

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Aging and People with Disabilities, Office of Licensing
and Regulatory Oversight 411

Agency and Division		Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	500 Summer Street NE, E-48 Salem, OR 97301-1074	(503) 945-6398

Rules Coordinator	Address	Telephone
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RULE CAPTION

Residential Care and Assisted Living Facilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

May 17, 2016	2:00 pm	Human Services Building 500 Summer Street NE, ROOM 160 Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:
411-054-0038

AMEND:
OAR Chapter 411, Division 054

REPEAL:
Temporary Rules: 411-054-0000(T); 411-054-0005(T); 411-054-0012(T); 411-054-0025(T); 411-054-0027(T); 411-054-0036(T); 411-054-0038(T)

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 409.050, 410.070, 413.042, 413.085, 443.450

Other Auth.: H.B. 2413 (2015), H.B. 4151 (2015)

Stats. Implemented: ORS 409.050, 413.042, 413.085, 443.400-443.455, 443.991

RULE SUMMARY

The Department of Human Services (Department) is amending OAR chapter 411, division 054 to make permanent temporary changes that became effective on January 1, 2016. The Department is amending the rules and adopting a new rule to add in requirements surrounding individually-based limitations for residential care and assisted living facilities to align the rules with the newly adopted rules in 411-004. The rules in 411-004 provide a foundation of standards to support the network of Medicaid-funded and private pay residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon.

The amended rules ensure individuals in residential care and assisted living and facilities receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

- Engage in community life;
- Control personal resources; and
- Receive services in the community.

The Department is also updating language in 411-054-0012 (Market Study language) to comply with H.B. 2413 (2015) and 411-054-0025 (Criminal Background language) to comply with H.B. 4151 (2015).

The Department is updating the rules to match current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

May 21, 2016 at 5 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Aging and People with Disabilities, Office of Licensing
and Regulatory Oversight 411

Agency and Division

Administrative Rules Chapter Number

Residential Care and Assisted Living Facilities

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The adoption of OAR 411-054-0038 and amendment of OAR chapter 411, division 054 and repeal of temporary rules 411-054-0000(T); 411-054-0005(T); 411-054-0012(T); 411-054-0025(T); 411-054-0027(T); 411-054-0036(T); and 411-054-0038(T) relating to residential care and assisted living facilities.

Statutory Authority: ORS 409.050, 410.070, 413.042, 413.085, 443.450

Other Authority: H.B. 2413 (2015), H.B. 4151 (2015)

Stats. Implemented: ORS 409.050, 413.042, 413.085, 443.400-443.455, 443.991

Need for the Rule(s):

The Department needs to amend the rules in OAR chapter 411, division 054 to make permanent temporary changes that were effective on January 1, 2016. The Department needs to align the rules in 411-054 with the newly adopted rules in 411-004 that implement the regulations and expectations of CMS by providing a foundation of standards to support the network of Medicaid-funded and private pay residential HCBS, HCB settings, and person-centered service planning for individuals receiving HCBS in Oregon. The Department will do this by amending current rules to match terminology used in 411-004. The Department will also adopt a new rule to set out when individually based limitations are applicable.

The Department also needs to amend the rules to update language to comply with H.B. 2413 (2015), H.B. 4151 (2015). The Department will do this by adding language to the background check portion of the rules and removing language from the market study portion of the rules. The Department will update the rules to match current Department terminology.

Documents Relied Upon, and where they are available:

1915(c) HCBS Waivers, 1915(i) State Plan HCBS, 1915(k) Community First Choice (K State Plan Option), Oregon's HCBS Transition Plan

Available at: <http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Pages?Transition-Plan.aspx>

H.B. 2413 (2015), H.B. 4151 (2015), available from DHS Hearings and Rules Unit, 500 Summer Street NE E48, Salem, Oregon 97301

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR 411-054 will have the following fiscal and economic impact:

During the Rules Advisory Committee (RAC) process, the Department asked for both verbal and written feedback on the fiscal and economic impact. RAC participants confirmed there will be a fiscal impact, but quantifying the impact is difficult at this time.

If the Department, units of local government, and providers do not comply with the regulations and expectations of CMS, Oregon risks losing federal funding, which covers approximately 70 percent of the cost of HCBS. Without this federal funding, Oregon could not fund the current HCB system, resulting in a significant impact to the Department, units of local government, service recipients, providers (including small businesses), and members of the public.

State Agencies: The Department anticipates that due to the new regulatory compliance requirements, there may be additional costs. The Department is unable to estimate the fiscal impact at this time due to the newness of the regulations and the lack of available data needed to accurately predict future needs.

Unit of Local Government: The Department estimates there will be no fiscal or economic impact on units of local government.

Consumers: The Department anticipates there will not be a fiscal impact to individuals eligible for Medicaid-funded HCBS. Private pay individuals may see slight cost increases should providers pass along any increased cost of doing business to the service recipient, but this is impossible to calculate.

Providers: The Department anticipates a fiscal impact to providers, but is unable to estimate the impact at this time due to these being new regulations in which the Department does not have available data to estimate what the costs will be. Below are some of the specific predicted areas of fiscal impacts to providers.

In a prior rulemaking for this rule division, the Department estimated the cost at \$110 per door lock. The Department is still unable to estimate the overall impact of this requirement because the Department is unable to estimate the number of rooms that need a lock.

Some providers may need to hire additional staff to meet the new regulations. If this occurs, a percentage of providers that are eligible to seek exceptional payments may have any costs offset through this process. Due to newness of rules, lack of available data, and variables in provider and resident needs, the Department is unable to estimate the overall impact.

