DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 360

ADULT FOSTER HOMES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

411-360-0010 Statement of Purpose
(Amended 7/1/2010)

The rules in OAR chapter 411, division 360 prescribe the standards and procedures for the licensure and provision of care and services to individuals in Department of Human Services' adult foster homes for individuals with developmental disabilities (AFH-DD) in a homelike environment that is safe and secure. The goal of the AFH-DD is to provide necessary care while emphasizing the individual's independence. This goal is reached through a cooperative relationship between the provider, the individual, the individual's guardian if applicable, and the community developmental disability program in a setting that protects and encourages the individual's independence, dignity, choice, and decision making. The individual's needs are to be addressed in a manner that supports and enables the individual to function at the highest level of independence possible.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0020 Definitions
(Amended 7/1/2010)

(1) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005; and

(b) Abuse of an adult as defined in OAR 407-045-0260.

(2) "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 as required by OAR 407-045-0310.

(3) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for health and safety. For the purpose of these rules, activities of daily living consist of eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior management.

> (a) "Independent" means the individual may perform the ADL without help.
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> (b) "Assist" means the individual is unable to accomplish all tasks of an ADL, even with assistive devices, without the assistance of another person.
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> (c) "Full Assist" means the individual is unable to do any part of an ADL task, even with assistive devices, without the assistance of another person. This means the individual requires hands-on assistance of another person through all phases of the activity, every time the activity is attempted.

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

(5) "Adult Foster Home (AFH)" means any family home or facility licensed by the Division in which residential care is provided in a home-like environment for compensation to five or fewer adults who are elderly or physically disabled and are not related to the provider by blood, marriage, or adoption. For the purpose of these rules, an AFH does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no individual thereof requires any element of care.

(6) "Adult Foster Home for Individuals with Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Division to provide residential care and support to individuals with developmental disabilities.

(7) "Advocate" means a person other than a paid caregiver 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 that maintains or enhances the individual's physical functioning.

(9) "Appeal" means the process for a contested case hearing under ORS chapter 183 that a licensed provider may use to petition the suspension, denial, revocation, or civil penalty of their license or application.

(10) "Applicant" means any person who completes an application for a license who shall also be an owner of the business.

(11) "Assistant Director" means the assistant director of the Division, or that person's designee.

(12) "Bill of Rights" means civil, legal, or human rights afforded to AFH individuals that are in accord with those rights afforded to all other U.S. citizens including but not limited to those rights delineated in the AFH Bill of Rights as described in OAR 411-360-0170.

(13) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 047.

(14) "Care" means:

(a) Supportive services that encourage maximum individual independence and enhance quality of life including but not limited to:

(A) Provision of 24 hour supervision, being aware of the individual’s whereabouts, and protection;

(B) Assistance with activities of daily living such as bathing, dressing, grooming, eating, management of money, transportation, socialization, recreation, and medication management; and

(C) Monitoring the activities of the individual to ensure the individual's health, safety, and welfare.

(b) The term "care" is synonymous with services.

(15) "Caregiver" means any person responsible for providing care and services to individuals including the provider, the resident manager, and any temporary, substitute, or supplemental caregiver, or other person designated to provide care and service to individuals.

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

(17) "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 by other communication methods.

(18) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(19) "Compensation" means monetary or in-kind payments by or on behalf of an individual to a provider in exchange for room and board, care, and services as indicated in the ISP. Compensation does not include the voluntary sharing of expenses between or among roommates.

(20) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(21) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

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

(23) "Contract" means an agreement between a provider and the Division to provide room, board, care, and services for compensation to an individual of an AFH-DD.

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

(25) "Crisis" means:

> (a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or
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> (b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(26) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight. Day care persons shall be counted in the total allowable five individuals of the capacity of the AFH-DD.

(27) "Denial" means the refusal of the Division to issue a license to operate an AFH-DD because the Division has determined that the home or the applicant is not in compliance with one or more of these rules.

(28) "Department" means the Department of Human Services (DHS).

(29) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require

training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, substance abuse, , personality disorder, learning disability, or Attention Deficit and Hyperactivity Disorder.

(30) "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. Direct nursing service differs from administrative nursing services.

(31) "Director" means the Director of the Department, or that person's designee.

(32) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

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

(34) "Enjoin" means to prohibit by judicial order.

(35) "Entry" means admission to a Division-funded developmental disability service. For the purpose of these rules "entry" means admission to an AFH-DD.

(36) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds are equal to or superior to the requirements of ORS 443.705

to 443.825 and that has entered into an agreement with the Department to license, inspect, and collect fees according to the provisions of ORS 443.705 to 443.825.

(37) "Exit" means either termination from a Division-funded developmental disability service or transfer from one funded program to another. Exit does not mean transfer from an AFH-DD to another AFH-DD of the same provider in the same county.

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

(39) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(40) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by an Oregon court to make decisions about services for an individual.

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

(42) "Hearing" means the formal process following an action that would terminate, suspend, or deny a license. This is a formal process required by ORS chapter 183. A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(43) "Home" for the purpose of these rules means the physical structure in which individuals live. Home is synonymous with AFH-DD.

(44) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and

services and encourages independence, choice, and decision making by the individuals.

(45) "House Rules" means written and posted rules governing house activities in the AFH-DD. These rules may not conflict with the AFH Bill of Rights.

(46) "Incident Report" means a written report of any injury, accident, acts of physical aggression, use of protective physical interventions, or unusual incident involving an individual.

(47) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(48) "Individual" means a person age 18 or older residing in an AFH-DD regardless of source of compensation. The terms "individual" and "client" are synonymous.

(49) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The ISP is developed at minimum annually, and as needed as the individual's support needs change, to reflect 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. .

(50) "Individual Support Plan Team (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual including the AFH-DD provider, services coordinator, the individual's legal guardian (if any), and may include family or other persons requested to develop the ISP or requested by the individual. If the individual is unable to, or does not express a preference, the ISP team shall determine appropriate team membership.

(51) "License" means a document granted by the Division to applicants who are in compliance with the requirements of these rules.

(52) "Licensed Medical Professional" means a person who holds at least one of the following valid licensures or certifications:

(a) Physician licensed to practice in Oregon;

(b) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(c) Physician's assistant licensed to practice in Oregon.

(53) "Licensee" means a person or business to whom a license is granted.

(54) "Limited License" means a license is issued to a provider who intends to provide care for compensation to a specific individual who is unrelated to the provider but with whom there is an established relationship.

(55) "Majority Agreement" means for purposes of entry, exit, transfer, and annual ISP team meetings, that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Providers, families, the CDDP, advocacy agencies, and individuals are considered as one member of the ISP team for the purpose of reaching majority agreement.

(56) "Mandatory Reporter" means any public or private official who:

(a) For the purpose of these rules, is a provider, resident manager, caregiver, or volunteer, per OAR 411-020-0002 working with individuals 18 years and older, and while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental 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.

(b) For the purpose of these rules, is a provider, resident manager, caregiver, or volunteer, per OAR 411-020-0002 working with individuals birth to 17 years of age, and comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the

knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(57) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Legal medical marijuana" refers to the use of marijuana authorized under the Oregon Medical Marijuana Act (OMMA), ORS 475.300 to ORS 475.346.

(58) "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 that restricts freedom of movement or access to the individual's body.

(59) "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.

(60) "Mental Health Assessment" means the determination of an individual's need for mental health services by interviewing the individual and obtaining all pertinent biopsychosocial information, as identified by the individual, family, and collateral sources that:

(a) Addresses the current complaint or condition presented by the individual;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(61) "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.

(62) "Monitoring" means the periodic review of the implementation of services identified in the ISP and the quality of services delivered by other organizations.

(63) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN) pursuant to ORS chapter 678.

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

(65) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the provider and caregiver.

(66) "Occupant" means anyone residing in or using the facilities of the AFH-DD including individuals, licensees, resident manager, friends, family members, day care persons, and boarders.

(67) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. OIS is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(68) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(69) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(70) "PRN (pro re nata)" means the administration of a medication to an individual on an 'as needed' basis.

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

(72) "Protective Physical Intervention" means:

> (a) Any manual physical holding of or contact with an individual that restricts the individual’s freedom of movement; and
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> (b) The use of any physical action to maintain the health and safety of an individual or others during a potentially dangerous situation or event,

(73) "Provider" means the person licensed to operate an AFH-DD who is responsible for the provision of room, board, care, services to individuals living in the AFH-DD, and the daily operation of the AFH-DD. Applicant, provider, licensee, and operator are all synonymous terms.

(74) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person must meet the standards of OAR 411-360-0110 and OAR 411-360-0070.

(75) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including but not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(76) "Qualified Mental Health Professional" means a person who meets both of the following:

(a) Holds at least one of the following educational degrees:

(A) Graduate degree in psychology;

(B) Bachelor’s degree in nursing and licensed in Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational, art, or music therapy;

(F) Bachelor’s degree in occupational therapy and licensed in Oregon; and

(b) Whose education and experience demonstrates the competencies to:

(A) Identify precipitating events;

(B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;

(C) Assess family, social, and work relationships;

(D) Conduct a mental status examination;

(E) Document a multiaxial DSM diagnosis;

(F) Write and supervise a Treatment Plan;

(G) Conduct a mental health assessment; and

(H) Provide individual, family, or group therapy within the scope of his or her practice.

(77) "Resident Manager" means an employee of the provider who lives in the AFH-DD and is directly responsible for the care of individuals on a day-to-day basis.

(78) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of those persons normally providing care for the individual. Respite services may include both day or overnight care. Respite care individuals must be counted in the total allowable five individuals in the home.

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

(80) "Revocation" means the action taken by the Division to rescind an AFH-DD license after the Division has determined that the AFH-DD provider is not in compliance with one or more of these rules.

(81) "Room and Board" means the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping. Room and board does not include provision of care.

(82) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without caregiver assistance upon the written order of a physician, and safely maintains the medication without supervision.

(83) "Services" means those activities that assist the individuals to develop appropriate skills to increase or maintain their level of functioning. Services available in the community and arranged for by the provider may include mental health services, habilitation services, rehabilitation services, social services, ADL's, medical, dental, and other health care services, educational services, financial management services, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet a individual's needs as defined in the ISP.

(84) "Services Coordinator" means an employee of the CDDP or the Division , who is selected to plan, procure, coordinate, monitor ISP services, and to act as a proponent for individuals with developmental disabilities. The term “case manager” is synonymous with “services coordinator”.

(85) "Special Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under 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, but may not be eaten, for example, offer prunes each morning at breakfast and include fresh fruit with each meal.

(86) "Subject Individual" means:

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

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

(B) All persons intending to work in the adult foster home including, but not limited to, direct caregivers and potential caregiver’s in training;

(C) Occupants, excluding individuals, residing in or on the premises of the proposed or currently licensed adult foster home including household members and boarders; or

(D) Volunteers if allowed unsupervised access to individuals.

(b) Subject individual does not apply to:

(A) Individuals of the AFH-DD and individuals' visitors;

(B) Persons who live or work on the AFH-DD who do not:

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

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

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

(C) Persons employed by a private business that provides services to individuals and is not regulated by the Department.

