Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Developmental Disabilities	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

RULE CAPTION

ODDS: Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities

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

May 19, 2016	2 p.m.	Human Services Building 500 Summer Street NE, Rm. 160 Salem, Oregon 97301	Staff
Hearing Date	Time	Location	Hearings Officer

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.

AMEND:

OAR chapter 411, division 360

REPEAL:

Temporary Rules: 411-360-0010(T); 411-360-0020(T); 411-360-0050(T); 411-360-0055(T); 411-360-0060(T); 411-360-0130(T); 411-360-0140(T); 411-360-0170(T); 411-360-0190(T).

Stat. Auth.: ORS 409.050, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Other Auth.:

Stats. Implemented: ORS 443.705-443.825

RULE SUMMARY

The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules in OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities.

These rules are being updated to --

- Make permanent temporary changes that became effective on January 1, 2016;
- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Add clarifying language to the definition of a functional needs assessment;
- Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20;
- Incorporate direct nursing services to support an adult with complex health management support needs as described in OAR chapter 411, division 380;
- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004;
- Require foster care providers to implement, as written by a behavior consultant, Behavior Support Plans and Interaction Guidelines;
- Incorporate changes to Bill of Rights language and requirements to match statutory language;
- Specify Individual Support Plan (ISP) participation requirements for foster care providers by removing the ISP requirements targeted for the case management entity;
- Clarify language to align the Medicaid benefits eligibility language under the qualifications for Department-funded services;
- Remove "crisis services" language; and
- Reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

Under the HCB setting standards, adult foster homes meet the definition of a provider owned, controlled, or operated residential setting. A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A 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.

By September 1, 2018, all provider owned, controlled, or operated residential settings must have all the following qualities:

- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;
- The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting;
- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;
- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;
- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;
- The setting is physically accessible to an individual;
- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;
- Each individual has privacy in his or her own unit;
- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;
- Individuals sharing units have a choice of roommates;
- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;
- Individuals may have visitors of their choosing at any time;
- Each individual has the freedom and support to control his or her own schedule and activities; and
- Each individual has the freedom and support to have access to food at any time.

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 23, 2016 at 5:00 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, Developmental Disabilities 411

Agency and Division | Administrative Rules Chapter Number

ODDS: Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities

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

In the Matter of: The amendment of OAR chapter 411, division 360; and repeal of temporary OAR 411-360-0010(T); 411-360-0020(T); 411-360-0050(T); 411-360-0055(T); 411-360-0060(T); 411-360-0130(T); 411-360-0140(T); 411-360-0170(T); and 411-360-0190(T) relating to adult foster homes for individuals with intellectual or developmental disabilities.

Statutory Authority:
ORS 409.050, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Other Authority:

Stats. Implemented:
ORS 443.705-443.825

Need for the Rule(s):

Temporary to Permanent Rules

The Department needs to make permanent temporary changes that became effective on January 1, 2016. The proposed rules reflect these changes.

Definitions

The Department needs to amend OAR 411-360-0020 (Definitions) to --

- Provide consistency and streamline definitions across services; and
- Modify the definition of a functional needs assessment to clarify the assessment requirements.

OAR 411-360-0020 is being amended to --

- Remove terms included in OAR 411-317-0000 (General Definitions); and
- Update the definition of a functional needs assessment.

Private Duty and Direct Nursing Services

The Department needs to amend the following rules to incorporate private duty and direct nursing services:

- OAR 411-360-0020 (Definitions); and
- OAR 411-360-0140 (Standards and Practices for Health Care).

These rules are being amended to --

- Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20; and
- Incorporate direct nursing services to support an adult with complex health management support needs as described in OAR chapter 411, division 380.

HCB Services and Settings

The Department needs to permanently update the following rules to implement the regulations and expectations of CMS for Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning:

- OAR 411-360-0010 (Statement of Purpose);
- OAR 411-360-0020 (Definitions);
- OAR 411-360-0050 (License Application and Fees);
- OAR 411-360-0055 (Provider Enrollment Agreements, Contracts, and Residency Agreements);
- OAR 411-360-0060 (Capacity);
- OAR 411-360-0130 (AFH-DD Standards);
- OAR 411-360-0140 (Standards and Practices for Health Care);
- OAR 411-360-0170 (Documentation and Record Requirements); and
- OAR 411-360-0190 (Standards for Entry, Transfers, Relief Care, Crisis Placements, Exit, and Closures).