An increase in administrative cost to providers is also anticipated in order to engage in new planning discussions and documentation processes around person-centered service planning and limits to freedoms and rights of individuals receiving services. Again, the Department is unable to estimate the impact to determine this cost due to providers having differing needs.

Some providers may need to close due to their inability to comply with the new regulations. The Department will be working with providers throughout the transition period to assist providers to come into compliance. If facilities are unable to meet the new rule expectations, or CMS determines that some settings are institutional and will no longer be funded, there would be a negative fiscal impact to those specific providers due to loss of income and loss of real estate and investment value. The Department is unable to estimate the number of providers that may be impacted in this way as these are new regulations and the Department does not have the data available to estimate the number of providers that would be negatively impacted.

Public: The Department estimates there will be no fiscal or economic impact on the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

There are currently 501 residential care facilities (RCF) and assisted living facilities (ALF) and of these approximately 20-25 ALF and RCF providers are considered a small business as defined by ORS 183.310.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed changes impact RCF/ALF as described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The proposed changes impact RCF/ALF as described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The RAC met October 28, 2015 to consider the proposed rule language and discuss the fiscal impact.

Those invited to attend the Administrative Rule Advisory Committee included representation from OHCA, LeadingAge, Oregon Law Center DHS, Long Term Care Ombudsman, Local Department offices, Avamere Corp., Gateway Living, Sweet Bye N Bye, NWSDS, and OHA and the Department including APD, OAAPI, and OLRO.

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities

4/29/2016

Signature

Date

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

**CHAPTER 411
DIVISION 54**

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0000 Purpose

(1) The purpose of these rules is to establish standards for assisted living and residential care facilities that promote the availability of a wide range of individualized services for elderly and persons with disabilities, in a homelike environment. The standards are designed to enhance the dignity, independence, individuality, and decision making ability of the resident in a safe and secure environment while addressing the needs of the resident in a manner that supports and enables the individual to maximize abilities to function at the highest level possible.

(2) Residential care and assisted living facilities are also required to adhere to Home and Community-Based Services, OAR 411-004. For purposes of these rules, all residential care and assisted living facilities are considered home and community-based care settings and therefore shall be referred to as "facility."

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 to 443.455 & 443.991

411-054-0005 Definitions

For the purpose of these rules, the following definitions apply:

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

(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, health, and safety. Activities consist of eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), ~~and~~ cognition, and behavior.

(3) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(4) "Administrator" means the individual who is designated by the licensee that is responsible for the daily operation and maintenance of the facility as described in OAR 411-054-0065.

(5) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(6) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(7) "APD" means "Aging and People with Disabilities".

(8) "Applicant" means the individual, individuals, or entity, required to complete a facility application for license.

(a) Except as set forth in OAR 411-054-0013(1)(b), applicant includes a sole proprietor, each partner in a partnership, and each member with a 10 percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business;
or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor,

each partner in a partnership, and each member with a ~~5~~five percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business;
or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(9) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to perform specific activities in relation to residential care and assisted living facilities including:

(a) Conducting inspections and investigations regarding protective service, abuse, and neglect;~~;~~

(b) Monitoring;~~and~~

(c) Making recommendations to the Department regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(10) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(11) "Building Codes" are comprised of the set of specialty codes, including the Oregon Structural Specialty Code (OSSC), Oregon Mechanical Specialty Code (OMSC), Oregon Electrical Specialty Code (OESC), Oregon Plumbing Specialty Code (OPSC), and their reference codes and standards.

(12) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker.

(13) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.

(14) "Change of Condition - Short-Term" means a change in the resident's health or functioning, that is expected to resolve or be reversed with minimal intervention, or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(15) "Change of Condition - Significant" means a major deviation from the most recent evaluation, that may affect multiple areas of functioning or health, that is not expected to be short-term, and imposes significant risk to the resident. Examples of significant change of condition include, but are not limited to:

- (a) Broken bones;
- (b) Stroke, heart attack, or other acute illness or condition onset;
- (c) Unmanaged high blood sugar levels;
- (d) Uncontrolled pain;
- (e) Fast decline in activities of daily living;
- (f) Significant unplanned weight loss;

- (g) Pattern of refusing to eat;
- (h) Level of consciousness change; and
- (i) Pressure ulcers (stage 2 or greater).

(16) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(17) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(18) "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.

(~~18~~19) "Department" means the Department of Human Services (DHS).

(~~19~~20) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:

(A) Chosen by the individual or, as applicable, the legal representative;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.

(D) The power to act as a designated representative is valid until the individual modifies the authorization or

notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(b) An individual or the legal representative of the individual is not required to appoint a designated representative.

(21) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.

(2022) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

- (a) Medication administration;_;
- (b) Resident-focused activities;_;
- (c) Assistance with activities of daily living;_;
- (d) Supervision and support of residents;~~and~~
- (e) Serving meals, but not meal preparation.

(2123) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.

(2224) "Director" means the Director of the Department's Licensing and Regulatory Oversight, or that individual's designee. The term "Director" is synonymous with "Assistant Director".

(2325) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or ~~manmade~~man-made, that renders the licensee unable to operate the facility or makes the facility uninhabitable.

(~~24~~26) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(~~25~~27) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(~~26~~28) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.

(~~27~~29) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility. For purposes of HCBS, "facility" can also mean "provider."

(~~28~~30) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division. of the Oregon Health Authority (OHA).

(31) "HCB" means "Home and Community-Based".

(~~29~~32) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. DHS, Office of Licensing and Regulatory Oversight and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.

