

Action Request Transmittal Aging and People with Disabilities



Mike McCormick

Authorized signature

Topic: Other

Subject: Keys Amendment - Annual Public Notification of Standards for Residential Facilities

Number: APD-AR-20-101

Issue date: 11/20/2020

Due date: 12/1/2020

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input checked="" type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Area Agencies on Aging: Type B | <input type="checkbox"/> Health Services |
| <input checked="" type="checkbox"/> Aging and People with Disabilities | <input checked="" type="checkbox"/> Office of Developmental Disabilities Services (ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input type="checkbox"/> ODDS Children's Intensive In Home Services |
| <input checked="" type="checkbox"/> County DD program managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input type="checkbox"/> ODDS Children's Residential Services | <input checked="" type="checkbox"/> Other (<i>please specify</i>): APD Field Managers |
| <input type="checkbox"/> Child Welfare Programs | |

Action required: Please print and post the attached letter and rules summary in a public place during the month of December 2020.

Reason for action: Section 1616(e) of the Social Security Act (the Keys Amendment) requires, in part, that States annually make available for public review a summary of standards (rules) developed for residential facilities. The facilities covered by this requirement provide room, board, protective oversight, and other supports to Supplemental Security Income (SSI) beneficiaries and other residents. Within the Oregon Health Authority and the Department of Human Services, Health Systems Division (formerly Addictions and Mental Health, Aging and People with Disabilities, and the Office of Developmental Disabilities Services divisions have residential facilities providing these services.

Field/stakeholder review: Yes No

If yes, reviewed by:

If you have any questions about this action request, contact:

Contact(s): Chris Pascual	
Phone: 503-572-0470	Fax: N/A
Email: Chris.Pascual@state.or.us	

Date: November 2020

To: Members of the General Public

From: Mike McCormick, DHS, Aging and People with Disabilities
Lilia Teninty, DHS, Developmental Disabilities Services
Dana Hittle, OHA, Health Systems Division

Subject: Annual Notification of Residential Standards Information

Section 1616(e) of the Social Security Act (the Keys Amendment) requires, in part, that States annually make the following information available to the public:

- A summary of standards developed for residential facilities where significant numbers of Supplemental Security Income (SSI) recipients reside or are likely to reside.
- A copy of such standards along with enforcement procedures, a list of waivers and standards, and any violation.

The attached rule summaries describe the relevant rules available to the general public by request. If you would like to read the *full* version of these rules, they can be accessed by:

- Link to the Oregon Administrative Rules via the Secretary of States website below
https://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx
- Call, write or email the specific Rules Coordinator to receive a hard copy of the rules and/or ask questions about the administration of these rules. The contact information for each coordinator is located in the attached document.

Attachments: 2020 Rules Summary

Administrative Rules Related to Keys Amendment Assurances
- State of Oregon -
November 2020

Oregon Department of Human Services (ODHS), Aging and People with Disabilities (APD) and Office of Developmental Disabilities Services (ODDS)

The following is a list of the ODHS rules that provide standards for facilities where a significant number of Supplemental Security Income (SSI) recipients are likely to reside. These standards span building maintenance, fire safety, sanitation, food, health, program and care services, staffing, residents' rights, and administrative management. The facilities are routinely inspected to determine substantial compliance with federal and state laws and licensure rules.

Adult Foster Homes (APD) – Chapter 411, Divisions 049-052 (division 49 last amended 7/1/2019; divisions 50, 51 and 52 last amended 6/24/2020). The purpose of these rules is to establish the minimum standards and procedures for adult foster homes that provide care and services for adults who are older or adults with physical disabilities in a home-like environment that is safe and secure. Adult foster homes provide necessary care and services that emphasize the resident's independence through a cooperative relationship between the resident (or court-appointed guardian) and the resident's care providers. Adult foster home care and services are provided in a setting that protects and encourages resident dignity, choice, and decision-making while addressing the needs of the resident in a manner that supports and enables the residents to maximize their ability to function at the highest level of independence possible.

Residential Care and Assisted Living Facilities (APD) – Chapter 411, Division 054 (Temporary rules, effective 8/14/2020 through 2/9/2021).

(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".

24-Hour Residential Programs and Settings for Children and Adults with Intellectual or Developmental Disabilities (ODDS) – Chapter 411, Division 325 (Temporary Rules 9/8/2020 - 3/6/2021).