(87) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(88) "Substitute Caregiver" means any person who provides care and services in an adult foster home, and left in charge of individuals for any period of time, having access to individual records under the jurisdiction of the Division.

(89) "Suspension of License" means an immediate withdrawal of the approval to operate an AFH-DD after the Division determines that there is a threat to the health or safety of individuals.

(90) "These Rules" mean the rules in OAR chapter 411, division 360.

(91) "Transition Plan" means a written plan for the period of time between an individual's entry into the AFH-DD 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 AFH-DD, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

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

(93) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in an individual's mental or physical condition.

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

(95) "Young Adult" for the purpose of these rules means a young person age 18 through 21 who resides in the AFH-DD, under the custody of the Department, voluntarily, or under guardianship.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0030 Variance
(Amended 7/1/2010)

(1) A provider or applicant may apply to the Division for a variance from a provision of these rules. The provider must justify to the Division that such a variance does not jeopardize the health or safety of the individuals. If the variance applies to an individual's services, the provider must provide evidence that the variance is consistent with a currently approved ISP.

(2) No variance shall be granted from a regulation or provision of these rules pertaining to the limit of five individuals, inspections of the AFH-DD, civil, legal, and human rights, and inspection of the public files. No variance related to fire and life safety shall be granted by the Division without prior consultation with the local fire department or the local fire department’s designee.

(3) Variances shall be granted in writing on a Division approved form. A variance granted to one AFH-DD provider does not constitute a precedent for any other AFH-DD provider.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0040 License Required
(Amended 7/1/2010)

(1) Any home that meets the definition of an AFH-DD as defined in OAR 411-360-0020 must apply for and obtain a license from the Division or an exempt area county.

(2) A person or entity may not represent themselves as operating an AFH-DD or accept placement of an individual without being licensed.

(3) No person, employed and requiring a criminal records check may be a provider, resident manager, substitute caregiver, or otherwise be in training, or employed by the provider, or reside in or on the property of an AFH-DD who:

> (a) Has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;
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> (b) Has not complied with Department rules for review of criminal records in accordance with OAR 407-007-0200 to 407-007-0370; or
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> (c) Has been disapproved to work based on current Department policy and procedures for criminal records checks in accordance with OAR 407-007-0200 to 407-007-0370.
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> (d) This provision does not apply to individual service recipients of the AFH-DD.

(4) Section (3)(a) of this rule does not apply to employees hired prior to July 28, 2009.

(5) Any home that meets the definition of a limited license AFH-DD as defined in OAR 411-360-0020 must have a license from the Division if receiving compensation from the Department or if the provider is privately paid.

> (a) To qualify for this license and for compensation from the Department, the provider must submit a completed application, appropriate licensing fee, physician's statement, a criminal records check, a background check in regards to founded abuse of children and substantiated abuse of an adult, demonstrate a clear understanding of the individual's care needs, and acquire any

additional training necessary to meet the specific needs of the individual.

(b) The provider must meet the standards of an AFH-DD, and meet minimal fire safety compliance, including the installation of smoke detectors and fire extinguishers, and obtain any training deemed necessary by the Division or the Division's designee to provide adequate care for the individual.

(c) The limited license shall be limited to the care of the named individual only and may not be transferred to another person

(6) Any AFH-DD that meets the definition of a provisional license, due to an emergency situation in which the licensed provider is no longer able to oversee the operation of the AFH-DD, must be licensed by the Division. The applicant for the provisional license must meet the standards in OAR 411-360-0070 and OAR 411-360-0110.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0050 License Application and Fees
(Amended 7/1/2010)

(1) A complete written application must be submitted by the applicant on forms supplied by the Division. The application is not complete until the required information is submitted to the Division with the required non-refundable fee. Incomplete applications are void after 60 days of the date the application form is received by the Division. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an AFH-DD is to be operated.

(3) An application for a home that has a resident manager must include a completed application for the resident manager on the form supplied by the Division.

(4) The application must include:

(a) The maximum capacity to be served by the home;

(b) A listing of all individuals living in the home and receiving care. This must include family members needing care and respite and day care persons;

(c) A list of all other occupants living in the home or on the property including family members, friends, and room and board occupants;

(d) A physician's statement on a form supplied by the Division regarding the AFH-DD applicant’s ability to provide care;

(e) A completed Financial Information Sheet on a form supplied by the Division;

(f) A signed criminal records check and if needed, the mitigating information and fitness determination form for each person who shall have regular contact with the individuals, including the provider, the resident manager, caregivers, and other occupants over the age of 16 (excluding individual service recipients);

(g) A signed consent form for a background check with regards to abuse of children;

(h) Founded reports of child abuse or substantiated abuse allegations, with dates, locations, and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors, and volunteers;

(i) A floor plan for each floor of the house showing the location and size of rooms indicating the rooms that are to be service recipient's bedrooms, caregiver sleeping rooms, rooms of other occupants of the home, the location and size of windows, fire exit doors, smoke detectors, fire extinguishers, escape routes, and wheelchair ramps;

(j) If requesting a license to operate more than one AFH-DD, a plan covering administrative responsibilities, staffing and caregiver qualifications, and evidence of financial responsibility;

(k) A $20.00 per bed non-refundable fee for each individual service recipient (includes all private pay and publicly funded individuals, but does not include day care and family members);

(l) References from three persons unrelated to the applicant (one professional, one employment, and one other), who can attest to the applicant's character and capabilities;

(m) A written plan for coverage of resident manager absences from the AFH-DD that has been provided to the local CDDP and the Division;

(n) A written description of the daily operation of the adult foster home, including the schedule of the provider, resident manager, and caregivers;

(o) A copy of the AFH-DD's house rules; and

(p) A mailing address if different from the AFH-DD, and a business address for electronic mail.

(5) After receipt of the completed application materials, including the non-refundable fee, the Division or the Division’s designee shall investigate the information submitted and inspect the home. Upon submission and completion of the application and the process described, the Division shall determine compliance with these rules.

(6) The applicant shall be given a copy of the inspection form identifying any areas of noncompliance and specifying a timeframe for correction, but no later than 60 days from date of inspection.

(7) Deficiencies noted during an inspection of the home must be corrected in the timeframe specified by the Division or the Division’s designee. Applicants must be in compliance with these rules before a license is issued. If cited deficiencies are not corrected within the timeframes specified by the Division or the Division’s designee, the application shall be denied. The application fee is non-refundable.

(8) Applicants must attend a local orientation offered by the local CDDP, prior to being licensed.

(9) The applicant may withdraw a new or renewal application at any time during the application process by notifying the Division in writing. The application fee is non-refundable.

(10) An applicant whose license has been revoked or voluntarily surrendered during a revocation or non-renewal process, or whose application has been denied, may not be permitted to make a new application for one year from the date that the revocation, surrender, or denial is final. The time period may be for a longer period of time if specified in the order revoking or denying the license.

(11) All monies collected under these rules shall be paid to the Quality of Care Fund.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0060 Capacity
(Amended 7/1/2010)

(1) The AFH-DD maximum capacity is limited to five adults who require care and are unrelated to the provider by blood, marriage, or adoption.

(2) The number of individuals permitted to reside in an AFH-DD shall be determined by the ability of the caregiver to meet the care needs of the individuals, fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum capacity shall include consideration of total household composition including all children, adult relatives, and elderly. In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents and the number of children or other individuals living in the AFH-DD requiring care.

(3) Individuals receiving respite service are included in the licensed capacity of the home.

(4) Individuals receiving day care services are included in the licensed capacity of the home.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0070 Classification of Adult Foster Homes for Individuals with Developmental Disabilities
(Amended 1/1/2011)

A Provisional, Limited, Level 1, Level 2B, or Level 2M license may be issued by the Division based upon the qualifications of the applicant and the resident manager (if applicable) and compliance with the following requirements.

(1) PROVISIONAL AFH-DD LICENSE. A Provisional AFH-DD license may be issued by the Division if:

(a) There is an emergency situation where the current licensed provider is no longer overseeing the operation of the AFH-DD.

(b) The applicant meets the standards of OAR 411-360-0110(1)(a-f)(h-k).

(c) A provisional license is valid for 60 days from the date of issue and is not renewable.

(2) LIMITED AFH-DD LICENSE. A Limited AFH-DD license may be issued by the Division if:

(a) The applicant meets the qualifications listed in OAR 411-360-0110(1)(a-k) and the home meets the requirements listed in OAR 411-360-0130.

(b) The applicant acquires any additional training necessary to meet the specific needs of the individual.

(c) The license shall be limited to the care of the named person only and the individual receiving care is named on the license.

(3) LEVEL 1 AFH-DD LICENSE. A Level 1 AFH-DD license may be issued by the Division if the applicant and resident manager (if applicable):

(a) Meet the qualifications listed in OAR 411-360-0110and completes the training requirements outlined in OAR 411-360-0120; and

(b) The home and applicant are in compliance with OAR 411-360-0080.

(4) LEVEL 2B AFH-DD LICENSE. If a provider serves or intends to serve more than one individual who exhibits behavior that pose a significant danger to the individual or others, the provider must be licensed as a Level 2B AFH-DD.

(a) A Level 2B AFH-DD license may be issued by the Division only if the applicant and resident manager (if applicable) has met the criteria for a Level 1 AFH-DD license and in addition, has met the following criteria:

(A) Has the equivalent of one year of full-time experience in providing direct care to individuals with developmental disabilities;

(B) Has two years of full time experience providing care and support to individuals who exhibit behavior that poses significant risk to the individual or others as described in subsection (4)(a)(E)(i-iv) of this section;

(C) Has completed OIS-G, OIS-IF, or OIS-C certification by a state approved OIS trainer;

(D) Has completed additional hours of advanced behavior intervention training per year, based on the support needs of the individual, if available from the Division;

(E) Has been certified in CPR and First Aid by a recognized training agency; and

(F) Intends to provide care and support to more than one individual who exhibit behavior that poses a significant danger to the individual. Examples include but are not limited to:

(i) Acts or history of acts that have caused injury to self or others requiring medical treatment;

(ii) Use of fire or items to threaten injury to persons or damage to property;

(iii) Acts that cause significant damage to homes, vehicles, or other properties; or

(iv) Actively searching for opportunities to act out thoughts that involve harm to others.

(b) A Level 2B AFH-DD provider must have a Transition Plan for each individual upon entry and a Behavior Support Plan within 60 days of placement that:

(A) Emphasizes the development of the functional alternative and positive approaches to behavior intervention;

(B) Uses the least intervention possible;

(C) Ensures that abusive or demeaning intervention shall never be used; and

(D) Is evaluated by the ISP Team through review of specific data at least every six months to assess the effectiveness of the procedures.

(c) A Level 2B AFH-DD provider may not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for the AFH-DD.

(d) The Level 2B AFH-DD may not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and may not admit individuals without prior approval of the CDDP.

(5) LEVEL 2M AFH-DD LICENSE.

(a) A provider must be licensed as a Level 2M AFH-DD if the provider serves or intends to provide care and support to more than one

individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(A) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(B) Significant risk of choking or aspiration;

(C) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids; or

(D) Mental health or alcohol or drug problems that are not responsive to treatment interventions.