(~~33~~) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

(~~30~~34) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.

(~~31~~35) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(~~32~~36) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(~~33~~37) "Individual" means a person enrolled in or utilizing HCBS.

(38) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020(2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual, or as applicable the legal representative, as described in OAR 411-004-0040.

(39) "Informed Consent" means:

(a) Options, risks, and benefits have been explained to an individual, and, as applicable, the legal representative of the individual, in a manner that the individual, and, as applicable, the legal or designated representative, comprehends; and

(b) The individual or, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.

(40) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(~~34~~41) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(3542) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(3643) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(b) For an individual 18 years of age and older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.

(44) "Major Alteration":

(a) Means:

(A) Any structural change to the foundation, floor, roof, exterior, or load bearing wall of a building;

(B) The addition of floor area to an existing building; or

(C) The modification of an existing building that results in a change in use where such modification affects resident services or safety.

(b) Does not include cosmetic upgrades to the interior or exterior of an existing building (for example: changes to wall finishes, floor rings, or casework).

~~(37) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.~~

(3845) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(3946) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes).

(a) Modified special diets include, but are not limited to:

- (A) Small frequent meals;
- (B) No added salt;
- (C) Reduced or no added sugar; and
- (D) Simple textural modifications.

(b) Medically complex diets are not included.

(4047) "New Construction" means:

- (a) A new building;~~;~~
- (b) An existing building or part of a building that is not currently licensed;~~;~~
- (c) A major alteration to an existing building; ~~or.~~
- (d) Additions, conversions, renovations, or remodeling of existing buildings.

(4148) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851.

(4249) "OHA" means the Oregon Health Authority.

(50) "Owner" means an individual with an ownership interest.

(4351) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(4452) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030.

(a) FOR INDIVIDUALS RECEIVING MEDICAID. The person-centered service plan coordinator completes the person-centered service plan.

(b) FOR NON-MEDICAID INDIVIDUALS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.

(53) "Person-Centered Service Plan Coordinator" means a:

(a) Resident's AAA or APD case manager assigned to provide case management services or person-centered service planning for and with individuals; or

(b) Person of the individual's choice for individuals who pay privately.

(54) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this

definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(4555) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(4656) "Provider" means any person or entity providing HCBS.

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

(4758) "Psychoactive Medications" mean medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.

(4859) "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR 333-675-0000.

(4960) "Renovate" means to restore to good condition or to repair.

(5061) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting.

(62) "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(5163) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as

described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(~~5264~~) "Restraint" means any physical device the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(~~5365~~) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).

(~~5466~~) "Risk Agreement" means a process where a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(~~67~~) "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(~~5568~~) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.

(~~5669~~) "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(~~5770~~) "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.

(a) For the purpose of these rules, subject individual includes:

(A) All applicants, licensees, and operators of a residential care or assisted living facility;

(B) All individuals employed or receiving training in an assisted living or residential care facility; and

(C) Volunteers, if allowed unsupervised access to residents.

(b) For the purpose of these rules, subject individual does not apply to:

(A) Residents and visitors of residents; or

(B) Individuals that provide services to residents who are employed by a private business not regulated by the Department.

(5871) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(5972) "These Rules" mean the rules in OAR chapter 411, division 054.

(6073) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

(a) The general public; ~~or~~

(b) A specific population, for example, residents with dementia or traumatic brain injury.

(6174) "Unit" means ~~an individual living space constructed as a completely private apartment, including living~~ the personal and sleeping space, ~~kitchen area, bathroom, and adequate storage areas~~ of an individual receiving

services in a RCF or ALF setting, as agreed to in the Residency Agreement.

(~~6275~~) "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070 ~~&~~, 443.450

Stats. Implemented: ORS 443.400 ~~to~~ ~~443.455~~ ~~&~~, 443.991

411-054-0012 Requirements for New Construction or Initial Licensure

(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed facility, must communicate with the Department before submitting a letter of intent as described in section (3) of this rule.

(2) ~~Prior to~~Before beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must provide the following information for consideration by the Department for a potential license:

(a) Demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and

(b) Provide a letter of intent as set forth in section (3) of this rule.

(3) LETTER OF INTENT. ~~Prior to application~~Before applying for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to the Department a letter of intent that includes the following:

(a) Identification of the potential applicant.;

(b) Identification of the city and street address of the intended facility.;

(c) Intended facility type (for example, RCF, ALF, or memory care), the intended number of units, and maximum resident capacity.;

(d) Statement of whether the applicant is ~~willing-able~~ to provide care and services for an underserved population and a description of any underserved population the applicant is ~~willing-able~~ to serve.;

(e) Indication of whether the applicant is ~~willing-able~~ to provide services through the state medical assistance program.;

(f) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population; ~~and.~~

(g) An independent market analysis completed by a third party professional that meets the requirements of section (4) of this rule.

(4) MARKET ANALYSIS. The applicant must submit a current market analysis to the Department ~~for review and consideration prior to application before applying~~ for a building permit. A market analysis is not required for change of owner applicants of existing licensed buildings. The market analysis must ~~show the need for the services offered by the license applicant and must~~ include:

(a) A description of the intended population to be served, including underserved populations and those eligible to receive services through the state medical assistance program, as applicable.;

(b) A current demographic overview of the area to be served.;

(c) A description of the area and regional economy and the effect on the market for the project.;

(d) Identification of the number of individuals in the area to be served who are potential residents.;

(e) A description of available amenities (for example, transportation, hospital, shopping center, or traffic conditions).;

(f) A description of the extent, types, and availability of existing and proposed facilities, as described in ORS 443.400 to 443.455, located in the area to be served; ~~and~~.

