DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES DIVISION
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 325

24 HOUR RESIDENTIAL SERVICES FOR CHILDREN AND ADULTS WITH DEVELOPMENTAL DISABILITIES

411-325-0010 Statement of Purpose
(Amended 8/1/2004)

These rules prescribe standards, responsibilities, and procedures for 24-Hour Residential Programs providing services to individuals with developmental disabilities. These rules also prescribe the standards and procedures by which the Department of Human Services licenses programs to provide residential care and training to individuals with developmental disabilities.

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

411-325-0020 Definitions
(Amended 8/1/2004)

(1) "24-Hour Program" means a comprehensive residential program licensed by the Department of Human Services under ORS 443.400(7) and (8), to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) "Abuse of a child" is defined in ORS 418.005, 419B.005, 418.015, 418.748, and 418.749. This includes but is not limited to:

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

(B) Any physical injury including, but not limited to, bruises, welts, burns, cuts, broken bones, sprains, bites, which are deliberately inflicted;

(C) Neglect including, but not limited to, failure to provide food, shelter, medicine, to such a degree that a child's health and safety are endangered;

(D) Sexual abuse and sexual exploitation including, but not limited to, any sexual contact in which a child is used to sexually stimulate another person. This may include anything from rape to fondling to involving a child in pornography;

(E) Threat of harm including, but not limited to, any action, statement, written or non-verbal message which is serious enough to make a child believe he or she is in danger of being abused;

(F) Mental injury including, but not limited to, a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or

(G) Child selling including, but not limited to, buying, selling or trading for legal or physical custody of a child;

(b) Abuse of an Adult. Except for those additional circumstances listed in OAR 411-325-0020(2)(c)(A-F) abuse of an adult means one or more of the following:

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

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

(C) Willful infliction of physical pain or injury; or

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult.

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and wellbeing.

(c) Abuse in other circumstances. When the Department directly operates any licensed 24 Hour Residential Program; or the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes, but is not limited to, the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or tolerating or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services;

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate or unauthorized restraint that results in injury.

(i) A restraint is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a behavior support plan; or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A restraint is not authorized if:

(I) There is not a written physician's order when the restraint is used as a heath related protection; or

(II) It is applied without ISP Team approval as identified on the ISP and is described in a formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation which may include, but is not limited to, an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or his/her legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit,

commingling an individual's funds with program or another individual's funds, or the program becoming guardian or conservator.

(G) The definitions of abuse described in OAR 411-325-0020 (2)(b)(A-E) also apply to homes or facilities licensed to provide 24-Hour Residential Services for children with developmental disabilities or to agencies licensed or certified to provide Proctor Foster Care for children with developmental disabilities.

(H) The definitions of abuse described in OAR 411-325-0020 (2)(c)(A-F) also apply to staff of the CMHDDP or a Support Services Brokerage.

(3) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(4) "Administration of medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(5) "Administrator" means the Assistant, Department of Human Services and Administrator of Seniors and People with Disabilities or that person's designee.

(6) "Adult" means an individual 18 years or older with developmental disabilities.

(7) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(8) "Aid to physical functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(9) "Appeal" is the process by which a licensed provider may petition the suspension, denial or revocation of their license or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(10) "Applicant(s)" means a person, agency, corporation or governmental unit, who applies for a license to operate a residential home or facility providing 24-hour comprehensive services to individuals with developmental disabilities.

(11) "Assessment" means an evaluation of an individual's needs. The evaluation is performed by a Services Coordinator or other designated Individual Support Plan team members who will use the evaluation to develop the individual's Individual Support Plan (ISP). At a minimum this includes the completion of the Personal Focus Worksheet and Risk Tracking Record.

(12) "Baseline Level of Behavior" means the frequency, duration or intensity of a behavior, objectively measured, described and documented prior to the implementation of an initial or revised behavior support plan. This baseline measure serves as the reference point by which the ongoing efficacy of the support plan is to be assessed. A baseline level of behavior should be reviewed and reestablished at minimum yearly, at the time of the individual's support plan team meeting.

(13) "Behavior Data Collection System" is the methodology specified within the individual's behavior support plan that directs the process for recording observation, intervention and other support provision information critical to the analysis of the efficacy of the behavior support plan.

(14) "Behavior Data Summary" is a document composed by the provider agency to summarize episodes of physical intervention. This document serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(15) "Board of Directors" means a group of individuals formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(16) "Care" means supportive services, including but not limited to, provision of room and board, supervision, protection;, and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation. Care also includes being aware of the individual's general whereabouts at all times, and monitoring the activities of the individuals while on the premises of the residence to ensure their health, safety and welfare.

(17) "Chemical restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior/treatment plan.

(18) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(19) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(20) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program which operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(22) "Competency Based Training Plan" means a written description of a provider's process for providing training to newly hired program staff. At a minimum the plan must address health, safety, rights, values and personal regard, and the provider's mission. The plan will describe competencies,

training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency(ies) may be waived by a provider to accommodate a staff person's specific circumstances.

(23) "Complaint investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

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

(25) "Crisis" means a situation, as determined by a qualified Services Coordinator, that could result in civil court commitment under ORS. 427.215 through 427.300, an imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no alternative resources available.

(26) "Denial" is the refusal of the Department of Human Services to issue a license to operate a 24-hour residential home/facility for children or adults because the Department has determined that the home/facility is not in compliance with one or more of these administrative rules.

(27) "Department" means Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(28) "Developmental Disability for adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

> (a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and
>
> (b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; and

(d) The condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) Results in significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(29) "Developmental Disability for children five years and younger" means the condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely, and is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: self care; receptive and expressive language; learning; mobility and self-direction; OR

(b) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in (28).

(30) "Developmental Disability for children six years and older" is always provisional and means:

(a) There is a diagnosis of mental retardation; OR

(b) There is a diagnosis of developmental disability; AND

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: self-care; receptive and expressive language; learning; mobility; self-direction; AND

(B) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(C) The individual is expected to need multiple, specialized supports indefinitely.

(31) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home/facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.

(32) "Domestic Animals" are any of various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(33) "Educational Surrogate" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when the parent cannot be identified or located after reasonable efforts, when there is reasonable cause to believe that the child has a disability and is a ward of the state, or at the request of a parent or adult student.

(34) "Entry" means admission to a Department funded developmental disability service provider. For purposes of this rule "entry" means admission to a 24-hour licensed home/facility.