(b) A Level 2M AFH-DD license may be issued by the Division only if the applicant or resident manager has met the requirements for a Level 1 AFH-DD and meets the following additional criteria:

(A) Has the equivalent of one year of full-time experience in providing direct care to individuals with developmental disabilities;

(B) Is a health care professional such as a registered nurse or licensed practical nurse, or has the equivalent of two years full-time experience providing care and support to individuals who have a medical condition that is serious and could be life-threatening as described in subsection (5)(b)(E)(i-v) of this section;

(C) Has been certified in CPR and First Aid by a recognized training agency;

(D) Can provide current satisfactory references from at least two medical professionals, such as a physician, physician’s assistant, nurse practitioner, or registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver;

(E) Has fulfilled a minimum six of the twelve hours of annual training requirements in specific medical training; and

(F) Intends to provide care and support to more than one individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(i) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(ii) Significant risk of choking or aspiration;

(iii) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids;

(iv) Mental health or alcohol or drug problems that are not responsive to treatment interventions; and

(v) A terminal illness that requires hospice care.

(c) A Level 2M AFH-DD provider must have a Transition Plan for each individual upon entry and develop, with the ISP Team, a Medical Support Plan within 30 days of placement or whenever there is a change in health status for each individual who has a medical condition that is serious and could be life threatening as described in subsection (5)(b)(E)(i-v) of this section.

(d) A provider with a 2M licensed AFH-DD may not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for a 2M AFH-DD.

(e) The 2M AFH-DD may not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and may not admit individuals without prior approval of the CDDP.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0080 Issuance of a License

(Amended 7/1/2010)

(1) The Division shall issue a license within 60 days after the Division has received the completed application materials, if the home and applicant are found to be in compliance with these rules. The license shall state the name of the provider, resident manager, address of premises to which license applies, the maximum capacity, expiration date, and classification level. The licensee must visibly post the license in the AFH-DD home and be available for inspection at all times.

(2) A limited license may be issued to a provider for the care of a specific individual. A provider with a limited license may not accept other placements. A provider with a limited license must meet the standards of an AFH-DD and acquire any additional training necessary to meet the specific needs of the individual and may be subject to the requirements of:

(a) OAR 411-360-0140, Standards and Practices for Health Care;

(b) OAR 411-360-0160, Behavior Supports;

(c) OAR 411-360-0170, Documentation and Record Requirements;

(d) OAR 411-360-0150, General Practices; and

(e) OAR 411-360-0190, Standards for Admission, Transfers, Respite, Crisis Placements, Exits and Closure.

(3) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person, if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the AFH-DD. A person shall be considered to be a qualified person if they are 21 years of age and meet the qualifications of a caregiver per OAR 411-360-0110(1)(a-f)(h)(i)(k).

(4) The Division may attach conditions to the license that limit, restrict, or specify other criteria for operation of the AFH-DD. The conditions must be posted with the license in the AFH-DD and be available for inspection at all times.

(5) A condition may be attached to a license that restricts admissions to the AFH-DD.

(6) An AFH-DD license is not transferable or applicable to any location or persons other than those specified on the license.

(7) When an AFH-DD is to be sold or otherwise transferred, the new provider must apply for, and obtain, a license prior to the transfer of operation of the AFH-DD.

(8) A license is valid for one year unless revoked or suspended.

(9) The Division shall not issue a license to operate an additional AFH-DD to a provider who has failed to achieve and maintain substantial compliance with the rules and regulations while operating any existing home or homes.

(10) The Division shall not issue an initial license unless:

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

(b) The Division or the Division's designee has completed an inspection of the AFH-DD;

(c) The Department has completed a criminal records check on the applicant, resident manager (if applicable), and any subject individual, other than an individual, 16 years of age or older who will be residing on the property, in the AFH-DD, or employed by the AFH-DD;

(d) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the AFH-DD;

(e) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and

(f) The Department has conducted a background check of the provider or resident manager with regard to founded abuse of children or substantiated abuse of adults.

(11) If a resident manager changes during the period of time the license covers, the provider must notify the Division immediately and identify who shall be providing care. The provider must submit a request for a change of resident manager to the Department, a criminal records check, a current consent form to conduct a background check for child abuse, and a payment fee of $10.00. Upon a determination the applicant meets the requirements of a resident manager and the applicant has received the Division's required AFH-DD training and passed the test, a revised license shall be issued with the name of the new resident manager.

(12) In seeking an initial license the burden of proof shall be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and these rules.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0090 Renewal of a License
(Amended 7/1/2010)

(1) The provider must submit a renewal application and fee prior to the expiration date that shall keep the license in effect until a new license is issued or a final order of non-renewal is issued by the Division. If the renewal application and fee are not submitted prior to the expiration date, the AFH-DD shall be treated as an unlicensed home subject to administrative sanctions.

(2) The renewal application must include the same information and fee as required for a new application. A physician's statement, financial information sheet, house rules, and floor plan are not required if the Division or the Division's designee reasonably determines that this information has not changed.

(3) The Division or the Division's designee may investigate any information in the renewal application and shall conduct an inspection of the AFH-DD.

(4) The provider shall be given a copy of the inspection form citing any deficiencies and a time frame for correction, but no longer than 60 days from the date of inspection.

(5) The Division may require the AFH-DD to correct deficiencies prior to issuing a license renewal. If cited deficiencies are not corrected within the time frame specified by the Division or the Division's designee, the renewal application may be denied.

(6) The Division shall not renew a license unless:

> (a) The provider and the AFH-DD are in compliance with ORS 443.705 to 443.825 and these rules;
>
> (b) The Division or the Division's designee has completed an inspection of the AFH-DD; and
>
> (c) The Department has completed a criminal records check as required by ORS 181.534 and 443.735 on the provider, resident manager (if applicable), and any subject individual, other than a service recipient, 16 years of age or older who shall be residing on the property, in the AFH-DD, or employed by the AFH-DD provider.

(7) In seeking a renewal of a license when an AFH-DD has been licensed for less than 24 months, the burden of proof shall be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and these rules.

(8) In proceedings for renewal of a license when an AFH-DD has been licensed for at least 24 continuous months, the burden of proof shall be upon the Division to establish noncompliance with ORS 443.705 to 443.825 and these rules.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0100 Contracts
(Amended 7/1/2010)

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

(2) Providers who care for private paying individuals must enter into a signed contract with the individual or person paying for care. This contract must include but is not limited to:

(a) An ISP;

(b) A schedule of rates;

(c) Conditions under which the rates may be changed; and

(d) The AFH-DD's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) A thirty day prior written notification of increases, additions, and other modifications of the rates must be given by the provider to private individuals or persons paying for care, unless the change is due to a medical emergency resulting in a greater level of care, in which case the notice must be given within 10 days of the change.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0110 Qualifications for Adult Foster Home Providers, Resident Managers, and Other Caregivers
(Amended 7/1/2010)

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

(a) Be at least 21 years of age.

(b) Live in the residence that is to be licensed as the AFH-DD or if the provider does not live in the residence there must be a resident manager who lives in the AFH-DD. For purposes of these rules, to live in the AFH-DD, the provider must sleep in the AFH-DD four nights per week.

(c) Provide evidence satisfactory to the Division regarding experience, training, knowledge, interest, and concern in providing care to individuals with a developmental disability. Such evidence may include but not be limited to:

(A) Certified nurse's aide training;

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

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

(D) Training approved by the Division; or

(E) Experience in caring for individuals with a developmental disability and home management skills.

(d) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Division to provide 24 hour care for adults who are developmentally disabled. Applicants must have a statement from a physician, on a form provided by the Division, that they are physically and mentally capable of providing care. Applicants with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment and rehabilitation and references regarding current condition.

(e) All subject individuals must undergo a criminal records check in accordance with OAR 407-007-0020 to 407-007-0370 and under ORS 181.534, and be determined fit for licensure by the Division. The Division shall evaluate and verify information regarding criminal history.

(A) A criminal records check must be completed prior to a subject individual’s change in position (for example, changing from substitute caregiver to resident manager).

(B) Effective July 28, 2009, public funds may not be used to support, in whole or in part, a provider, a resident manager, providers’ employees, alternate caregivers, volunteers, or any

other subject individual under OAR 407-007-0200 to 407-007-0370, who is subject to criminal background checks, and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(C) Effective July 28, 2009, a person may not be authorized as a provider or meet qualifications as described in this rule if the person is subject to criminal records checks and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(D) Occupants who do not provide care in the home but require a criminal records check on or after July 28, 2009, shall have a weighing test applied to the criminal records check for approval purposes.

(E) PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL. Any person meeting the definition of subject individual may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(F) Section (1)(e)(B)(C) of this rule does not apply to caregivers of the AFH-DD hired prior to July 28, 2009.

(f) Have no founded reports of child abuse or a substantiated abuse allegation.

(g) The applicant must have the financial ability and must provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential service and room and board payments.

(A) The applicant must provide the Division with a list of all unsatisfied judgments, liens, and pending lawsuits in which a claim for money or property is made against the applicant, all bankruptcy filings by the applicant, and all unpaid taxes due from the applicant.

(B) The Division may require or permit the applicant to provide a current credit report to satisfy this financial requirement.

(C) The Division may not issue an initial license to an applicant who has been adjudged bankrupt more than once.

(D) If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens, or unpaid taxes, the Division shall require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims.

(E) If the applicant is unable to demonstrate the financial ability and resources as required, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(h) Be literate and capable of understanding written and oral orders, communicating with individuals, physician, case manager, and appropriate others, and be able to respond appropriately to emergency situations at all times.

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

(j) Meet the requirements of the licensing classification of the AFH-DD described in OAR 411-360-0070 as indicated on the application.

(k) Document annual review of responsibility for mandatory reporting of abuse or neglect of an individual on forms provided by the Division.

(2) An application for employment in any capacity in an AFH-DD must include a question asking whether the applicant has been found to have committed abuse

(3) The resident manager must meet the provider qualifications listed in subsections (1)(a-f)(h-k) of this rule.

(4) Substitute caregivers left in charge of individuals for any period of time must have access to individual records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Have a criminal records check in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a substitute caregiver or meet qualifications as described in this rule if the substitute caregiver has been hired on or after July 28, 2009, or is subject to criminal records checks beginning July 28, 2009 as required by administrative rule, and the substitute caregiver has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(c) Be notified annually of the substitute caregiver's responsibility as a mandatory reporter of abuse or neglect and documented on forms provided by the Division;

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

(e) Know fire safety and emergency procedures;

(f) Have a clear understanding of job responsibilities, have knowledge of ISP's, and be able to provide the care specified for each individual's needs;

(g) Be able to meet the qualifications of a resident manager when left in charge of an AFH-DD for 30 days or longer;

(h) Not be an individual service recipient of the AFH-DD;

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

(j) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Division to provide care for adults who are developmentally disabled. Substitute caregivers with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment and rehabilitation and references regarding current condition;

(k) Must meet the training requirements of the licensing classification of the AFH-DD in OAR 411-360-0120; and

(l) Must disclose on application for employment if they have been found to have committed abuse,

(5) Providers may not hire or continue to employ a resident manager or substitute caregiver that does not meet the requirements stated in this rule.