- (1) The rules in OAR chapter 411, division 325 prescribe standards, responsibilities, and procedures for 24-hour residential programs delivering home and community-based services to individuals with intellectual or developmental disabilities in 24-hour residential settings.
- (2) These rules incorporate the provisions for home and community-based services and settings, person-centered service planning, and individually-based limitations, set forth in OAR chapter 411, division 004.
- (3) These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.
- (4) Effective September 1, 2018, each 24-hour residential setting must be in full compliance with the requirements for home and community-based services and settings set forth in OAR chapter 411, division 004. All setting and individually-based limitation requirements of home and community-based settings and services must be fully implemented.

Foster Homes for Children with Intellectual or Developmental Disabilities (ODDS) – Chapter 411, Division 346 (Temporary Rules 9/17/2020 - 3/15/2021).

- (1) The rules in OAR chapter 411, division 346, prescribe the standards and procedures for the provision of Developmental Disabilities-funded foster care services for children with intellectual or developmental disabilities in child foster homes certified by the Department of Human Services as a condition for certification and payment.
- (2) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004, ensure children with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.
 - (a) A foster provider initially certified on or after January 1, 2016, must meet the requirements in OAR chapter 411, division 004, prior to being certified.
 - (b) A foster provider certified prior to January 1, 2016, must make measurable progress toward compliance with the rules in OAR chapter 411, division 004, and be in full compliance by September 1, 2018.

Host Home Programs and Settings for Children with Intellectual or Developmental Disabilities (ODDS) - Chapter 411, Division 348 (Adopted 11/1/2019)

- (1) The rules in OAR chapter 411, division 348, in addition to the rules in OAR chapter 411, divisions 318 and 323, prescribe standards, responsibilities, and procedures for a Host Home Program delivering home and community-based services to children with intellectual or developmental disabilities, including:
 - (a) The provision of services based on assessed need to provide daily living support, preserve safety, and support community-based living for children receiving services in a Host Home setting;
 - (b) Development, management, and support for a Host Home setting; and
 - (c) Transition support and planning for children entering and exiting Host Home placements.
- (2) These rules incorporate the provisions for home and community-based services and settings and person-centered planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure children with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities (ODDS) – Chapter 411, Division 360 (Temporary Rules 9/8/2020 - 3/6/2021).

- (1) The rules in OAR chapter 411, division 360 prescribe the standards and procedures for the licensure of adult foster homes for individuals with intellectual or developmental disabilities (AFH-DD).
- (2) These rules incorporate the provisions for home and community-based services and settings set forth in OAR chapter 411, division 004 to ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.
 - (a) An AFH-DD provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed.
 - (b) An AFH-DD provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.
- (3) An AFH-DD facilitates individual choice regarding services and supports, and who provides the services and supports, through a cooperative relationship between the AFH-DD provider, the individual, the legal or designated representative of the individual (if applicable), and the Community Developmental Disability Program.
- (4) An AFH-DD protects and encourages the independence, dignity, choice, and decision making of the individual while addressing the needs of the individual in a manner that supports and enables the individual to achieve optimum physical, mental, and social well-being and independence.

Criminal History Check (ODHS) – Chapter 407, Division 007, 0200-0370 (Amended 8/3/2020).

(1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to supplement OAR 125-007-0200 to 125-007-0330 with guidelines and requirements specific to background checks for Department of Human Services (Department) and Oregon Health Authority (Authority) subject individuals (SIs). These rules provide for the reasonable screening under ORS 181A.195, 181A.200, 409.027, and 413.036 of SIs to determine if they have a history of specific criminal or abusive behavior identified in federal or state law or rules such that they should not be allowed to work, volunteer, be employed, reside, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating potentially disqualifying convictions and conditions of an SI when conducting fitness determinations based upon such information. The fact that an SI is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100 (DHS Employees, Volunteers, and Contractors) or 407-007-0400 to 407-007-0460 (Abuse Check Rules for Department Employees and Volunteers).

(3) Providers for the Department and the Authority are subject to criminal records and abuse checks. The Authority authorizes the Department to act on its behalf in carrying out criminal and abuse checks associated with programs or activities administered by the Authority. References in these rules to the Department or Authority shall be construed to be references to either or both agencies.

Office of Training, Investigations and Safety (ODDS) – Chapter 407, Division 045, Rules 0250-0370 (last amended 01/01/2020).

(1) These rules, OAR 407-045-0250 to 407-045-0370, prescribe standards and procedures for the investigation of reported abuse, and assessment for and provision of protective services for adults with developmental disabilities in community programs and facilities, and the nature and content of the abuse investigation and protective services report.