These rules are being amended to incorporate the standards for HCB services and settings and person-centered planning adopted in OAR chapter 411, division 004 by the Department on January 1, 2016, including the following specific qualities for provider owned, controlled, or operated residential settings:

- The setting is physically accessible to an individual;
- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;
- Each individual has privacy in his or her own unit;
- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;
- Individuals sharing units have a choice of roommates;

- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;
- Individuals may have visitors of their choosing at any time;
- Each individual has the freedom and support to control his or her own schedule and activities; and
- Each individual has the freedom and support to have access to food at any time.

A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A 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.

Additional Rule Changes

The Department also needs to amend the following rules:

- OAR 411-360-0160 (Behavior Support) to incorporate rule requirements for the implementation of Behavior Support Plans and Interaction Guidelines;
- OAR 411-360-0170 (Documentation and Record Requirements) to incorporate changes to Bill of Rights language and requirements to match statutory language;
- OAR 411-360-0170 (Documentation and Record Requirements) to modify ISP language to clarify provider participation requirements and remove ISP language required to be completed by the case management entity;
- OAR 411-360-0190 (Standards for Entry, Transfers, Relief Care, Crisis Placements, Exit, and Closures) to modify language to align the Medicaid benefits eligibility language under the qualifications for Department-funded services;
- OAR 411-360-0190 (Standards for Entry, Transfers, Relief Care, Crisis Placements, Exit, and Closures) to remove crisis placement service language; and
- Various rule in OAR chapter 411, division 360 to reflect current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

The proposed rules reflect these additional changes.

Documents Relied Upon, and where they are available:

1. OAR chapter 411, division 004 Home and Community-Based Services and Settings and Person-Centered Service Planning
Available at: http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_411/411_004.html

2. CFR 441.530
Available at: http://www.ecfr.gov/cgi-bin/text-idx?SID=bb475ef66c500d90c3f3469b6058bc13&mc=true&node=se42.4.441_1530&rgn=div8

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 chapter 411, division 360 will have the following fiscal and economic impact:

State Agencies: As noted in the fiscal and economic rulemaking statement for the adoption of the HCBS rules in OAR chapter 411, division 004, the Department and the Oregon Health Authority are at risk for losing federal matching funds for programs that are out of compliance with HCBS. There will be increased regulatory compliance requirements and costs but the Department is unable to estimate the fiscal impact at this time due to these being new regulations and the Department does not have available data to estimate costs.

For non-HCBS rule related changes, there is expected to be some changes in licensing requirements but the changes should not require an increase in field time or central office time.

Units of Local Government: Community Developmental Disabilities Programs (CDDPs) are contractually required to assist the Office of Licensing and Regulatory Oversight in licensing local AFH homes. There is expected to be an increase in costs for CDDPs because of the new HCBS requirements. The Department is unable to estimate the fiscal impact at this time due to these being new regulations and the Department does not have available data to estimate costs.

Some local CDDP's have projected specifically an hour to an hour and a half per visit per year workload on each home to assure HCBS compliance. The number of homes is 944. The rate of pay for a local licensor varies around the state. Other variables to consider are the number of homes local licensors are expected to visit as part of current requirements, the homes that may already be HCBS compliant, the number of current providers who choose not to continue to be licensed AFH providers because of actual or perceived costs of compliance, and the time and costs to assist new providers to meet HCBS requirements prior to the issuance of a license. AFH providers licensed prior to Dec 31st, 2015 must be in full compliance with HCBS requirements by no later than September 2018. The multitude of variables make the Department unable to estimate the cost of compliance at this time.

For non-HCBS related rule requirements there is no expected fiscal or economic impact.

Service Recipients: The Department expects no 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 the Department is unable to estimate the number of providers that may do so. The number of AFH-DD that have private pay recipients is a very small percentage of the total number of licensed homes.

Providers: The Department anticipates a fiscal impact to Adult Foster Care Providers to come into compliance with HCBS requirements. However, because these regulations are new and data is not available to estimate the costs, the Department is unable to estimate the fiscal impact.

Some predicted areas of fiscal and economic impact to providers include:

- The cost of adding locks to doors for individual privacy is estimated at $110 per door lock. The Department is unable to estimate the overall impact because the Department is unable to quantify 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 service recipient 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. The Department is unable to calculate the variables necessary to estimate the cost due to providers differing needs.

For non-HCBS related rule requirements there is no expected fiscal or economic impact.

Public: The Department estimates there will not be a fiscal or economic impact to the public, however, if there is a substantial lack of compliance with HCBS requirements there is a risk of loss of federal matching which could be significant. This could necessitate increased General Funds or cuts to programs.