(6) A provider is responsible for the supervision and training of resident managers and substitute caregivers and their general conduct when acting within the scope of their employment or duties.

(7) Any provider, resident manager, caregiver, volunteer, or other subject individual must self report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or designee within 24 hours.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0120 Training Requirements
(Amended 7/1/2010)

(1) All providers must complete the Division's Basic Training Course that includes but is not limited to taking and passing an examination on course work and necessary skills. Failure to obtain a passing score on the Basic Training Examination may result in denial or non-renewal of a license pursuant to OAR 411-360-0270. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application may be denied.

(2) All resident manager applicants must complete the Division's Basic Training Course and pass the Basic Training Examination prior to becoming a resident manager. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application may be denied.

(3) All substitute caregivers left in charge of the home in the provider's or resident manager's absence for any length of time must complete the Division's Basic Training Course and pass the Basic Training Examination prior to giving care.

(4) The provider or resident manager must keep documentation of the completed Division Basic Training Course and annual training of substitute caregivers including the date of the training, subject content, name of the agency or organization providing the training, and the number of training hours.

(5) Prior to placement of individuals in the home, the provider must complete an AFH-DD orientation provided by the local CDDP that at a minimum covers the requirements of the rules governing AFH-DD services.

(6) All provider and resident manager applicants must have current certification in first aid by a training agency approved by the Division.

(7) The Division requires at least 12 hours of Division approved training annually for the provider, resident manager, and substitute caregivers of an AFH-DD that must be documented in the record.

(8) If a provider, resident manager, or substitute caregiver is not in compliance with these rules, the Division may require additional training in the deficient area, whether or not the 12-hour approved annual training requirement has already been met.

(9) Providers, resident managers, or substitute caregivers who perform tasks of care that are delegated by a registered nurse or taught by a physician must receive appropriate training and monitoring from a registered nurse or physician on performance and implementation of task of care. The delegated tasks of care must be addressed as part of the ISP.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0130 Facility Standards
(Amended 5/29/2012)

In order to qualify for or renew a license, an AFH-DD must meet the following provisions.

(1) GENERAL CONDITIONS.

(a) Each AFH-DD must maintain up-to-date documentation verifying they meet applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations for a single-family residence. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP.

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

(c) Stairways (interior and exterior) must have handrails and be adequately lighted. Yard and exterior steps must be accessible and appropriate to the needs of individuals.

(d) Adequate lighting must be provided in each room, internal and external stairways, and internal and external exit ways. Incandescent light bulbs and florescent tubes must be protected and installed per manufacturer’s directions.

(e) The heating system must be in working order. Areas of the AFH-DD used by individuals must be maintained at no less than 68 degrees F during the day (when individuals are home) and 60 degrees F during sleeping hours. During times of extreme summer heat, the provider must make every reasonable effort to make the individuals comfortable and safe using ventilation, fans, or air conditioners.

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

(g) Providers may not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the premise without supervision. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access.

(h) Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(i) Marijuana must not be grown in or on the premises of the AFH-DD. Individuals with Oregon Medical Marijuana Program (OMMP) registry cards must arrange for and obtain their own supply of medical marijuana from a designated grower as authorized by OMMP. The licensed provider, the caregiver, other employee, or any occupant in or on the premises of the AFH-DD must not be designated as the individual's grower and must not deliver marijuana from the supplier.

(2) SANITATION.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, it must be tested for coliform bacteria by a certified agent yearly and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

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

(d) Prior to laundering, soiled linens and clothing must be stored in containers in an area separate from food storage, kitchen, and dining areas. Special pre-wash attention must be given to soiled and wet bed linens.

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

(f) There must be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation.

(g) Universal precautions for infection control must be followed in care to individuals. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 to 459.405).

(3) BATHROOMS. Bathrooms must:

(a) Provide for individual privacy and have a finished interior, a mirror, an openable window or other means of ventilation, and a window covering. No person must have to walk through another person's bedroom to get to a bathroom;

(b) Be clean and free of objectionable odors;

(c) Have tubs or showers, toilets, and sinks in good repair, and hot and cold water. A sink must be located near each toilet. A toilet and

sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(d) Have hot and cold water in sufficient supply to meet the needs of individuals for personal hygiene. Hot water temperature sources for bathing areas may not exceed 120 degrees F;

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

(f) Have grab bars for toilets, tubs, and showers for the safety of individuals as required by individual disabilities;

(g) Have barrier-free access to toilet and bathing facilities with appropriate fixtures if there are non-ambulatory individuals. Alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene; and

(h) Have adequate supplies of toilet paper for each toilet and soap for each sink. Individuals must be provided with individual towels and wash cloths that are laundered in hot water at least weekly or more often if necessary. Individuals must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, individuals must be provided with individually dispensed paper towels.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must:

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

(B) Be finished with walls or partitions of standard construction that go from floor to ceiling and a door that opens directly to a

hallway or common use room without passage through another bedroom or common bathroom;

(C) Be adequately ventilated, heated, and lighted with at least one openable window that meets the fire regulations described in subsection (7)(a) of this rule;

(D) Have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals; and

(E) Have no more than two persons per room.

(b) Providers, resident managers, or family members must not sleep in areas designated as common use living areas, nor share bedrooms with individuals.

(c) There must be an individual bed for each individual consisting of a mattress and box springs at least 36 inches wide. Cots, rollaways, bunks, trundles, couches, futons, and folding beds must not be used for individuals. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases must be laundered at least weekly, and more often if necessary. Waterproof mattress covers must be used for incontinent individuals. An individual's bed must not be used by day care persons.

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

(e) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility.

(f) Individual bedrooms must be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or

be equipped with an intercom or audio monitor as approved by the ISP team.

(g) Bedrooms must have at least one window or exterior door that readily opens from the inside without special tools and that provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress that may be used by individuals. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(h) For AFH-DD homes with one or more employees, smoking regulations in compliance with Oregon's Indoor Clean Air Act must be adopted to allow smoking only in outdoor designated areas. Signs must be posted prohibiting smoking in the workplace per OAR 333-015-0040. Designated smoking areas must be at least 10 feet from entrances, exits, windows that open, ventilation intakes, or accessibility ramps.

(5) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the four basic food groups and fresh fruit and vegetables in season unless otherwise specified in writing by the physician. There must be no more than a 14-hour span between the evening meal and breakfast, unless snacks and liquids are served as supplements. Consideration must be given to cultural and ethnic backgrounds, as well as, the food preferences of individuals in food preparation. Special consideration must be given to individuals with chewing difficulties and other eating limitations. Food may not be used as an inducement to control the behavior of an individual.

(b) Menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and families. Menu substitutions in compliance with subsection (5)(a) of this section are acceptable.

(c) MODIFIED OR SPECIAL DIETS. For individuals with physician or health care provider ordered modified or special diets, the provider must:

(A) Have menus for the current week that provide food and beverages that 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 to individuals.

(d) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(e) Utensils, dishes, glassware, and food supplies must not be stored in bedrooms, bathrooms, or living areas.

(f) Meals must be prepared and served in the AFH-DD where individuals live. Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual.

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

(h) Food storage and preparation areas and equipment must be clean, free of obnoxious odors, and in good repair.

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

(6) TELEPHONE.

(a) A telephone must be provided in the AFH-DD that is available and accessible for individuals' use for incoming and outgoing calls. Telephone lines must be unblocked to allow for access.

(b) Emergency telephone numbers for the local CDDP, police, fire, medical if not served by 911, an emergency number to reach a provider who does not live in the AFH-DD, and any emergency physician and additional persons to be contacted in the case of an emergency, must be posted in close proximity to all phones utilized by the licensee, resident manager, individuals, and caregivers.

(c) Telephone numbers for making complaints or a report of alleged abuse to the Department, the local CDDP, and Disability Rights Oregon must also be posted.

(d) Limitations on the use of the telephone by individuals are to be specified in the written house rules. Individual restrictions must be specified in the ISP. In all cases, a telephone must be accessible to individuals for outgoing calls (emergencies) 24 hours a day.

(e) AFH-DD telephone numbers must be listed in the local telephone directory.

(f) The licensee must notify the Department and the Department's designee, individuals, individuals' families, legal representatives, and service coordinators, as applicable, of any change in the adult foster home's telephone number within 24 hours of the change.

(7) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The AFH-DD may be inspected for fire safety by the State Fire Marshal's office at the request of the Department using the standards in these rules as appropriate.

(b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good

repair. Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood stoves to prevent individuals with ambulation or confusion problems from coming in contact with the stove. Un-vented portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction.

(c) Extension cord wiring must not be used in place of permanent wiring.

(d) Hardware for all exit doors and interior doors used for exit purposes must have simple hardware that cannot be locked against exit and must have an obvious method of single action operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more individuals who have impaired judgment and are known to wander away from their place of residence must have a functional and activated alarm system to alert a caregiver of an unsupervised exit by an individual.

(e) EMERGENCY PROCEDURES.

(A) GENERAL FIRE DRILL REQUIREMENTS. The provider must conduct unannounced evacuation drills when individuals are present, once every quarter 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, with exit routes being varied based on the location of a simulated fire. All residents must participate in the evacuation drills.

(B) WRITTEN FIRE DRILL DOCUMENTATION REQUIRED. Written documentation must be made at the time of the fire drill

and kept by the provider for at least two years following the drill. Fire drill documentation must include:

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

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

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

(iv) The type of evacuation assistance provided by providers to individuals;

(v) The amount of time required by each individual to evacuate; and

(vi) The signature of the provider conducting the drill.

(C) The ISP must document that, within 24 hours of arrival, each new individual receives an orientation to basic safety and is shown how to respond to a fire alarm and how to exit from the AFH-DD in an emergency.

(D) The provider must demonstrate the ability to evacuate all individuals from the AFH-DD within three minutes. If there are problems in demonstrating this evacuation time, the licensing authority may apply conditions to the license that include but are not limited to reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license.

(E) The provider must provide, keep updated, and post a floor plan on each floor containing room sizes, location of each individual's bed, window, exit doors, resident manager or provider's sleeping room, smoke detectors, fire extinguishers, escape routes, and wheelchair ramps. A copy of the floor plan must be submitted with the application and updated to reflect any change.

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

(f) SMOKE ALARMS. Battery operated smoke alarms with a 10-year battery life and hush feature must be 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 inches and 12 inches from the ceiling and not within 12 inches of a corner. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms must be maintained in functional condition.

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

(h) SPECIAL HAZARDS.

(A) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by individuals and vandals. To protect the safety of an individual in an AFH-DD, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the individuals in the AFH-DD.

(B) Smoking regulations must be adopted to allow smoking only in outdoor designated areas in compliance with Oregon’s Indoor Clean Air Act. Smoking is prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted. Ashtrays must be at least 10 feet from any entrance, exit, window that opens, ventilation intake, or accessibility ramp.

(C) Smoking is prohibited in vehicles when individuals or employees occupy the vehicle.

(D) Cleaning supplies, medical sharps containers, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage, dining areas, and medications.