(2) The Department's Office of Training, Investigations and Safety (OTIS) has the duties, functions and powers of training, coordinating, assisting, directing and approving the services provided by the Community Developmental Disabilities Programs (CDDP) related to these rules. OTIS is responsible to ensure investigations are conducted in a uniform, objective and thorough manner.

(3) For the purpose of carrying out these rules, Community Developmental Disabilities Programs (CDDP) are Department designees as used in ORS 430.731 and 430.735 through 430.765.

(4) OTIS or CDDP shall receive all reports of alleged abuse, assess the need for protective services and conduct thorough and unbiased investigations to make findings as required by ORS 430.735 to 430.768 and these rules.

(5) Minors, who are persons under the age of 18 years old and not considered emancipated, may not be named as an accused person in an abuse investigation conducted under these rules.

(6) Alleged abuse of young adults who are 18 through 20 years old who are receiving 24-hour residential services from a facility licensed by the Department for children with developmental disabilities or certified as a child foster home, shall be immediately reported to the Department's child abuse reporting hotline for possible action under other Department rules.

(7) Complaints of alleged abuse of adults while:

(a) A student of an educational provider and the accused person is a school employee, contractor, agent, or volunteer of the student's educational provider shall be reported to OTIS for possible investigation under these rules; or

(b) A patient at the Oregon State Hospital shall be reported to OTIS for possible action under OAR 407-045-0400 to 407-045-0495.

Child Abuse Investigation Rules for Child-Caring Agencies and Developmental Disabilities Facilities for Children (DHS Shared Services OTIS) - Chapter 407, Division 45, Rules 0800 to 0955 (Amended 01/01/2020)

The Department receives reports of abuse of children and young adults and screens them to determine the response required under ORS chapters 418 and 419B. The purpose of these rules, OAR 407-045-0800 to 407-045-0955, is to describe:

(1) The circumstances under which the Office of Training, Investigations and Safety (OTIS) is responsible to respond to a report of abuse of a child or young adult;

(2) The requirements for screening and investigating a report of abuse of a child or young adult that is the responsibility of OTIS; and

(3) The procedures of OTIS to provide respondents with notice and the right to request a contested case hearing.

OAR 407-045-0835 (Amended 03/27/2020)

(1)(b) Investigation required. An investigation is required when paragraph (A), (B), or (C) of this subsection applies:

(A) The OTIS investigator determines all of the following are true:

(i) The information alleged in the report meets the definition of abuse in ORS 419B.005.

(ii) The respondent is:

(I) A child-caring agency, proctor foster home, ODDS licensed group home, or ODDS host home; or

(II) An employee, contractor, or volunteer of a child-caring agency, proctor foster home, ODDS licensed group home, or ODDS host home.

(iii) The alleged victim is a child as defined in ORS 419B.005.

(B) The OTIS investigator determines all of the following are true:

(i) The information alleged in the report meets the definition of abuse in ORS 418.257.

(ii) The respondent is:

(I) A child-caring agency, proctor foster home, ODDS licensed group home, or host home; or

(II) An employee, contractor, or volunteer of a child-caring agency, proctor foster home, ODDS licensed group home or ODDS host home.

(iii) The alleged victim is a child or young adult residing in or receiving services from a child-caring agency, proctor foster home, ODDS licensed group home, or host home.

(C) The director of OTIS determines that the Department is authorized by Oregon law to investigate and it is in the best interest of child or young adult safety for OTIS to investigate.

Copies of complete rules may be obtained on the internet at the web site of the Office of the Secretary of State <https://secure.sos.state.or.us/oard/ruleSearch.action> or by contacting:

- For APD Rules: Written request to Kristina Krause, 500 Summer St. NE, E-48, Salem, OR 97301; by calling 503-945-6398; or sending an e-mail to kristina.r.krause@dhsosha.state.or.us.
- For ODDS Rules: Written request to Christina Hartman, 500 Summer St. NE, E-09, Salem, OR 97301; by calling 971-413-4225; or sending an e-mail to christina.hartman@dhsosha.state.or.us.
- For OAR Chapter 407, Division 45, OTIS Rules: Written request to Tina Strahan, 201 High Street, SE, Suite 500, Salem, OR 97301; by calling 503-510-1084; or emailing Tina.Strahan@dhsosha.state.or.us

Oregon Health Authority (OHA), Health Systems Division (HSD) (formerly Addictions and Mental Health)

The following is a list of OHA HSD rules that provide standards for facilities where a significant number of supplemental Social Security Income (SSI) recipients are likely to reside. These standards address building layout and maintenance, fire and other safety, sanitation, nutrition, oversight of physical, mental and dental health care, program and care services, staff qualifications and training, residents' rights, and administrative management. The facilities are routinely inspected to determine substantial compliance with federal and state laws and the following licensure and administrative rules.

