed for use as a home rather than a travel trailer. The unit must have a manufacturer's label permanently affixed on the unit itself that states the unit meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced 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."

(b) If such a label is not evident and the licensee believes the unit meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the manufacturer.

(c) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(17) The applicant or licensee must meet minimal fire safety standards including:

(a) A functional smoke alarm with back-up battery must be installed in all sleeping areas and hallways or access ways that adjoin sleeping areas;

(b) A functional carbon monoxide alarm with back-up battery must be installed within 15 feet of each bedroom and at a height as recommended by the manufacturer;

(c) At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose;

(d) The licensee must have a safe evacuation plan and may be required to demonstrate their evacuation plan. The licensee may be required to install an Americans with Disabilities Act (ADA) compliant ramp for the safety of all occupants;

(e) The licensee and all occupants must be able to evacuate within 3 minutes to an initial point of safety exterior to and away from the structure, with access to a public sidewalk or street. The licensee and all occupants must be able to demonstrate the ability to further evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less;

(f) Smoking is prohibited in any bedroom including that of the resident, the licensee, occupants, or caregivers and in any room where oxygen is used or stored;

(g) The home must be built of standard construction and must meet all applicable state and local building, mechanical, and housing codes for fire and life safety;

(h) A resident must have a bedroom that:

(A) Was constructed as a bedroom when the home was built or remodeled under permit;

(B) Is finished with walls or partitions of standard construction that go from floor to ceiling;

(C) Has a door large enough to accommodate the occupant of the room and any equipment that may be necessary such as a hospital bed or wheelchair;

(D) Be adequately ventilated, heated, and lighted with at least one operable window or exterior door that leads directly outside as a secondary egress for resident use; and

(E) Has at least 70 square feet of usable floor space.

(i) All exit ways, including windows, must remain unobstructed at all times;

(j) Flammable materials cannot be stored within 36 inches of open flame or heat sources;

(k) Only sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the State Fire Marshal or State Fire Marshal's designee. Heaters must be plugged directly into an outlet and may not be used with extension cords; and

(l) The licensee must install or make available any supportive device necessary to meet the resident's needs and ensure resident safety including, but not limited to grab bars, ramps, and door alarms.

(18) A license is not transferable and does not apply to any location or person other than the location and the person indicated on the license obtained from the local licensing authority.

(19) The licensee must notify the local licensing authority at least 30 days prior to any change in residential or mailing address.

(20) The Department, the local licensing authority, and the Centers for Medicare and Medicaid Services (CMS) have authority to conduct inspections with or without advance notice to the licensee or the resident of a home. The licensee must allow and authorize other caregivers and occupants to permit entrance and access to the home and the resident for the purpose of assessing, monitoring, inspection, investigation, and other duties within the scope of the Department, the local licensing authority, or CMS.

(21) The applicant or licensee must obtain any training and maintain resident record documentation deemed necessary by the Department to provide adequate care for the resident.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0665 Abuse Reporting, Complaints, and Notification of Findings

(Temporary Effective 1/1/2015 to 06/29/2015)

(1) ABUSE REPORTING. Abuse is prohibited. The facility employees and licensee may not permit, aid, or engage in abuse of residents who are under their care. Abuse and suspected abuse must be reported in accordance with OAR 411-020-0020.

(a) STAFF REPORTING. All facility employees must immediately report abuse and suspected abuse to the investigative authority.

(b) LICENSEE REPORTING. The licensee must immediately notify the investigative authority of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

(c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances).

(2) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The licensee may not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner, including, but not limited to:

(A) Increasing or threatening to increase charges;

(B) Decreasing or threatening to decrease services;

(C) Withholding rights or privileges;

(D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(E) Threatening to harass or abuse a resident in any manner.

(b) The licensee must ensure any complainant, witness, or employee of a facility is not subjected to retaliation by any caregiver, (including the caregiver's family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint, or being a witness, including, but not limited to, restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(c) Anyone who, in good faith, reports abuse or suspected abuse has immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

(3) Immunity under this rule does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(4) The local licensing authority must furnish each adult foster home with a Complaint Notice that states the telephone number of the Department, the investigative authority, and the Long-Term Care Ombudsman, and the procedure for making complaints.

(5) Any person who believes these rules have been violated may file a complaint with the Department, the local licensing authority, or the investigative authority.

(6) The Department or the investigative authority shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20, OAR chapter 407, division 45, or OAR chapter 943, division 45, as applicable.

(7) Immediate protection shall be provided for the residents by the Department, the local licensing authority, or the investigative authority, as necessary, regardless of whether the investigative report is completed. The licensee must immediately cease any practice that places a resident at risk of serious harm.