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:

The Department estimates that there are approximately 749 licensed AFH-DDs. AFH-DD providers are considered small businesses as defined by ORS 183.310 and are subject to the proposed rules.

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

The proposed changes impact providers 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 providers 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 Administrative Rule Advisory Committee included representation from the following; Self Advocates; Support Service Brokerages; SEIU 503; Advocacy Groups; Oregon Council on Developmental Disabilities; Disability Rights of Oregon; Oregon Rehabilitation Association; Association of Community Mental Health Program; and Residential and Supported Living Provider Partnerships for Community Living.

Signed Lilia Teninty, Director, Developmental Disabilities 4/15/2016

Signature Date

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 360

ADULT FOSTER HOMES FOR INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

411-360-0010 Statement of Purpose

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

(2) These rules incorporate the provisions for home and community-based services (HCBS) 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 HCBS.

(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 ~~individuals by providing necessary care~~, and who provides the services and supports, through a cooperative relationship between the AFH-DD provider, the individual, the ~~individual's~~ legal or designated representative of the individual (if applicable), and the Community Developmental Disability Program.

(~~3~~4) An AFH-DD protects and encourages ~~an individual's~~the independence, dignity, choice, and decision making of the individual while addressing ~~an individual's~~the needs of the individual in a manner that supports and enables the individual to ~~maximize his or her ability to function at the highest level of~~ achieve optimum physical, mental, and social well-being and independence ~~possible~~.

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

411-360-0020 Definitions and Acronyms

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

~~(1) "Abuse" means:~~

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

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

~~(2) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.~~

~~(3) "Adult" means an individual who is18 years or older with an intellectual or developmental disability.~~

(41) "Adult Foster Home (AFH)" means any ~~family~~ home ~~or facility licensed by the Department~~ in which residential care and services are provided in a home-like environment for compensation to five or fewer adults who are not related to the provider by blood, marriage, or adoption. An adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no individual thereof requires any element of care.

(~~5~~2) "Adult Foster Home for Individuals with Intellectual or Developmental Disabilities (AFH-DD)" means an adult foster home ~~licensed by the~~

~~Department to provide~~ in which residential care and services are provided to support individuals with intellectual or developmental disabilities.

(~~6~~3) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by an individual or the legal representative of the individual that provides health care instructions in the event the individual is no longer able to give directions regarding his or her wishes. The Advance Directive gives the individual the means to control his or her own health care in any circumstance. An Advance Directive for Health Care does not include Physician Orders for Life-Sustaining Treatment (POLST).

(~~7~~4) "Advocate" means a person other than a paid caregiver who has been selected by an individual or the legal representative of the individual to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

~~(8) "AFH" means "adult foster home" as defined in this rule.~~

(~~9~~5) "AFH-DD" means an "adult foster home for individuals with intellectual or developmental disabilities" as defined in this rule.

~~(10) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.~~

(~~11~~6) "Applicant" means a person who completes an application for an adult foster home license who is also the owner of the business or a person who completes an application to become a resident manager. The term applicant includes a co-applicant (if applicable).

~~(12) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210 (Criminal Records and Abuse Check for Providers).~~

(~~13~~7) "Bill of Rights" means civil, legal, or human rights afforded to individuals in an adult foster home that are in accordance with those rights afforded to all other U.S. citizens including, but not limited to, those rights delineated in the Adult Foster Home Bill of Rights for individuals with intellectual or developmental disabilities described in OAR 411-360-0170.

~~(14) "Brokerage" means "Brokerage" as defined in OAR 411-340-0020.~~

(~~15~~8) "Care" means supportive services that encourage maximum individual independence and enhance the quality of life for an individual including, but not limited to:

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

(b) Assistance with activities of daily living as defined in OAR 411-317-0000;

(c) Assistance with instrumental activities of daily living as defined in OAR 411-317-0000;

(d) Assistance with quality of life activities, such as socialization and recreation; and

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

~~(16) "Career Development Plan" means the part of an ISP that identifies:~~

~~(a) The employment goals and objectives for an individual;~~

~~(b) The services and supports needed to achieve those goals;~~

~~(c) The people, agencies, and providers assigned to assist the individual to attain those goals;~~

~~(d) The obstacles to the individual working in an individualized job in an integrated employment setting; and~~

~~(e) The services and supports necessary to overcome those obstacles.~~

(~~17~~9) "Caregiver" means any person responsible for providing care and services to support individuals. A caregiver includes a provider, resident

manager, and any temporary, substitute, or supplemental caregiver or other person designated to provide care and service to support individuals in an adult foster home for individuals with intellectual or developmental disabilities.

