DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 360

ADULT FOSTER HOMES FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

411-360-0010 Statement of Purpose
(Amended 9/27/2013)

(1) The rules in OAR chapter 411, division 360 prescribe the standards and procedures for the licensure of adult foster homes for individuals with intellectual or developmental disabilities (AFH-DD) and the provision of care and services to support individuals with intellectual or developmental disabilities in a homelike environment that is safe and secure.

(2) An AFH-DD supports individuals by providing necessary care and services through a cooperative relationship between the AFH-DD provider, the individual, the individual's legal representative (if applicable), and the community developmental disability program.

(3) An AFH-DD protects and encourages an individual's independence, dignity, choice, and decision making while addressing an individual's needs in a manner that supports and enables the individual to maximize his or her ability to function at the highest level of independence possible.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0020 Definitions
(Temporary Effective 07/01/2014 to 12/28/2014)

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 360:

(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 the 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) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(4) "Adult" means an individual18 years or older with an intellectual or developmental disability.

(5) "Adult Foster Home (AFH)" means any family home or facility licensed by the Department in which residential care and services are provided in a home-like environment for compensation to five or fewer adults who are not related to the provider by blood, marriage, or adoption. An adult foster home 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 Intellectual or Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Department to provide residential care and services to support individuals with intellectual or developmental disabilities.

(7) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by an individual or the legal representative of the individual that provides health care instructions in the event the individual is no longer able to give directions regarding his or her wishes. The Advance Directive gives the individual the means to control his or her own health care in any circumstance. An Advance Directive for Health Care does not include Physician Orders for Life-Sustaining Treatment (POLST).

(8) "Advocate" means a person other than a paid caregiver who has been selected by an individual or the legal representative of the individual 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.

(9) "AFH" means "adult foster home" as defined in this rule.

(10) "AFH-DD" means an "adult foster home for individuals with intellectual or developmental disabilities" as defined in this rule.

(11) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.

(12) "Applicant" means a person who completes an application for an adult foster home license who is also the owner of the business or a person who completes an application to become a resident manager. The term applicant includes a co-applicant (if applicable).

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

(14) "Bill of Rights" means civil, legal, or human rights afforded to individuals in an adult foster home that are in accordance with those rights afforded to all other U.S. citizens including, but not limited to, those rights delineated in the Adult Foster Home Bill of Rights for individuals with intellectual or developmental disabilities described in OAR 411-360-0170.

(15) "Care" means supportive services that encourage maximum individual independence and enhance the quality of life for an individual including, but not limited to:

> (a) Provision of 24-hour supervision, being aware of the whereabouts of the individual, and ensuring the health, safety, and welfare of the individual;

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

(c) Monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(16) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

(17) "Caregiver" means any person responsible for providing care and services to support individuals. A caregiver includes a provider, resident manager, and any temporary, substitute, or supplemental caregiver or other person designated to provide care and service to support individuals in an adult foster home for individuals with intellectual or developmental disabilities.

(18) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources and services.

(19) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA) and overseeing Medicaid programs administered by the states through survey and certification.

(20) "CDDP means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(21) "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.

(22) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.

(23) "CMS" means "Centers for Medicare and Medicaid Services".

(24) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(25) "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.

(26) "Complaint" means an allegation that a licensee or caregiver has violated these rules or an expression of dissatisfaction with a service provider, the services provided, or the condition of an adult foster home.

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

(28) "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.

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

(30) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(31) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight. Individuals receiving day care services are included in the licensed capacity of a home as described in OAR 411-360-0060.

(32) "Delegation" means that a registered nurse authorizes a provider, resident manager, or substitute caregiver to perform nursing tasks in selected situations and confirms that authorization in writing. Delegation may only occur after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047. Delegation by a physician is also allowed.

(33) "Denial" means the refusal of the Department to issue a license to operate an adult foster home for individuals with intellectual or developmental disabilities because the Department has determined that an applicant or the home is not in compliance with one or more of these rules.

(34) "Department" means the Department of Human Services or the designee of the Department.

(35) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

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

(37) "Director" means the Director of the Department or the designee of the Director.

(38) "Disaster" means an occurrence beyond the control of a licensee, whether natural, technological, or man-made that renders a home uninhabitable on a temporary, extended, or permanent basis.

(39) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

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

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

(42) "Entry" means admission to a licensed adult foster home for individuals with intellectual or developmental disabilities.

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

(44) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.

(45) "Facility" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(46) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), 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 a person alleged to have engaged in the conduct.

(47) "Functional Needs Assessment":

> (a) Means the comprehensive assessment or re-assessment that: (A) Documents physical, mental, and social functioning;

(B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and

(C) Determines the service level.

(b) The functional needs assessment for an individual residing in an adult foster home for individuals with intellectual or developmental disabilities is known as the Support Needs Assessment Profile (SNAP). The Department incorporates Version 14a of the SNAP dated March 31, 2014 into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.

(48) "Guardian" means the parent of an individual less than 18 years of age or a person or agency appointed and authorized by a court to make decisions about services for an individual. A paid provider for an individual may not be the guardian of the individual.

(49) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(50) "Home" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(51) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services to support and encourage independence, choice, and decision making by the individuals.

(52) "House Rules" means the written and posted statements governing house activities in an adult foster home that do not conflict with the Adult Foster Home Bill of Rights.

(53) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(54) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(55) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

(56) "Individual" means an adult residing in an adult foster home for individuals with intellectual or developmental disabilities, regardless of source of compensation.

(57) "Individualized Education Plan" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.

(58) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(59) "Involuntary Transfer" means a provider has made the decision to transfer an individual and the individual or the legal representative of the individual has not given prior approval.

(60) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(61) "ISP Team" means a team composed of an individual receiving services and the legal representative of the individual, services coordinator or personal agent, and others chosen by the individual or the legal representative of the individual, such as providers or family members.

(62) "Legal Representative" means a person who has the legal authority to act for an individual. The term "legal representative" includes the guardian of an individual, as well as:

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

(b) For financial decisions, a court-appointed conservator, an agent under a power of attorney, or a representative payee.

(63) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules.

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

(65) "Limited License" means a license is issued to a licensee who intends to provide care and services for compensation to a specific individual who is unrelated to the licensee but with whom the licensee has an established relationship of no less than one year.

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

(67) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Is a provider, resident manager, caregiver, or volunteer who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.

(B) Is a provider, resident manager, caregiver, or volunteer who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(68) "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.

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

(70) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing an individual and obtaining all pertinent biopsychosocial information as identified by the individual, the family of the individual and collateral sources. A mental health assessment:

(a) Addresses the condition presented by the individual;

(b) Determines a diagnosis; and

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

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

(72) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan and the quality of services delivered by other organizations.

(73) "Natural Supports" mean the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(74) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.

(75) "Occupant" means any person residing in or using the facilities of an adult foster home including the individuals, licensee, resident manager, friends, family members, a person receiving day care services, and room and board tenants.

(76) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(77) "OIS" means the "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide

elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(78) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meets the eligibility criteria described in OAR chapter 461.

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

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

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

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

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

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

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

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

(81) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

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

(83) "Protective Physical Intervention" means any manual physical holding of or contact with an individual that restricts freedom of movement.

(84) "Provider" means any person operating an adult foster home, such as a licensee or resident manager. "Provider" does not include caregivers or the owner or lessor of the building in which an adult foster is situated unless the owner or lessor of the building is also the operator of the adult foster home.

(85) "Provider Enrollment" means an agreement between the Department and a Medicaid provider to provide room and board and care and services for compensation to support a Medicaid eligible individual in an adult foster home.

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

(87) "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.

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

(89) "Qualified Mental Health Professional" means a licensed medical practitioner or any other person meeting the qualifications specified in OAR 309-019-0125.

(90) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing care and services to support an individual. Relief care

may include 24-hour relief care or hourly relief care. Individuals receiving relief care are included in the licensed capacity of a home as described in OAR 411-360-0060.

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

(92) "Resident Manager" means an employee of a licensee approved by the Department, who resides in an adult foster home and is directly responsible for the care and services to support individuals on a day-to-day basis.

(93) "Respite" means "relief care" as defined in this rule.

(94) "Revocation" means the action taken by the Department to rescind an adult foster home license after the Department has determined that the provider is not in compliance with one or more of these rules.

(95) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping to a person that does not need assistance with activities of daily living. Room and board facilities for two or more people are required to register with the Department as described in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Room and board does not include provision of care.

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

(97) "Services" mean the activities and supports that assist an individual to develop appropriate skills to increase or maintain his or her level of functioning. Services available in the community and arranged for by the provider may include mental health services, rehabilitation services, social services, activities of daily living, medical, dental, other health care services, educational services, financial management services, legal services, vocational services, transportation, recreational and leisure

activities, and other services required to meet the needs of the individual as described in the ISP for the individual.

(98) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(99) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.

(100) "Subject Individual" means:

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

(A) A licensed adult foster home provider and provider applicant;

(B) A person intending to work in or currently working in an adult foster home, including but not limited to a substitute caregiver and a potential substitute caregiver in training;

(C) A volunteer if allowed unsupervised access to an individual; and

(D) An occupant, excluding an individual, residing in or on the premises of a proposed or currently licensed adult foster home, including:

(i) A member of the household;

(ii) A room and board tenant; and

(iii) A person visiting for four consecutive weeks or greater.

(b) Subject individual does not apply to:

(A) An individual of the adult foster home or a visitor of an individual;

(B) A person who resides or works in an adult foster home who does not have:

(i) Regular access to the home for meals;

(ii) Regular use of the appliances or facilities of the adult foster home; or

(iii) Unsupervised access to an individual or the personal property of an individual.

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

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

(102) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department that is left in charge of the individuals for any period of time and has access to the individuals' records.

(103) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(104) "Suspension" means an immediate, temporary withdrawal of the approval to operate an adult foster home after the Department determines a provider or home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of individuals.

(105) "Tenant" means an individual who resides in an adult foster home and receives services such as meal preparation, laundry, and housekeeping.

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

(107) "Transfer" means movement of an individual from one home to another home administered or operated by the same provider.

