

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division		Administrative Rules Chapter Number
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Rules Coordinator	Address	Telephone
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to become effective [upon filing] through [May 29, 2012].
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

AFH-DD: Notice of Exit or Transfer

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

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

411-360-0170, 411-360-0190

SUSPEND:

Temporary Rules 411-360-0170(T), 411-360-0190(T)

Stat. Auth.: ORS 409.050 & 410.070

Other Auth.:

Stats. Implemented: ORS 443.705 to 443.825

RULE SUMMARY

On December 1, 2011, the Department of Human Services (Department) temporarily amended OAR 411-360-0170 and 411-360-0190 to clarify the transfer and exit standards for adult foster homes for individuals with developmental disabilities (AFH-DD) by removing reference to the transfer standards for nursing facilities. Upon further

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The amendment of OAR 411-360-0170 and 411-360-0190 and the suspension of temporary rules OAR 411-360-0170(T) and 411-360-0190(T) relating to adult foster homes for individuals with developmental disabilities.

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

AFH-DD: Notice of Exit or Transfer

Statutory Authority: **ORS 409.050 & 410.070**

Other Authority:

Stats. Implemented: **ORS 443.705 to 443.825**

Need for the Temporary Rule(s):

On December 1, 2011, the Department temporarily amended OAR 411-360-0170 and 411-360-0190 to clarify the AFH-DD transfer and exit standards by removing reference to the transfer standards for nursing facilities.

The Department needs to amend the temporary rules, OAR 411-360-0170 and 411-360-0190, and retroactively reinstate the reference to the transfer standards for nursing facilities as of December 1, 2011, as ORS 443.738(11)(c) requires the standards governing transfer notices and hearings for residents of nursing facilities apply to adult foster homes.

Documents Relied Upon, and where they are available:

1. OAR chapter 411, division 360 relating to adult foster homes for individuals with developmental disabilities

Available at: http://www.dhs.state.or.us/policy/spd/rules/411_360.pdf

2. OAR chapter 411, division 050 relating to the licensure of adult foster homes

Available at: http://www.dhs.state.or.us/policy/spd/rules/411_050.pdf

3. OAR chapter 411, division 088 relating to nursing facility transfers

Available at: http://www.dhs.state.or.us/policy/spd/rules/411_088.pdf

4. ORS 443.705 to 443.825 relating to adult foster homes

Available at: <http://www.leg.state.or.us/ors/443.html>

Justification of Temporary Rule(s):

Failure to reinstate the standards for AFH-DD transfers and exits retroactive to December 1, 2011, will result in serious prejudice to individuals, providers, Community Developmental Disability Programs, and the Department and is necessary to maintain compliance with statutory requirements.

These rule changes cannot wait to be implemented after the full 49-day permanent rulemaking procedure because these changes must be implemented immediately to avoid a conflict with statutory requirements.

Signed Mary Lee Fay, Director, Office of Developmental Disability Services

December 29, 2011

Signature

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 945-2005

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

**CHAPTER 411
DIVISION 360**

**ADULT FOSTER HOMES FOR PERSONS WITH
DEVELOPMENTAL DISABILITIES**

411-360-0170 Documentation and Record Requirements

(Temporary Effective 12/30/2011 – 5/29/12)

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

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

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

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

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

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

(iii) The individual's preferred dentist;

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

(v) The individual's services coordinator; and

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

(b) EMERGENCY INFORMATION. The AFH-DD provider must maintain emergency information for each individual receiving services in the AFH-DD in addition to an individual summary sheet identified in section (1)(a) of this rule. The emergency information must be kept current and must include:

(A) The individual's name;

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

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

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

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

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

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

(i) How the individual communicates;

(ii) The language the individual uses and understands;

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

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

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

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The record must include:

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

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

(C) Signature of the provider making each entry.

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

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

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

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

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

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

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

(b) Date of inclusion in the record;

(c) Date and reason for removal from record;

(d) Signature of provider making each entry; and

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

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

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

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

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

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

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

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

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

(A) Habilitation services;

(B) Rehabilitation services;

(C) Educational services;

(D) Vocational services;

(E) Recreational and leisure activities; and

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

(5) HOUSE RULES. The provider must document that a copy of the written house rules has been provided and discussed with the individual annually.

House rules must be in compliance with sections (9)(a-s) of this rule governing the rights of individuals. House rules established by the provider must:

(a) Include any restrictions the AFH-DD may have on the use of alcohol, tobacco in compliance with Oregon's Smokefree Workplace Law, medical marijuana (if applicable), pets, visiting hours, dietary restrictions, or religious preference.

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

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

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

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

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

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

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

(8) MONTHLY PROGRESS NOTES. The provider must maintain and keep current, at minimum monthly progress notes for each individual residing in the home, regarding the progress of the ISP supports, any medical,

behavioral, or safety issues or any other events that are significant to the individual.