~~(18) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA) and overseeing Medicaid programs administered by the states through survey and certification.~~

(~~19~~10) "CDDP means "Community Developmental Disability Program" ~~as defined in OAR 411-320-0020~~.

~~(20) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.~~

~~(21) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.~~

(~~22~~11) "CMS" means "Centers for Medicare and Medicaid Services".

(~~23~~12) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(~~24~~13) "Compensation" means monetary or in-kind payments by or on behalf of an individual to a provider in exchange for room and board, care, and services as indicated in the ISP~~.~~ or Service Agreement. Compensation

does not include the voluntary sharing of expenses between or among roommates.

~~(25) "Complaint" means an allegation that a licensee or caregiver has violated these rules or an expression of dissatisfaction with a provider, the services provided, or the condition of an adult foster home.~~

~~(26) "Complaint Investigation" means the investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.~~

(~~27~~14) "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.

(~~28~~15) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

~~(29) "Crisis" means "crisis" as defined in OAR 411-320-0020.~~

(~~30~~16) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight. Individuals receiving day care services are included in the licensed capacity of a home as described in OAR 411-360-0060.

~~(31) "Delegation" is the process by which a registered nurse authorizes a provider, resident manager, or substitute caregiver to perform nursing tasks in selected situations and confirms that authorization in writing. Delegation may only occur after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.~~

(~~32~~17) "Denial" means the refusal of the Department to issue a license to operate an adult foster home for individuals with intellectual or developmental disabilities because the Department has determined that an applicant or the home is not in compliance with one or more of these rules.

~~(33) "Department" means the Department of Human Services or the designee of the Department.~~

~~(34) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(36) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.~~

(~~37~~18) "Disaster" means an occurrence beyond the control of a licensee, whether natural, technological, or man-made that renders a home uninhabitable on a temporary, extended, or permanent basis.

(~~38~~19) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(~~39~~20) "Enjoin" means to prohibit by judicial order.

~~(40) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation.~~

~~(41) "Entry" means admission to a licensed adult foster home for individuals with intellectual or developmental disabilities.~~

(~~42~~21) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes that the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the license, inspection, and fee provisions described in ORS 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

~~(43) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.~~

(~~44~~22) "Facility" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

~~(45) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to a person alleged to have engaged in the conduct.~~

(~~46~~23) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) A functional needs assessment may be:

(A) ~~The functional needs assessment for an individual residing in an adult foster home for individuals with intellectual or developmental disabilities is known as t~~The Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at ~~http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx.~~ https://www.oregon.gov/DHS/SENIORS-DISABILITIES/DD/PROVIDERS-PARTNERS/Pages/rebar-assessments.aspx;

(B) The Adult Needs Assessment (ANA). The Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm; or

(C) The Children's Needs Assessment (CNA). The Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm.

(c) A printed copy of the assessment tools may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(4724) "Guardian" means the parent for an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an the individual. A paid provider for an individual may not be the guardian of the individual.

(4825) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.

(4926) "Home" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(5027) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services to support and encourage independence, choice, and decision making by the individuals.

(5128) "House Rules" meansmean the writtensocial courtesies identified through a voluntary collaborative process by members of the household. The identified rules are non-binding and posted statements governing house activities in an adult foster home that domay not be solely provider driven expectations for individuals residing in the homeconflict with the Adult Foster Home Bill of Rights.

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

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

(5429) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

(~~55~~30) "Individual" means a~~n~~ young adult or adult residing in an adult foster home for individuals with intellectual or developmental disabilities, regardless of source of compensation.

(~~56~~31) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.

~~(57) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(58) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.~~

(~~59~~32) "ISP" means "Individual Support Plan". ~~An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources. The ISP includes the Career Development Plan.~~

~~(60) "ISP Team" means a team composed of an individual receiving services and the legal representative of the individual, services coordinator or personal agent, and others chosen by the individual, or as applicable the legal representative of the individual, such as providers or family members.~~

~~(61) "Legal Representative" means a person who has the legal authority to act for an individual. The term "legal representative" includes the guardian of an individual, as well as:~~

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

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

(~~62~~33) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules.

(~~63~~34) "Licensee" means the person who is issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The licensee of an adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor of the building is the provider.

(~~64~~35) "Limited License" means a license is issued to a licensee who intends to provide care and services for compensation to a specific individual who is unrelated to the licensee but with whom the licensee has an established relationship of no less than one year.