Enhanced Care Services (HSD) – Chapter 309-019-0155 (last amended 3/1/2018). These rules prescribe standards and procedures for the delivery of mental health services designed to treat eligible persons with severe mental illness residing in selected facilities licensed by DHS.

Residential Treatment Facilities and Residential Treatment Homes for Adults with Mental Health Disorders (HSD) – Chapter 309, Division 035 (temporary amendment filed 04/21/2020, effective 04/21/2020 through 10/09/2020).

(1) These rules prescribe standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community based residential treatment facilities and community based residential treatment homes for adults with mental health disorders. The standards promote optimum health, mental and social well-being, and recovery for adults with mental health disorders through the availability of a wide range of home and community based residential settings and services. They prescribe how services will be provided in safe, secure, and homelike environments that recognize the dignity, individuality, and right to self-determination of each individual.

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for Home and Community-Based Services (HCBS) authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as individuals not receiving HCBS, consistent with the standards set out in OAR chapter 411, division 4.

(2) These rules apply to all Residential Treatment Homes (RTH) and Residential Treatment Facilities (RTF) providing services to adults with mental health disorders regardless of whether the program receives public funds. These rules prescribe distinct standards in some areas for Secure Residential Treatment Facilities (SRTF) or are based on the number of individuals receiving services in the program.

Adult Foster Homes (HSD) – Chapter 309, Division 040 (last amended 3/30/2018).

(1) These rules prescribe care and service standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community-based Adult Foster Homes (AFHs) for adults with mental or emotional disorders. The care and services standards are designed to promote the individual's right to independence, choice, and decision making while providing a safe, secure, homelike environment. The provider shall address the individual's needs in a manner that enables the individual to function at the highest level of independence possible:

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid

Services for home and community-based services authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving these services consistent with the standards set out in OAR chapter 411, division 4.

(2) These rules apply to adult foster homes providing services to five or fewer adults with mental or emotional disorders, regardless of whether the provider receives public funds.

Outpatient Addictions and Mental Health Services (HSD) – Chapter 309, Division 019, (amendment filed 11/12/2020, effective 11/12/2020).

(1) These rules prescribe minimum service delivery standards for services and supports provided by providers certified by the Health Systems Division (Division) of the Oregon Health Authority (Authority).

(2) In addition to applicable requirements in OAR 410-120-0000 through 410-120-1980 and 943-120-0000 through 943-120-1550, these rules specify standards for behavioral health treatment services and supports provided in:

(a) Outpatient Community Mental Health Services and Supports for Children and Adults;

(b) Outpatient Substance Use Disorders Treatment Services; and

(c) Outpatient Problem Gambling Treatment Services.

Residential Substance Use Disorders and Problem Gambling Treatment and Recovery (HSD) – Chapter 309, Division 018, (amendment filed 12/24/2019, effective 01/01/2020).

(1) Purpose: These rules prescribe minimum standards for services and supports provided by addictions and mental health providers approved by the Health Systems Division of the Oregon Health Authority.

(2) Scope: In addition to applicable requirements in OAR 410-120-0000 through 410-120-1980 and 943-120-0000 through 943-120-1550, these rules specify standards for services and supports provided in:

(a) Residential Substance Use Disorders Treatment and Recovery Services; and

(b) Residential Problem Gambling Treatment and Recovery Services.

Intensive Treatment Services for Children and Adolescents & Children's Emergency Safety Intervention Specialist (CESIS) – Chapter 309, Division 022, (amendment filed 12/24/2019, effective 01/01/2020).