(8) EMERGENCY PLANNING.

(a) If an individual 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.

(b) WRITTEN EMERGENCY PLAN. Providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all the individuals in the event of an emergency or disaster. 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 and food 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 supplies; and

(iv) Caregivers unable to report as scheduled.

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

(i) The duties of caregivers during evacuation, transporting, and housing of individuals including instructions to caregivers to notify the Department or the Department's designee and local CDDP 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 individuals name, and to identify the name of the individual’s supporting provider; and

(v) A method for tracking and reporting to the Department, or the Department's designee, and the local CDDP 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 and the individual’s emergency information identified in OAR 411-360-0170, 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.

(c) Providers must instruct and provide training to all caregivers about the caregivers' duties and responsibilities for implementing the Emergency Plan.

(A) Documentation of caregiver training must be kept on record by the provider.

(B) The provider must re-evaluate the Emergency Plan at least annually or when there is a significant change in the home.

(d) Applicable parts of the Emergency Plan must coordinate with each applicable Employment, Alternative to Employment, or Day Program provider to address the possibility of an emergency or disaster during day time hours.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0140 Standards and Practices for Health Care
(Amended 7/1/2010)

(1) INDIVIDUAL HEALTH CARE. The individual must receive care that promotes their health and well-being as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary health care provider whom the individual or the individual's parent, guardian, or legal representative has chosen from among qualified providers.

(b) The AFH-DD must ensure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by the qualified health care provider.

(c) The AFH-DD 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 use or implementation of any of the following:

(A) Prescription medications;

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

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

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

(f) Injections may be self-administered by the individual, or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or the provider, resident manager, or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851, division 047. Documentation regarding the training or delegation must be maintained in the individual's record.

(2) REQUIRED DOCUMENTATION. The AFH-DD provider must maintain and keep current, 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, any known allergies, immunizations, Hepatitis B status, previous TB tests, incidents or injuries affecting the health safety or emotional well being of the individual, and history of emotional or mental health status that may be pertinent to current care;

(b) A record of visits and appointments to licensed health professionals that include documentation of the consultation, any treatment provided, and any follow-up reports provided to the AFH-DD provider;

(c) A record of known hospitalizations and surgeries;

(d) Current signed orders for all medications, treatments, therapies, specialized diets, and adaptive equipment;

(e) Medication administration records (MARs);

(f) Documentation of guardian consent for medical treatment that is not routine including surgery and anesthesia;

(g) Copies of previous mental health assessments, assessment updates, including multi-axial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services; and

(h) Provide, when requested, copies of medical records and MARs to a child or young adult’s legal guardian, Department caseworker, and CDDP services coordinator.

(3) 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.

(4) MEDICATION ADMINISTRATION.

(a) All medications and treatments must be recorded on an individualized 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 over the counter topical medications without a physician's order, a transcription of the printed instructions from the topical medication 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 (taken as needed) medication was administered;

(H) Documented effectiveness of any PRN (taken as needed) medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

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

(b) Any correction of errors in the MAR must be corrected with a circle of the error and the initials of the person making the correction.

(5) 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.

(6) SELF-ADMINISTRATION MEDICATIONS UNAVAILABLE TO OTHER INDIVIDUALS. The AFH-DD must ensure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(7) USE OF MEDICAL MARIJUANA.

(a) Prior to using medical marijuana in the AFH-DD, an individual must:

(A) Possess a valid OMMP registry card. A copy of the current registry card must be made available to the licensed provider and maintained in the individual's record.

(B) Provide a copy of the physician's written statement that indicates medical marijuana may mitigate the symptoms of the individual's qualifying condition and instructions for the use of medical marijuana.

(C) Be responsible for obtaining their marijuana from an OMMP approved third party grower who is not the AFH-DD licensee, caregiver, resident manager, or any other occupant in or on the premises of the AFH-DD.

(D) Sign an agreement that the individual understands that:

(i) Marijuana is not allowed to be grown by any person in or on the AFH-DD premises.

(ii) A participant in the OMMP may not possess more than one ounce of marijuana at any one time while in or on AFH-DD premises.

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual agrees to arrange for a "designated caregiver", authorized by the OMMP, and identified on the registry card. The individual understands that the AFH-DD licensee, caregivers, resident manager, and any occupant of the AFH-DD cannot be designated as their OMMP approved caregiver and identified on their OMMP registry card.

(iv) The AFH-DD licensee, caregivers, resident managers, and any occupant of the home cannot assist with the preparation, administration, or delivery of medical marijuana.

(v) The individual must maintain any equipment used to administer marijuana.

(vi) Marijuana must be kept in locked storage in the individual's bedroom when not being administered.

(vii) Immediately notify the OMMP of any change in status, such as a change in address, primary caregiver, or person responsible for the marijuana grow site. Copies of updated registry cards must be made available to the licensed AFH-DD provider for the individual's record.

(E) Comply with the Oregon Medical Marijuana Act, the requirements of the OMMP, and these rules. The individual must understand that failure to comply with Oregon laws, Oregon rules, or the house rules of the AFH-DD may result in additional action.

(b) The individual must self administer medical marijuana and ingest it or inhale it with a vaporizer. All smoking in or on the AFH-DD premises is prohibited. Marijuana must be administered in privacy in

a room that is not shared with another person. The individual may not have visitors, other individuals, or any other person in this private space while administering the marijuana.

(c) The individual must designate a grower to provide the marijuana as necessary, but that person must not be the AFH-DD provider, resident manager, caregivers, or any occupant in or on the AFH-DD premises. The grower designated by the individual must be authorized by OMMP and identified on the individual's registry card.

(A) The designated grower for individuals being served in the foster care system must accommodate the specific needs related to the dispensation and tracking of the controlled substance. Not more than 28 grams at a time can be stored on the property of the AFH-DD per card holder. The remainder of the OMMP card holder's marijuana must be stored at the grower's site.

(B) Each 28 grams, as needed, must be packaged in an airtight container clearly dated and labeled as to the total amount in grams with the OMMP card holder's name. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the MAR as to dosage in grams as weighed on a scale, date, and time of day.

(d) The AFH-DD licensee, caregivers, resident managers, and any other occupant in or on the AFH-DD premises must not prepare or in any way assist with the administration or procurement of the individual's marijuana. The AFH-DD licensee must monitor the individual's usage of medical marijuana to ensure safety and to document its use is in compliance with the physician's instructions for using marijuana as documented in the individual's ISP.

(8) USE OF PSYCHOTROPIC MEDICATIONS.

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

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

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

(b) The provider, resident manager, or any caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for an individual without direction from the licensed medical professional,

(c) The provider, resident manager, or any caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a licensed medical professional.

(d) PRN (as needed) psychotropic medication orders are not allowed.

(e) PSYCHOTROPIC MEDICATIONS FOR CHILDREN AND YOUNG ADULTS IN CHILD WELFARE CUSTODY VOLUNTARILY OR UNDER GUARDIANSHIP STATUS. Prior to any child or young adult being prescribed one or more psychotropic or any antipsychotic medication, a mental health assessment by a qualified mental health professional or a licensed medical professional is required.

(A) A mental health assessment is not required in the following situations:

(i) In case of urgent medical need;

(ii) For a change in the delivery system of the same medication;

(iii) For a change in medication within the same classification;

(iv) A one-time medication order given prior to a medical procedure; or

(v) An anti-epileptic medication prescribed for a seizure disorder.

(B) When a mental health assessment is required, the provider must notify and inform the following of the need for a mental health assessment:

(i) The Department's caseworker when a child or young adult is in the legal custody of the Department;

(ii) The CDDP services coordinator; or

(iii) The parent if retaining guardianship, or the legal guardian,

(C) The required mental health assessment must:

(i) Have been completed within three months prior to the prescription; or

(ii) May be an update of a prior mental health assessment, which focuses on a new or acute problem; and

(iii) Information from the mental health assessment must be provided to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(D) Within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for the child or young adult, the provider must notify:

(i) The parent, when they retain legal guardianship; or

(ii) The legal guardian, either the Department, a family member, or other person who has legal guardianship; and

(iii) The CDDP services coordinator.

(E) The notification from the provider to the legal guardian and the CDDP services coordinator must contain:

(i) The name of the prescribing physician, or qualified health care provider;

(ii) The name of the medication;

(iii) The dosage, any change of dosage, or suspension or discontinuation of the current psychotropic medication;

(iv) The dosage administration schedule prescribed; and

(v) The reason the medication was prescribed.

(F) The provider must get a written informed consent prior to filling a prescription for any new psychotropic medication from one of the following except in case of urgent medical need:

(i) The parent who retains legal guardianship;

(ii) The family member or person who has legal guardianship; or

(iii) The Department when the Department is the legal guardian of the child or young adult.

(G) When a young adult or child has more than two prescriptions for psychotropic medications, an annual review of psychotropic medications must occur by a licensed medical professional, or a qualified mental health professional with the authority to prescribe drugs, such as the Oregon Medicaid Drug Use Review Program.

(9) BALANCING TEST FOR PSYCHOTROPIC MEDICATIONS. When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care provider using the Department’s Balancing Test Form, or by inserting the required form content into the AFH-DD provider's forms.

(a) The AFH-DD provider 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; and

(b) The provider must keep signed copies of the balancing test in the individual's medical record for seven years.

(10) ADVERSE MEDICATION EFFECTS SAFEGUARDS. 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 that maintains a medication profile for the individual;

(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 caregiver; and

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

(11) 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.

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

(a) Coordinate with the nurse and the ISP team to ensure that the nursing 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 registered nurse.

(13) DELEGATION AND SUPERVISION OF TASKS OF NURSING CARE. Tasks of nursing care may be delegated by a registered nurse to providers and other caregivers only in accordance with Oregon State Board of Nursing OAR 851-047-0000.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0150 Personal Care Services
(Amended 7/1/2010)

Individuals living in the AFH-DD and receiving services from the Division must not receive personal care services funded through the state Title XIX Medicaid State Plan.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0160 Behavior Support
(Amended 7/1/2010)

(1) DEVELOPMENT OF AN INDIVIDUALIZED PLAN TO ALTER AN INDIVIDUAL’S BEHAVIOR. A decision to develop a plan to alter an

individual’s behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the AFH-DD provider.

(2) FUNCTIONAL BEHAVIORAL ASSESSMENT REQUIRED. Prior to the development of a formal Behavior Support Plan, as agreed to by the ISP team, a functional behavioral assessment must be conducted, 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.

(3) 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 of the behavior (as derived from the functional behavioral assessment);

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

(d) Prevention strategies including environmental modifications and arrangements;

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

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

(g) A plan to address post crisis issues;

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

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

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

(4) ADDITIONAL DOCUMENTATION REQUIREMENTS FOR IMPLEMENTATION OF BEHAVIORAL SUPPORT PLANS. Providers must maintain written evidence that the individual, the individual's parent (if applicable), guardian or legal representative (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;

(5) PROTECTIVE PHYSICAL INTERVENTION.

(a) CIRCUMSTANCES ALLOWING THE USE OF PHYSICAL INTERVENTION. The AFH-DD must only employ protective physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee.