(~~65~~36) "Liquid Resource" means cash or those assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

~~(66) "Mandatory Reporter":~~

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

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

~~(B) Is a provider, resident manager, caregiver, or volunteer who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe~~

~~the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.~~

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

(~~67~~37) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Legal medical marijuana" refers to the use of marijuana authorized under the Oregon Medical Marijuana Act (OMMA), ORS 475.300 to ORS 475.346.

~~(68) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body that cannot be easily removed or easily negotiated around that restricts freedom of movement or access to the body.~~

(~~69~~38) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing an individual and obtaining all pertinent biopsychosocial information as identified by the individual, the family of the individual, and collateral sources. A mental health assessment:

(a) Addresses the condition presented by the individual;

(b) Determines a diagnosis; and

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

(~~70~~39) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

~~(71) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan and the quality of services delivered by other organizations.~~

~~(72) "Natural Supports" mean the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.~~

~~(73) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.~~

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

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

(~~35~~40) "~~Direct~~ Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. ~~Direct n~~Nursing service~~s~~ differ~~s~~ from administrative nursing services. ~~Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health-related agency policies and procedures, or providing general training for caregivers.~~

(41) "OCCS" means the "Oregon Health Authority, Office of Client and Community Services".

(~~74~~42) "Occupant" means any person residing in or using the facilities of an adult foster home including the individuals, licensee, resident manager,

friends, family members, a person receiving day care services, and room and board tenants.

~~(75) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.~~

(~~76~~43) "OIS" means the "Oregon Intervention System". ~~OIS is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.~~

(~~77~~44) "OSIPM" means "Oregon Supplemental Income Program-Medical". ~~as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meets the eligibility criteria described in OAR chapter 461.~~

(~~78~~45) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(~~79~~46) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. A person with an ownership or control interest means a person or corporation that:

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

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

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

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

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

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

~~(80) "Person-Centered Planning":~~

~~(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and the individual is enabled to make informed choices and decisions consistent with 42 CFR 441.540.~~

~~(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:~~

~~(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;~~

~~(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and~~

~~(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.~~

~~(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.~~

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

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

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

(~~84~~47) "Provider" means any person operating an adult foster home, such as a licensee or resident manager. "Provider" does not include caregivers or the owner or lessor of the building in which an adult foster home is situated unless the owner or lessor of the building is also the operator of the adult foster home.

(~~85~~48) "Provider Enrollment" means an agreement between the Department and a Medicaid provider to provide room and board and care and services for compensation to support a Medicaid eligible individual in an adult foster home.

(~~86~~49) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-360-0070 and OAR 411-360-0110.

~~(87) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.~~

(~~88~~50) "Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(~~89~~51) "Qualified Mental Health Professional" means a licensed medical practitioner or any other person meeting the qualifications specified in OAR 309-019-0125.

(~~90~~52) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing care and services to support an individual. Relief care may include 24-hour relief care or hourly relief care. Individuals receiving relief care are included in the licensed capacity of a home as described in OAR 411-360-0060.

(~~91~~53) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to reside in a home if the visit of the person is for four consecutive weeks or greater.

(~~92~~54) "Resident Manager" means an employee of a licensee approved by the Department, who resides in an adult foster home and is directly responsible for the care and services to support individuals on a day-to-day basis.

(~~93~~55) "Respite" means "relief care" as defined in this rule.

(~~94~~56) "Revocation" means the action taken by the Department to rescind an adult foster home license after the Department ~~has determined that~~ determines the provider or home is not in compliance with one or more of these rules.

(~~95~~57) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping to a person that does not need assistance with activities of daily living. Room and board facilities for two or more people are required to register with the Department as described in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Room and board does not include provision of care.

(~~96~~58) "Self-Preservation" in relation to fire and life safety means the ability of an individual to respond to an alarm without additional cues and reach a point of safety without assistance.

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

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

(~~99~~59) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet where extra or additional food is offered without the order of a physician or licensed health care provider but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(~~100~~60) "Subject Individual" means:

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

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

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

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

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

(i) A member of the household;

(ii) A room and board tenant; and

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

(b) Subject individual does not apply to:

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

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

(i) Regular access to the home for meals;

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

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

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

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

(~~102~~61) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department that is left in charge of the individuals for any period of time and has access to the individuals' records.

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

(~~104~~62) "Suspension" means an immediate, temporary withdrawal of the approval to operate an adult foster home after the Department determines a provider or home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of individuals.

(~~105~~63) "Tenant" means an individual who resides in an adult foster home and receives services, such as meal preparation, laundry, and housekeeping.

(~~106~~64) "These Rules" mean the rules in OAR chapter 411, division 360.