(35) " Executive Director" means the individual designated by a board of directors or corporate owner responsible for the administration of the program's services for individuals.

(36) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(37) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program or an employee of the program.

(38) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(39) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(40) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505(12); or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR 411-365-0100 through 411-365-0320.

(41) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual.

(42) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(43) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator.

(44) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for an individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(45) "Individualized Education Plan" (IEP) means a written plan of instructional goals and objectives in conference with the teacher, parent/guardian, student, and a representative of the school district.

(46) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, agency representatives who provide service to the individual if appropriate for in-home supports, the guardian, if any, relatives of the individual, and the Services Coordinator and other persons who are well liked by the individual.

(47) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, that are in proximity to community resources and foster contact with persons in their community. (See ORS 427.005.)

(48) "Legal representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the adult, or a person, or agency who is authorized by the court to make decisions about services for the individual.

(49) "Licensee" means a person or organization to whom a license is granted.

(50) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team will have the authority to make decisions for the team. Representatives from service

provider(s), families, the CDDP, or advocacy agencies will be considered as one member of the ISP team for the purpose of reaching majority agreement.

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

(52) "Mechanical restraint" means any mechanical device, material, object or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual's body.

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

(54) "Modified diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(55) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(56) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught or delegated to the provider and staff.

(57) "Oregon Core Competencies" is:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

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

(58) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and nonaversive behavior intervention. The system uses principles of pro-active support and describes approved physical intervention techniques that are used to maintain health and safety.

(59) "Physical intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(60) "Physical restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(61) "Prescription medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(62) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(63) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(64) "Protective services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and safeguard an individual's person, property, and funds as soon as possible.

(65) "Psychotropic medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(66) "Respite care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(67) "Revocation" is the action taken to rescind a 24-hour home/facility license after the Department has determined that the program is not in compliance with one or more of these administrative rules.

(68) "Self-administration of medication" means without supervision, the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, and safely maintaining the medication(s).

(69) "Services Coordinator" means an employee of the community developmental disability program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities.

(70) "Service provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider", "program", "applicant" or "licensee" is synonymous with "service provider."

(71) "Significant other" means a person selected by the individual to be his/her friend.

(72) "Specialized diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise specified by a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, without physician's

orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(73) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(74) "Support" means those services that assist an individual maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence.

(75) "Suspension of License" is a temporary withdrawal of the approval to operate a 24-hour home or facility after the Department determines that the 24-hour home or facility is not in compliance with one or more of these administrative rules.

(76) "Transfer" means movement of an individual from one home/facility to another within the same county, administered by the same service provider..

(77) "Transition plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(78) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(79) "Variance" means an exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the provider.

(80) "Volunteer" is any individual assisting in a 24-hour home or facility without pay to support the care provided to individuals residing in the home or facility.

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

411-325-0030 Issuance of License
(Amended 8/1/2004)

(1) License required. No person, agency or governmental unit acting individually or jointly with any other person, agency or governmental unit will establish, conduct, maintain, manage or operate a residential home or facility providing 24-hour support services without being licensed for each home or facility.

(2) Not transferable. No license is transferable or applicable to any location, home or facility, agency, management agent or ownership other than that indicated on the application and license.

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

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

411-325-0040 Application for Initial License
(Adopted 1/1/2004)

(1) Application. At least 30 days prior to anticipated licensure the applicant must submit an application and required non-refundable fee. The application will be provided by the Department and must include all information requested by the Department.

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

(3) Contracts. The initial application must include a copy of any lease agreements or contracts, management agreements or contracts, and sales agreements or contracts, relative to the operation and ownership of the home or facility.

(4) Floor Plan. The initial application must include a floor plan of the home or facility showing the location and size of rooms, exits, smoke alarms and extinguishers.

(5) Scheduled onsite-licensing inspection. Should the scheduled, onsite licensing inspection reveal that the applicant is not in compliance with these rules, as attested to on the Licensing Onsite Inspection Checklist, the onsite licensing inspection may be rescheduled at the Department's convenience.

(6) License required prior to providing services. Applicants must not admit any individual to the home or facility prior to receiving a written confirmation of licensure from the Department.

(7) Demonstrated Capability and Performance History

> (a) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed, or may deny or revoke the license.
>
> (b) Any applicant or person with a controlling interest in an agency will be considered responsible for acts occurring during, and relating to, the operation of such home/facility or agency for purpose of licensing.

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

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

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

(9) Admittance of individuals. No residential home or facility will admit individuals whose care needs exceed the classification on its license without prior written consent of the Department.

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

411-325-0050 License Expiration, Termination of Operations, License Return
(Adopted 1/1/2004)

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

(2) Termination of operation.

(a) If the home or facility operation is discontinued for any reason, the license will be considered to have been terminated.

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

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

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

411-325-0060 Conditions on License
(Amended 8/1/2004)

Attaching conditions to a license. The Department may attach conditions to the license which limit, restrict or specify other criteria for operation of the home or facility.

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

411-325-0070 Renewal of License
(Adopted 1/1/2004)

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

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

(3) Licensing review. The Department will conduct a licensing review of the service prior to the renewal of the license. The review will be unannounced, be conducted 30 - 120 days prior to expiration of the license, and will review compliance with OAR 411-325-0010 through 411-325-0480.

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

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

411-325-0080 Mid-Cycle Review
(Amended 8/1/2004)

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the home or facility nine to fifteen months after renewal of the provider's license under the following circumstances:

(a) Failure by the provider to successfully complete licensing renewal as evidenced by two or more follow-up reviews; or

(b) Failure by the provider to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or provider.

(2) Self-Assessment Required. As part of the mid-cycle process the provider must conduct a self-assessment based upon the requirements of this rule.

(a) The provider must document the findings of the self-assessment on forms provided by the Department;

(b) The provider must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The provider must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) Compliance with OAR 411-325-0010 through 411-325-0480. The review will be conducted for compliance with OAR 411-325-0010 through 411-325-

0480, and at the discretion of the Department the review may be announced or unannounced.

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

411-325-0090 Change of Ownership, Legal Entity, Legal Status, Management Corporation
(Adopted 1/1/2004)

(1) Notice of pending change in ownership, legal entity, legal status, or management corporation. The home or facility must notify the Department in writing of any pending change in the program's ownership or legal entity, legal status, or management corporation.

(2) New license required. A new license will be required upon change in a program's ownership, legal entity or legal status. The program must submit a license application and required fee at least 30 days prior to change in ownership, legal entity or legal status.