(8) **PRELIMINARY FINDINGS.** The Department, through the investigative authority, shall provide, by written communication or electronic mail, a copy of the preliminary abuse investigation report to the licensee and complainant within seven business days of the completion of the investigation:

(a) The report shall be accompanied by a notice informing the licensee and complainant of their right to give additional information about the content of the report to the investigative authority within 10 calendar days of receipt of the report.

(b) The investigative authority must review the responses and reopen the investigation or amend the report if the additional evidence warrants a change.

(9) A copy of the entire report shall be sent to the Department upon completion of the investigation report.

(10) NOTIFICATION OF FINDINGS. Upon a determination of substantiated abuse or a rule violation, the Department must provide written notification of its findings to the licensee.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation;

(B) Include the date and time of each occurrence;

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(E) Include a copy of the complaint investigation report;

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 calendar days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Department determines there is substantiated abuse, the Department may determine the licensee, an individual, or both the licensee and an individual were responsible for abuse. In determining responsibility, the Department shall consider intent, knowledge, and ability to control, and adherence to professional standards, as applicable.

(A) LICENSEE RESPONSIBLE. Examples of when the Department shall determine the licensee is responsible for the abuse include, but are not limited to, the following:

(i) Failure to provide sufficient, qualified staffing in accordance with these rules without reasonable effort to correct;

(ii) Failure to check for or act upon relevant information available from a licensing board;

(iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff;

(iv) Failure to adequately train, orient, or provide sufficient oversight to staff;

(v) Failure to provide adequate oversight to residents;

(vi) Failure to allow sufficient time to accomplish assigned tasks;

(vii) Failure to provide adequate services;

(viii) Failure to provide adequate equipment or supplies;
or

(ix) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL RESPONSIBLE. Examples of when the Department determines an individual is responsible includes, but is not limited to:

(i) Intentional acts against a resident, including assault, rape, kidnapping, murder, or sexual, verbal, or mental abuse;

(ii) Acts contradictory to clear instructions from the facility, such as those identified in section (9)(b)(A) of this rule, unless the act is determined by the Department to be the responsibility of the facility;

(iii) Callous disregard for resident rights or safety; or

(iv) Intentional acts against a resident's property (e.g., theft or misuse of funds).

(C) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(D) NURSING ASSISTANTS. In cases of substantiated abuse by a nursing assistant, the written notice shall explain:

(i) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140; and

(ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(c) DISTRIBUTION.

(A) The written notice shall be mailed to:

(i) The licensee;

(ii) Any person reported to have committed wrongdoing;

(iii) The complainant, if known;

(iv) The Long-term Care Ombudsman; and

(v) The local licensing authority.

(B) A copy of the written notice must be placed in the Department's facility complaint file.

(10) Upon receipt of a notice that substantiates abuse for victims covered by ORS 430.735, the facility must provide written notice of the findings to the individual found to have committed abuse, residents of the facility, and the residents' case managers and legal representatives.

(11) Licensees who acquire substantiated complaints pertaining to the health, safety, or welfare of residents may be assessed civil penalties, have conditions placed on their licenses, or have their licenses suspended, revoked, or not renewed.

(12) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the local licensing authority. Individuals may purchase a photocopy upon requesting an appointment to do so.

(13) The Department and the local licensing authority shall not disclose information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0670 and:

(a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency;

(b) Treat the names of the witnesses as confidential information; and

(c) Clearly designate the final disposition of the complaint.

(A) PENDING COMPLAINT REPORTS. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) COMPLAINT REPORTS AND RESPONSES. The investigation reports, including copies of the responses with confidential information deleted, must be available to the public at the local licensing authority office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 124.050, 124.060, 124.075, 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0670 Inspections

(Renumbered from 411-050-0450 - Amended 9/1/2013)

(1) The local licensing authority must conduct an inspection of an adult foster home and all structures on the adult foster home property:

- (a) Prior to issuance of a license;
- (b) Prior to the annual renewal of a license. The local licensing authority must conduct this inspection unannounced;
- (c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or
- (d) Anytime the Department has probable cause to believe a home has violated a regulation or provision of these rules or is operating without a license.

(2) The Department may conduct inspections:

- (a) Any time such inspections are authorized by these rules and any other time the Department considers it necessary to determine if a home is in compliance with these rules or with conditions placed upon the license;
- (b) To determine if cited violations have been corrected; and
- (c) For the purpose of routine monitoring of the residents' care.

(3) State or local fire inspectors must be permitted access to enter and inspect adult foster homes regarding fire safety upon the Department's request.