(9) INDIVIDUAL'S BILL OF RIGHTS. The provider must abide by the Individual's Bill of Rights and post them in a location that is accessible to individuals and individuals' parents, guardians, or legal representatives. The provider must give a copy of the Individual's Bill of Rights along with a description of how to exercise these rights to each individual and the individual's parent, guardian, or legal representative. The Individual's Bill of Rights must be reviewed annually or as changes occur by the provider with the individual and any parent, guardian, or legal representative. The Individual's Bill of Rights states each individual has the right to:

- (a) Be treated as an adult with respect and dignity;
- (b) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;
- (c) Receive appropriate care and services, prompt health care as needed;
- (d) Have adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service, and medical professionals, send and receive personal mail unopened, and engage in telephone conversations as explained in OAR 411-360-0130(6)(a-f);
- (e) Have access to and participate in activities of social, religious, and community groups;
- (f) Be able to keep and use personal clothing and possessions as space permits;
- (g) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion;
- (h) Manage his or her financial affairs unless determined unable by the ISP team or legally restricted;

- (i) Have a safe and secure environment;
- (j) Have a written agreement regarding services to be provided;
- (k) Voice grievance without fear of retaliation;
- (l) Have freedom from training, treatment, chemical or protective physical interventions except as agreed to, in writing, in a individual's ISP;
- (m) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to individuals in an age appropriate manner;
- (n) Have an opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;
- (o) Be free from punishment. Behavior intervention programs must be approved in writing on the individual's ISP;
- (p) Be free from abuse and neglect;
- (q) Have the opportunity to contribute to the maintenance and normal activities of the household;
- (r) Have access and opportunity to interact with persons with or without disabilities; and
- (s) Have the right not to be transferred or moved without advance notice as provided in ORS 443.739(18) and OAR 411-088-0070, and the opportunity for a hearing as provided in ORS 443.738(11)(~~bc~~) and OAR 411-088-0080. [The standards imposed by this subsection continue the standards in effect prior to December 1, 2011, and continue those standards, except as amended in this subsection, as of December 1, 2011.](#)

(10) AFH-DD records must be kept current and maintained by the AFH-DD provider and be available for inspection upon request. AFH-DD records must include but not be limited to proof that the provider, resident manager,

and any other caregivers have met the minimum qualifications as required by OAR 411-360-0110. The following documentation must be available for review upon request:

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

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

(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 [Division's Department's](#) Basic Training Course for the provider, resident manager, and all caregivers.

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

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

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

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

411-360-0190 Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

(Temporary Effective 12/30/2011 – 5/29/2012)

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

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

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

(c) Be referred by the CDDP or have prior written approval of the CDDP or [Division Department](#) if the individual's services are paid for by the [Division Department](#); or

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

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

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

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

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

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

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

- (B) The results of any dental evaluation;
- (C) A record of immunizations;
- (D) A record of known communicable diseases and allergies;
and
- (E) A record of major illnesses and hospitalizations.

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

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

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

(3) **ADMISSION MEETING.** An ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include at a minimum:

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

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

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

(d) Documentation of the pre-admission information required by section (2)(a-g) of this rule;

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

(f) A written Transition Plan to include all medical, behavior, and safety supports needed by the individual, to be provided to the

individual for no longer than 60 days, if the decision was made to serve.

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

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

(6) TRANSFERS.

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the AFH-DD without 30 days advance written notice to the individual, the individual's legal representative, guardian, or conservator, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the individual's right to a hearing as provided in ORS 443.738(11)([bc](#)) and OAR 411-088-0080, except for a medical emergency, or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

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

(B) Failure to make payment for care;

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

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

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

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

(c) The standards imposed by this section continue the standards in effect prior to December 1, 2011, and continue those standards, except as amended in subsections (b) and (c) above, as of December 1, 2011.

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

(a) If the total number of individuals does not exceed five;

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

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

(8) CRISIS SERVICES. All individuals considered for crisis services received in an AFH-DD must:

(a) Be referred by the CDDP or DivisionDepartment;

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

(c) Be determined to be eligible for developmental disability services as defined in OAR 411-360-0020 or any subsequent revision thereof;

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

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

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

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

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

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

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

(14) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers stated in sections (6)(a)(A-E) of this rule. The provider must give at least 30 days written notice to an individual, the CDDP services coordinator, and the Department or the Department's designee before termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or

others. If an individual requests a hearing to appeal the exit from an AFH-DD, the individual must receive the same services until the grievance is resolved.

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

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

- (a) The name of the individual considered for exit;
- (b) The date of the meeting;
- (c) Documentation of the participants included in the meeting;
- (d) Documentation of the circumstances leading to the proposed exit;
- (e) Documentation of the discussion of strategies to prevent an exit from the AFH-DD unless the individual, or individual's guardian is requesting exit;
- (f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and
- (g) Documentation of the proposed plan for services to the individual after the exit.

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

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

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

| (17) CLOSING. Providers must notify the ~~Division~~ [Department](#) in writing prior to a voluntary closure of an AFH-DD, and give individuals, families, and the CDDP, 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH-DD, individuals may not be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CDDP. A provider must return the AFH-DD license to the Department if the home closes prior to the expiration of the license.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825