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

411-325-0100 Inspections and Investigations
(Amended 8/1/2004)

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

(a) Quality assurance, license renewal and onsite inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) Inspections and investigations by the Department, its designee or proper authority. All inspections and investigations must be performed by the Department, its designee, or proper authority.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, its designee or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee has determined to initiate an investigation, the provider must not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

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

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

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

(d) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or its designee must conduct investigations prescribed in OAR 407-045-0250 through OAR 407-045-0360 and must complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0330. The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not

substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation. Upon completion of the abuse investigation by the Department, its designee, or a law enforcement agency, a provider may conduct an investigation to determine if any personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law will be provided to the appropriate provider(s). The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) Plan of correction. A plan of correction must be submitted to the CDDP and the Department for any noncompliance found during an inspection under this rule.

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

411-325-0110 Variances
(Adopted 1/1/2004)

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

(2) Variance application. The provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

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

(b) The reason for the proposed variance;

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

(d) If the variance applies to an individual's services, evidence that the variance is consistent with a currently approved ISP according to OAR 411-325-0430.

(3) Community Developmental Disability Program review. The CDDP shall forward the signed variance request form to the Department within 30 days of receipt of the request indicating its position on the proposed variance.

(4) Department review. The Administrator or designee may approve or deny the request for a variance.

(5) Notification. The Department must notify the provider and the CDDP of the decision. This notice will be sent within 30 calendar days of receipt of the request by the Department with a copy to other relevant Department programs or offices.

(6) Appeal. Appeal of the denial of a variance request will be made in writing to the Administrator with a copy sent to the CDDP. The Administrator's decision will be final.

(7) Duration of variance. The Department will determine the duration of the variance.

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

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

411-325-0120 Health: Medical
(Amended 8/1/2004)

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

(a) Individual health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if provided ;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) Individual health care. The individual must receive care that promotes their health and well being as follows:

(a) The program must ensure each individual has a primary physician or primary health care provider whom he or she, the parent, guardian or legal representative has chosen from among qualified providers;

(b) The program must ensure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by a physician;

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

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

(A) Prescription medications;

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

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The program must implement a physician's or qualified health care provider's order.

(3) Required documentation. The program must maintain records on each individual to aid physicians, licensed health professionals and the program in understanding the individual's medical history. Such documentation must include:

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

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

(c) A record of known hospitalizations and surgeries.

(4) Medication procurement and storage. All medications must be:

(a) Kept in their original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer or physician, as specified per the physician's or licensed health care practitioner's written order; and

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

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

(a) The name of the individual;

(b) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency and method of administration;

(c) For topical medications and treatments without a physician's order, a transcription of the printed instructions from the package;

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

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

(f) Method of administration;

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

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

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

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

(6) Self-administration of medication. For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(7) Self-administration medications unavailable to other individuals. The program must ensure that individuals able to self-administer medications keep them in a secure locked container unavailable to other individuals

residing in the same residence and store them as recommended by the product manufacturer.

(8) PRN/Psychotropic medication prohibited. PRN (i.e., as needed), orders will not be allowed for psychotropic medication.

(9) Adverse medication effects safe guards. Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible, all prescription medication except samples provided by the health care provider, for an individual from a single pharmacy which maintains a medication profile for him or her;

(b) Maintaining information about each medication's desired effects and side effects;

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

(d) Documentation in the individual's record of reason why all medications should not be provided through a single pharmacy.

(10) Unused, discontinued, outdated, recalled and contaminated medications. All unused, discontinued, outdated, recalled and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:

(a) Date of disposal;

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

(c) Individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

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

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

(11) Direct nursing services. When direct nursing services are provided to an individual the program must:

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

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

(12) Notification. When the individual's medical, behavioral or physical needs change to a point that they cannot be met by the program, the Services Coordinator must be notified immediately and that notification documented.

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

411-325-0130 Health: Food and Nutrition
(Amended 8/1/2004)

(1) Well balanced diet. The provider must provide access to a well balanced diet in accordance with the U.S. Department of Agriculture.

(2) Modified or special diets. For individuals with physician or health care provider ordered modified or special diets the program must:

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

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

(3) Number of meals. At least three meals must be made available or arranged for daily.

(4) Need and preference of individual. Foods must be served in a form consistent with the individual's need and provide opportunities for choice in food selection.

(5) Prohibited food items. Unpasteurized milk and juice or home canned meats and fish must not be served or stored in the residence.

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

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

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

411-325-0140 Health: Physical Environment
(Adopted 1/1/2004)

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

(2) Water and sewage. The water supply and sewage disposal must meet the requirements of the current rules of the Department of Human Services governing domestic water supply.

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

(4) Septic tanks or other non-municipal sewage disposal systems. Septic tanks or other non-municipal sewage disposal systems must be in good working order. Incontinence garments must be disposed of in closed containers.

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

(6) Heat source screens. Screening for workable fireplaces and open-faced heaters must be provided.

(7) Heating and cooling devices. All heating and cooling devices must be installed in accordance with current Building Codes and maintained in good working order.

(8) Handrails. Handrails must be provided on all stairways.

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

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

(11) Insects and rodents. All measures necessary must be taken to prevent the entry of rodents, flies, mosquito's and other insects.

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

(13) State and local codes. Any work undertaken at a residence, including but not limited to, demolition, construction, remodeling, maintenance, repair, or replacement must comply with all applicable State and local

building, electrical, plumbing and zoning codes appropriate to the individuals served.

(14) Zoning. Programs must comply with all applicable, legal zoning ordinances pertaining to the number of individuals receiving services at the residence.

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

411-325-0150 Safety: General
(Amended 8/1/2004)

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

(a) Properly labeled;

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

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

(2) Flammable and combustible materials. All flammable and combustible materials must be properly labeled, stored and locked in accordance with State Fire Code.

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

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

(5) Hot water supply and temperature. Hot water in bathtubs and showers must not exceed 120 °F. Other water sources, except the dishwasher, must not exceed 140 °F.

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

(7) Square footage requirement for sleeping rooms. Sleeping rooms must have 60 square feet per individual with beds located at least three feet apart.

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

(9) First-aid kit and manual. First-aid kits and first-aid manuals must be available to staff within each residence in a designated location. First aid kits containing any items other than band-aids, tape, bandages must be locked.

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

411-325-0160 Program Management and Personnel Practices
(Amended 8/1/2004)

(1) Non-discrimination. The program must comply with all applicable state and federal statutes, rules and regulations in regard to non-discrimination in employment practices.