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(5) The Department shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.

(a) If the applicant is dissatisfied with the decision of the Department, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.

(b) The contested case hearing shall be in accordance with ORS chapter 183.

(6) ~~Prior to~~Before issuing a license, the Department shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules.

(7) BUILDING DRAWINGS. After the letter of intent has been submitted to the Department, one set of building drawings and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.

(a) Building drawings must be submitted to FPS:

(A) ~~Prior to~~Before beginning construction of any new building;

(B) ~~Prior to~~Before beginning construction of any addition to an existing building;

(C) ~~Prior to~~Before beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or

(D) ~~Subsequent to~~After application for an initial license of a facility not previously licensed under this rule.

(b) Drawings must comply with the building codes and the Oregon Fire Code (OFC) as required for the occupancy classification and construction type.

(c) Drawings submitted for a licensed assisted living or residential facility must be prepared by and bear the stamp of an Oregon licensed architect or engineer.

(8) ~~SIXTY-60~~ DAYS ~~PRIORBEFORE~~ LICENSURE. At least 60 days ~~prior~~ ~~to~~before anticipated licensure, the applicant must submit to the Department:

(a) A completed application form with the required fee;

(b) A copy of the facility's written rental agreements;

(c) Disclosure information; ~~and~~

(d) Facility policies and procedures to ensure the facility's administrative staff, personnel, and resident care operations are conducted in compliance with these rules.

(9) ~~THIRTY-30~~ DAYS ~~PRIORBEFORE~~ LICENSURE. ~~Thirty-30~~ days ~~prior~~ ~~to~~before anticipated licensure the applicant must submit:

(a) To the Department, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a background check request; ~~and~~

(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests the scheduling of an onsite licensing inspection.

(10) TWO-DAYS ~~PRIORBEFORE~~ LICENSURE. At least two working days ~~prior~~ ~~to~~before the scheduled onsite licensing inspection of the facility, the applicant must submit, to the Department and FPS, a completed and signed Project Completion/Inspection Checklist that confirms the building project is complete and fully in compliance with these rules.

(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and the Department.

(b) The onsite licensing inspection may be rescheduled at the Department's convenience if the scheduled, onsite licensing inspection reveals the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.

(11) CERTIFICATE OF OCCUPANCY. The applicant must submit to the Department and FPS, a copy of the Certificate of Occupancy issued by the building codes agency having jurisdiction that indicates the intended occupancy classification and construction type.

(12) CONFIRMATION OF LICENSURE. The applicant, ~~prior to~~before admitting any resident into the facility, must receive a written confirmation of licensure issued by the Department.

Stat. Auth.: ORS 410.070, ~~&~~ 443.450

Stats. Implemented: ORS 443.400-~~to~~ 443.455, ~~&~~ 443.991

411-054-0025 Facility Administration

(1) FACILITY OPERATION.

(a) The licensee is responsible for the operation of the facility and the quality of services rendered in the facility.

(b) The licensee is responsible for the supervision, training, and overall conduct of staff when staff are acting within the scope of ~~their~~ his or her employment duties.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

~~(ed)~~ The licensee is responsible for obtaining background checks on all subject individuals.

(2) BACKGROUND CHECK REQUIREMENTS

~~(A)(a)~~ Background checks must be submitted to the Department for a criminal fitness determination on all subject individuals in accordance with OAR chapter 407-007-0200 to 407-007-0370, and 407-007-0600 to 0640, including prior to before a subject individual's change in position ~~(for example, change from caregiver to med aide).~~

~~(B) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual may be approved to work in multiple facilities under the same operational entity. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various facilities.~~

~~(d) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.~~

~~(2) BACKGROUND CHECK REQUIREMENTS.~~

~~(A) (a)~~ On or after July 28, 2009, no individual may be a licensee, or employed in any capacity in a facility, who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

~~(B)(b)~~ Subject individuals who are employees and hired prior to before July 28, 2009 are exempt from subsection (a) of this section provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

~~(C) Background checks are to be completed every two years on all subject individuals.~~

(b) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual may be approved to work in multiple facilities under the same operational entity. The Department's Background Check

Request form must be completed by the subject individual to show intent to work at various facilities.

(3) EMPLOYMENT APPLICATION. An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse. The licensee must check all potential employees against the Oregon State Board of Nursing (Board) and inquire whether the individual is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the individual or any substantiated abuse findings against a nursing assistant.

(4) Reasonable precautions must be exercised against any condition that may threaten the health, safety, or welfare of residents.

(5) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and must be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license.;

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility.;

(c) The current facility staffing plan.;

(d) A copy of the most recent re-licensure survey, including all revisits and plans of correction as applicable.;

(e) The Ombudsman Notification Poster.;

(f) Other notices relevant to residents or visitors required by state or federal law.

(6) NOTIFICATION. The facility must notify the Department's Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

- (a) Any change of the administrator of record.;
- (b) Severe interruption of physical plant services ~~in which~~where the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food.;
- (c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable.;
- (d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility.;
- (e) Unusual resident death or suicide; ~~or.~~
- (f) A resident who has eloped from the facility and has not been found within 24 hours.

(7) POLICIES AND PROCEDURES. The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment. The facility must develop and implement:

- (a) A policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in ~~their~~his or her daily living.
- (b) A written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.
- (c) Effective methods of responding to and resolving resident complaints.
- (d) All additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition and Monitoring), OAR 411-054-0045 (Resident Health

Services), and OAR 411-054-0085 (Refunds and Financial Management).