(b) Protective physical intervention techniques must only be applied:

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

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

(C) As a health related protection prescribed 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.

(6) TRAINING. Providers, resident managers, and substitute caregivers who support individuals who have behavior support needs that may require the application of protective physical intervention, and when the ISP team has determined that there is probable cause for future application of protective physical intervention, must be trained by an instructor certified in OIS. Documentation verifying such training must be maintained in the personnel file of the provider, resident manager, and substitute caregiver.

(7) MODIFICATION OF OIS PROTECTIVE PHYSICAL INTERVENTION PROCEDURES. The AFH-DD provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of protective physical intervention techniques 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.

(8) PROTECTIVE PHYSICAL INTERVENTION TECHNIQUES IN EMERGENCY SITUATIONS. Use of protective physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the AFH-DD provider or resident manager 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) Require submission of an incident report to the CDDP services coordinator, or other Division designee (if applicable), and personal agent (if applicable) no later than one working day after the incident has occurred; and

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

(9) INCIDENT REPORT. Any use of protective physical intervention must be documented in an incident report. The report must include:

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

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

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

(d) Documentation of any injury;

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

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

(g) The name and position of the person conducting the review of the incident that includes the follow-up to be taken to prevent a recurrence of the incident.

(10) COPIES SUBMITTED. A copy of the incident report must be forwarded within five working days of the incident, to the CDDP services coordinator or other Division designee (if applicable) unless the protective physical intervention results in an injury, in which case, the CDDP, or other Division designee (if applicable) must be notified within one working day of

the incident... Copies of incident reports not associated with protective service investigations must be provided to the personal agent (if applicable) and the individual's legal guardian (if applicable) within the timeframes specified above.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0170 Documentation and Record Requirements
(Amended 5/29/2012)

(1) INDIVIDUAL RECORDS. A record must be developed, kept current, and available on the premises for each individual admitted to the AFH-DD.

(a) The provider must maintain a summary sheet for each individual in the home. The summary sheet must include:

(A) The individual's name, current and previous address, date of entry into AFH-DD, date of birth, gender, marital status, religious preference, preferred hospital, Medicaid prime and private insurance number if applicable, and guardianship status; and

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

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

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

(iii) The individual's preferred dentist;

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

(v) The individual's services coordinator; and

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

(b) EMERGENCY INFORMATION. The AFH-DD provider must maintain emergency information for each individual receiving services in the AFH-DD in addition to the individual summary sheet identified in subsection (1)(a) of this section. 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 AFH-DD where the individual resides if different from that of the licensee;

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

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

(ii) Any other identifying characteristics that may 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:

(i) How the individual communicates;

(ii) The language the individual uses and understands;

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

(iv) 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:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

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

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

(v) 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;

(vi) 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;

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

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

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

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

(ii) 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 may assist in the care and support of the individual should a natural or man-made disaster occur.

(c) Individual records must be available to representatives of the Department, or the Department's designee conducting inspections or investigations, as well as to individuals to whom the information pertains, their authorized representative, or other legally authorized persons;

(d) INDIVIDUAL RECORDS. Individual records must be kept by the provider for a period of at least three years. When an individual moves or the AFH-DD closes, copies of pertinent information must be transferred to the individual's new place of residence; and

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

(2) INDIVIDUAL ACCOUNT RECORDS. For those individuals not yet capable of managing their own money as determined by the ISP Team or guardian, the provider must prepare, maintain, and keep current a separate and accurate written record for each individual of all money received or disbursed on behalf of or by the individual.

(a) 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 provider making each entry.

(b) Purchases of $10.00 or more made on behalf of an individual must be documented by receipts unless an alternate amount is otherwise specified by the ISP team.

(c) Personal Incidental Funds (PIF) for individuals are to be used at the discretion of the individual for such things as clothing, video games, and snacks (not part of daily diet) and addressed in the ISP.

(d) Each record must include the disposition of the room and board fee that the individual pays to the provider at the beginning of each month.

(e) REIMBURSEMENT TO INDIVIDUAL. The provider must reimburse the individual any funds that are missing due to theft or mismanagement on the part of the provider, resident manager, or caregiver of the AFH-DD, or for any funds within the custody of the provider that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(f) Financial records must be maintained for at least seven years.

(3) INDIVIDUALS' PERSONAL PROPERTY RECORD. The provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or 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 record;

(d) Signature of provider making each entry; and

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

(4) INDIVIDUAL SUPPORT PLAN. A health and safety transition plan must be developed at the time of admission for the first 60 days of service. A complete ISP must be developed by the end of 60 days. It must be updated at a minimum annually, and more often when the individual's support needs change.

(a) A completed ISP must be documented on the Department-mandated Foster Care ISP Form that includes the following:

(A) What is most important to the individual and what works and doesn't work;

(B) The individual's support needs as identified on the Support Needs Assessment Profile (SNAP) (if applicable);

(C) The type and frequency of supports to be provided;

(D) The person responsible for carrying out the supports; and

(E) A copy of the Employment, Alternatives to Employment, or Day Program provider's plan must be integrated or attached to the AFH-DD ISP for persons also served in an employment or other Department-funded day service.

(b) The ISP must include at least six hours of activities each week that are of interest to the individual, not including television or movies made available by the provider. Activities available in the community and made available or offered by the provider or the CDDP may include but are not limited to:

(A) Habilitation services;

(B) Rehabilitation services;

(C) Educational services;

(D) Vocational services;

(E) Recreational and leisure activities; and

(F) Other services required to meet an individual's needs as defined in the ISP.

(5) HOUSE RULES. The provider must document that a copy of the written house rules has been provided and discussed with the individual annually. House rules must be in compliance with section (9) of this rule governing the rights of individuals. House rules established by the provider must:

(a) Include any restrictions the AFH-DD may have on the use of alcohol, tobacco in compliance with Oregon’s Indoor Clean Air Act,

medical marijuana (if applicable), pets, visiting hours, dietary restrictions, or religious preference.

(b) Include house rules specific to the presence and use of medical marijuana on the AFH-DD premises, if applicable. The home's medical marijuana rules must be reviewed and approved by the Department or the Department's designee.

(c) Not be in conflict with the individual's Bill of Rights, the family atmosphere of the home, or any of these rules.

(d) Include house rules specific to the immediate notification of substantiated abuse as described in OAR 411-360-0210(16).

(e) Be reviewed and approved by the Department or the Department's designee prior to the issuance of a license and prior to implementing changes.

(f) Be readily available to be seen and read by individuals and visitors.

(6) UNUSUAL INCIDENTS. A written report of all unusual incidents relating to an individual must be sent to the CDDP within five working days of the incident. The report must include how and when the incident occurred, who was involved, what action was taken by the provider or caregiver, the outcome to the individual, and what action is being taken to prevent the reoccurrence of the incident.

(7) GENERAL INFORMATION. The provider must maintain all other information or correspondence pertaining to the individual.

(8) MONTHLY PROGRESS NOTES. The provider must maintain and keep current, at minimum, monthly progress notes for each individual residing in the home regarding the progress of the ISP supports, any medical, behavioral, or safety issues, or any other events that are significant to the individual.

(9) INDIVIDUAL'S BILL OF RIGHTS. The provider must abide by the individual's Bill of Rights and post them in a location that is accessible to individuals and the individuals' parents, guardians, or legal representatives.

The provider must give a copy of the individual's Bill of Rights along with a description of how to exercise these rights to each individual and the individual’s parent, guardian, or legal representative. The individual’s Bill of Rights must be reviewed annually or as changes occur by the provider with the individual and any parent, guardian, or legal representative. The individual’s Bill of Rights states each individual has the right to:

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

(b) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;

(c) Receive appropriate care and services and prompt health care as needed;

(d) Have adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service, and medical professionals, send and receive personal mail unopened, and engage in telephone conversations as explained in OAR 411-360-0130(6);

(e) Have access to and participate in activities of social, religious, and community groups;

(f) Be able to keep and use personal clothing and possessions as space permits;

(g) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion;

(h) Manage his or her financial affairs unless determined unable by the ISP team or legally restricted;

(i) Have a safe and secure environment;

(j) Have a written agreement regarding services to be provided;

(k) Voice grievance without fear of retaliation;

(l) Have freedom from training, treatment, or chemical or protective physical interventions except as agreed to, in writing, in an individual's ISP;

(m) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to individuals in an age appropriate manner;

(n) Have an opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(o) Be free from punishment. Behavior intervention programs must be approved in writing on the individual's ISP;

(p) Be free from abuse and neglect;

(q) Have the opportunity to contribute to the maintenance and normal activities of the household;

(r) Have access and opportunity to interact with persons with or without disabilities; and

(s) Have the right not to be transferred or moved without advance notice as provided in ORS 443.739(18) and OAR 411-088-0070, and the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080.

(10) AFH-DD records must be kept current and maintained by the AFH-DD provider and be available for inspection upon request. AFH-DD records must include but not be limited to proof that the provider, resident manager, and any other caregivers have met the minimum qualifications as required by OAR 411-360-0110. The following documentation must be available for review upon request:

(a) Completed employment applications including the names, addresses, and telephone numbers of all caregivers employed by the provider. All employment applications for persons hired to provide care in an AFH-DD must ask if the applicant has ever been found to have committed abuse.

(b) Proof that the provider has the Department's approval for each subject individual, who is 16 years of age and older, to have contact with adults who are elderly or physically disabled or developmentally disabled as a result of a background check as defined in OAR 407-007-0210.

(c) Proof of required training according to OAR 411-360-0120. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of training hours.

(d) A certificate to document completion of the Department's Basic Training Course for the provider, resident manager, and all caregivers.

(e) Proof of mandatory abuse report training for all caregivers.

(f) Proof of any additional training required for resident managers and caregivers.

(g) Documentation of caregiver orientation to the AFH-DD, training of emergency procedures, training on individual's ISP's, and training on behavior supports and Nursing Care Plan (if applicable).