(2) Basic personnel policies and procedures. The program must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an alleged perpetrator in an abuse investigation or when the allegation of abuse has been substantiated.

(3) Prohibition against retaliation. A community program or service provider must not retaliate against any staff who reports in good faith suspected abuse or retaliate against the child or adult with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, will be subject to a penalty up to $1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the child or adult because of the report and includes, but is not limited to:

(A) Discharge or transfer from the program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the program or the individuals served by the program.

(4) Competency-based staff training plan. The program must have and implement a competency-based staff-training plan, which meets, at a

minimum, the competencies and timelines set forth in the Department's Oregon Core Competencies.

(5) Mandatory abuse reporting personnel policies and procedures. Any employee of a public or private community agency is required to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse or that any person with whom the employee comes in contact, while acting in an official capacity, has abused the individual. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following will apply:

(a) Agencies providing services to adults must report to the CDDP where the adult resides and if there is reason to believe a crime has been committed a report must also be made to law enforcement.

(b) Agencies providing services to children must report to DHS Child Welfare or law enforcement in the county where the child resides.

(6) Director qualifications. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services or a related field. Six years of experience in the identified fields may be substituted for a degree.

(7) General staff qualifications. Any employee providing direct assistance to individuals must meet the following criteria:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Oregon Department of Human Services policy and procedures for review of criminal history;

(c) Be literate and capable of understanding written and oral orders; be able to communicate with individuals, physicians, Services Coordinators and appropriate others; and be able to respond to emergency situations at all times;

(d) Have clear job responsibilities as described in a current signed and dated job description;

(e) Have knowledge of individuals' ISP's and all medical, behavioral and additional supports required for the individual; and

(f) Have met the basic qualifications in the program's competency based training plan.

(8) Personnel files and qualifications records. The program must maintain up-to-date written job descriptions for all employees as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each employee:

(a) Written documentation of references and qualifications being checked;

(b) Written documentation of an approved criminal record clearance by the Oregon Department of Human Services;

(c) Written documentation of employee notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;

(d) Written documentation of any substantiated abuse allegations;

(e) Written documentation kept current that the staff person has demonstrated competency in areas identified by the provider's competency based training plan as required by OAR 411-325-0160(4), and which is appropriate to their job description;

(f) Written documentation of 12 hours job-related inservice training annually; including documentation of training in CPR and first aid certification.

(9) Program documentation requirements. All entries required by this rule OAR 411-325-0010 to 411-325-0480 must:

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

(b) Be accurate and contain no willful falsifications;

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

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

(10) Dissolution of program. Prior to the dissolution of a program, a representative of the governing body or owner must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

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

411-325-0170 Safety: Staffing Requirements
(Amended 8/1/2004)

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

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

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

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

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

(2) Exceptions to minimum staffing requirements in OAR 411-325-0170(1)(a), (b) and (c) for homes or facilities serving adults. A home or facility is granted an exception to staffing requirements in OAR 411-325-0170(1)(a), (b) and (c) for adults to be home alone when the following conditions have been met:

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

(b) The amount of time any adult can be left alone will not exceed five hours within a twenty-four hour period and no adult will be responsible for any other adult or child in the home or community;

(c) No individual will be left home alone without staff supervision between the hours of 11:00 P.M. and 6:00 A.M.;

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

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

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

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

(D) Before opening door, checks who is there;

(E) Does not invite strangers to the home/facility;

(F) Answers door appropriately;

(G) Use small appliances, sharp knives, kitchen stove and microwave safely;

(H) Self-administers medications, if applicable;

(I) Safely adjusts water temperature at all faucets; and

(J) Safely takes shower/bathes without falling.

(e) There is a documented ISP team decision annually noting team agreement that the adult meets the requirements of OAR 411-325-0170(2)(d)(A)-(J).

(3) Changes in an adult's ability to remain home alone without supervision. If at any time the adult is unable to meet the requirements in OAR 411-325-0170(2)(d)(A)-(J), the provider must not leave the adult alone without supervision. In addition, the provider must notify the adult's Services Coordinator within one working day and request that the ISP team meet to address the adult's ability to be left alone without supervision.

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

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

411-325-0180 Safety: Individual Summary Sheets
(Amended 8/1/2004)

Current one to two page summary sheet. A current one to two page summary sheet must be maintained for each individual receiving services from the program. The record must include:

(1) The individual's name, current and previous address, date of entry into the program, date of birth, sex, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number where applicable, guardianship status; and

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

(a) The individual's legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, education surrogate, if applicable;

(b) The individual's preferred physician, secondary physician or clinic;

(c) The individual's preferred dentist;

(d) The individual's identified pharmacy;

(e) The individual's school, day program, or employer, if applicable;

(f) The individual's Services Coordinator, and for Department direct contracts, Department representative; and

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

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

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

411-325-0185 Safety: Emergency Information
(Adopted 9/11/2008)

(1) Effective September 1, 2009, a program must maintain emergency information for each individual receiving services from the program in addition to an individual summary sheet identified in OAR 411-325-0180.

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

(a) The individual's name;

(b) The provider's name, address and telephone number;

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

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

(A) The individual's race, sex, height, weight range, hair and eye color; and

(B) Any other identifying characteristics that could assist in identifying the individual should the need arise, such as marks or scars, tattoos, or body piercings.

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

(A) How the individual communicates;

(B) The language the individual uses or understands;

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

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

(f) The individual's health support needs including:

(A) Diagnosis;

(B) Allergies or adverse drug reactions;

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

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

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

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

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

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

(g) The individual's emotional and behavioral support needs including:

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

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

(h) Any court ordered or guardian authorized contacts or limitations;

(i) The individual's supervision requirements and why; and

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

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

411-325-0190 Safety: Incident Reports and Emergency Notifications
(Amended 8/1/2004)

(1) Incident reports. A written report that describes any incident as defined in OAR 411-325-0020(41) involving an individual must be placed in the individual's record. Such description must include:

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

(b) A description of the incident;

(c) Staff response at the time; and

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

(2) Sent to guardian and Services Coordinator. Copies of all unusual incident reports must be sent to the individual's Services Coordinator within five working days of the incident. Upon request of the guardian, copies of unusual incident reports will be sent to the guardian within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of unusual incident reports will not be provided to a guardian when the report is part of an abuse or neglect investigation.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR 411-325-0020(2)(a)(A)-(G), (b)(A)-(E), and (c)(A)-(H). When an abuse investigation has been initiated, the CDDP will assure that either the Services Coordinator or the program will also immediately notify the individual's legal guardian or conservator. The parent who is not the guardian, next of kin or other significant person may also be notified unless the adult requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification for serious illness, injury or death. In the case of a serious illness, injury or death of an individual, the program must immediately notify:

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

(b) The Community Developmental Disability Program; and

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

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

(a) The individual's guardian, if any, or nearest responsible relative;

(b) The individual's designated contact person;

(c) The local police department; and

(d) The Community Developmental Disability Program.