(e) A policy on smoking.

(A) The smoking policy must be in accordance with:

(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(ii) The rules in OAR chapter 333, division 015; and

(iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(f) A policy for the referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident.

(g) A policy on facility employees not receiving gifts or money from residents.

(8) RECORDS. The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility, the licensee must provide the Department with written notification of the location of all records.

(9) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

(10) DISCLOSURE - RESIDENCY AGREEMENT. The facility must provide a Department designated Uniform Disclosure Statement (form SDS 9098A) to each individual who requests information about the facility. The residency agreement and the disclosure information described in subsection (a) of this section must be provided to all potential residents ~~prior to~~before move-in. All disclosure information and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by the Department ~~prior to~~before distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition.²⁷

(B) Payment provisions including the basic rental rate and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable.²⁷

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided.²⁷

(D) Policy for increases, additions, or changes to the rate structure. The disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan.²⁷

(E) Refund and proration conditions.²⁷

(F) A description of the scope of resident services available according to OAR 411-054-0030.²⁷

(G) A description of the service planning process.²⁷

(H) Additional available services.

(I) The philosophy of how health care and ADL services are provided to the resident.

(J) Resident rights and responsibilities.

(K) The facility's system for packaging medications including the option for residents to choose a pharmacy that meets the requirements of ORS 443.437.

(L) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move;

(M) Resident rights pertaining to notification of involuntary move-out.

(N) Notice that the Department has the authority to examine resident records as part of the evaluation of the facility; ~~and~~

(O) The facility's staffing plan.

(b) The facility may not include any provision in the residency agreement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.

(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to the resident's designated representative.

(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed, emailed, or mailed to the Department before distribution.

Stat. Auth.: ORS 181.534, 410.070, 443.004, & 443.450

Stats. Implemented: ORS 181.534, 443.004, 443.400 ~~to~~ 443.455, & 443.991

411-054-0027 Resident Rights and Protections

(1) The facility must implement a residents' Bill of Rights. Each resident ~~or~~ and the resident's designated representative, if appropriate, must be given a copy of the resident's rights and responsibilities ~~prior to~~ before moving into the facility. The Bill of Rights must state that residents have the right:

- (a) To be treated with dignity and respect~~;~~.
- (b) To be given informed choice and opportunity to select or refuse service and to accept responsibility for the consequences~~;~~.
- (c) To participate in the development of their initial service plan and any revisions or updates at the time those changes are made~~;~~.
- (d) To receive information about the method for evaluating their service needs and assessing costs for the services provided~~;~~.
- (e) To exercise individual rights that do not infringe upon the rights or safety of others~~;~~.
- (f) To be free from neglect, financial exploitation, verbal, mental, physical, or sexual abuse~~;~~.
- (g) To receive services in a manner that protects privacy and dignity~~;~~.
- (h) To have prompt access to review all of their records and to purchase photocopies. Photocopied records must be promptly provided, but in no case require more than two business days (excluding Saturday, Sunday, and holidays)~~);~~).
- (i) To have medical and other records kept confidential except as otherwise provided by law~~;~~.

(j) To associate and communicate privately with any individual of choice, to send and receive personal mail unopened, and to have reasonable access to the private use of a telephone~~;~~₂

(k) To be free from physical restraints and inappropriate use of psychoactive medications~~;~~₂

(l) To manage personal financial affairs unless legally restricted~~;~~₂

(m) To have access to₂ and participate in₂ social activities~~;~~₂

(n) To be encouraged and assisted to exercise rights as a citizen~~;~~₂

(o) To be free of any written contract or agreement language with the facility that purports to waive their rights or the facility's liability for negligence~~;~~₂

(p) To voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of retaliation~~;~~₂

(q) To be free of retaliation after they have exercised their rights provided by law or rule~~;~~₂

(r) To have a safe and homelike environment~~;~~₂

(s) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion~~;~~~~and~~₂

(t) To receive proper notification if requested to move~~;~~~~out~~ of the facility, and to be required to move~~;~~~~out~~ only for reasons stated in OAR 411-054-0080 (Involuntary Move-out Criteria) and have the opportunity for an administrative hearing, if applicable.

(2)

(2) HCBS RIGHTS.

(a) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than September 1, 2018 for providers initially licensed before January 1, 2016 the following rights must include the freedoms authorized by 42 CFR 441.301(c)(~~42~~)(~~xiii~~) & 42 CFR 441.530(a)(1):

(A) Live under a legally enforceable residency agreement;

(B) The freedom and support to access food at any time;

(C) To have visitors of the resident's choosing at any time;

(D) Choose a roommate when sharing a bedroom;

(E) Furnish and decorate the resident's bedroom according to the Residency Agreement; and

(F) The freedom and support to control the resident's schedule and activities.

(b) The rights described in (B) through (F) of this section must meet the requirements set forth in OAR 411-054-0038 and shall not be limited without the informed, written consent of the resident or the resident's representative, and approved by the person-centered service plan coordinator.

(23) Licensees and facility personnel may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident, as follows: parent, child, brother, sister, grandparent, grandchild, aunt or uncle, or niece or nephew. An owner, administrator, or employee may act as a representative payee for the resident or serve in other roles as provided by law.

(34) Licensees and facility personnel may not spend resident funds without the resident's consent.

(a) If the resident is not capable of consenting, the resident's representative must give consent.