(108) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into an adult foster home and the development of an ISP for the individual. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the adult foster home, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.
(109) "Unusual Incident" means any incident involving an individual that includes an act of physical aggression, serious illness or an accident, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, death, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

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

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

(112) "Young Adult" means a young individual age 18 through 21 who resides in an adult foster home under the custody of the Department, voluntarily, or under guardianship. A young adult may include an individual who is less than 18 years of age.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-825

411-360-0030 Variance
(Amended 9/27/2013)

(1) A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that

such a variance does not jeopardize the health, safety, or welfare of the individuals. If the variance applies to an individual's care and services, the provider must provide evidence that the variance is consistent with the individual's currently approved ISP.

(2) A variance is granted in writing on a Department-approved form. A variance granted to one AFH-DD provider does not constitute a precedent for any other AFH-DD provider. A variance is specific to a licensed site.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0040 License Required
(Amended 9/27/2013)

(1) Any home that meets the definition of an AFH-DD as defined in OAR 411-360-0020 must first apply for and obtain a license from the Department or an exempt area county before providing care and services for compensation to an individual.

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

(3) No person, employed and requiring a background check may be a provider, resident manager, substitute caregiver, or otherwise be in training, employed by the provider, a volunteer for the AFH-DD, 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;
>
> (b) Has not complied with Department rules for review of background checks in accordance with OAR 407-007-0200 to 407-007-0370; or
>
> (c) Has been disapproved to work based on current Department policy and procedures for background checks in accordance with OAR 407-007-0200 to 407-007-0370.

(4) Section (3) of this rule does not apply to individual service recipients of the AFH-DD.

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

(6) LIMITED LICENSE. Any home that meets the definition of a limited license AFH-DD as defined in OAR 411-360-0020 must apply for and obtain a license from the Department before providing care and services to an individual for compensation.

(a) To qualify for a limited license and for compensation from the Department, the provider must:

(A) Submit a completed provider enrollment agreement, application for a limited license, appropriate licensing fee, physician's statement, and a background check in regards to criminal records, founded abuse of children, and substantiated abuse of an adult;

(B) Demonstrate a clear understanding of the individual's care, service, and support needs;

(C) Acquire any additional training necessary to meet the specific care, service, and support needs of the individual;

(D) Meet the standards of an AFH-DD;

(E) Meet minimal fire safety compliance including the installation of smoke alarms, carbon monoxide alarms, and fire extinguishers; and

(F) Obtain any training deemed necessary by the Department to provide adequate care and services to support the individual.

(b) A limited license is limited to the care and services of the individual named on the license only and may not be transferred to another individual.

(7) PROVISIONAL LICENSE. 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 Department. 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, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0050 License Application and Fees
(Amended 9/27/2013)

(1) An applicant for an AFH-DD license must complete a written application on forms supplied by the Department and submit the application to the Department with the non-refundable fee.

(a) The application is not complete until the required information is submitted to the Department with the required non-refundable fee. Incomplete applications are void after 60 days from the date the application form is received by the Department.

(b) Failure to provide accurate information may result in the denial of the application.

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

(3) An application for an AFH-DD that has a resident manager must include a completed application for the resident manager on the form supplied by the Department.

(4) The application for an AFH-DD license must include:

(a) The maximum capacity as described in OAR 411-360-0060;

(b) A list of all persons that reside in the home that receive care including family members that reside in the home that require care and persons receiving respite and day care services;

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

(d) A physician's statement on the form supplied by the Department regarding the applicant’s ability to provide care and services;

(e) Financial information including:

(A) A completed Financial Information Sheet on the form supplied by the Department;

(i) An applicant must have the financial ability and maintain sufficient liquid resources to pay the operating costs of an AFH-DD for at least two months without solely relying on potential income from individuals and room and board payments.

(ii) If an applicant is applying to operate more than one AFH-DD, the applicant must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of all the homes for at least two months without solely relying on potential income from individuals and room and board payments.

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

(B) Documentation of all unsatisfied judgments, liens, and pending lawsuits in which a claim for money or property is made against the applicant;

(C) Documentation of all bankruptcy filings by the applicant;

(D) Documentation of all unpaid taxes due from the applicant including but not limited to, property taxes, employment taxes, and state and federal income taxes;

(E) Copies of bank statements from the last three months demonstrating banking activity in both checking and savings accounts as applicable or demonstration of cash on hand may be requested; and

(F) A copy of a complete and current credit report for the applicant may be requested.

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

(A) The owner and landlord's name;

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

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

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

(h) A current and accurate floor plan for the home that indicates:

(A) The size of the rooms;

(B) The size of the windows;

(C) Which bedrooms are to be used by individuals, the licensee, caregivers, room and board tenants (as applicable), and for day care and respite services;

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

(E) The location of any wheelchair ramps;

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

(G) Planned evacuation routes; and

(H) Any designated smoking areas in or on the premises of the home.

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

(j) Three personal references for the applicant. The personal references may not be family members, current or potential licensees, or co-workers of current or potential licensees;

(k) A written description of the daily operation of the AFH-DD including:

(A) The schedule of the provider, resident manager, and substitute caregivers; and

(B) A plan of coverage for the absence of the provider, resident manager, and substitute caregivers.

(l) Written information describing the operational plan for the AFH-DD including:

(A) The use of a substitute caregiver, if applicable; and

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

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

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

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

(p) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of caregivers as required by the Department;

(q) 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);

(r) A copy of the house rules for the AFH-DD; and

(s) A mailing address if different from the address of the home and a business address for electronic mail.

(5) After receipt of the completed application materials, including the non-refundable fee, the Department investigates the information submitted and inspects the home. Compliance with these rules is determined upon submission and completion of the application and the process described.

(a) The applicant is 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 the date of inspection.

(b) Deficiencies noted during an inspection of the home must be corrected in the timeframe specified by the Department. Applicants must be in compliance with these rules before a license is issued. An application is denied if cited deficiencies are not corrected within the timeframes specified by the Department.

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

(7) An applicant may withdraw a new or renewal application at any time during the application process by notifying the Department in writing.

(8) An applicant whose license has been revoked, non-renewed, 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 action is final, or for a longer period of time if specified in the final order.

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

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0055 Provider Enrollment Agreements and Contracts
(Adopted 9/27/2013)

(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.

(a) An applicant or licensee who intends to provide care and services to support individuals who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Department, follow Department rules, and abide by the terms of the Agreement. A Medicaid Provider Enrollment Agreement is not approved unless the Department has determined that the applicant, licensee, co-licensee, or any owner or officer of the corporation, as applicable, is not listed on the Office of Inspector General's or the U.S. General Services Administration's (System for Award Management) Exclusion Lists.

(b) An approved Medicaid Provider Enrollment Agreement does not guarantee the placement of individuals eligible for Medicaid services in an AFH-DD.

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

(d) An individual eligible for Medicaid services may not be admitted into an AFH-DD unless and until the Department has approved a Medicaid Provider Enrollment Agreement. Medicaid payment is not issued to a licensee without a current license and an approved Medicaid Provider Enrollment Agreement in place.

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

(f) The Department does not issue payment for the date of the exit of an individual or for any time period thereafter.

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

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

> (A) The licensee fails to maintain substantial compliance with all related federal, state, and local laws, ordinances, and regulations; or
>
> (B) The license to operate the AFH-DD has been voluntarily surrendered, revoked, or not renewed.

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

> (A) The licensee fails to permit access by the Department or CMS to any AFH-DD licensed to and operated by the licensee;
>
> (B) The licensee submits false or inaccurate information;
>
> (C) Any person with five percent or greater direct or indirect ownership in the AFH-DD did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the

background check rules in OAR 407-007-0200 to 407-007-0370;

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

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

(j) If a licensee submits notice of termination of the Medicaid Provider Enrollment Agreement, the licensee must concurrently issue a Notice of Involuntary Move or Transfer to each individual eligible for Medicaid services residing in the licensee's AFH-DD.

(k) If either a licensee or the Department terminates the Medicaid Provider Enrollment Agreement, the licensee may not re-apply for a new Medicaid Provider Enrollment Agreement for a period of no less than 180 days from the date the licensee or the Department terminated the Agreement.

(l) A licensee must forward all of the personal incidental funds (PIF) of an individual who is a recipient of Medicaid services within 10 business days of the death of the individual to the Estate Administration Unit, PO Box 14021, Salem, Oregon 97309-5024.

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

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

(A) An Individual Support Plan;

(B) A schedule of rates; and

(C) Conditions under which the rates may be changed.

(b) The provider must give a copy of the signed contract to the individual or the individual's legal representative and retain the original contract in the individual's record.

(c) The licensee must give written notice to a private pay individual or the person paying for the individual's care and services 30 days prior to any general rate increases, additions, or other modifications of the rates 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, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0060 Capacity
(Amended 9/27/2013)

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

(2) The number of individuals permitted to reside in an AFH-DD is determined by the ability of the caregiver to meet the care, service, and support needs of the individuals, fire safety standards, physical structure standards, and the standards of these rules.

(a) Determination of maximum capacity includes consideration of total household composition including all children, adult relatives, and older adults.

(b) In determining maximum capacity, consideration is given to whether children over the age of 5 have a bedroom separate from

their parents and the number and age of children or others that reside in the AFH-DD requiring care.

(3) Children under the age of 10 living in the AFH-DD, individuals receiving respite services, and individuals receiving day care services are included in the licensed capacity of the AFH-DD.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0070 Classification
(Amended 9/27/2013)

A provisional, limited, level 1, level 2B, or level 2M license may be issued by the Department only if the qualifications of the applicant, resident manager (if applicable), and substitute caregiver fulfills the requirements of these rules.

(1) PROVISIONAL LICENSE.

(a) A provisional license may be issued by the Department if --

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

(B) An applicant meets the qualifications described in OAR 411-360-0110(1)(a-f)(h-m).

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

(2) LIMITED LICENSE.

(a) A limited license may be issued by the Department if --

(A) An applicant intends to provide care and services to a specific individual who is unrelated to the applicant but with

whom the applicant has an established relationship of no less than one year;

(B) The applicant meets the qualifications described in OAR 411-360-0110(1);

(C) The home meets the facility standards described in OAR 411-360-0130; and

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

(b) The license is limited to only the care of the individual named on the license.