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0180 General Practices
(Amended 5/29/2012)

The provider must:

(1) Conspicuously post the state license where it can be seen by individuals;

(2) Explain and document in the individual's file that a copy of the individual's Bill of Rights is given to each individual at admission. The individual's Bill of Rights must be posted in a conspicuous place and

include the name and phone number of the office to call in order to report complaints;

(3) Develop written house rules regarding hours, visitors, designated smoking areas, alcohol, use and presence of medical marijuana, meal times, use of telephones and kitchen, monthly charges and services to be provided, and policies on refunds in case of departure, hospitalization, or death. House rules must be discussed with individuals and their families at the time of admission, reviewed annually, and posted in a conspicuous place in the AFH-DD. House rules are subject to review and approval by the Department or the Department's designee and may not violate individual's rights as stated in ORS 430.210, 443.739, and OAR 411-360-0170(9). If the individual intends to use medical marijuana in the AFH-DD, the individual’s record must include the home’s medical marijuana house rules signed and dated by the individual or the individual’s legal representative;

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

(5) Give care and services, as appropriate to the age and condition of the individuals and as identified in the ISP. The provider must be responsible for ensuring that physicians' orders and those of other medical or health professionals are followed and that the individual's physicians and other health professionals are informed of changes in health status and if the individual refuses care;

(6) In the provider's absence, have a substitute caregiver on the premises that can provide care or services as required by the age and condition of the individuals. An AFH-DD service recipient may not be a substitute caregiver. For provider absences beyond 72 hours, the CDDP must be notified of the name of the substitute caregiver;

(7) A provider, resident manager, or caregiver must be present in the home at all times individuals are present, unless specifically stated in the ISP and granted as a variance by the Department;

(8) Allow individuals to exercise all civil and human rights accorded to other citizens;

(9) Not allow or tolerate physical, sexual, or emotional abuse or punishment, exploitation, or neglect of individuals;

(10) Provide care and services as agreed to in the ISP;

(11) Keep information related to individuals confidential as required under ORS 179.050;

(12) Assure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the CDDP and Department;

(13) Not admit individuals without developmental disabilities prior to the express permission of the Department or the Department's designee. The provider must notify the CDDP prior to admitting an individual not referred for placement by the CDDP;

(14) Notify the Department and CDDP prior to announcing a planned closure to individuals and families. The provider must give individuals, families, and the CDDP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH-DD, individuals may not be shifted from one AFH-DD to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CDDP;

(15) Exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of individuals;

(16) Immediately notify the appropriate ISP team members (in particular the services coordinator and family or guardian) of any unusual incidents that include the following:

(a) Any significant change in medical status;

(b) An unexplained or unanticipated absence from the AFH-DD;

(c) Any alleged or actual abuse of the individual;

(d) Any major behavioral incident, accident, illness, or hospitalization;

(e) If the individual contacts or is contacted by the police; or

(f) The individual dies.

(17) Write an incident report for any unusual incident and forward a copy of the incident report to the CDDP within five working days of the incident unless the incident must be referred immediately for a protective services investigation. Copies of incident reports not involving a protective services investigation must be provided to the guardian or personal agent, when applicable; and

(18) Notify the Department and the Department's designee within 24 hours upon a change in the business address for electronic mail and the telephone number for the provider and the AFH-DD.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0190 Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures
(Amended 5/29/2012)

(1) ADMISSION. All individuals considered for admission into the AFH-DD must:

(a) Not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law; and

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

(A) Be referred by the CDDP or have prior written approval of the CDDP or Department if the individual's services are paid for by the Department; or

(B) Be placed with the agreement of the CDDP if the individual is either private pay or not developmentally disabled.

(2) INFORMATION REQUIRED FOR ADMISSION. At the time of the referral, the provider must be given:

(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 support that includes where available:

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

(B) The 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 any other legal restrictions on the rights of the individual, if applicable; and

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

(3) ADMISSION MEETING. An ISP team meeting must be conducted prior to the onset of services for 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-admission information required by section (2) of this rule;

(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.

(4) The provider must retain the right to deny admission of any individual if they feel the individual’s support needs may not be met by the AFH-DD provider, or for any other reason specifically prohibited by these rules.

(5) AFH-DD homes may not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the CDDP or the Department.

(6) TRANSFERS.

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the AFH-DD without 30 days advance written notice to the individual, the individual's legal representative,

guardian, or conservator, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the individual's right to a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080, except for a medical emergency, or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care;

(C) The AFH-DD has had its license suspended, revoked, not renewed, or the provider voluntarily surrendered their license;

(D) The individual's care needs exceed the ability of the provider; or

(E) There is a mutual decision made by the individual and the ISP team that a transfer is in the individual’s best interest and all team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider must be given the opportunity for hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, a family member, and the CDDP. If a hearing is requested to appeal a transfer, the individual must continue to receive the same services until the appeal is resolved.

(7) RESPITE. Providers may not exceed the licensed capacity of their AFH-DD. However, respite care of no longer than 14 days duration may be provided to one or more individuals if the addition of the respite individual does not cause the total number of individuals to exceed five. Thus, a provider may exceed the licensed number of individuals by one or more respite individuals for 14 days or less if:

(a) Approved by the CDDP or the Department;

(b) The total number of individuals does not exceed five;

(c) There is adequate bedroom and living space available in the AFH-DD; and

(d) The provider has information sufficient to provide for the health and safety of individuals receiving respite.

(8) CRISIS SERVICES.

(a) All individuals considered for crisis services received in an AFH-DD must:

(A) Be referred by the CDDP or Department;

(B) Be determined to have a developmental disability by the Department or the Department's designee;

(C) Be determined to be eligible for developmental disability services as described in OAR 411-320-0080;

(D) Not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law; and

(E) Have a written Crisis Plan developed by the CDDP or Regional Crisis Diversion Program that serves as the justification for, and the authorization of, supports and expenditures pertaining to an individual receiving crisis services provided under this rule.

(b) SUPPORT SERVICES PLAN OF CARE AND CRISIS ADDENDUM REQUIRED. Individuals receiving support services under OAR chapter 411, division 340, and receiving crisis services in an AFH-DD must have a Support Services Plan of Care and a Crisis Addendum upon admission to the AFH-DD.

(c) PLAN OF CARE. Individuals not enrolled in support services receiving crisis services for less than 90 consecutive days must have a Transition Plan on admission that addresses any critical information relevant to the individual's health and safety including current physicians' orders.

(d) ADMISSION MEETING REQUIRED. Admission meetings are required for individuals receiving crisis services.

(e) EXIT MEETING REQUIRED. Exit meetings are required for individuals receiving crisis services.

(f) WAIVER OF APPEAL RIGHTS FOR EXIT. Individuals receiving crisis services do not have appeal rights regarding exit upon completion of the Crisis Plan.

(9) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers stated in section (6)(a) of this rule. The provider must give at least 30 days written notice to an individual, the CDDP services coordinator, and the Department or the Department’s designee before termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual requests a hearing to appeal the exit from an AFH-DD, the individual must receive the same services until the grievance is resolved.

(b) The provider must promptly notify the CDDP in writing if an individual gives notice or plans to leave the AFH-DD or if an individual abruptly leaves. An individual is not required to give notice to an AFH-DD provider if they choose to exit the AFH-DD.

(10) 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 the AFH-DD unless the individual or the individual's 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.

(11) REQUIREMENTS FOR WAIVER OF EXIT MEETING. Requirements for an exit meeting may be waived if an individual is immediately removed from the AFH-DD under the following conditions:

(a) The individual and the individual’s guardian or legal representative request an immediate move from the AFH-DD home; or

(b) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(12) CLOSING. Providers must notify the Department in writing prior to a voluntary closure of an AFH-DD and give individuals, families, and the CDDP 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH-DD, individuals may not be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CDDP. A provider must return the AFH-DD license to the Department if the home closes prior to the expiration of the license.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0200 Adjustment, Suspension, or Termination of Payment
(Amended 7/1/2010)

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

(a) The provider's AFH-DD license is revoked, suspended, or terminated;

(b) Upon finding that the provider is failing to deliver any service as agreed to in the ISP;

(c) When funding, laws, regulations, or the CDDP or Division priorities change such that funding is no longer available, redirected to other purposes, or reduced;

(d) The individual's service needs change;

(e) The individual is absent without providing notice to the provider for five or more consecutive days;

(f) The individual is determined to be ineligible for services; or

(g) The individual moves, with or without notice, from the AFH-DD. The provider shall be paid only through the last night the individual slept in the AFH-DD.

(2) The CDDP or the Division is under no obligation to maintain the AFH-DD at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0210 Inspections
(Amended 7/1/2010)

(1) The Division or the Division's designee shall conduct an inspection of an AFH-DD:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or

(c) Anytime the Division or the Division's designee has probable cause to believe that an AFH-DD has violated a regulation or provision of these rules or is operating without a license.

(2) The Division or the Division's designee may conduct inspections of an AFH-DD:

(a) Anytime such inspections are authorized by these rules and any other time the CDDP or the Division considers it necessary to determine if an AFH-DD is in compliance with these rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring of the individuals' care.

(3) State or local fire inspectors shall be permitted access to enter and inspect the AFH-DD regarding fire safety upon request of the Division.

(4) Division or CDDP staff shall have full access and authority to examine, among other things, facility and individual records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) Division or CDDP staff shall have authority to interview the provider, resident manager, caregivers, and individuals. Interviews shall be confidential and conducted in private, and shall be confidential except as considered public record under ORS 430.763.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Division or CDDP staff for the purpose of inspection and investigation.

(7) The Division or CDDP staff has authority to conduct inspections with or without advance notice to the provider, substitute caregivers, or an individual of the AFH-DD. The Division or CDDP may not give advance notice of any inspection if they believe that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) The inspector shall respect the private possessions and living area of individuals, providers, and caregivers while conducting an inspection.

(9) A copy of the inspection report shall be given to the licensee within 10 working days of completion of the final report.

(10) Completed reports on inspections, except for confidential information, shall be available to the public, upon request of the Division or CDDP, during business hours.

(11) For individuals receiving services authorized or funded by a CDDP, the Department or the Department's designee must investigate allegations of abuse as defined in OAR 407-045-0260.

(12) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee, has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Department or the Department's designee. For the purposes of this section, an internal investigation is defined as:

> (a) Conducting interviews of the alleged victim, witness, the accused person or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances;
>
> (b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or
>
> (c) Any other actions beyond the initial actions of determining:
>
> > (A) If there is reasonable cause to believe that abuse has occurred;

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

(C) If there is reason to believe that a crime has been committed; and

(D) What, if any, immediate personnel actions shall be taken.

(13) When an abuse investigation has been initiated, the Department or the Department's designee must provide notice to the AFH-DD provider according to OAR 407-045-0290.

(14) The Department or the Department's designee shall conduct investigations as described in OAR 407-045-0250 to 407-045-0360.

(15) When an abuse investigation has been completed, the Department or the Department's designee must provide notice of the outcome of the Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(16) When the provider receives notification of a substantiated allegation of abuse, the provider must provide immediate written notification:

(a) To the person found to have committed abuse;

(b) Individuals of the foster home;

(c) Individuals' services coordinators; and

(d) Individuals' guardians.

(17) The provider's written notification must include:

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

(b) When the allegation was substantiated; and

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

(18) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation to determine if any other personnel actions are necessary.

(19) Upon completion of the Abuse Investigation and Protective Services 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 must be provided to the appropriate provider. The provider must implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(20) A provider may not retaliate against any person who reports in good faith suspected abuse, or against the individual with respect to the report. An accused person may not self-report solely for the purpose of claiming retaliation.

(21) Any provider who retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to $1,000, not withstanding any other remedy provided by law.

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

(a) Discharge or transfer from the AFH-DD, 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 AFH-DD or the individuals served by the AFH-DD.

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

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0220 Complaints
(Amended 7/1/2010)

(1) The Division or CDDP shall furnish each AFH-DD with a Complaint Notice that must be posted in a conspicuous place, stating the telephone number of the Division and the CDDP and the procedure for making complaints.

(2) Any person who believes these rules have been violated may file a complaint with the Division or CDDP.

(3) The Division or CDDP shall investigate any complaint regarding the AFH-DD.