(b) If the resident has no representative and is not capable of consenting, licensees and facility personnel must follow the requirements described in OAR 411-054-0085 and may not spend resident funds for items or services that are not for the exclusive benefit of the resident.

Stat. Auth.: ORS 410.070-~~&~~, 443.450

Stats. Implemented: ORS 443.400-~~to~~-443.455-~~&~~, 443.991

411-054-0036 Service Plan - General

(1) If the resident has a Person-Centered Service Plan pursuant to 411-004-0030, the facility must incorporate all elements identified in the person-centered service plan into the resident's service plan.

(2) SERVICE PLAN. The service plan must reflect the resident's needs as identified in the evaluation and include resident preferences that support the principles of dignity, privacy, choice, individuality, and independence.

(a) The service plan must be completed:

(A) ~~Prior to~~Before resident move-in, with updates and changes as appropriate within the first 30-days; and

(B) Following quarterly evaluations.

(b) The service plan must be readily available to staff and provide clear direction regarding the delivery of services.

(c) The service plan must include a written description of who ~~will~~ shall provide the services and what, when, how, and how often the services ~~will~~ shall be provided.

(d) Changes and entries made to the service plan must be dated and initialed.

(e) When the resident experiences a significant change of condition the service plan must be reviewed and updated as needed.

(f) A copy of the service plan, including each update, must be offered to the resident or to the resident's legal representative.

(g) The facility administrator is responsible for ensuring the implementation of services.

(23) SERVICE PLAN REQUIREMENTS ~~PRIOR TO~~BEFORE MOVE-IN.

(a) Based on the resident evaluation performed ~~prior to~~before move-in, an initial service plan must be developed ~~prior to~~before move-in that reflects the identified needs and preferences of the resident.

(b) The initial service plan must be reviewed within 30-days of move-in to ensure that any changes made to the plan during the initial 30-days, accurately reflect the resident's needs and preferences.

(c) Staff must document and date adjustments or changes as applicable.

(34) QUARTERLY SERVICE PLAN REQUIREMENTS.

(a) Service plans must be completed quarterly after the resident moves into the facility.

(b) The quarterly evaluation is the basis of the resident's quarterly service plan.

(c) If the resident's service plan is revised and updated at the quarterly review, changes must be dated and initialed, and prior historical information must be maintained.

(45) SERVICE PLANNING TEAM. The service plan must be developed by a Service Planning Team that consists of the resident, the resident's legal representative, if applicable, any person of the resident's choice, the facility

administrator or designee and at least one other staff person who is familiar with, or who will is going to provide services to the resident. Involved family members and case managers must be notified in advance of the service-planning meeting.

(a) As applicable, the Service Planning Team must also include:

(A) Local SPDAPD or AAA case managers and family members invited by the resident, as available.;

(B) A licensed nurse if the resident will be shall need, or is, receiving nursing services or experiences a significant change of condition as required in 411-054-0045(1)(f)(D) (Resident Health Services); and.

(C) The resident's physician or other health practitioner.

(b) Each resident must actively participate in the development of the service plan to the extent of the resident's ability and willingness to do so. If resident participation is not possible, documentation must reflect the facility's attempts to determine the resident's preferences.

~~(56)~~ MANAGED RISK AGREEMENT. When a resident's actions or choices pose a potential risk to that resident's health or well-being, the facility may utilize a ~~managed~~-risk agreement to explore alternatives and potential consequences with the resident.

(a) The facility must identify the need for and develop a written ~~managed~~-risk plan agreement following the facility's established guidelines and procedures. A ~~managed~~ risk plan agreement must include:

(A) An explanation of the cause~~(s)~~ of concern;

(B) The possible negative consequences to the resident or others;

(C) A description of the resident's preference~~(s)~~;

(D) Possible alternatives or interventions to minimize the potential risks associated with the resident's current preferences and actions;

(E) A description of the services the facility ~~will~~shall provide to accommodate the resident's' choice or minimize the potential risk; and

(F) The final agreement, if any, reached by all involved parties, must be included in the service plan.

(b) ~~The licensing policy analyst must be consulted and alternatives reviewed before the resident signs the agreement.~~

(c) The facility ~~will~~must involve the resident, the resident's designated representative₁ and others as indicated, to develop, implement₁ and review the ~~managed-risk plan~~agreement. The resident's preferences ~~will~~shall take precedence over those of a family member~~(s)~~.

(ed) A ~~managed-risk plan~~agreement ~~will~~shall not be entered into or continued with₁ or on behalf of₁ a resident who is unable to recognize the consequences of their behavior or choices.

(de) The ~~managed-risk plan~~agreement must be reviewed at least quarterly.

Stat. Auth.: ORS 410.070~~&~~₁ 443.450

Stats. Implemented: ORS 443.400~~to~~₁ 443.455~~&~~₁ 443.991

411-054-0038 Individually-Based Limitations

This rule becomes effective on January 1, 2017.

(1) When threats to the health and safety of an individual or others arise, limitations may be applied in the following areas:

(a) To have unit entrance doors lockable by the individual, with only appropriate staff having a key to access the unit.

(b) For individuals sharing units, to have a choice of roommates.

(c) To have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.

(d) To have visitors of his or her choosing at any time.

(e) To have the freedom and support to control his or her own schedule and activities.

(f) To have the freedom and support to have access to food at any time.

(2) An individually-based limitation must be supported by a specific assessed need and documented in the person-centered service plan by completing and signing a program approved form documenting the consent to the appropriate limitation. The form identifies and documents:

(a) The specific and individualized assessed need justifying the individually-based limitation;

(b) The positive interventions and supports used prior to any individually-based limitation;

(c) Less intrusive methods that have been tried but did not work;

(d) A clear description of the limitation that is directly proportionate to the specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;

(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(g) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(h) An assurance that the interventions and support do not cause harm to the individual.