(3) LEVEL 1 LICENSE. A Level 1 license may be issued by the Department if --

(a) The home and applicant are in compliance with OAR 411-360-0080; and

(b) An applicant and resident manager (if applicable):

(A) Meets the qualifications described in OAR 411-360-0110;

(B) Complete the training requirements described in OAR 411-360-0120;

(C) Has the equivalent of one year of full-time experience in providing direct care and services to support individuals with intellectual or developmental disabilities; and

(D) Has current CPR and First Aid certification.

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

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

(4) LEVEL 2B LICENSE.

(a) A provider must be licensed as a Level 2B AFH-DD if the provider serves or intends to serve more than one individual who exhibits behavior that poses a significant danger to the individual or others. Examples of behaviors that may pose a significant danger to the individual or others include but are not limited to:

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

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

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

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

(b) A Level 2B license may be issued by the Department only if the applicant and resident manager (if applicable) has met the requirements described in section (3) of this rule for a Level 1 license and meets the following additional criteria:

(A) Has two years of full time experience providing care and services to support individuals who exhibit the behavior described in subsection (a) of this section that poses significant risk to the individual or others;

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

(C) If available from the Department, has completed additional hours of advanced behavior intervention training per year based on the support needs of the individual.

(c) A provider of a Level 2B AFH-DD must have a Transition Plan for each individual upon entry that addresses the individual's support and service needs.

(d) A Behavior Support Plan, if needed, must be implemented within 120 days of the individual's placement that --

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

(B) Uses the least intervention possible;

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

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

(e) A provider of a Level 2B AFH-DD may not employ a resident manager or substitute caregiver who does not meet or exceed the qualifications and training standards described in subsection (b) of this section.

(f) A provider of a Level 2B AFH-DD may not admit an individual whose care and service needs exceed the licensed classification of the Level 2B AFH-DD and may not admit an individual without prior approval of the CDDP.

(5) LEVEL 2M LICENSE.

(a) A provider must be licensed as a Level 2M AFH-DD if the provider serves or intends to serve more than one individual who has a medical condition that is serious and may be life threatening. Examples of medical conditions that are serious and may be life threatening 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;

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

(E) A terminal illness that requires hospice care.

(b) A Level 2M license may be issued by the Department only if the applicant and resident manager (if applicable) has met the requirements described in section (3) of this rule for a Level 1 license and meets the following additional criteria:

(A) Is a licensed health care provider such as a registered nurse or licensed practical nurse or has the equivalent of two years of full-time experience providing care and services to support individuals who have a medical condition described in subsection (a) of this section that is serious and may be life-threatening;

(B) Has current satisfactory references from at least two licensed health care providers, 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; and

(C) Has fulfilled a minimum 6 of the 12 hours of annual training requirements in specific medical training.

(c) A provider of a Level 2M AFH-DD must have a Transition Plan for each individual upon entry that addresses the individual's support and service needs.

(d) A provider must develop, with an individual's ISP Team, a Medical Support Plan within 30 days of the individual's placement or whenever there is a change in the individual's health status.

(e) A provider of a Level 2M AFH-DD may not employ a resident manager or substitute caregiver who does not meet or exceed the qualification and training standards described in subsection (b) of this section.

(f) A provider of a Level 2M AFH-DD may not admit an individual whose care and service needs exceed the licensed classification of the Level 2M AFH-DD and may not admit an individual 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 9/27/2013)

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

(2) LIMITED LICENSE. A limited license is 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 support 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 411-360-0180, General Practices; and

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

(3) PROVISIONAL LICENSE.

(a) The Department may issue a 60-day provisional license to a qualified person if the Department 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 is considered qualified if he or she is at least 21 years of age and meets the qualifications of a provider described in OAR 411-360-0110(1)(a-f)(h-m).

(b) A provisional license may be extended one time for a period of 30 days if an applicant has demonstrated a good faith effort to complete the application process and obtain the required qualifications and trainings.

(4) The Department may attach conditions to a 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) A license for an AFH-DD 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 Department does 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 Department does not issue an initial license unless:

(a) An applicant and home are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The Department has completed an inspection of the home;

(c) The Department has completed a background check on the applicant, resident manager (if applicable), and any subject individual as defined in OAR 411-360-0020;

(d) The Department has determined that the applicant has the financial ability and maintains sufficient liquid resources to pay the operating costs of the home for at least two months without solely relying on potential income from individuals and room and board payments;

(e) The Department has checked the record of sanctions available from the Department's 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) CHANGE OF RESIDENT MANAGER. If a resident manager changes during the period of time the license covers, the provider must notify the Department within 24 hours and identify who is to be providing care.

(a) The provider must submit a request for a change of resident manager to the Department with --

(A) A completed application for the resident manager applicant on the form supplied by the Department;

(B) A background check and a current consent form to conduct a background check for child abuse for the resident manager applicant; and

(C) A non-refundable payment fee of $10.00.

(b) A revised licensed with the name of the new resident manager is issued upon the Department's determination that the applicant meets the requirements of a resident manager and the applicant has received the Department's required AFH-DD training and passed the test.

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

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0090 Renewal of a License
(Amended 9/27/2013)

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

(2) The renewal application must include the same information and fee as described in OAR 411-360-0050. A physician's statement, financial information, house rules, and floor plan are not required if the Department reasonably determines that the information has not changed.

(3) The Department may investigate any information in the renewal application and is to conduct an inspection of the home.

(a) The licensee is given a copy of the inspection form citing any deficiencies and a timeframe for correction, but no longer than 30 days from the date of inspection.

(b) The Department may require the AFH-DD to correct deficiencies prior to issuing a license renewal. The Department may deny a renewal application if cited deficiencies are not corrected within the timeframe specified by the Department.

(4) The Department does not renew a license unless:

(a) The provider and the home are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The Department has completed an inspection of the home; and

(c) The Department has completed an annual background check as required by ORS 181.534 and 443.735 on the provider, resident manager (if applicable), and any subject individual as defined in OAR 411-360-0050.

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

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

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0100 Contracts *(Repealed 9/27/2013)*

411-360-0110 Qualifications for Providers, Resident Managers, and Caregivers
(Amended 9/27/2013)

(1) PROVIDER QUALIFICATIONS. An AFH-DD provider must meet the level requirements of the AFH-DD license as described in OAR 411-360-0070 and the following qualifications:

(a) Be at least 21 years of age;

(b) Reside in the home that is to be licensed as the AFH-DD or if the provider does not reside in the home there must be a resident manager who resides in the home. A provider or resident manager resides in the home when the provider or resident manager sleeps in the home four nights per week;

(c) Provide evidence satisfactory to the Department regarding experience, training, knowledge, interest, and concern in providing care and services to support individuals with intellectual or developmental disabilities. 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 Department; or

(E) Experience providing care and services and home management skills to individuals with intellectual or developmental disabilities.

(d) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Department to provide 24-hour care and services to support individuals with intellectual or developmental disabilities. A provider must have a statement from a physician, on a form provided by the Department, indicating that the provider is physically and mentally capable of providing care and services. A provider with a documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful

treatment and rehabilitation and references regarding current condition;

(e) Have an approved background check annually as required in section (2) of this rule and maintain that approval as required;

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

(g) Have the financial ability and maintain sufficient liquid resources to pay the operating costs of the AFH-DD for at least two months without solely relying on potential income from individuals and room and board payments. If a provider operates more than one AFH-DD, the provider must have the financial ability and maintain sufficient liquid resources to pay the operating costs of all the AFH-DDs for at least two months without solely relying on potential income from individuals and room and board payments;

(A) Upon application, documentation of the following must be provided to the Department:

(i) All unsatisfied judgments, liens, and pending lawsuits in which a claim for money or property is made against the applicant;

(ii) All bankruptcy filings by the applicant; and

(iii) All unpaid taxes due from the applicant including but not limited to property taxes, employment taxes, and state and federal income taxes.

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

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

(D) If an applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens, or unpaid

taxes, proof that the applicant has the amount of resources necessary to pay those claims must be provided to the Department as required.

(E) If an applicant is unable to demonstrate the financial ability and resources as required, the Department 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 in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the individuals, licensed health care providers, services coordinators, and others involved in the care of the individuals;

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

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

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

(l) Have a clear understanding of the job responsibilities, knowledge of the individuals' ISPs, and the ability to provide the care and services specified for each individual; and

(m) Not be listed on the Office of Inspector General’s or General Services Administration’s Exclusion lists.

(2) BACKGROUND CHECKS.

(a) In accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534, all subject individuals as defined in OAR 411-360-0020 must have an approved background check prior to operating, working, training in, or residing in an AFH-DD:

(A) Annually;

(B) Prior to a subject individual’s change in position (i.e. changing from a caregiver to resident manager); and

(C) Prior to working in another AFH-DD regardless of whether the employer is the same or not unless subsection (b) of this section applies.

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

(c) 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 background checks, who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275. This rule does not apply to caregivers of the AFH-DD hired prior to July 28, 2009.

(d) 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 background checks and has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275. This rule does not apply to caregivers of the AFH-DD hired prior to July 28, 2009.

(e) A weighing test is applied to background checks for occupants who do not provide care in the AFH-DD but require a background check on or after July 28, 2009 for approval purposes.

(3) RESIDENT MANAGER REQUIREMENTS. A resident manager must meet the provider qualifications listed in section (1) of this rule and the level requirements of the AFH-DD license as described in OAR 411-360-0070.