(4) The Department, the local licensing authority, the investigative authority, and the Centers for Medicare and Medicaid Services (CMS) have authority and must have full access to examine and copy facility and resident records, including but not limited to, admission agreements, private pay resident contracts, and resident account records, as applicable.

(5) PRIVATE INTERVIEW. Department, local licensing authority, investigative authority, and CMS staff have authority to interview the licensee, resident manager, other caregivers, and the residents. Interviews must be confidential and conducted privately.

(6) Licensees must authorize all staff to permit the Department, local licensing authority, the investigative authority, and CMS staff, for the purpose of inspection, investigation, and other duties within the scope of their authority:

(a) Entrance to the adult foster home and any other structure on the premises; and

(b) Access to resident and facility records.

(7) The Department, local licensing authority, the investigative authority, and CMS has authority to conduct inspections with or without advance notice to the licensee, staff, or the residents of the home. The Department, local licensing authority, and CMS shall not give advance notice of any inspection if it is believed that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) If Department, local licensing authority, the investigative authority, or CMS staff are not permitted access for inspection, a search warrant may be obtained.

(9) The inspector must respect the private possessions of the residents, licensee, and staff while conducting an inspection.

(10) PUBLIC FILE. The local licensing authority must maintain current information on all licensed adult foster homes and must make all non-confidential information available to prospective residents and other interested members of the public at local licensing authority offices throughout the state as authorized by law. The information includes:

(a) The location of the adult foster home and the name and mailing address of the licensee if different;

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

- (c) A copy of the current license that indicates the current classification, level, and capacity of the home, as applicable;
- (d) The date the licensee was first licensed to operate that home;
- (e) 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 inspection findings;
- (f) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings, actions taken by the Department, and responses from the licensee and complainant, as appropriate. All complaint terminology must be clearly defined and the final disposition clearly designated;
- (g) Any license conditions, suspensions, denials, revocations, non-renewals, civil penalties, variances, or other actions taken by the Department involving the home; and
- (h) Whether care is provided primarily by the licensed provider, a resident manager, or shift caregivers.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0675 Procedures for Correction of Violations

(Renumbered from 411-050-0460 - Amended 9/1/2013)

- (1) If, as a result of an inspection or investigation, the Department determines that abuse has occurred, the licensee shall be notified verbally to immediately cease the abusive act. The Department shall follow-up with a written confirmation of the warning to cease the abusive act and shall include notification that further sanctioning may be imposed.
- (2) If an inspection or investigation indicates a violation of these rules other than abuse, the local licensing authority shall notify the licensee of the violation in writing.

(3) The notice of violation may not include information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Notices placed in the public file must be in compliance with OAR 411-050-0670 and must include the following:

- (a) A description of each condition that constitutes a violation;
- (b) Each rule that has been violated;
- (c) A specific time frame for correction, not to exceed 30 calendar days after receipt of the notice. The local licensing authority may approve a reasonable time in excess of 30 calendar days if correction of the violation within that time frame is not practical. If the licensee requests more than 30 calendar days to correct the violation, such time must be specified in the licensee's plan of correction and must be found acceptable by the local licensing authority;
- (d) Sanctions that may be imposed against the home for failure to correct the violation;
- (e) The right of the licensee to contest the violation if an administrative sanction is imposed; and
- (f) The right of the licensee to request a variance as provided in OAR 411-050-0642.

(4) At any time after receipt of a notice of violation or an inspection report, the applicant, the licensee, the local licensing authority, or the Department may request a meeting. The meeting must be scheduled within 10 business days of a request by any party.

- (a) The purpose of the meeting is to discuss the violation stated in the notice of violation, provide information, and to assist the applicant or licensee in achieving compliance with the requirements of these rules.
- (b) The request for a meeting by an applicant, licensee, local licensing authority, or the Department does not extend any previously established time frame for correction.

(5) The applicant or licensee must notify the local licensing authority of correction of the violation by completing a written response in the provider's statement of correction section on the violation. Notification of correction of the violation must be submitted to the local licensing authority no later than the date specified in the notice of violation.

(6) The local licensing authority may conduct a re-inspection of the home after the date the local licensing authority receives the report of compliance, or after the date the violation must be corrected as specified in the notice of violation.

(7) For violations that present an imminent danger to the health, safety, or welfare of residents, the licensee must correct the violation and abate the conditions no later than 24 hours after receipt of the notice of violation. The local licensing authority may inspect the home after the 24-hour period to determine if the violation has been corrected as specified in the notice of violation.

(8) If residents are in immediate danger, the license may be immediately suspended and arrangements made to move the residents.