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

~~(108) "Transition Plan" means the ISP describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.~~

~~(109) "Unusual Incident" means any incident involving an individual that includes an act of physical aggression, serious illness or an accident, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, death, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.~~

(~~110~~65) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in the mental or physical condition of an individual.

(~~111~~66) "Variance" means the temporary ~~exception~~ exemption from a regulation or provision of these rules that may be granted by the Department upon written application by the provider.

(~~112~~67) "Young Adult" means a young individual age 18 through 21 who resides in an adult foster home under the custody of the Department, voluntarily, or under guardianship. A young adult may include an individual who is less than 18 years of age.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-443,825

411-360-0050 License Application and Fees

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

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

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

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

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

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

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

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

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

(d) ~~A physician's~~The statement of a health care provider on the form supplied by the Department regarding the ~~applicant's~~ ability of the applicant to provide care and services;

(e) Financial information including:

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

(i) An applicant must have the financial ability and maintain sufficient liquid resources to pay the operating costs of an AFH-DD for at least two months without solely

relying on potential income from individuals and room and board payments.

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

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

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

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

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

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

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

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

(A) The name of the owner and ~~landlord's name~~landlord;

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

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

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

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

(A) The size of the rooms;

(B) The size of the windows;

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

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

(E) The location of any wheelchair ramps;

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

(G) Planned evacuation routes; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

411-360-0055 Provider Enrollment Agreements ~~and,~~ Contracts, and Residency Agreements

(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.

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

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

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

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

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

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

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

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

(A) The licensee fails to maintain substantial compliance with all related federal, state, and local laws, ordinances, and regulations; or

(B) The license to operate the AFH-DD has been voluntarily surrendered, revoked, or not renewed.

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

(A) The licensee fails to permit access by the Department or CMS to any AFH-DD licensed to and operated by the licensee;

(B) The licensee submits false or inaccurate information;

(C) Any person with five percent or greater direct or indirect ownership in the AFH-DD did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the background check rules in OAR 407-007-0200 to 407-007-0370;

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

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

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

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

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

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

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

(A) A~~n Individual Support Plan~~person-centered service plan;

(B) A schedule of rates; and

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

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

(c) The licensee must give written notice to a private pay individual, or as applicable the person paying for the ~~individual's~~ care and services of the individual, 30 days prior to any general rate increases, additions, or other modifications of the rates unless the change is due to a medical emergency resulting in a greater level of care in which case the notice must be given within 10 days of the change.

(3) RESIDENCY AGREEMENT.

(a) The licensee must enter into a written Residency Agreement with each individual specifying, at a minimum, the following:

(A) The eviction process, notice requirements, and appeal rights available to each individual;

(B) The right of the individual to furnish and decorate his or her bedroom, subject to the limitations specified herein; and

(C) Policies and conditions for the following:

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

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

(iii) Restriction related to pets, if any;

(iv) Monthly charges and services to be provided; and

(v) Refunds in case of departure or death.

(b) The Residency Agreement may not violate the rights of an individual as stated in ORS 430.210, ORS 443.739, OAR 411-360-0170, and OAR 411-318-0010.

(c) The Residency Agreement may not be in conflict with any of these rules or the rules in OAR chapter 411, division 004 for home and community-based services and settings.

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement may be subject to review by the Department or the designee of the Department.

(e) The provider must review and provide a copy of the Residency Agreement to each individual, and as applicable the legal representative of the individual, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or as applicable the legal representative of the individual, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the record for the individual.

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

411-360-0060 Capacity

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

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

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

(b) In determining maximum capacity, consideration is given to whether children over the age of 5 have a bedroom separate from their parents and the number and age of children or others that reside in the AFH-DD requiring care.

(3) Children under the age of 10 living in the AFH-DD~~,~~ and individuals ~~receiving respite services, and individuals receiving day care~~requiring relief care, attendant care, or skills training services are included in the licensed capacity of the AFH-DD.

(4) A provider may only exceed the licensed capacity of the AFH-DD by one or more individuals if:

(a) Approved by the Department;

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

(c) The total capacity does not exceed five.

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

411-360-0110 Qualifications for Providers, Resident Managers, and Caregivers

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

(a) Be at least 21 years of age;

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

(c) Provide evidence satisfactory to the Department regarding experience, training, knowledge, interest, and concern in providing care and services to support individuals with intellectual or developmental disabilities. Such evidence may include, but not be limited to:

(A) Certified nurse's aide training;

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

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

(D) Training approved by the Department; or

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

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

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

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

(g) Have the financial ability and maintain sufficient liquid resources to pay the operating costs of the AFH-DD for at least two months without solely relying on potential income from individuals and room

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

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

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

(ii) All bankruptcy filings by the applicant; and

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

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

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

(D) If an applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens, or unpaid taxes, proof that the applicant has the amount of resources necessary to pay those claims must be provided to the Department as required.