(4) SUBSTITUTE CAREGIVER REQUIREMENTS. A substitute caregiver must meet the level requirements of the AFH-DD license as described in OAR 411-360-0070 and the following qualifications:

(a) Be at least 18 years of age;

(b) Have an approved background check annually as required in section (2) of this rule and maintain that approval as required. A person may not be authorized as a substitute caregiver or meet qualifications as described in this rule if the person has been hired on or after July 28, 2009, or is subject to a background check beginning July 28, 2009 as required by administrative rule, and the person 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. Annual mandatory reporter notification must be documented on forms provided by the Department;

(d) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with the individuals, licensed health care providers, services coordinators, and others involved in the care of the individuals;

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

(f) Know fire safety and emergency procedures;

(g) Have a clear understanding of the job responsibilities, knowledge of the individuals' ISPs, and the ability to provide the care and services specified for each individual's needs;

(h) Be able to meet the qualifications of a resident manager described in section (4) of this rule when left in charge of an AFH-DD for 30 days or longer;

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

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

(k) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Department to provide care and services to support individuals with intellectual or developmental disabilities. A substitute caregiver with a documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition;

(l) Must meet the training requirements of the level of the AFH-DD license in OAR 411-360-0120; and

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

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

(6) The licensee is responsible for the operation of the AFH-DD and the quality of care and services rendered in the AFH-DD.

(7) The licensee 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.

(8) A licensee, 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 within 24 hours.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0120 Training Requirements

(Amended 9/27/2013)

(1) A provider must complete the Department'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 the denial or non-renewal of a license pursuant to OAR 411-360-0270. If an applicant fails the first Examination, a second Examination may be taken. If the applicant fails the second Examination, the application may be denied.

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

(3) All substitute caregivers must complete the Department's Basic Training Course and pass the Basic Training Examination prior to providing care and services. If a substitute caregiver fails the first Examination, a second Examination may be taken. If the substitute caregiver fails the second Examination, the substitute caregiver must wait 14 days to retake the Examination. Each subsequent test failure requires a 14-day waiting period until the substitute caregiver passes the Examination.

(4) The provider or resident manager must keep documentation of the completion of the Department's 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 an AFH-DD, 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) Prior to providing care and services to any individual, a resident manager and substitute caregiver must be oriented to the AFH-DD and to the individuals by the provider. Orientation must be clearly documented in the AFH-DD records. Orientation includes but is not limited to:

(a) The location of the fire extinguishers;

(b) Demonstration of evacuation procedures;

(c) Instruction on the emergency preparedness plan;

(d) Location of the individuals' records;

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

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

(g) Introduction to individuals;

(h) Instructions for caring for each individual;

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

(j) Instructions related to any Advance Directives.

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

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

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

(8) The Department requires at least 12 hours of Department-approved training annually for the provider, resident manager, and substitute caregivers. Training must be documented in the records of the AFH-DD.

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

(10) 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 the task of care. The delegated tasks of care must be addressed as part of an individual's ISP.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0130 Facility Standards
(Amended 9/27/2013)

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 the AFH-DD meets applicable local business license, zoning, building, and housing codes, and state and local fire and safety regulations for a single-family residence. General buildings must be of sound construction and meet all applicable state and local fire and safety regulations in effect at the time of construction. 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) Mobile homes must have been built since 1976 and designed for use as a home rather than a travel trailer. The mobile home must have a manufacturer’s label permanently affixed to the home that states the mobile home meets the requirements of the Department of Housing and Urban Development (HUD) or authority having jurisdiction.

(c) The building, patios, decks, walkways, and furnishings must be clean and in good repair. The interior and exterior must be well maintained and accessible according to the needs of the individuals. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting, as appropriate. There must be no accumulation of garbage, debris, rubbish, or offensive odors.

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

(e) 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.

(f) The heating system must be in working order. Areas of the AFH-DD used by individuals must be maintained at a comfortable temperature. Minimum temperatures during the day (when individuals are home) must be no less than 68 degrees F and no less than 60 degrees at night when individuals are sleeping. 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. The temperature may not exceed 85 degrees in the house.

(g) 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 in 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.

(h) Providers must not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the AFH-DD 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.

(i) Hallways and exit ways must be a minimum of 36 inches wide or as approved by the authority having jurisdiction. Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(j) Only ambulatory individuals capable of self-preservation may be housed on a second floor or in a basement.

(k) Split level homes must be evaluated according to accessibility, emergency egress, and evacuation capability of the individuals.

(l) Ladders, rope, chain ladders, and other devices may not be used as a secondary means of egress.

(m) 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, the water source 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

area. 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 of the AFH-DD 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, a window capable of being opened or other means of ventilation, and a window covering. No person must have to walk through another person's bedroom to access a bathroom;

(b) Be clean and free of objectionable odors;

(c) Have tubs or showers, toilets, and sinks in good repair. 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 the provider's family;

(d) Have hot and cold water in sufficient supply to meet the needs of the 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 the individuals' disabilities;

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

(h) Have adequate supplies of toilet paper for each toilet and soap for each sink; and

(i) 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 window capable of being opened that meets the fire regulations described in subsection (h) of this section;

(D) Have at least 70 square feet of usable floor space for each individual or 120 square feet of usable floor space 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 or share bedrooms with individuals.

(c) There must be a bed for each individual including a frame unless otherwise documented by an ISP Team decision with a clean and comfortable mattress, a waterproof mattress cover if an individual is incontinent, and a pillow..

(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.

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

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

(g) 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 an ISP team.

(h) 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 the State Fire Marshal's designee.

(5) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community.

(A) 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 a physician.

(B) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(C) Food preparation must include consideration of cultural and ethnic backgrounds, as well as, the food preferences of individuals. Special consideration must be given to individuals with chewing difficulties and other eating limitations.

(D) 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 the individuals' families. Menu substitutions in compliance with subsection (a) of this section are acceptable.

(c) MODIFIED OR SPECIAL DIETS. For individuals with modified or special diets ordered by a physician or licensed health care provider, 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 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 reside. 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.

(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 reside 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 individual's 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, individuals, and individuals' families, legal representatives, and service coordinators, as applicable, of any change in the AFH-DDs 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.

(A) 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 the recommended maintenance schedule.

(B) Fireplaces must have protective glass screens or metal mesh curtains attached to the top and bottom of the fireplace.

(C) 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.

(D) 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 and multi-plug adaptors must not be used in place of permanent wiring. UL-approved, re-locatable power tabs (RPTs) with circuit breaker protection are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPTs must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(d) 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 the individual.

(e) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and

maintained in accordance with the manufacturer's instructions. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

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

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

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

(A) 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.

(B) Smoke alarms must be equipped with a device that warns of low battery when battery operated or with a battery back-up if hard wired.

(C) Smoke alarms when activated must be audible in all sleeping rooms.

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

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

alarms must be loud enough to wake occupants when all bedroom doors are closed.

(h) The licensee must test all carbon monoxide alarms and smoke alarms in accordance with the manufacturer's instructions at least monthly (per NFPA 72). Testing must be documented in the AFH-DD records.

(i) FIRE EXTINGUISHERS. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements. Fire extinguishers must be inspected at least once a year by a qualified person 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 must be maintained in the AFH-DD records.

(j) The licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(8) EMERGENCY PROCEDURES AND PLANNING.

(a) EVACUATION DRILLS.

(A) 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 occupants must participate in the evacuation drills.

(B) Written documentation must be made at the time of the drill and kept by the provider for at least two years following the drill. Evacuation 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, the provider, caregivers, and all other occupants present on the premises at the time of the drill;

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

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

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

(b) The provider 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 and carbon monoxide alarm and how to exit from the AFH-DD in an emergency.

(c) 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 Department 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.

(d) The provider must provide, keep updated, and post, a floor plan on each floor. The floor plan must contain room sizes, the location of each individual's bed, windows, exit doors, resident manager or provider's sleeping room, smoke and carbon monoxide alarms, fire extinguishers, escape routes, and wheelchair ramps. A copy of the floor plan must be updated to reflect any change and a copy of the updated floor plan must be submitted to the Department.

(e) 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) 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.

(g) 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 AFH-DD 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 and

local CDDP of the plan to evacuate or the evacuation of the AFH-DD 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 AFH-DD;

(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 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.

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

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

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

(G) 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.

(9) 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.

(b) Oxygen and other gas cylinders in service or in storage must be adequately secured to prevent cylinders from falling or being knocked over. No smoking signs must be visibly posted where oxygen or other gas cylinders are present. Oxygen and other gas cylinders may not be used or stored in rooms where a wood stove, fireplace, or open flames are located.

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

(d) For AFH-DDs 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.

(e) Smoking is prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted. Designated smoking areas must be at least 10 feet from any entrance, exit, window that opens, ventilation intake, or accessibility ramp. Smoking is prohibited in vehicles when individuals or employees occupy the vehicle.

(f) Cleaning supplies, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, food preparation and storage, dining areas, and medications and in a manner to prevent tampering by individuals.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
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411-360-0140 Standards and Practices for Health Care
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) INDIVIDUAL HEALTH CARE. An individual must receive care and services that supports and promotes the health and well-being of the individual as follows:

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

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

(d) A written and signed order from a physician or licensed health care provider 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 provider must implement the order of a physician or licensed health care provider.

(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 record for the individual.

(2) REQUIRED DOCUMENTATION.

(a) A provider must maintain and keep current records on each individual to aid physicians, licensed health care providers, the CDDP, and the Department in understanding the medical history of the individual. 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 and services;

(B) A record of visits and appointments to licensed health care providers that includes documentation of the consultation, any treatment provided, and any follow-up reports provided to the provider;

(C) A record of known hospitalizations and surgeries;

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

(E) Medication administration records (MARs);

(F) Documentation of the consent from the legal representative of the individual for medical treatment that is not routine including surgery and anesthesia; and

(G) Copies of previous mental health assessments and assessment updates, including multi-axial DSM diagnosis, treatment recommendations, and progress records for mental health treatment services.

(b) When requested, copies of medical records and MARs must be provided to the legal guardian, Department caseworker, or services coordinator.

(3) MEDICATION PROCUREMENT AND STORAGE. All medications must be:

(a) Kept in the original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified by the written order of a physician or licensed health care provider; 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 order of the physician or licensed health care provider 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 written order from a physician or licensed health care provider, 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 (as needed) medication was administered;

(H) Documented effectiveness of any PRN (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 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.

(a) 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.

(b) The AFH-DD must ensure that individuals able to self-administer medications keep the medications in a place unavailable to other individuals residing in the AFH-DD and store the medications as recommended by the product manufacturer.

(6) USE OF MEDICAL MARIJUANA.