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

411-325-0200 Safety: Transportation
(Amended 8/1/2004)

(1) Vehicles operated to transport individuals. Providers, including employees and volunteers who own or operate vehicles that transport individuals, must:

(a) Maintain the vehicles in safe operating condition;

(b) Comply with Department of Motor Vehicles laws;

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

(d) Carry in vehicles a first aid kit.

(2) Seat belts and appropriate safety devices. When transporting, the driver must ensure that all individuals use seat belts. Individual car or booster seats will be used for transporting all children as required by law. When

transporting individuals in wheel chairs, the driver must ensure that wheel chairs are secured with tie downs and that individuals wear seat belts.

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

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

411-325-0210 Individual/Family Involvement Policy
(Adopted 1/1/2004)

(1) Individual/family involvement policy needed. The program must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the program;

(b) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the program to interact;

(c) Opportunities for individuals, families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the program.

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

411-325-0220 Individual Furnishings
(Adopted 1/1/2004)

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

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

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

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

(2) Linens. Two sets of linens must be provided, or arranged for each individual and include:

(a) Sheets and pillowcases;

(b) Blankets, appropriate in number and type for the season and the individual's comfort; and

(c) Towels and washcloths.

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

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

411-325-0230 Emergency Plan and Safety Review
(Amended 9/11/2008)

(1) EFFECTIVE DATE. This rule shall become effective on September 1, 2009.

(2) EMERGENCY PLANNING.

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

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

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

(b) If an individual regularly accesses the community independently, the provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

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

(a) The emergency plan must:

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

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

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

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food or supplies; and

(iv) Staff unable to report as scheduled.

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

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

(ii) The method and source of transportation;

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

(iv) A method that provides persons unknown to the individual the ability to identify each individual by the individual's name and to identify the name of the individual's supporting provider; and

(v) A method for tracking and reporting to the Seniors and People with Disabilities Division, local office, or designee, the physical location of each individual until a different entity resumes responsibility for the individual,

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

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

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

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

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

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

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

(d) The emergency plan summary, on the form supplied by the Seniors and People with Disabilities Division, must be sent to the Seniors and People with Disabilities Division annually and upon change of ownership.

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

(4) QUARTERLY SAFETY REVIEW. A documented safety review must be conducted quarterly to ensure that each residence is free of hazards. The provider must keep the quarterly safety review reports for three years and must make them available upon request by the CDDP or the Seniors and People with Disabilities Division.

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

411-325-0240 Safety: Assessment of Fire Evacuation Assistance Required
(Adopted 1/1/2004)

(1) Assessment of level of evacuation assistance required. The program must assess within 24 hours of entry to the residence the individual's ability to evacuate the residence in response to an alarm or simulated emergency.

(2) Documentation of level of assistance required. The program must document the level of assistance needed by each individual to safely evacuate the residence and such documentation must be maintained in the individual's entry records.

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

411-325-0250 Safety: Fire Drill Requirements and Fire Safety
(Amended 8/1/2004)

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

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

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

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

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

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

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

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

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

(4) Adaptations required for sensory or physically impaired. The program must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

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

411-325-0260 Safety: Individual Fire Evacuation Safety Plans
(Amended 8/1/2004)

(1) Written fire safety evacuation plan for five or fewer individuals residing in homes, duplexes, or apartments who are unable to evacuate residence in three minutes or less, or who request not to participate in fire drills. For individuals who are unable to evacuate the residence within the required evacuation time, or who, with concurrence of the ISP team, request not to participate in fire drills, the program must develop a written fire safety and evacuation plan that includes the following:

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

(b) Identification of how the individual will evacuate his/her residence including level of support needed;

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

(d) Identification of assistive devices required for evacuation;

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

(f) The alternative practices;

(g) Approval of the plan by the individual's guardian, case manager and the program director; and

(h) A plan to encourage future participation.

(2) Required documentation of practice and review of fire safety and evacuation plans. The program must maintain documentation of the practice and review of the safety plan by the individual and the staff.

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

411-325-0270 Specific Standards: Safety- Fire Safety Requirements for Homes on a Single Property or on Contiguous Property Serving Six or More Individuals
(Amended 9/11/2008)

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

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

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

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

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

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

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

(2) Licensed capacity plus respite bed for homes on a single property or on a contiguous property serving six or more individuals. At no time will the number of individuals served exceed the licensed capacity, except that one additional individual may receive respite care services not to exceed two weeks. Respite supports must not violate the safety and health sections of this rule.

(3) No admittance of person unable to appropriately respond. The program must not admit individuals functioning below the level indicated on the license for the residence.

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

411-325-0280 Specific Standards: Safety-Fire Safety Requirements for Homes or Duplexes Serving Five or Fewer Individuals
(Amended 9/11/2008)

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

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

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

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

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

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

(2) Exception for permanent wired smoke alarms and 13D residential sprinkler systems. A home or duplex is granted an exception to requirements in OAR 411-325-0280(1)(c) and (d) under the following circumstances:

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

(b) Battery operated smoke alarms with a 10 year battery life and hush feature have been installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes, at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6" and 12" from the ceiling and not within 12" of a corner. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition; and

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

(3) Respite care. At no time will the number of individuals served at the residence exceed the maximum capacity of five including respite services. An individual may receive respite services not to exceed two weeks. Respite services must not violate the safety and health sections of this rule.

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

411-325-0290 Specific Standards: Safety-Fire Safety Requirements for Apartments Serving Five or Fewer Individuals
(Amended 8/1/2004)

(1) Fire safety requirements. The apartment must be made fire safe by:

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

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

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

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

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

(2) Respite care. At no time will the number of individuals served at the residence exceed the maximum capacity of five including respite services. An individual may receive respite services not to exceed two weeks. Respite services must not violate the safety and health sections of this rule.