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

(h) Be literate in the English language and demonstrate the ability to comprehend and communicate in English orally and in writing with

the individuals, licensed health care providers, services coordinators, and others involved in the care of the individuals;

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

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

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

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

(m) Not be listed on the ~~Office of Inspector General's or General Services Administration's~~ Exclusion ~~l~~Lists of the Office of Inspector General or General Services Administration.

(2) BACKGROUND CHECKS.

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

(A) Annually;

(B) Prior to ~~a subject individual's~~a change in the position of a subject indidividual(i.e. changing from a caregiver to resident manager); and

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

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

(c) ~~Effective July 28, 2009, p~~Public funds may not be used to support, in whole or in part, a provider, a resident manager, ~~providers'~~ employees of the provider, alternate caregivers, volunteers, or any other subject individual under OAR 407-007-0200 to 407-007-0370 who is subject to background checks, who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275. This rule does not apply to caregivers of ~~the~~ an AFH-DD hired prior to July 28, 2009.

(d) ~~Effective July 28, 2009,a~~A person may not be authorized as a provider or meet qualifications as described in this rule if the person is subject to background checks and has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275. This rule does not apply to caregivers of the AFH-DD hired prior to July 28, 2009.

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

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

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

(a) Be at least 18 years of age;

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

person may not be authorized as a substitute caregiver or meet qualifications as described in this rule if the person has been hired on or after July 28, 2009, or is subject to a background check beginning July 28, 2009 as required by administrative rule, and the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(c) Be notified annually of the ~~substitute caregiver's~~ responsibility of the substitute caregiver as a mandatory reporter of abuse or neglect. Annual mandatory reporter notification must be documented on forms provided by the Department;

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

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

(f) Know fire safety and emergency procedures;

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

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

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

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

(k) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Department to provide care and services to support individuals with intellectual or

developmental disabilities. A substitute caregiver with a documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition;

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

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

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

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

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

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

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

411-360-0130 ~~Facility~~AFH-DD Standards

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

(1) GENERAL CONDITIONS.

(a) Each AFH-DD must maintain up-to-date documentation verifying the AFH-DD meets applicable local business license, zoning,

building, and housing codes, and state and local fire and safety regulations for a single-family residence. General buildings must be of sound construction and meet all applicable state and local fire and safety regulations in effect at the time of construction. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP.

(b) Mobile homes must have been built since 1976 and designed for use as a home rather than a travel trailer. The mobile home must have the label from the manufacturer permanently affixed to the home that states the mobile home meets the requirements of the Department of Housing and Urban Development (HUD) or authority having jurisdiction.

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

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

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

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

fans, or air conditioners. The temperature may not exceed 85 degrees in the house.

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

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

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

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

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

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

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

(2) SANITATION.

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

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

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

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

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

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

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

(h) All caregivers must take precautions to prevent injuries caused by needles and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as

practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 to 459.405).

(3) BATHROOMS. Bathrooms must:

(a) Provide for individual privacy and have a finished interior, a mirror, a window capable of being opened or other means of ventilation, and a window covering. No person must have to walk through the bedroom of another person to access a bathroom;

(b) Be clean and free of objectionable odors;

(c) Have tubs or showers, toilets, and sinks in good repair. A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and the family of the provider;

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

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

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

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

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

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

(4) BEDROOMS.

(a) Bedrooms for all household occupants must:

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

(B) ~~Be~~Have a finished interior with walls or partitions of standard construction that go from floor to ceiling; ~~and~~

(C) Have a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(~~C~~D) Be adequately ventilated, heated, and lighted with at least one window capable of being opened that meets the fire regulations described in subsection (~~h~~k) of this section;

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

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

(b) If an individual chooses to share a bedroom with another individual, the individuals must be afforded an opportunity to have a choice of roommates.

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

(d) SINGLE ACTION LOCKS.

(A) An AFH-DD licensed on or after January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys.

(B) An AFH-DD licensed prior to January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys by September 1, 2018.

(C) Limitations may only be used when there is a health or safety risk, as described in OAR 411-360-0170 and OAR 411-004-0040, and when a written informed consent is obtained.

(~~b~~e) Providers, resident managers, or their family members must not sleep in areas designated as common use living areas or share bedrooms with individuals.