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

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

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

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

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

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

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

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual must

agree to arrange for a "designated primary caregiver". The designated primary caregiver must be authorized by the OMMP and identified on the OMMP registry card for the individual;

(iv) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot be designated as the OMMP-approved designated primary caregiver of the individual and identified on the OMMP registry card for the individual;

(v) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot assist with the preparation, administration, or delivery of medical marijuana;

(vi) The individual must maintain any equipment used to administer marijuana;

(vii) Marijuana must be kept in locked storage in the bedroom of the individual when not being administered;

(viii) The individual must immediately notify the OMMP of any change in status such as a change in address, designated primary caregiver, or person responsible for the marijuana grow site. A copy of the updated OMMP registry card for the individual must be made available to the provider for the record of the individual; and

(ix) Failure to comply with Oregon laws, Oregon rules, or the house rules of the AFH-DD may result in additional action.

(b) An individual must comply with the Oregon Medical Marijuana Act, the rules for the OMMP in OAR chapter 333, division 008, these rules, and any other requirements for the OMMP.

(c) An individual must self-administer medical marijuana by ingesting the marijuana or inhaling the marijuana with a vaporizer. Smoking marijuana in or on the premises of the AFH-DD is prohibited.

Marijuana must be administered privately 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 self-administering the marijuana.

(d) An individual must designate a grower to provide the marijuana as necessary. The grower must not be the provider, resident manager, caregiver, or any occupant in or on the premises of the AFH-DD. The grower designated by the individual must be authorized by OMMP and identified on the OMMP registry card for the individual.

> (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 may 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 site of the grower.
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> (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 name of the OMMP card holder. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the individual's MAR as to dosage in grams as weighed on a scale, date, and time of day.

(e) A provider, caregiver, resident manager, or any other occupants in or on the premises of the AFH-DD must not prepare or in any way assist with the administration or procurement of an individual's marijuana. The provider must monitor the individual's usage of medical marijuana to ensure safety and to document that the individual's use of medical marijuana is in compliance with the physician's instructions for using marijuana as documented in the individual's ISP.

(f) If a provider, resident manager, or caregiver also has an OMMP card for medical purposes, a substitute caregiver must be available to support the individuals when the provider, resident manager, or caregiver is under the influence of the medical marijuana. Any OMMP

card holder in or on the premises of the AFH-DD must not smoke marijuana in or on the premises of the AFH-DD but may ingest the marijuana or inhale the marijuana with a vaporizer.

(7) PSYCHOTROPIC MEDICATIONS.

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

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

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

(b) A 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 a licensed health care provider.

(c) A 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 health care provider.

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

(e) PSYCHOTROPIC MEDICATIONS FOR YOUNG ADULTS. A qualified mental health professional or a licensed health care provider must provide a mental health assessment prior to any young adult being prescribed one or more psychotropic medications or any antipsychotic medication.

(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 parent who retains legal guardianship of the young adult, the legal guardian of the young adult, or the caseworker of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(C) The required mental health assessment:

(i) Must be completed within three months prior to the prescription of a psychotropic medication; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Information from the mental health assessment must be provided to the licensed health care provider prior to the issuance of a prescription for a psychotropic medication.

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

(i) The parent who retains legal guardianship of the young adult, the legal guardian of the young adult, or the

caseworker of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(F) The notification described in subsection (E) of this section must contain:

(i) The name of the prescribing physician or licensed 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.

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

(i) The parent who retains legal guardianship of the young adult;

(ii) The legal guardian of the young adult; or

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

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

(f) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing licensed health care provider using the Balancing Test Form maintained by the Department, or by inserting the required form content into a form maintained by the provider.

(A) The provider must present the physician or licensed 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 medical record for the individual for seven years.

(8) MEDICATION SAFEGUARDS.

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

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

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

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or caregiver.

(b) An individual's record must include documentation of the reason when all medications may not be provided through a single pharmacy.

(9) MEDICATION DISPOSAL. All unused, discontinued, outdated, recalled, and contaminated medications including over-the-counter medications may not be kept in the AFH-DD and must be disposed of within 10 days of expiration, discontinuation, or the knowledge of the provider of recall or

contamination. A provider may contact the local DEQ waste management company in the area for instructions on proper disposal of medications. Disposal of all controlled medications must be documented and witnessed by at least one other person who is 18 years of age or older. A written record of the disposal of the medication must be maintained that includes documentation of:

(a) Date of disposal;

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

(c) Name of the 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.

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

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

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

(11) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Delegation and training of nursing tasks to a provider, resident manager, or substitute caregiver;

(E) Teaching and education of the provider and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(F) Collateral contact with a services coordinator regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(b) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in medical condition requires an update to the Nursing Service Plan.

(c) Community nursing services exclude direct nursing care.

(d) A Nursing Service Plan must be present when Department funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.(e) When community nursing services are provided to an individual the provider must:

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

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

(f) A registered nurse providing community nursing services must comply with:

(A) Provider record and documentation requirements referenced in OAR 407-120-0100 -1505 for financial, clinical,

and other records including the Provider Enrollment Agreement and electronic billing procedures;

(B) Department direct contracts (if applicable); and

(C) Service record requirements outlined in this rule.

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

(a) The delegation process includes:

(A) Assessing an individual in a specific situation;

(B) Evaluating the ability of the provider, resident manager, or substitute caregiver to perform the nursing task;

(C) Teaching the nursing task;

(D) Ensuring supervision of the provider, resident manager, or substitute caregiver; and

(E) Re-evaluating the nursing task at regular intervals.

(b) The provider, resident manager, or substitute caregiver performs nursing tasks under the delegated authority of a registered nurse.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-825

411-360-0150 Personal Care Services *(Repealed 9/27/2013)*

411-360-0160 Behavior Support
(Amended 9/27/2013)

(1) A decision to develop a plan to alter an individual’s behavior must be made by the individual's ISP team. The provider must maintain documentation of the ISP team's decision.

(2) FUNCTIONAL BEHAVIORAL ASSESSMENT. Prior to the development of a formal Behavior Support Plan, as agreed to by an individual's ISP team, a functional behavioral assessment must be conducted. The functional behavioral assessment must be based upon information provided by one or more persons who know the individual and include:

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

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

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

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric conditions; or

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

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

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

(3) BEHAVIOR SUPPORT PLAN.

(a) A Behavior Support Plan must include:

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

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

(C) Strategies that are related to the function of the behavior and are expected to be effective in reducing 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 Behavior Support Plan including 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 Behavior Support Plan; and

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

(b) A provider must maintain written evidence that an individual, the individual’s legal representative (if applicable), and the individual's ISP team are aware of the development of a Behavior Support Plan and any objections or concerns must be documented.

(4) PROTECTIVE PHYSICAL INTERVENTION.

(a) 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 an individual or others is at risk and the individual's ISP team has authorized the procedures as documented by the ISP team's decision, the procedures are documented in the individual's 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.

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

(d) MODIFICATION OF TECHNIQUES. A 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. The provider must maintain documentation of the OIS Steering Committee's approval in the individual's record.

(e) USE IN EMERGENCY SITUATIONS.

(A) Use of protective physical intervention techniques in emergency situations that are not part of an approved Behavior Support Plan must:

(i) Be reviewed by the provider, resident manager, or designee within one hour of application; and

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

(B) No later than one working day after the use of protective physical intervention techniques in an emergency situation, an incident report as described in subsection (f) of this section must be submitted to the services coordinator, personal agent (if applicable), or other Department designee.

(C) An individual's ISP must meet if an emergency protective physical intervention is used more than three times in a six-month period.

(f) INCIDENT REPORT.

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

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

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

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

(iv) Documentation of any injury;

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

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

(vii) 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.

(B) Within five working days of the incident, a copy of the incident report must be forwarded to the services coordinator or other Department designee (if applicable).

(C) If the protective physical intervention results in an injury, a copy of the incident report must be forwarded within one working day of the incident to the services coordinator or other Department designee (if applicable).

(D) A copy of an incident report not associated with a protective service investigation must be provided to the individual's personal agent (if applicable) and the individual's legal representative (if applicable) within the timeframes specified in this rule.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0170 Documentation and Record Requirements
(Temporary Effective 07/01/2014 to 12/28/2014)

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

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

(A) The name of the individual, current and previous address, date of entry into the 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 legal representative, family, advocate, or other significant person;

(ii) The primary licensed health care provider preferred by the individual and designated back up licensed health care provider or clinic;

(iii) The dentist preferred by the individual;

(iv) The day program or employer (if any);

(v) The services coordinator; and

(vi) Other representatives providing care and services to the individual.

(b) EMERGENCY INFORMATION. The provider must maintain emergency information for each individual receiving care and services in the AFH-DD in addition to the individual summary sheet identified in subsection (a) of this section. The emergency information must be kept current and must include:

(A) The name of the individual;

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

(C) The address and telephone number of the AFH-DD where the individual resides if different from that of the provider;

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

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

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

(E) Information on the abilities and characteristics of the individual 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 may assist a person not familiar with the individual to understand what the individual can do for him or herself.

(F) The health support needs of the individual including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person needs 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 ability of the individual to communicate, respond to instructions, or follow directions; and

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

(G) The emotional and behavioral support needs of the individual 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 supervision requirements of the individual and why; and

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

(c) Individual records must be made available to representatives of the Department conducting inspections or investigations as well as to individuals to whom the information pertains, the legal representative of the individual, or other legally authorized people.

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

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

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

(a) The account record must include:

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

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

(C) The signature of the provider or caregiver 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) are to be used at the discretion of the individual for things such as clothing, video games, and snacks (not part of daily diet) as addressed in the ISP for the individual.

(d) Each account 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) PERSONAL PROPERTY RECORD. A provider must prepare and maintain an accurate individual written record of personal property that has significant emotional or monetary value to each individual as determined by a documented ISP team or legal representative decision. The personal property 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 personal property record for accuracy.

(4) INDIVIDUAL SUPPORT PLAN. A health and safety transition plan must be developed for an individual at the time of entry for the first 60 days of care and services. A complete ISP must be developed by the end of 60 days. The ISP must be updated at least annually and more often when the support needs of the individual change.