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

411-325-0300 Rights: General
(Amended 8/1/2004)

(1) Abuse prohibited for adults and children. Adults as defined at 411-325-0020(6) must not be abused nor will abuse be tolerated by any employee, staff or volunteer of the program. Children as defined at 411-325-0020(18) or as defined in these rules must not be abused nor will abuse be tolerated by any employee, staff or volunteer of the program.

(2) Protection and wellbeing. The program must ensure the health and safety of individuals from abuse including the protection of individual rights, as well as, encourage and assist individuals through the ISP process to understand and exercise these rights. Except for children under the age of 18, where reasonable limitations have been placed by a parent or guardian, these rights must at a minimum provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order:

(b) Adequate food, housing, clothing, medical and health care, supportive services and training;

(c) Visits with family members, guardians, friends, advocates and others of the individual's choosing, and legal and medical professionals;

(d) Confidential communication including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical/mechanical/ physical restraints;

(h) Freedom to choose whether or not to participate in religious activity;

(i) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(j) Expression of sexuality within the framework of State and Federal Laws, and for adults over the age of 18, freedom to marry and to have children;

(k) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities and health care resources;

(l) Individual choice for children and adults that allows for decision making and control of personal affairs appropriate to age;

(m) Services which promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult;

(n) Individual choice for adults to consent to or refuse treatment, unless incapable, and then an alternative decision maker is allowed to consent or refuse. For children consent to or refusal of treatment by the child's parent or guardian except as defined in statute (ORS 109.610) or limited by court order;

(o) Individual choice to participate in community activities;

(p) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(3) Policies and procedures. The program must have and implement written policies and procedures that protect an individual's rights as listed in OAR 411-325-0300(2)(a - p).

(4) Notification of policies and procedures. The program must inform each individual and parent or guardian orally and in writing of their rights and a description of how to exercise those rights. This must be completed at entry to the program and in a timely manner, thereafter, as changes occur. Information must be presented using language, format, and methods of communication appropriate to the individual's needs and abilities.

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

411-325-0310 Rights: Confidentiality of Records
(Amended 8/1/2004)

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records under these rules, service providers under these rules are considered "providers" as defined in ORS 179.505(1).

(2) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

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

411-325-0320 Rights: Informal Complaints and Formal Grievances
(Amended 8/1/2004)

(1) Grievances. The program must develop and implement written policies and procedures regarding individual informal complaints and formal grievances. These policies and procedures must at minimum address:

> (a) Informal complaint resolution. Opportunity for an individual or someone acting on behalf of the individual to informally discuss and

resolve any allegation that a program has taken action which is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing this opportunity will not preclude the individual or someone acting on behalf of the individual to pursue resolution through formal grievance processes.

(b) Formal grievances and grievance log. A description of how the program receives and documents grievances from individual(s) and others acting on the behalf of individuals. If a grievance is associated in any way with abuse, the recipient of the grievance must immediately report the issue to the appropriate authority, the CDDP, Department for direct contracted services and notify the Executive Director or designee. The formal grievance policies and procedures must require:

(A) Investigation of the facts supporting or disproving the grievance;

(B) That the Executive Director or designee provide a formal written response to the grievant within 15 days of receipt of the grievance, unless the grievance is informally resolve to the grievant's satisfaction prior to that time. The formal written response of the Executive Director or designee must clearly inform the grievant:

(i) Of the right to appeal an adverse decision to the CDDP and how to do so, including the name, address, and phone number of the person at the CDDP to whom the appeal should be submitted;

(ii) Of the availability of assistance in appealing the grievance and how to access that assistance.

(C) That the Executive Director or designee will submit to the CDDP for review grievances that have not been resolved to the satisfaction of the grievant, where the Executive Director or designee believes that the grievant may not have the capability to appeal an adverse decision to the CDDP.

(D) The CDDP will address the appeal as provided in the Community Developmental Disability Programs Administrative Rule, OAR 411-320-0170.

(E) Documentation of each grievance and its resolution must be filed or noted in the grievant's record. In addition, the program must maintain a grievance log, which will, at a minimum, identify the person making the grievance, the date of the grievance, the nature of the grievance, the resolution, and the date of the resolution.

(2) Notification of policies and procedures. The program must inform each individual, parent or guardian orally and in writing, of its grievance policy and procedures. This must be done at entry to the program and in a timely manner thereafter as changes occur. Information must be presented using language, format and methods of communication appropriate to the individual's needs and abilities.

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

411-325-0330 Rights: Medicaid Fair Hearings
(Adopted 1/1/2004)

Medicaid service recipients policy and procedure. The program must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, parent or guardian requests a fair hearing. The policy and procedure must include immediate notice to the individual, parent or guardian of the right to a Medicaid fair hearing each time a program takes action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid.

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

411-325-0340 Rights: Behavior Support
(Amended 8/1/2004)

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

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

(3) Functional behavioral assessment required. The program must conduct a functional behavioral assessment of the behavior, which must be based upon information provided by one or more persons who know the individual. The functional behavioral assessment must include:

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

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

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

(A) An effort to communicate;

(B) The result of medical conditions;

(C) The result of psychiatric conditions; and

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

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

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

(4) Behavior support plan requirements. The behavior support plan must include:

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

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

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

(d) Prevention strategies including environmental modifications and arrangement(s);

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

(f) A general crisis response plan that is consistent with the Oregon Intervention System (OIS);

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the plan which includes a method of collecting and reviewing data on frequency, duration and intensity of the behavior;

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

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

(5) Additional documentation requirements for implementation of behavioral support plans. Providers must maintain the following additional documentation for implementation of behavioral support plans:

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

(b) Written evidence of the ISP team decision for approval of the implementation of the behavior support plan; and

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

(6) Notification of policies and procedures. The program must inform each individual and the parent(s), guardian, legal representative of the behavior support policy and procedures at the time of entry to the program and as changes occur.

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

411-325-0350 Rights: Physical Intervention
(Amended 8/1/2004)

(1) Circumstances allowing the use of physical intervention. The program must only employ physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Physical intervention techniques must only be applied:

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

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

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

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

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

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

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

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

(c) Submit an incident report to the CDDP Services Coordinator, or other Department designee (if applicable), personal agent (if applicable), and the person's legal guardian (if applicable), no later than one working day after the incident has occurred; and

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

(5) Incident report. Any use of physical intervention(s) must be documented in an incident report excluding circumstances defined in OAR 411-325-0350(7)(a-h). The report must include:

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

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

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

(d) Documentation of any injury;

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

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

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

(h) Documentation of an administrative review that includes the follow-up to be taken to prevent a recurrence of the incident by the director or his/her designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) Copies submitted. A copy of the incident report must be forwarded within five working days of the incident, to the CDDP Services Coordinator and when applicable to the legal guardian and the personal agent.