(9) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the local licensing authority has not received a report of compliance, the Department may institute one or more administrative sanctions.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0680 Administrative Sanctions

(Renumbered from 411-050-0465 - Amended 9/1/2013)

(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
- (d) Reclassification of a license.

(2) If the Department imposes an administrative sanction, the Department shall serve a notice of administrative sanction upon the licensee personally, by certified or registered mail, or by certified electronic mail if requested by the licensee.

(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 Department'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 Department shall issue a final order of default if the licensee fails to request a hearing within the specified time.

(4) The licensee must comply with any final order of the Department.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443..001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0685 Civil Penalties

(Amended 04/01/2014)

(1) Except as otherwise provided in this rule, 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, unless otherwise required by law, 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 licensee or other qualified caregiver on duty 24 hours per day in the adult foster home.

(4) A mandatory penalty of \$250 shall be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) The Department shall impose a civil penalty of not less than \$250 nor more than \$500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee and the admission places the resident or other residents at risk of harm.

(6) Civil penalties up to a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Department or the Department's designee conducts an investigation and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Department shall impose a civil penalty of not less than \$2,500 for each violation.

(a) To impose this civil penalty, the Department must establish that:

(A) The abuse arose from deliberate or other than accidental action or inaction;

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(C) The person with the finding of abuse had a duty of care toward the resident.

(b) For the purposes of this civil penalty, the following definitions apply:

(A) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(C) "Sexual abuse" means any form of nonconsensual sexual contact including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty provided by law, the Department 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 licensee fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance;

(d) The home is unable to provide adequate level of care to the 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 licensee fails to cooperate with the Department or fails to cooperate with the prescribing practitioner or licensed health care professional in carrying out a resident's care plan; or

(g) The licensee fails to obtain an approved background check from the Department prior to employing a caregiver in the home.

(9) A civil penalty may be imposed for violations other than those involving the health, safety, or welfare of a resident if the licensee fails to correct the violation as required when a reasonable time frame for correction was given.

(10) Any civil penalty imposed under this rule becomes due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person or sent by registered or certified mail and must 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.

(11) The person to whom the notice is addressed shall have 10 calendar days after 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 Department shall issue a final order by default.

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

(13) When imposing a civil penalty, the Department 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; and

(e) The degree of harm to residents.

(14) 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.

(15) Unless the penalty is paid within 10 calendar 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 that person. The Department may also initiate a notice of revocation for failure to comply with a final order.

(16) 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.

(17) All penalties recovered under ORS 443.790 to 443.815 are paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

411-050-0686 Conditions

(Renumbered from 411-050-0483 - Amended 9/1/2013)

(1) Conditions may be attached to a license and take effect immediately upon notification by the Department or the delivery date of the notice, whichever is sooner. 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, safety, or welfare of the residents;
- (b) A threat to the health, safety, or welfare of a resident exists;
- (c) There is reliable evidence of abuse, neglect, or exploitation; or
- (d) The home is not being operated in compliance with these rules.

(2) Examples of conditions that may be imposed on a licensee include, but are not limited to:

- (a) Restricting the total number of residents based upon the ability of the licensee to meet the health and safety needs of the residents;
- (b) Restricting the number of residents a provider may admit or retain within a specific classification or level based upon the ability of the licensee and staff to meet the health and safety needs of all the residents;
- (c) Changing the classification of the license based on the licensee's ability to meet the specific care needs of the residents;
- (d) Requiring additional staff to meet the resident's care needs;
- (e) Requiring additional qualifications or training of licensee and staff to meet specific resident care needs;

(f) Restricting admissions when there is a threat to the current residents of the home and admitting new residents would compound that threat; and

(g) Restricting a licensee from allowing persons on the premises who may be a threat to a resident's health, safety, or welfare.

(3) In accordance with OAR 411-050-0680, the licensee shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.550. A licensee must request a hearing in writing within 21 calendar days after the receipt of the notice. Conditions take effect immediately and are a final order of the Department unless later rescinded through the hearings process.

(4) In addition to, or in-lieu of, a contested case hearing, a licensee may request an informal conference with the Department of conditions imposed. The informal conference does not diminish the licensee's right to a hearing.

(5) Conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied. If the licensee believes the situation that warranted the condition has been remedied, the licensee may request in writing that the condition be removed.

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

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0687 Denial, Revocation, or Non-Renewal of License

(Renumbered from 411-050-0480 - Amended 9/1/2013)

(1) The Department shall deny, revoke, or refuse to renew a license where the Department 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 Department has conducted a background check and determined the applicant or licensee is not approved in accordance with OAR 411-050-0620;

(c) The licensee allows a caregiver, or any other person, excluding the residents, to reside or work in the adult foster home, who has been convicted of potentially disqualifying crimes, and has been denied, or refused to cooperate with the Department in accordance with OAR 411-050-0620; or

(d) The applicant or licensee falsely represents that he or she has not been convicted of a crime.