(3) Providers are responsible for:

(a) Maintaining a copy of the completed and signed form documenting the consent to the appropriate limitation. The form must be signed by the individual, or, if applicable, the legal representative of the individual;

(b) Regular collection and review of data to measure the ongoing effectiveness of and the continued need for the individually-based limitation; and

(c) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.

Stat. Auth.: ORS 409.050, 413.042, 413.085

Stats. Implemented: ORS 409.050, 413.042, 413.085

411-054-0065 Administrator Qualifications and Requirements

(1) FULL-TIME ADMINISTRATOR. Each licensed residential care and assisted living facility must employ a full-time administrator. The administrator must be scheduled to be on-site in the facility at least 40 hours per week.

(2) ADMINISTRATOR QUALIFICATIONS. The administrator must:

(a) Be at least 21 years of age:

(b) Possess a high school diploma or equivalent; and

(A) Have at least two years professional or management experience that has occurred within the last five years, in a health or social service related field or program, or have a combination of experience and education; or

(B) Possess an accredited Bachelor's Degree in a health or social service related field.

(3) ADMINISTRATOR REQUIREMENTS.

(a) Facility administrators must meet the following training requirements ~~prior to~~before employment:

(A) Complete a ~~Division-Department~~ approved classroom administrator training program of at least 40 hours;

(B) Complete a ~~Division-Department~~ approved administrator training program that includes both a classroom training of less than 40 hours and a ~~Division-Department~~ approved 40-hour internship program with a ~~Division-Department~~ approved administrator; or

(C) Complete another ~~Division-Department~~ approved administrator training program.

(b) CONTINUING EDUCATION. Administrators must have 20 hours of documented ~~Division-Department~~ approved continuing education credits each year. The approved administrator -training program fulfills the 20-hour continuing education requirement for the first year.

(c) Persons who have met ~~Division-Department~~ approved training program requirements, but have been absent from an administrator position for five years or less, do not have to re-take the administrator

training, but must provide evidence of 20 hours of annual continuing education ~~annually~~.

(d) ~~Prior to~~Before employment as ~~administrator of~~ a facility administrator, persons must complete the criminal records check requirements ~~of in~~ OAR 407-007-0200 to 407-007-0370 and comply with the tuberculosis screening recommendations in OAR 333-019-0041. An administrator of a facility may not have convictions of any of the crimes described in OAR 407-007-0275.

(e) ADMINISTRATOR REFERENCE SUMMARY. Newly hired administrators are responsible for the completion of form SDS 0566, Administrator Reference Summary, and are required to email or fax the completed form to the ~~Division~~Department upon hire. The ~~Division~~Department may reject a form that has been falsified or is incomplete.

(f) DESIGNEE. The administrator must appoint a staff member as designee to oversee the operation of the facility in the administrator's absence. The administrator, or a designee, must at all times:

(A) ~~b~~Be in charge on ~~site~~ at all times, and

(B) ~~e~~Ensure there are sufficient, qualified staff; and

(C) Ensure ~~that~~ the care, health, and safety needs of the residents are met at all times.

(4) ADMINISTRATOR TRAINING COURSE STANDARDS.

(a) The training curriculum for the administrator training course must be approved by the ~~Division~~Department and shall be re-evaluated by the ~~Division~~Department at periodic intervals.

(b) Individuals, companies, or organizations providing the administrator training course must be approved by the ~~Division~~Department. The ~~Division~~Department may withdraw approval under the following conditions:

(A) Failure to follow ~~Division~~Department approved curriculum;

(B) The trainer demonstrates lack of competency in training;

(C) There is insufficient frequency of training to meet the need;
or

(D) Facilities owned or operated by the training entity have a pattern of substantial non-compliance with these rules.

(c) Approved training must be open and available to all applicants and may not be used to orient trainees to a specific company's management or operating procedures.

Stat. Auth.: ORS 410.070, ~~& 443.450~~

Stats. Implemented: ORS 443.400 ~~-to~~ 443.455, ~~& 443.991~~

411-054-0080 Involuntary Move-out Criteria

The Department of Human Services, ~~Seniors Aging~~ and People with Disabilities ~~Office Division~~ encourages facilities to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the community-based care setting due to safety and medical limitations.

(1) Information must be specified in the facility's disclosure information that describes the types of health, nursing, behavior, and care services the facility is unable to provide. The minimum required services identified in OAR 411-054-0030 (Resident Services) must be provided before a resident ~~can~~ may be asked to move-out. In addition, facilities ~~that are~~ indorsed under OAR chapter 411, division 057 (~~Indorsement~~ Endorsement of Alzheimer's Care Units) must provide services to support residents with the progressive symptoms of the disease.

(2) The facility must give written notification on form ~~number~~ SDS 0567 to the resident, the resident's legal representative, and case manager, if applicable, when the facility requests a resident to move from the facility. The resident must be given 30 days advance written notice to move from the facility unless criteria in section (6) of this rule are met.

(3) The facility must demonstrate through service plan modification and documentation, attempts to resolve the reason for the move-out.