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

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

(B) The care, services, and support needs as identified by a functional needs assessment;

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

(D) The person responsible for carrying out the care, services, and supports.

(b) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(c) For an individual in employment services, day support activities, or other Department-funded day services, a copy of the plan maintained by the service provider for employment services, day support activities, or other Department-funded services must be integrated or attached to the ISP for the individual.

(d) The ISP must include at least six hours of activities each week that are of interest to the individual that do not include television or

movies made available by the provider. Activities are those available in the community and made available or offered by the provider or the CDDP.

(A) Activities may include:

(i) Recreational and leisure activities; and

(ii) Other activities required to meet the needs of an individual as described in the ISP for the individual.

(B) Activities may not include:

(i) Day support activities;

(ii) Rehabilitation;

(iii) Educational services; or

(iv) Employment services.

(5) HOUSE RULES.

(a) A provider must establish 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. The house rules must also include:

(A) House rules specific to the immediate notification of substantiated abuse as described in OAR 411-360-0210; and

(B) Any restrictions the AFH-DD may have on the use and presence of alcohol, tobacco, medical marijuana (if applicable), pets, visiting hours, dietary restrictions, or religious preference.

(i) Use of tobacco must be in compliance with the Oregon Indoor Clean Air Act and OAR 411-360-0130.

(ii) Use and presence of medical marijuana must be in compliance with the Oregon Medical Marijuana Act and OAR 411-360-0140. The house rules for medical marijuana must be reviewed and approved by the Department. If an individual intends to use medical marijuana in the AFH-DD, the house rules for medical marijuana must be signed and dated by the individual or the legal representative of the individual and included in the record for the individual.

(b) House rules may not violate the rights of an individual as stated in ORS 430.210, ORS 443.739, OAR 411-318-0010, and described in section (9) of this rule.

(c) House rules may not be in conflict with the family atmosphere of the AFH-DD or any of these rules.

(d) House rules are subject to review and approval by the Department prior to the issuance of a license and prior to implementing changes.

(e) A provider must discuss and provide a copy of the house rules to each individual and the legal representative of the individual at the time of entry and annually or as changes occur. The provider must document in the file for the individual that a copy of the house rules was provided.

(f) House rules must be posted in a conspicuous location in the AFH-DD that is accessible to 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 monthly progress notes for each individual residing in the AFH-DD that include, at a minimum, the progress of the ISP supports, any medical, behavioral, or safety issues, or any other events that are significant to the individual.

(9) BILL OF RIGHTS FOR INDIVIDUALS.

(a) The provider must abide by the Bill of Rights for individuals.

(b) The Bill of Rights must be posted in a conspicuous location in the AFH-DD that is accessible to individuals and the legal representatives of the individuals. The Bill of Rights must include the name and phone number of the office to call in order to report a complaint.

(c) The provider must explain and provide a copy of the Bill of Rights along with a description of how to exercise these rights to each individual and the legal representative of the individual at the time of entry and document in the file for the individual that a copy of the Bill of Rights was provided.

(d) The provider must review the Bill of Rights with each individual and the legal representative of the individual annually or as changes occur.

(e) The Bill of Rights states each individual has the right to:

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

(B) Be free from abuse and neglect;

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

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

(E) 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;

(F) Send and receive personal mail unopened and engage in telephone conversations as explained in OAR 411-360-0130;

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

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

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

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

(K) Have a safe and secure environment;

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

(M) Voice grievance without fear of retaliation;

(N) Have freedom from training, treatment, mechanical or chemical restraint, or protective physical interventions except as agreed to, in writing, in the ISP for an individual;

(O) Be allowed and encouraged to learn new skills, to act on his or her own behalf to his or her maximum ability and to relate to others in an age appropriate manner;

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

(Q) Be free from punishment. Behavior intervention programs must be approved in writing in the ISP for an individual;

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

(S) Have access and opportunity to interact with people with or without disabilities; and

(T) Have the right to not 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 provider and be available for inspection upon request.

(11) EMPLOYMENT RECORDS. AFH-DD records must include 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 included in the AFH-DD record and made available for review upon request:

(a) Completed employment applications including the names, addresses, and telephone numbers of all caregivers employed by the provider. An application for employment in any capacity in an AFH-DD must include a question asking whether the person applying for employment has ever been found to have committed abuse;

(b) Proof that the provider has the approval from the Department for each subject individual, as defined in OAR 411-360-0020, to have contact with older adults, adults with disabilities, or adults with intellectual or developmental disabilities 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 substitute caregivers;

(e) Proof of mandatory abuse report training for the provider, resident manager, and substitute caregivers;

(f) Proof of any additional training required for the specific classification of an AFH-DD or the provider, resident manager, and all caregivers; and

(g) Documentation of caregiver orientation to the AFH-DD, training of emergency procedures, training on the ISPs for individuals, and training on behavior supports and the Nursing Service Plan (if applicable).

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-825

411-360-0180 General Practices
(Amended 9/27/2013)

The provider must:

(1) Post the license for the AFH-DD in a conspicuous location in the AFH-DD that is accessible to individuals and visitors;

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

(3) Give care and services as appropriate to the age and condition of the individuals and as identified in the individuals' ISP. The provider must be responsible for ensuring that physician 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 and services;

(4) In the provider's absence, have a substitute caregiver on the premises that is capable of providing care and 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 and the plan of operation in the provider’s absence;

(5) A provider, resident manager, or caregiver must be present in the AFH-DD at all times individuals are present, unless specifically stated in an individual's ISP and granted as a variance by the Department;

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

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

(8) Provide care and services as agreed to in an individual's ISP;

(9) Keep information related to individuals confidential as required under ORS 179.505;

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

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

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

(13) Immediately notify the appropriate ISP team members (in particular the services coordinator and an individual's legal representative) 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.

(14) 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 individual's legal representative or personal agent, when applicable; and

(15) Notify the Department 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, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0190 Standards for Entry, Transfers, Relief Care, Crisis Placements, Exit, and Closures
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may 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.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters an AFH-DD is subject to eligibility as described in this section.

(a) To become a Department-funded resident of an AFH-DD, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020; and

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

(b) To be eligible for Department-funded relief care in an AFH-DD, an individual must:

(A) Meet the criteria in subsection (2)(a)(A-D) of this section;

(B) Be referred by a CDDP or support services brokerage; and

(C) Not be receiving 24-hour residential services for children and adults with intellectual or developmental disabilities as described in OAR chapter 411, division 325 or supported living services for adults with intellectual or developmental disabilities as described in OAR chapter 411, division 328.

(c) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIP-M. This includes, but is not limited to, the following assets:

(i) An annuity that is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate that is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual that is evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

(B) When an individual is disqualified for a transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIP-M.

(C) An individual found to have transferred assets is not eligible for adult foster care services.

(3) ENTRY. All individuals considered for entry into the AFH-DD must:

(a) Be referred by the CDDP or have prior written approval of the CDDP or Department if the services for the individual 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 eligible for developmental disability services.

(4) DOCUMENTATION UPON ENTRY.

(a) At the time of a referral from the CDDP, a provider must be given:

(A) A copy of the eligibility determination document for an individual;

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

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

(D) The medical history of the individual and information on health care support that includes when available:

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

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

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

(v) A record of major illnesses and hospitalizations.

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

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

(G) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Plan (if applicable); and

(H) Copies of protocols, risk tracking record, and any support documentation (if applicable).

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

(5) ENTRY MEETING. An ISP team meeting must be conducted prior to an individual entering an AFH-DD. The findings of the ISP team meeting must be recorded in the file for the individual 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 for the individual;

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

(d) Documentation of the pre-entry information required by section (4) of this rule;

(e) Documentation of the decision to serve the individual requesting services; and

(f) A written Transition Plan for no longer than 60 days after entry that includes all medical, behavior, and safety supports needed by the individual.

(6) The provider retains the right to deny the entry of any individual if the provider feels the support needs of the individual may not be met by the provider or for any other reason specifically prohibited by these rules.

(7) An AFH-DD 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 Department.

(8) 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 legal representative of the individual, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the right of the individual 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 and services;

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

(D) The care and service needs of the individual exceed the ability of the provider; or

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

(b) Before a transfer, an individual must be presented with at least three appropriate placement setting options including at least two different types of residential settings.

(A) The Department or the designee of the Department may not transfer an adult from a placement setting without first complying with subsection (b) of this section.

(B) The Department or the designee of the Department is not required to present the options under subsection (b) of this section if:

(i) The Department or the designee of the Department demonstrates that three appropriate placement settings or two different types of residential settings are not available within the geographic area where the adult wishes to reside;

(ii) The adult selects a placement setting option and waives the right to be presented with the placement setting options described in subsection (b) of this section; or

(iii) The adult is at imminent risk to health or safety in the current placement setting.

(c) Individuals who object to the transfer by the AFH-DD provider must be given the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080. Participants may include the individual and at the request of the individual, 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.

(9) RELIEF CARE.

(a) Relief care may be provided to one or more individuals if the addition of the individual receiving relief care in the AFH-DD does not cause the capacity of the AFH-DD as determined by OAR 411-360-0060 to exceed five. Relief care may not be provided for longer than 14 days duration without prior approval from the Department. A provider may exceed the licensed capacity of the AFH-DD by one or more individuals receiving relief care if:

(A) Approved by the Department;

(B) The capacity of the AFH-DD as determined by OAR 411-360-0060 does not exceed five; and

(C) There is adequate bedroom and living space available in the AFH-DD for the individuals receiving relief care.

(b) The provider must have information sufficient to provide for the health and safety of an individual receiving relief care that includes the following:

(A) Medications provided in a container labeled from a pharmacy or in the original container labeled from the manufacturer;

(B) A list of medications, administration times, and self-administration information as needed. Administration of medication must be documented on a MAR;

(C) Basic summary sheet for the individual that includes the following:

(i) The name of the physician of the individual and the phone number for the physician;

(ii) The name of the emergency contact person of the individual and the phone number for the emergency contact;

(iii) List of supports related to food and drink (textures, special diets, allergies, preferences);

(iv) List of supports related to health supports;

(v) List of supports related to safety including ability to adjust water temperature; and

(vi) List of supports related to challenging behaviors.