(2) The Department shall deny, revoke, or refuse to renew a license where the Department of Human Services has received notice from the Department of Revenue in accordance with ORS 305.385.

(3) The Department may deny, revoke, or refuse to renew an adult foster home license if the applicant or licensee:

(a) Submits incomplete or untrue information to the Department;

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

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

(d) 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 licensee is able to demonstrate to the Department by clear and convincing evidence that the person does not pose a threat to the residents. For purposes of this subsection, an applicant or licensee is "associated with" a person if the applicant or licensee:

- (A) Resides with the person;
 - (B) Employs the person in the foster home;
 - (C) Receives financial backing from the person for the benefit of the foster home;
 - (D) Receives managerial assistance from the person for the benefit of the foster home;
 - (E) Allows the person to have access to the foster home; or
 - (F) Rents or leases 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 that interferes with the ability to provide care and services;
 - (h) Has previously been cited for the operation of an unlicensed adult foster home;
 - (i) Does not possess the good judgment or character deemed necessary by the Department;
 - (j) Fails to correct a violation within the specified time frame;
 - (k) Refuses to allow access and inspection;
 - (l) Fails to comply with a final order of the Department to correct a violation of the rules for which an administrative sanction has been imposed, such as a license condition;

(m) Fails to comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty;

(n) Fails to take or pass the Department's Ensuring Quality Care Course and examination;

(o) Fails to obtain an approved background check for subject individuals according to OAR 411-050-0620 on more than one occasion;

(p) Has previously surrendered a license while under investigation or administrative sanction during the last three years;

(q) Is not currently or has not previously been in compliance with employment or tax laws; or

(r) Fails to operate the home or any other facility in substantial compliance with ORS 443.705 to 443.825.

(4) If the Department issues a notice of revocation for the reason of abuse, neglect, or exploitation of a resident, the licensee may request a review in writing within 10 calendar days after receipt of the notice of the revocation. If a request is made, the Department must review all material relating to the allegation of abuse, neglect, or exploitation and the revocation within 10 calendar days. The Department shall determine, based on a review of the material, whether to sustain the decision. If the Department does not sustain the decision, the license shall be restored immediately. The decision of the Department is subject to a contested case hearing under ORS 183.

(5) If a license is revoked or not renewed, the licensee is entitled to a contested case hearing preceding the effective date of the revocation or non-renewal if the licensee requests a hearing in writing within 21 calendar days after receipt of the notice. If no written request for a hearing is timely received, the Department shall issue the final order by default. The Department may designate its file as the record for purposes of default.

(6) A license subject to revocation or non-renewal remains valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.

(7) If an initial license is denied for any reason other than the results of a test or inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within 60 calendar days after receipt of the denial notice. If no written request for a hearing is timely received, the Department shall issue a final order by default. The Department may designate its file as the record for purposes of default.

(8) If a license is revoked or not renewed, the Department may arrange for residents to move for the residents' protection.

Stat. Auth.: ORS 410.070, 430.735, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0688 Suspension of License

(Renumbered from 411-050-0481 - Amended 9/1/2013)

(1) The Department may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if:

(a) The Department finds that the abuse, neglect, or exploitation causes an immediate threat to any of the residents; or

(b) The licensee fails to operate the home or any other facility in substantial compliance with ORS 443.705 to 443.825.

(2) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 calendar days after receipt of the notice and order of suspension. Within 10 calendar days after receipt of the licensee's request for a review, the Department must 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 Department shall determine, based on a review of the material, whether to sustain the decision. If the Department does not sustain the decision, the suspension

shall be rescinded immediately. The decision of the Department is subject to a contested case hearing under ORS 183 if requested within 90 calendar days.

(3) The Department shall suspend a license upon written notice from the Department of Revenue in accordance with ORS 305.385, and after notice to the licensee and a hearing if requested.

(4) If a license is suspended, the Department may arrange for residents to move for the resident's protection.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

411-050-0690 Criminal Penalties

(Renumbered from 411-050-0485 - Amended 9/1/2013)

(1) Operating an adult foster home without a license is punishable as a Class C misdemeanor ORS 443.991(5).

(2) Refusing to allow access and inspection of a home by Department or local licensing authority staff or state or local fire inspection is a Class B misdemeanor ORS 443.991(6).

(3) The Department 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 a notice of revocation or suspension has been given and a reasonable time for placement of individuals in other facilities has been allowed.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991