(4) A resident may be asked to move from a facility if one or more of the following circumstances exists:

(a) The resident's needs exceed the level of ADL services the facility provides as specified in the facility's disclosure information;

(b) The resident engages in behavior or actions that repeatedly and substantially interferes with the rights, health, or safety of residents or others;

(c) The resident has a medical or nursing condition that is complex, unstable or unpredictable, and exceeds the level of health services the facility provides as specified in the facility's disclosure information;

(d) The facility is unable to accomplish resident evacuation in accordance with OAR 411-054-0090 (Fire and Life Safety);

(e) The resident exhibits behavior that poses a danger to self or others;

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

(g) Non-payment of charges.

(5) The facility must fax or email a copy of the move-out notice to ~~SPD~~the Department's central office ~~in Salem~~. Where a resident lacks capacity and there is no legal representative, a copy of the notice to move-out must be emailed or faxed to the State Long-Term Care Ombudsman who may request an informal conference and administrative hearing for the resident.

(6) LESS THAN 30-DAY NOTICE. The resident must be given 30 days advance written notice before being moved from the facility, except in the following unusual circumstances:

(a) A resident who leaves the facility to receive urgent medical or psychiatric care may return to the facility unless, at the time the

resident is to return, facility staff have re-evaluated the resident's needs and have determined that the facility is unable to meet the resident's needs ~~cannot be met at the facility~~.

(A) An appropriate facility staff person must re-evaluate the resident's condition prior to before determining ~~that~~ the facility cannot is unable to meet the resident's needs.

(B) A written notice on form ~~number~~ SDS 0568 must be given to the resident or the resident's legal representative on the date the facility makes its determination. The written notice ~~will~~ shall contain the specific reasons the facility is unable to meet the resident's needs, as determined by the facility's evaluation.

(C) If the resident or resident's designee requests an administrative hearing, the facility must hold the resident's room or unit and may charge room and board payment pending resolution of the administrative hearing.

(b) If the health or safety of the resident or others is in jeopardy and undue delay in moving the resident increases the risk of harm, the facility may give less than 30 days advance written notice on form ~~number~~ SDS 0568.

(A) ~~SPD~~ The Department's central office ~~in Salem~~ must be consulted and alternatives reviewed prior to before the resident ~~receiving~~ receives this the notice.

(B) The resident is entitled to request an administrative hearing, as stated in section (7) of this rule.

(C) If the resident is moved out of the facility and requests an administrative hearing, ~~the~~ the facility must hold the resident's room, without charge for room and board or services, pending resolution of the administrative hearing.

(c) The facility must fax or email a copy of the move-out notice to ~~SPD~~ the Department's central office ~~in Salem~~ and the State Long-Term Care Ombudsman Office on the same day the notice is delivered to the resident or the resident's legal representative.

(7) ADMINISTRATIVE HEARING. Except when a facility has had its license revoked, not renewed, voluntarily surrendered, or terminates its Medicaid contract, a resident who receives an involuntary move-out notice is entitled to an administrative hearing, provided the resident or resident's designee requests a hearing in a timely manner.

(a) A resident who receives a 30-day notice to move has ~~10~~ten working days to request an administrative hearing after receipt of the notice. ~~SPD~~The Department's central office ~~in Salem~~ must be notified of all hearing requests.

(b) ~~SPD~~The Department's central office ~~in Salem~~ ~~will~~ shall notify the Office of Administrative Hearings of the resident's request for a formal administrative hearing.

(c) ~~SPD~~The Department may hold an informal conference to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, no formal hearing ~~will~~ shall be held.

(d) A resident who is not allowed to return to the facility after receiving medical or psychiatric care, or who is immediately moved out of the facility to protect the health or safety of the resident or others, as specified in section (6) of this rule, has five working days to request an administrative hearing after receiving the move-out notice.

(A) ~~SPD~~The Department's central office ~~in Salem~~ must be notified by telephone, email, or fax of a resident's request for hearing.

(B) When the resident is not allowed to remain in the facility, ~~SPD~~the Department's central office ~~in Salem~~ ~~will~~ shall request an expedited administrative hearing.

(e) The facility may not rent the resident's unit pending resolution of the administrative hearing.

(8) A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met:

(a) The facility was not notified ~~prior to~~before admission that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(b) The facility learns ~~that~~ the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(c) The resident presents a current risk of harm to another resident, staff, or visitor in the facility, as evidenced by:

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

(B) 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 individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.

(d) ~~Prior to~~Before the move, the facility must contact ~~SPD~~the Department's central office ~~in Salem~~ by telephone and review the criteria in sections (8)(c)(A) and (B) of this rule. ~~SPD~~The Department will shall respond within one working day of contact by the facility. The Department of Corrections parole or probation officer must be included in the review, if available. ~~SPD will~~The Department shall advise the facility if rule criteria for immediate move-out are not met. DHS ~~will~~shall assist in locating placement options.

(e) A written move-out notice must be completed on form ~~number~~ SDS 0568A. The form must be filled out in its entirety and a copy of the notice delivered in person, to the resident, or the resident's legal representative, if applicable. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out ~~must~~shall be immediately faxed or emailed to the State Long Term Care Ombudsman.

(f) ~~Prior to~~Before the move, the facility ~~must~~shall orally review the notice and right to object with the resident or legal representative and determine if a hearing is requested. A request for hearing does not

delay the involuntary move-out. The facility ~~will~~ shall immediately telephone ~~SPD~~ the Department's central office ~~in Salem~~ when a hearing is requested. The hearing ~~will~~ shall be held within five business days of the resident's move. No informal conference ~~will~~ shall be held ~~prior to~~ before the hearing.

Stat. Auth.: ORS 410.070, ~~&~~ 443.450

Stats. Implemented: ORS 443.400 ~~-to~~ 443.455, ~~&~~ 443.991