(4) A copy of all AFH-DD complaints shall be maintained by the Division. All complaints and action taken on the complaint, indexed by the name of the provider, must:

> (a) Be placed into the public file at the Division. (Information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed);
>
> (b) Protect the privacy of the complainant and the individual; and
>
> (c) Treat the names of the witnesses as confidential information.

(5) Providers who receive substantiated complaints pertaining to the health, safety. or welfare of individuals may have their licenses suspended, revoked, or not renewed, or may have conditions placed on the license.

(6) The AFH-DD provider, resident manager, or caregiver must not retaliate in any way against any individual after a complaint has been filed with the Division. Retaliation may include but is not limited to:

(a) Increasing charges;

(b) Decreasing services, rights, or privileges;

(c) Threatening to increase charges or decrease services, rights, or privileges;

(d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH-DD; or

(e) Abusing, harassing, or threatening to harass or abuse an individual in any manner.

(7) A complainant, witness, or caregiver of an AFH-DD must not be subject to retaliation by a provider or resident manager for making a report or being interviewed about a complaint or being a witness. Retaliation may include but is not limited to caregiver dismissal or harassment, or restriction of access to either the AFH-DD or an individual.

(8) Any person has the right to inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Division upon request subject to the Division's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests subject to federal and state confidentiality laws.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0230 Procedures for Correction of Violations
(Amended 7/1/2010)

(1) If an inspection or investigation results in a violation of the rules other than abuse, the Division, or the Division's designee shall notify the provider in writing of violations of these rules.

(2) The notice of violation shall state the following:

(a) A description of each conduct or condition that constitutes a violation;

(b) Each regulation that has been violated; and

(c) Except in cases of abuse, a specific time frame for correction, but no later than 60 days after receipt of the notice.

(3) The provider must notify the Division in writing of the correction of violations no later than the date specified in the notice of violation.

(4) The Division or the Division's designee shall conduct a re-inspection of the AFH-DD after the date the Division or the CDDP receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

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

(a) Imposition of an administrative sanction; or

(b) Filing of a criminal complaint.

(6) For violations that present a serious threat to the health, safety, or welfare of individuals, the notice of violation shall order the licensee to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division or the Division's designee shall inspect the AFH-DD after the 24 hour period to determine if the violations have been corrected as specified in the notice of violation.

(7) If individuals are in serious and immediate danger, the license may be suspended immediately and arrangements made to move the individuals.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0240 Administrative Sanction
(Amended 7/1/2010)

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

(a) Attachment of conditions to a license;

(b) Civil penalties;

(c) Denial, revocation, or non-renewal of license; or

(d) Immediate suspension of license.

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

(3) The notice of administrative sanction shall state:

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

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) A statement of the administrative sanction imposed;

(d) A statement of the licensee's right to a contested case hearing;

(e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that the Division's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(4) The Division's notice serves as the final order by default if the licensee fails to request a hearing within the specified time or fails to appear for the contested case hearing.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0250 Conditions
(Amended 7/1/2010)

(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 of an adult; or

(d) The AFH-DD is not being operated in compliance with these rules.

(2) IMPOSING CONDITIONS. Conditions that may be imposed on a licensee include but are not limited to:

(a) Restricting the total number of individuals in the AFH-DD;

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

(c) Requiring additional caregiver or caregiver qualifications;

(d) Requiring additional training of caregivers;

(e) Requiring additional documentation;

(f) Restricting a provider from opening an additional AFH-DD; and

(g) Suspending admissions.

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

(4) TIMELINE TO MAKE WRITTEN APPLICATION FOR CONTESTED CASE HEARING. The provider to whom the notice is addressed, shall have 10 days from the date of service of the notice in which to make a written application for a contested case hearing before the Division.

(5) ADMINISTRATIVE REVIEW. In addition to, or in lieu of a contested case hearing, a provider may request a review by the Assistant Director of the Division of conditions imposed by the CDDP or the Division. The review does not diminish the provider's right to a hearing.

(6) LENGTH OF CONDITIONS. Conditions may be imposed for the duration of the licensure period (one year) or limited to some other shorter period of time. If the conditions correspond to the licensing period, the reasons for the conditions shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0260 Civil Penalties
(Amended 5/29/2012)

(1) Civil penalties, except as otherwise provided in this rule, may not exceed $100 per violation to a maximum of $250 assessed for a general violation of these rules.

(2) A civil penalty of up to $500, unless otherwise required by law, shall be imposed for falsifying individual or AFH-DD records or causing another to do so.

(3) A civil penalty of $250 shall be imposed on a licensee for failure to have either the provider, resident manager, or other qualified caregiver on duty 24 hours per day in the AFH-DD per ORS 443.725(3), unless permitted under OAR 411-360-0180(7).

(4) A civil penalty of $250 shall be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) A civil penalty of not less than $250 and not more than $500, unless otherwise required by law, shall be imposed on a provider who admits knowing that the individual's care needs exceed the license classification of the AFH-DD if the admission places the individual or other individuals at grave risk of harm.

(6) Civil penalties of up to $1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Department or the Department's designee conducts an investigation or survey and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Department shall impose a civil penalty of not less than $2,500 for each violation.

(a) To impose this civil penalty, the Department shall establish that:

(A) The abuse arose from deliberate or other than accidental action or inaction;

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(C) The person with the finding of abuse had a duty of care toward the resident.

(b) For the purposes of this civil penalty, the following definitions apply:

(A) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(C) "Sexual abuse" means any form of nonconsensual sexual contact including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty, the Department may impose a civil penalty for any of the following:

(a) Operating the AFH-DD without a license;

(b) The number of individuals exceeds the licensed capacity;

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

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

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

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

(g) Violations are found on two consecutive inspections of an AFH-DD after a reasonable amount of time prescribed for elimination of the violations has passed.

(9) In imposing a civil penalty pursuant to this rule, the Department shall consider the following factors:

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

(b) Any prior violations of statutes or rules pertaining to AFH-DD homes;

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

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

(10) Any civil penalty imposed under this rule shall become due and payable when the provider incurring the penalty receives a notice in writing from the Department. The notice shall be sent by registered or certified mail and shall include:

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

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

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

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

(11) The provider, to whom the notice is addressed, shall have 10 days from the date of service of the notice in which to make a written application for a contested case hearing before the Department.

(12) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(13) If the provider notified fails to request a contested case hearing within 10 days, a final order may be entered by the Department assessing a civil penalty.

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

(15) If the final order is not appealed, the amount of the penalty is payable within 10 days after the final 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, shall constitute a judgment and may be filed in accordance with provisions of ORS chapter 18. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(16) A violation of any general order or final order pertaining to an AFH-DD 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.

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

(18) All penalties recovered under ORS 443.455 and 441.710 to 441.740 shall be paid into the Quality Care Fund.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0270 Denial, Revocation, or Non-renewal of License
(Amended 7/1/2010)

(1) The Division shall deny, revoke, or refuse to renew a license where it finds:

(a) There has been imminent danger to the health or safety of individuals or substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of individuals in an AFH-DD.

(b) The applicant or provider has a denied criminal records check from the Department.

(c) The applicant or provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(d) The provider fails to implement a plan of correction or comply with a final order of the Division imposing an administrative sanction.

(e) The provider refuses to allow access and inspections.

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

(g) If a criminal records check is required on or after July 28, 2009 and the individual has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

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

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

(i) Resides with the person;

(ii) Employs the person in the AFH-DD;

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

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

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

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

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

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

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

(c) Has a founded finding of abuse of a child or substantiated finding of abuse of an adult;

(d) Has a medical or psychiatric problem that interferes with the ability to provide care;

(e) Has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked, or refused to be renewed in this or any other state or suspension, revocation, or refusal to renew was due in any part to abuse of an adult or child, creating a threat to the individuals, or failure to possess physical health, mental health, or good personal character; or

(f) Has failed to pass the second AFH-DD Basic Training Examination.

(3) Failure to disclose requested information on the application, provision of incomplete or incorrect information on the application, or failure to renew their license shall constitute grounds for denial or revocation of the license.

(4) The provider to whom the notice is addressed, shall have 60 days from the date of service of the notice in which to make a written application for a hearing before the Division when the administrative sanction is a denial of a license. The provider shall have 60 days when the administrative sanction is a non-renewal of a license. The provider shall have 21 days when the administrative sanction is the revocation of a license.

(5) All hearings shall be conducted pursuant to the applicable provisions or ORS chapter 183.

(6) If the provider notified fails to request a hearing within the time period specified in the notice an order may be entered by the Division.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0275 Immediate Suspension
(Amended 7/1/2010)

(1) A license may be immediately suspended upon a finding by the Division of any of the following:

(a) There exists an immediate threat to the health, safety, or welfare of any individual.

(b) There is reliable evidence of abuse, neglect, or exploitation of any individual.

(c) The AFH-DD is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted there under.

(d) The AFH-DD provider has been found to have been convicted of a crime that would have resulted in a denied fitness determination.

(2) If the license is immediately suspended for the reason of abuse, neglect, or exploitation of an individual, the provider may request a review in writing within 10 days after notice of the immediate suspension.

(a) If a request is made, the Assistant Director of the Division shall review all material relating to the allegation of abuse, neglect, or exploitation and to the immediate suspension within 10 days of the request.

(b) The Assistant Director shall determine, based on review of the material, whether or not to sustain the decision to immediately suspend.

(c) If the Assistant Director determines not to sustain the decision, the license shall be restored immediately.

(d) If the Assistant Director's decision is to affirm the suspension the licensee has 21 days to appeal the decision in a contested case hearing.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended, the Division shall withhold service payments until the defective situation is corrected. For protection of individuals, the Division, or the Division's designee shall arrange for them to move.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0280 Criminal Penalties
(Amended 7/1/2010)

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

(2) Refusing to allow the Department or the Department's designee access to the AFH-DD for inspection, access to individuals in order to interview individuals privately, access to review records, or access to the AFH-DD regarding fire safety by state and local fire inspector, is punishable as a Class B misdemeanor.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0290 Enjoinment of Adult Foster Home Operation
(Amended 7/1/2010)

The Division may commence an action to enjoin operation of an AFH pursuant to ORS 443.775(8):

(1) When an AFH-DD is operated without a valid license; or

(2) After notice of revocation or suspension has been given, a reasonable time for placement of individuals in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0300 Zoning for Adult Foster Homes
(Amended 7/1/2010)

An AFH-DD is a residential use of property for zoning purposes. An AFH-DD is a permitted use in any residential zone, including a residential zone that allows a single family dwelling, and in any commercial zone that allows a single-family dwelling. No city or county may impose any zoning requirement on the establishment and maintenance of an AFH-DD in these zones that is more restrictive than a single-family dwelling in the same zone.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825

411-360-0310 Public Information
(Amended 7/1/2010)

(1) The Division, or the Division's designee, shall maintain current information on all licensed AFH-DD's and shall make that information available to prospective individuals, their families, and other interested members of the public.

(2) The information shall include:

(a) The location of the AFH-DD;

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

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

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

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

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

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

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

(3) Any list of adult foster homes maintained or distributed by the Division shall include notification to the reader of the availability of public records concerning the AFH-DD's.

Stat. Auth.: ORS 409.050 & 410.070
Stats. Implemented: ORS 443.705 - 443.825