(a) The Services Coordinator or when applicable the Department designee will receive complete copies of incident reports.

(b) Copies of incident reports will not be provided to a legal guardian, personal agent or other service providers, when the report is part of an abuse or neglect investigation.

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

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

(7) Behavior data summary. The program may substitute a behavior data summary in lieu of individual incident reports when:

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

(b) The intervention utilized is not a physical restraint;

(c) There is a formal written functional assessment and a written behavioral support plan;

(d) The individual's behavior support plan defines and documents the parameters of the baseline level of behavior;

(e) The physical intervention technique(s), and the behavior(s) for which they are applied remain within the parameters outlined in the individual's behavior support plan and the OIS curriculum;

(f) The behavior data collection system for recording observation, intervention and other support information critical to the analysis of the efficacy of the behavior support plan, is also designed to record items as required in support in OAR 411-325-0350(5)(a)-(c) and (e)-(h); and

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

(8) Copy to CDDP. A copy of the behavior data summary must be forwarded every thirty days to the CDDP Services Coordinator or other Department designee (if applicable), or personal agent (if applicable) and the person's legal guardian (if applicable).

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

411-325-0360 Rights: Psychotropic Medications and Medications for Behavior
(Amended 8/1/2004)

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

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

(b) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences.

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

(3) Documentation requirements. The provider must keep signed copies of these forms in the individual's medical record for seven years.

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

411-325-0370 Rights: Individuals' Personal Property
(Adopted 1/1/2004)

(1) Record of personal property. The program must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or guardian decision. The record must include:

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

(b) Date of inclusion in the record;

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

(d) Signature of staff making each entry; and

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

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

411-325-0380 Rights: Handling and Managing Individuals' Money
(Adopted 1/1/2004)

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

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

(b) Safeguarding of an individual's funds;

(c) Individuals receiving and spending their money; and

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

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

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

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

(c) Signature of the staff making each entry.

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

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

411-325-0390 Entry, Exit and Transfer: General
(Amended 8/1/2004)

(1) Qualifications for Department funding. All individuals considered for Department funded services must:

(a) Be referred by the Community Developmental Disability Program;

(b) Be determined to have a developmental disability by the Department or its designee; and

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

(2) Authorization of entry into 24-Hour Residential Programs. The CDDP Services Coordinator, except in the cases of children's residential services and state operated community programs, must make authorization of entry into 24-Hour residential program. The Department must authorize admission into children's residential services and state operated community programs.

(3) Information required for entry meeting. The program must acquire the following information prior to or upon an entry ISP team meeting:

(a) A copy of the individual's eligibility determination document;

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

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

(d) A medical history and information on health care supports that includes, where available:

(A) The results of a physical exam made within 90 days prior to entry;

(B) Results of any dental evaluation;

(C) A record of immunizations;

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

(E) A record of major illnesses and hospitalizations.

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

(f) Copies of documents relating to guardianship or conservatorship or health care representative or any other legal restrictions on the rights of the individual, if applicable;

(g) Written documentation that the individual is participating in out of residence activities including school enrollment for individuals under the age of 21; and

(h) A copy of the most recent Functional Behavioral Assessment, Behavior Support Plan, Individual Support Plan, and Individual Education Plan if applicable.

(4) Crisis entries from family homes. If the individual is being admitted from his or her family home and the information required in OAR 411-325-0390(3)(a)-(h) is not available, the program will ensure that they assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than thirty days after entry. This must include a written justification as to why the information is not available.

(5) Entry meeting. An entry ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-entry information required by OAR 411-325-0390(3)(a)-(h);

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(f) A written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(6) Exit meeting. Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent an exit from service (unless the individual, individual's guardian, or for a child the parent or guardian is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(7) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

(a) The individual and his/her guardian or legal representative requests an immediate move from the home; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings other than detention for a child.

(8) Transfer meeting. A meeting of the ISP Team to discuss any proposed transfer of an individual must precede the decision to transfer. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the meeting or telephone call(s);

(c) Documentation of the participants included in the meeting or telephone call(s) including for a child, a parent or guardian who is participating to sign documents;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, guardian, legal representative, parent or family members cannot be honored;

(g) Documentation of a majority agreement of the participants with the decision; and

(h) The written plan for services to the individual after transfer.

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

411-325-0400 Grievance of Entry, Exit and Transfer
(Amended 8/1/2004)
(1) Grievances. In cases where the individual, parent or guardian objects to, or the ISP team cannot reach majority agreement regarding an entry refusal, a request to exit the program or a transfer within a program, a grievance may be filed by any member of the ISP team.

(a) In the case of a refusal to serve, the program vacancy may not be permanently filled until the grievance is resolved.

(b) In the case of a request to exit or transfer, the individual must continue to receive the same services until the grievance is resolved.

(2) Grievance to the CDDP. All grievances must be made to the CDDP Director or designee in writing, in accordance with the CDDP's dispute resolution policy. The CDDP will provide written response to the individual making the appeal within the timelines specified in the CDDP's dispute resolution policy.

(3) Grievance to the Department. In cases where the CDDP's decision is in dispute a written grievance must be made to the Department within ten days of receipt of the CDDP's decision.

(4) Department Grievance process. The Administrator or designee will review all unresolved appeals. Such review will be completed and a written response provided within 45 days of receipt of written request for Department review. The decision of the Administrator or designee will be final.

(5) Documentation required. Documentation of each grievance and its resolution must be filed or noted in the individual's record.

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

411-325-0410 Respite Care Services
(Amended 8/1/2004)

(1) Qualifications for respite care services. All individuals considered for respite care services funded through 24-hour residential services must:

(a) Be referred by the Community Developmental Disability Program or Department;

(b) Be determined to have a developmental disability by the Department or its designee; and

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

(2) Respite care plan. The individual, provider, and the guardian, legal representative, advocate, parent and family or other ISP team members (as available) must participate in an entry meeting prior to the initiation of respite care services. This meeting may occur by phone and the CDDP or Department will ensure that any critical information relevant to the individual's health and safety, including physicians' orders, will be made immediately available. The outcome of this meeting will be a written respite care plan that must take effect upon entry and be available on site, and must:

(a) Address the individual's health, safety and behavioral support needs;

(b) Indicate who is responsible for providing the supports described in the plan; and

(c) Specify the anticipated length of stay at the residence up to 14 days.