(c) On the first relief care visit of an individual, the provider must practice and document a fire drill immediately upon the arrival of the individual. For subsequent relief care visits, the provider must review the fire evacuation procedures with the individual and document the review.

(d) No use of PRN (as needed) psychotropic medications is allowed.

(10) 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 eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080; and

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

(b) An individual receiving support services under OAR chapter 411, division 340 and receiving crisis services in an AFH-DD must have a Support Services ISP and a Support Services Brokerage Crisis Addendum upon the entry of the individual to the AFH-DD.

(c) Individuals not enrolled in support services receiving services to avert a crisis situation for less than 90 consecutive days must have a Transition Plan at the time of entry that addresses any critical information relevant to the health and safety of the individual including the current orders of a physician.

(d) An entry meeting as described in section (5) of this rule is required for an individual receiving crisis services in an AFH-DD.

(e) An exit meeting as described in section (11) of this rule is required for an individual receiving crisis services in an AFH-DD when the individual exits the AFH-DD.

(f) An individual receiving crisis services in an AFH-DD does not have appeal rights regarding exit upon completion of the Crisis Plan for the individual.

(11) IMMEDIATE EXIT.

(a) An individual who was admitted on or after July 1, 2014 may be moved without advance notice if all of the following are met:

(A) The AFH-DD provider was not notified prior to the entry of the individual to the AFH-DD that the individual is on probation,

parole, or post-prison supervision after being convicted of a sex crime; and

(B) The AFH-DD provider learns that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(C) The individual presents a current risk of harm to another individual, staff, or visitor in the AFH-DD as evidenced by:

(i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; or

(ii) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the Static 99 score for the individual or other assessment indicates a probable sexual re-offense risk to others in the AFH-DD.

(b) Prior to the move, the AFH-DD provider must contact the Central Office of the Department by telephone to review the criteria in subsection (a) of this section. The Department shall respond within one working day of contact by the AFH-DD. The parole or probation officer of the Department of Corrections must be included in the review, if available. The Department shall advise the AFH-DD provider if rule criteria for immediate exit are not met. The Department shall assist in locating placement options.

(c) A written move-out notice must be completed on form number SDS 0719DD. The form must be filled out in its entirety and a copy of the notice must be delivered in person to the individual or if applicable the legal representative of the individual. Where an individual lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(d) Prior to the move, the AFH-DD licensee must orally review the notice and the right to object with the individual, or as applicable the

legal representative of the individual, and determine if a hearing is requested. A request for hearing does not delay the exit. The AFH-DD must immediately telephone the Central Office of the Department when a hearing is requested. The hearing must be held within five business days of the exit of the individual. An informal conference may not be held prior to the hearing.

(12) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers as described in section (8)(a) of this rule or for an immediate exit as described in section (11) of this rule.

(b) The provider must give at least 30 days written notice to an individual, the services coordinator, and the Department before termination of residency, unless an immediate exit as described in section (11) of this rule or where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual requests a hearing to appeal an exit from an AFH-DD, the individual must receive the same services until the appeal is resolved. This does not apply to an immediate exit as described in section (11) of this rule.

(c) 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 the individual chooses to exit the AFH-DD.

(13) EXIT MEETING. An ISP team must meet 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 exit 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 the exit of the individual from the AFH-DD (unless the individual or the legal representative of the individual is requesting the exit or the individual must exit immediately as described in section (11) of this rule);

(f) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Transfer or Exit; and

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

(14) 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 or the legal representative of an individual requests an immediate move from the AFH-DD; or

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

(15) CLOSURE. Providers must notify the Department and CDDP in writing prior to announcing a voluntary closure of the AFH-DD to individuals and the legal representatives of the individuals.

(a) The provider must give each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, except in circumstances where undue delay might jeopardize the health, safety, or welfare of the individuals, provider, or caregivers.

(b) If a provider has more than one AFH-DD, the individuals may not be shifted from one AFH-DD to another AFH-DD without providing each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, unless prior approval is given and agreement obtained from the individuals, the legal representative of the individuals, and the CDDP or when undue delay might jeopardize the health, safety, or well-being of the individuals, provider, or caregivers.

(c) A provider must return the AFH-DD license to the Department if the AFH-DD closes prior to the expiration of the license.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-825

411-360-0200 Adjustment, Suspension, or Termination of Payment
(Amended 9/27/2013)

(1) The Department 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 care or service as agreed to in an individual's ISP;

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

(d) An individual's care and service needs change;

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

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

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

(2) The Department 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, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0210 Inspections and Abuse Investigations
(Amended 9/27/2013)

(1) The Department conducts an inspection of an AFH-DD --

(a) Prior to the issuance of an AFH-DD license;

(b) Prior to the annual renewal of an AFH-DD license;

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

(d) Anytime the Department has probable cause to believe that an AFH-DD violated a regulation or provision of these rules or is operating without an AFH-DD license.

(2) The Department may conduct inspections of an AFH-DD --

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

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

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

(3) State or local fire inspectors must be permitted access to inspect an AFH-DD for fire safety upon request of the Department.

(4) Department staff must have full access and authority to --

(a) Examine the physical premises of the AFH-DD including the buildings, grounds, equipment, and any vehicles; and

(b) Examine and copy facility, individual, and account records (as applicable).

(5) Department staff has authority to interview the provider, resident manager, caregivers, and individuals. Interviews are conducted in private and are confidential except as considered public record under ORS 430.763.

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

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

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

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

(10) Completed reports on inspections, except for confidential information, are available to the public during business hours, upon request of the Department.

(11) ABUSE INVESTIGATIONS.

(a) The Department investigates allegations of abuse as defined in OAR 407-045-0260 for individuals receiving services authorized or funded by the Department.

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

(A) Conducting interviews of the alleged victim, witness, the accused person, or any other person 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:

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

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

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

(iv) What, if any, immediate personnel actions must be taken.

(c) When an abuse investigation has been initiated, the Department must provide notice to the provider according to OAR 407-045-0290.

(d) The Department conducts investigations as described in OAR 407-045-0250 to 407-045-0360.

(e) When an abuse investigation has been completed, the outcome of the Abuse Investigation and Protective Services Report is provided by the Department according to OAR 407-045-0320.

(f) NOTIFICATION OF SUBSTANTIATED ABUSE.

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

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

(ii) Each individual of the AFH-DD;

(iii) Each individual's services coordinator; and

(iv) Each individual's legal representative.

(B) The provider's written notification of a substantiated allegation of abuse must include:

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

(ii) When the allegation was substantiated; and

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

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

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

(i) RETALIATION. 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.

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

(B) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For the purpose of this section, "adverse action" means any action taken by a

community facility, community program, or person involved in a report of suspected abuse against the person making the report or against the individual because of the report. Adverse action may include but is not limited to:

(i) Discharge or transfer from the AFH-DD, except for clinical reasons;

(ii) Discharge from or termination of employment;

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

(iv) Restriction or prohibition of access to the AFH-DD or the individuals served by the AFH-DD.

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

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0220 Complaints
(Amended 9/27/2013)

(1) The Department furnishes each AFH-DD with a Complaint Notice. The Complaint Notice must be posted in a conspicuous location in the AFH-DD, stating the telephone number of the Department 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 Department or CDDP.

(3) The Department investigates any complaint regarding the AFH-DD.

(4) Copies of all AFH-DD complaints are maintained by the Department. 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 Department. (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 AFH-DD licenses suspended, revoked, or not renewed, or may have conditions placed on the AFH-DD license.

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

(a) Increasing charges;

(b) Decreasing care or services, rights, or privileges;

(c) Threatening to increase charges or decrease care or 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, 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 Department upon request subject to the Department'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, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0230 Procedures for Correction of Violations
(Amended 9/27/2013)

(1) If an inspection or investigation results in a violation of these rules other than abuse, the Department notifies the provider in writing of violations of these rules.

(2) The notice of violation includes the following:

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

(b) Each rule that has been violated; and

(c) A specific timeframe for correction, not to exceed 30 calendar days after receipt of the notice of violations.

(A) The Department may approve a reasonable timeframe in excess of 30 calendar days if correction of the violation within that timeframe is not practical.

(B) If the licensee requests more than 30 calendar days to correct the violation, such time must be specified in the licensee's plan of correction and must be found acceptable by the Department.

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

(4) The Department may conduct a re-inspection of the AFH-DD after the date the Department receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(5) For violations that present an imminent danger to the health, safety, or welfare of individuals, the licensee must correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Department inspects the AFH-DD after the 24-hour period to determine if the violations are corrected as specified in the notice of violation.

(6) If individuals are in immediate danger, the AFH-DD license may be suspended immediately and arrangements made to move the individuals.

(7) 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 Department has not received a report of compliance, the Department may institute one or more of the following actions:

(a) Imposition of an administrative sanction; or

(b) Filing of a criminal complaint.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0240 Administrative Sanction
(Amended 9/27/2013)

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

(a) Attachment of conditions to an AFH-DD license;

(b) Civil penalties;

(c) Denial, suspension, revocation, or non-renewal of the AFH-DD license; or

(d) Reclassification of the AFH-DD license.

(2) If the Department imposes an administrative sanction, the notice of administrative sanction is served upon the licensee either personally or by certified mail.

(3) The notice of administrative sanction includes:

(a) Each sanction imposed;

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

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

(d) A statement of the administrative sanction imposed;

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

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

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

(h) A statement that the Department’s notice of administrative sanction serves as the final order by default if the licensee fails to request a contested case hearing within the specified time or fails to appear for a contested case hearing.

(4) The licensee must comply with the final order of the Department.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0250 Conditions
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The Department may attach conditions to a license that take effect immediately upon notification by the Department or the delivery of the notice of condition whichever is sooner. The type of conditions attached to an AFH-DD license must directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to a license upon a finding that:

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

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

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

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

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

(a) Restricting the total number of individuals in the AFH-DD based upon the ability of the licensee to meet the health and safety needs of the individuals;

(b) Restricting the number and impairment level of individuals in the AFH-DD based upon the capacity of the caregivers to meet the health and safety needs of all individuals;

(c) Requiring additional caregivers to meet the needs of the individuals;

(d) Requiring additional qualifications or training of the licensee and caregivers to meet specific individual care and service needs;

(e) Requiring additional documentation;

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

(g) Restricting admissions --

(A) When there is a threat of harm to the individuals of the AFH-DD and admitting new individuals compounds that threat; or

(B) When the Department has issued a notice of intent to revoke or not renew the license; and

(h) Restricting a licensee from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual.