(1) OAR 309-022-0100 through OAR 309-022-0192 prescribe minimum standards for services and supports provided by addictions and mental health providers approved by the Health Systems Division (Division) of the Oregon Health Authority (Authority) to operate under:

- (a) An Intensive Treatment Services (ITS) certificate; or
- (b) A Child and Adolescent Integrated Psychiatric Residential Treatment Facility and Residential Substance Use Disorders Treatment Program license (also called an “Integrated license” or “IPSR” program or license).
- (2) OAR 309-022-0100 through OAR 309-022-0105 and OAR 309-022-0195 through OAR 309-0122-0230 prescribe minimum standards for services and supports provided by addictions and mental health providers approved by the Division to serve as a Children’s Emergency Safety Intervention Specialist (CESIS).
- (3) In addition to applicable requirements in OAR 410-120-0000 through 410-120-1980 and OAR 943-120-0000 through 943-120-1550, these rules specify standards for services and supports provided in Intensive Treatment Services (ITS) for children and adolescents.
- (4) Entities providing or seeking to operate a child and adolescent Integrated Psychiatric Residential Treatment Facility and Residential Substance Use Disorders Treatment Program (IPSR) shall:
 - (a) Meet all the requirements for ITS providers;
 - (b) Meet all the requirements for residential substance use disorder treatment programs in OAR 309-018-0100 through 309-018-0215, except as described in subsection (d) below;
 - (c) Not be required to obtain a separate license under OAR 309-018-0100 through 309-018-0215 as long as the entities have a valid IPSR license under OAR chapter 309, division 022;
 - (d) Meet the requirements for individual rights set forth in OAR 309-018-0115, except that seclusion and restraint may be administered as set forth in OAR 309-022-0175;
 - (e) Comply with the requirements of OAR 309-022-0175 and OAR chapter 309, division 022 to the extent that seclusion and restraint is administered; and
 - (f) Be subject to the rules in OAR chapter 415, division 012 with respect to the IPSR/Integrated license or application for a license.

Copies of complete rules may be obtained on the internet at the web site of the Office of the Secretary of State <https://secure.sos.state.or.us/oard/ruleSearch.action>.

Director’s Office, Oregon Health Authority (OHA)

Criminal History Checks (OHA) – Chapter 943, Division 007 (OHA 1-2020, amend filed 02/10/2020, effective 02/10/2020). The purpose of the rules is to inform employees, volunteers, providers and contractors for the Oregon Health Authority (Authority) they are subject to background checks and screening to determine if they have a history of criminal or abusive behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

Abuse Reporting and Protective Services in Community Mental Health Programs Facilities (DHS – Shared Services) – Chapter 407, Division 045, 0120 - 0240 (Temporary rules filed 8/15/2018).

(1) These rules, OAR 407-045-0120 to 407-045-0240, prescribe standards and procedures for the investigation of reported abuse, and the assessment for and provision of protective services for:

(a) Adults with a severe and persistent mental illness while in mental health treatment from a community program; or

(b) Residents of facilities for adults with mental illness.

(2) The Department's Office of Training, Investigations and Safety (OTIS) has the duties, functions and powers of training, coordinating, assisting, directing and approving the services provided by the community mental health programs (CMHP) related to these rules. OTIS is responsible to ensure investigations are conducted in a uniform, objective and thorough manner.

(3) For the purpose of carrying out these rules, community mental health programs are Department designees as used in ORS 430.731 through 430.765.

(4) OTIS or CMHP shall receive all reports of alleged abuse, assess the need for protective services and conduct thorough and unbiased investigations to make findings as required by ORS 430.735 to 430.768 and these rules.

(5) These rules ensure affording safety and protection assessments to adults with mental illness upon receipt of a complaint of abuse, while balancing the duty of community mental health program designees to investigate alleged abuses within services. Therefore investigation of alleged abuse are limited to incidents involving:

(a) Residents receiving services at facilities; or

(b) Adults with severe and persistent mental illness while receiving mental health treatment from a community program and the accused is either:

(A) A mental health treatment service provider; or

(B) A caregiver for the adult.

(6) Minors, who are persons under the age of 18 years old and not considered emancipated, may not be named as an AP in an abuse investigation conducted under these rules.

(7) Complaints of alleged abuse of adults while a patient at the Oregon State Hospital shall be reported to OTIS for possible action under OAR 407-045-0400 to 407-045-0495.

Copies of complete rules may be obtained on the internet at the web site of the Office of the Secretary of State <https://secure.sos.state.or.us/oard/ruleSearch.action> or by contacting:

- For OAR chapter 943 Rules: Written Request to: Keely West, Director's Office, Oregon Health Authority, 500 Summer St. NE, Salem, OR 97301; by calling 503-945-6292; or sending an e-mail to keely.i.west@dhsosha.state.or.us.

- For Abuse Reporting rules in OAR chapter 407: Written request to: Jennifer Bittel, 250 Winter St NE, Salem, OR, 97301-3950; phone- 503-947-5250; email- Jennifer.Bittel@state.or.us