(3) Waiver of exit meeting requirement. Exit meetings are waived for individuals receiving respite care services.

(4) Waiver of appeal rights for entry, exit and transfer. Individuals receiving respite care services do not have appeal rights regarding entry, exit or transfer.

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

411-325-0420 Crisis Services
(Amended 8/1/2004)

(1) Qualifications for crisis services. All individuals considered for crisis services funded through 24-hour residential services must:

(a) Be referred by the Community Developmental Disability Program or Department;

(b) Be determined to have a developmental disability by the Department or its designee;

(c) Be determined to be eligible for DD Services as defined in OAR 411-325-0020(28), (29), or (30), or any subsequent revision thereof; and

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

(2) Support Services Plan of Care and Crisis Addendum required. Persons receiving support services under chapter 411, division 340, and receiving crisis services must have a Support Services Plan of Care and a Crisis Addendum upon entry to the program.

(3) Plan of Care required for persons not enrolled in support services. Persons, not enrolled in support services, receiving crisis services for less than 90 consecutive days must have a plan of care on entry that addresses any critical information relevant to the individual's health and safety including current physicians' orders.

(4) Risk Tracking Record required. Persons not enrolled in support services, receiving crisis services for 90 days or more must have a completed Risk Tracking Record and a Plan of Care that addresses all identified health and safety supports as noted in the Risk Tracking Record.

(5) Entry meeting required. Entry meetings are required for individuals receiving crisis services.

(6) Exit meeting required. Exit meetings are required for individuals receiving crisis services.

(7) Waiver of appeal rights for entry, exit and transfers. Individuals receiving crisis services do not have appeal rights regarding entry, exit or transfers.

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

411-325-0430 Individual Support Plan
(Amended 8/1/2004)

(1) Department Individual Support Plan implementation schedule. Providers must participate as scheduled in the Department ISP training and must implement the required Department ISP process after completion of training.

(2) Individual Support Plan required. A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the residence within 60 days of entry and annually thereafter, unless the provider has not been trained to implement the Department ISP process. In situations where the provider has not been trained, the individual must have a completed ISP with supporting documents as required by OAR 309-041-1300 through 309-041-1370.

(3) Preparation for ISP. The following information must be collected and summarized within 45 days prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(e) Other documents required by the ISP team.

(4) Content of Individual Support Plan. A completed ISP must be documented on the Department required form that includes the following:

(a) What's most important to the individual;

(b) Risk summary;

(c) Professional services the individual uses or needs;

(d) Action plan(s);

(e) Discussion Record;

(f) Service supports; and

(g) Signature sheet.

(5) Documentation required. The provider must maintain documentation of implementation of each support specified in OAR 411-325-0430(3)(c-e) and services noted in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP and Department representatives.

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

411-325-0440 Children's Direct Contracted Services
(Amended 8/1/2004)

For purposes of this rule chapter 411, division 325, any documentation or information required to be submitted to the CDDP Services Coordinator must also be submitted to the Department Residential Services Coordinator assigned to the home or facility.

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

411-325-0450 Conditions
(Amended 8/1/2004)

(1) Circumstances under which conditions may be applied to a license. Conditions may be attached to a license upon a finding that:

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

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

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

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

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

(2) Imposing conditions. Conditions that may be imposed on a licensee include:

(a) Restricting the total number of individuals that can be served;

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

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional staff or staff qualifications;

(e) Requiring additional training of provider/staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) Written notification. The provider will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.310 to 183.550.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, a provider may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the provider's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the extent of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the license.

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

411-325-0460 Civil Penalties
(Amended 8/1/2004)

(1) Long-term care facility statute applicable. For purposes of imposing civil penalties, 24-Hour residential homes and facilities licensed under ORS 443.440 to 443.455 and subsection (2) of 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Schedule and sections of rule subject to civil penalties. The Department will exercise the powers under ORS 441.705 to 441.745 and thereby issues

the following schedule of penalties applicable to 24-hour residential homes and facilities:

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

(A) 411-325-0120(2), (11);

(B) 411-325-0130;

(C) 411-325-0140;

(D) 411-325-0150;

(E) 411-325-0160;

(F) 411-325-0170;

(G) 411-325-0190;

(H) 411-325-0200;

(I) 411-325-0220(1), (2);

(J) 411-325-0230;

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

(L) 411-325-0300, 0310, 0320, 0330, 0340, and 0350;

(M) 411-325-0360;

(N) 411-325-0380;

(O) 411-325-0430(3), (4) and (5); and

(P) 411-325-0440.

(b) Civil penalties of up to $300 per day per violation may be imposed for violations of any section of this rule not listed in (2)(a) (A)-(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential home or facility where such surveys are conducted by an employee of the Department. Penalties assessed under this section will not exceed $6,000 within a 90-day period.

(3) Monitoring defined. For purposes of this rule, a monitoring occurs when a 24-hour residential home or facility is surveyed, inspected or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.

(4) Consideration of factors when imposing civil penalties. In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department will consider the following factors:

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

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

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

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

(5) Due and payable. Any civil penalty imposed under ORS 443.455 and 441.710 will become due and payable when the program incurring the penalty receives a notice in writing from the Administrator or designee. The notice referred to in this section will be sent by registered or certified mail and will 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 program's right to request a hearing.

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

(7) Conduct of hearing. All hearings will be conducted pursuant to the applicable provisions of ORS Chapter 183.

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

(9) Program is found to be in violation of a license, rule, or order listed in ORS 441.701(1). If, after a hearing, the program is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(10) Remittance or reduction of a civil penalty. A civil penalty imposed under ORS 443.455 or 441.710 may re remitted or reduced upon such terms and conditions as the Administrator considers proper and consistent with individual health and safety.

(11) Civil penalty payable within 10 days after order is entered. If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, will constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) Violation of any general order or final order. A violation of any general order or final order pertaining to a 24-hour residential home or facility

issued by the Department is subject to a civil penalty in the amount of not less than $5 and not more than $500 for each and every violation.

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

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

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

411-325-0470 License Denial, Suspension, Revocation, Refusal to Renew
(Amended 8/1/2004)

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

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

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

(4) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with rules of the Department and ORS Chapter 183.

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

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

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

411-325-0480 Criminal Penalties
(Adopted 1/1/2004)

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

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

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