(3) A written notice is issued to the licensee by the Department when the Department imposes conditions. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183.

(4) The licensee may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of the imposition of conditions.

(a) The licensee must request a hearing within 21 calendar days from the receipt of the written notice of conditions. Conditions take effect immediately upon issuance of the written notice of conditions and are a final order of the Department unless later rescinded through the hearings process.

(b) In addition to, or in lieu of a hearing, a licensee may request an administrator review by the Director of the Department. The administrator review does not diminish the right of the licensee to a hearing.

(5) Conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied. The licensee may send a written request to the Department to remove a condition if the licensee believes the situation that warranted the condition has been remedied .

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

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-825

411-360-0260 Civil Penalties
(Amended 9/27/2013)

(1) A civil penalty of not less than $100 and not more than $250 per violation, except as otherwise provided in this rule, is imposed on a licensee for a general violation of these rules.

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

(3) A civil penalty of $250 is 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 is 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, is imposed on a licensee who admits knowing that an individual's care or service 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 conducts an abuse investigation and the substantiated abuse resulted in the death, serious injury, rape, or sexual abuse of an individual, a civil penalty of not less than $2,500 is imposed for each violation.

> (a) To impose the civil penalty in section (7) of this rule, the Department must establish that:

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

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

(C) The person with the substantiated finding of abuse had a duty of care and services toward the individual.

(b) For the purpose of the civil penalty in section (7) of this rule, 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 the 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 for the AFH-DD;

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

(d) The AFH-DD is unable to provide an adequate level of care and services to support individuals in the AFH-DD;

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

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

(g) The licensee fails to obtain an approved background check from the Department on a subject individual as defined in OAR 411-360-0020 prior to the subject individual operating, working, training in, or residing in an AFH-DD;

(h) 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; or

(i) Violations other than those involving the health, safety, or welfare of an individual if the licensee fails to correct the violation as required when a reasonable timeframe for correction was given.

(9) In imposing a civil penalty pursuant to this rule, except for a civil penalty imposed pursuant to section (7) of this rule, the following factors are considered by the Department:

(a) The past history of the licensee incurring a civil 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;

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

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

(10) The notice of civil penalty is delivered in person or sent by registered or certified mail and includes:

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

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

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

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

(11) The licensee has10 calendar days after the receipt of the notice of civil penalty in which to make a written application for a contested case hearing before the Department. A final order by default is issued by the Department if a written request for a contested case hearing is not timely received.

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

(13) Except as may be prohibited by state law, 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.

(14) If a final order is not appealed, the amount of the civil penalty is payable within 10 days after the final order is entered. If the final order is appealed and is sustained, the amount of the civil penalty is payable within 10 days after the court decision. The final order, if not appealed or sustained on appeal, constitutes 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.

(15) 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.

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

(17) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are to be paid into the Quality Care Fund.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0270 Denial, Revocation, or Non-renewal of License
(Amended 9/27/2013)

(1) The Department denies, revokes, or refuses 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;

(b) 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;

(c) The Department has conducted a background check and determined the applicant or licensee is not approved in accordance with OAR 411-360-0110;

(d) The applicant or licensee is listed on the Office of Inspector General's or the U.S. General Services Administration's (System for Award Management) Exclusion Lists;

(e) The licensee allows a caregiver, or any other subject individual as defined in OAR 411-360-0020, excluding individuals who are receiving care and services in the AFH-DD, to operate, work, train in, or reside in the AFH-DD that --

(A) Have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(B) Are not approved by the Department as the result of a background check; or

(C) Refused to cooperate with the Department for a background check in accordance with OAR 407-007-0200 to 407-007-0370;

(f) The applicant or licensee falsely represents that he or she has not been convicted of a crime;

(g) The licensee fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction;

(h) When a background check is required on or after July 28, 2009, a subject individual as defined in OAR 411-360-0020 has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(i) The Department of Revenue has sent the Department a notice in accordance with ORS 305.385;

(j) The applicant or licensee has had a previous certificate or license to operate a foster home, or any other setting involving residential care, denied, suspended, revoked, or not renewed within three years preceding the present action or is associated with a person whose certificate or license was denied, suspended, revoked, or not renewed within three years preceding the present action due to the abuse of an individual or failure to possess the physical or mental health, or good personal character necessary, unless the applicant or licensee demonstrates to the Department by clear and convincing evidence that the applicant or licensee, or the person associated with the applicant or licensee, does not pose a threat to the individuals.

(A) For the purpose of this subsection, an applicant or licensee is "associated with" a person as described above, if the applicant or licensee:

(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 the purpose of this subsection only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.

(2) The Department may deny, revoke, or refuse to renew an AFH-DD license if the applicant or licensee:

(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 report of abuse of a child or has a substantiated finding of abuse of an individual;

(d) Has a medical or psychiatric problem that interferes with the applicant's or licensee's ability to provide care and services;

(e) Has had a previous certificate or license to operate a foster home, or any other setting involving residential care, denied, suspended, revoked, or not renewed more than three years from the present action or the licensee or applicant is associated with a person whose certificate or license was denied, suspended, revoked, or not

renewed more than three years from the present action due to the abuse of an individual or failure to possess the physical or mental health, or good personal character necessary, unless the applicant or licensee demonstrates to the Department by clear and convincing evidence that the applicant or licensee, or the person associated with the applicant or licensee, does not pose a threat to the individuals.

(A) For the purpose of this subsection, an applicant or licensee is "associated with" a person as described above, if the applicant or licensee:

(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 the purpose of this subsection only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.

(f) Has failed to pass the second AFH-DD Basic Training Examination;

(g) Has failed to disclose requested information on the application or submits untrue information to the Department;

(h) Has previously been cited for the operation of an unlicensed AFH;

(i) Does not possess the good judgment or character deemed necessary by the Department;

(j) Fails to correct a violation within the specified timeframe allowed;

(k) Refuses to allow access to the AFH-DD and inspection of the AFH-DD;

(l) Fails to comply with a final order of the Department to correct a violation of the rules for which an administrative sanction has been imposed, such as a license condition;

(m) Fails to obtain an approved background check for subject individuals according to OAR 411- 360-0110; or

(n) Fails to operate any AFH-DD licensed to the licensee in substantial compliance with ORS 443.705 to 443.825 and these rules.

(3) DENIAL. When the Department denies an applicant an AFH-DD license, the applicant has 60 calendar days after receipt of the notice of denial to make a written application for a contested case hearing before the Department.

(4) NON-RENEWAL. When an administrative sanction is to not renew an AFH-DD license, the licensee has 21 calendar days after the receipt of the notice of administrative sanction to make a written application for a contested case hearing before the Department.

(5) REVOCATION. When an administrative sanction is to revoke a license, the licensee has 10 calendar days after the receipt of the notice of administrative sanction to make a written application for a contested case hearing before the Department.

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

(7) If the applicant or licensee fails to request a contested case hearing within the timeframe specified in the notice of denial, refusal to renew, or revocation, a default order may be entered by the Department.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0275 Suspension
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The Department may suspend a license for reasons of abuse, neglect, or exploitation of an individual if:

(a) An immediate threat to the health, safety, or welfare of any individual exists;

(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; or

(d) The provider has been found to have been convicted of a crime that would have resulted in a denied fitness determination of a background check.

(2) The licensee may request an administrator review of the decision of the Department to suspend an AFH-DD license. The Department must receive a written request for an administrator review within10 calendar days from the receipt of the notice and order of suspension.

(a) Within 10 calendar days from the receipt of the request for an administrator review from the licensee, all material relating to the allegation of abuse, neglect, or exploitation and the suspension of the AFH-DD license, including any written documentation submitted by the licensee within that timeframe, is reviewed by the Director of the Department. Based on review of the material, the Director determines whether to sustain the decision to suspend the AFH-DD license.

(b) A suspension is rescinded immediately if the Director does not sustain the decision to suspend the AFH-DD license.

(c) The decision of the Director is subject to a hearing under ORS chapter 183 if requested within 90 calendar days from the date of the decision of the administrator review.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended, the Department withholds service payments until the license is reinstated.

(4) For the protection of the individuals, the Department arranges for the individuals in the AFH-DD to move when the AFH-DD license is suspended.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-825

411-360-0280 Criminal Penalties
(Amended 9/27/2013)

(1) Operating an AFH-DD without a license is punishable as a Class C misdemeanor pursuant to ORS 443.991(5).

(2) Refusing to allow the Department access and inspection to the AFH-DD or access to the AFH-DD regarding fire safety by state and local fire inspector, is punishable as a Class B misdemeanor pursuant ORS 443.991(6).

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0290 Enjoinment of Operation
(Amended 9/27/2013)

The Department 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 homes has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0300 Zoning
(Amended 9/27/2013)

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, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825

411-360-0310 Public Information
(Amended 9/27/2013)

(1) The Department maintains current information on all licensed AFH-DD's and makes that information available to prospective individuals, the individuals' families, and other interested members of the public.

(2) The information includes:

(a) The location of the AFH-DD;

(b) A brief description of the physical characteristics of the AFH-DD;

(c) The name and mailing address of the provider;

(d) The license classification of the AFH-DD and the date the provider was first licensed to operate the AFH-DD;

(e) The date of the last inspection of the AFH-DD, the name and telephone number of the office that performed the inspection, and a summary of the findings of the inspection;

(f) Copies of all complaint investigations involving the AFH-DD, together with the findings of and actions taken by the Department;

(g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions, or other actions taken by the Department involving the AFH-DD; and

(h) Whether care and services are provided primarily by the provider, a resident manager, or other arrangement.

(3) Any list of adult foster homes maintained or distributed by the Department includes notification to the reader of the availability of public records concerning the AFH-DD's.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.705 - 443.825