(~~c~~f) There must be a bed for each individual. The bed must include a frame unless otherwise documented by an ISP ~~T~~team decision. The bed must include a clean and comfortable mattress, a waterproof mattress cover if an individual is incontinent, and a pillow.

(~~d~~g) Each bedroom must have sufficient, separate, private dresser and closet space for the clothing and personal effects for each individual, including hygiene and grooming supplies. Individuals must be allowed to keep and use reasonable amounts of personal belongings and to have private, secure storage space.

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

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

(~~g~~j) Individual bedrooms must be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with an intercom or audio monitor as approved by an ISP team.

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

(5) MEALS.

(a) The provider must support the freedom of the resident to have access to his or her personal food at any time. Limitations may only be used when there is a health or safety risk, as described in OAR 411-360-0170 and OAR 411-004-0040, and when a written informed consent is obtained.

(b) Three nutritious meals and two snacks must be ~~served~~provided. Meals must be offered daily at times consistent with those in the community.

(A) Each ~~daily menu~~meal must include food from the ~~four~~ basic food groups ~~and~~ according to the United States Department of Agriculture (USDA) and include fresh fruit and vegetables when in season unless otherwise specified in writing by a health care provider~~physician~~.

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

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

~~(D) Food may not be used as an inducement to control the behavior of an individual.~~

(~~b~~c) A schedule of meal times and ~~M~~menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and the families of the individuals. Menu substitutions in compliance with subsection (~~a~~b) of this section are acceptable. If an individual misses or plans to miss a meal at a scheduled time, or requests an alternate meal time, an alternative meal must be made available. Individuals are not restricted to specific meal times and must be encouraged to choose when, where, and with whom to eat.

(d) The individual is responsible for the provision of food beyond the required three meals and two snacks.

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

(A) Have menus for the current week that provide food and beverages that consider the preferences of the individual and are appropriate to the modified or special diet; and

(B) Maintain documentation that identifies how modified or special diets are prepared and served to individuals.

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

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

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

(~~g~~h) Household utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination.

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

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

(6) TELEPHONE.

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

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

(A) Local CDDP;

(B) Police, fire, and medical if not served by 911;

(C) The provider if the provider does not reside in the AFH-DD;

(D) Emergency physician; and

(E) Additional persons to be contacted in the case of an emergency.

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

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

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

(f) The licensee must notify the Department, individuals, and as applicable the families, legal representatives, and service coordinators of the individuals of any change in the AFH-DDs telephone number within 24 hours of the change.

(7) SAFETY.

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

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

(A) Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow the recommended maintenance schedule.

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

(C) The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood

stoves to prevent individuals with ambulation or confusion problems from coming in contact with the stove.

(D) Un-vented portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction.

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

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

(e) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the instructions of the manufacturer. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

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

(B) Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular carbon monoxide alarm must be

equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

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

(A) Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6 inches and 12 inches from the ceiling and not within 12 inches of a corner.

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

(C) When activated, ~~S~~smoke alarms ~~when activated~~ must be audible in all ~~sleeping~~ bedrooms.

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

(g) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when ~~actuated~~activated, an alarm that is audible in all ~~sleeping~~ bedrooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed.

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

(i) FIRE EXTINGUISHERS. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements. Fire extinguishers must be

inspected at least once a year by a qualified person that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose and documentation must be maintained in the AFH-DD records.

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

(8) EMERGENCY PROCEDURES AND PLANNING.

(a) EVACUATION DRILLS.

(A) The provider must conduct unannounced evacuation drills when individuals are present, once every quarter, with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening, and night, with exit routes being varied based on the location of a simulated fire. All occupants must participate in the evacuation drills.

(B) Written documentation must be made at the time of the drill and kept by the provider for at least two years following the drill. Evacuation drill documentation must include:

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

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

(iii) The last names of all individuals, the provider, caregivers, and all other occupants present on the premises at the time of the drill;

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

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

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

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

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

(d) The provider must provide, post, and keep up to date, a floor plan on each floor.

(A) The floor plan must contain --

(i) rRoom sizes~~,~~;

(ii) tThe location of the bed for each individual~~,~~;

(iii) wWindows~~,~~;

(iv) eExit doors~~,~~;

(v) tThe sleeping rooms for the resident manager or provider~~,~~;

(vi) sSmoke and carbon monoxide alarms~~,~~;

(vii) fFire extinguishers~~,~~;

(viii) eEscape routes~~,~~; and

(ix) ~~w~~Wheelchair ramps.

(B) ~~A copy of t~~The floor plan must be updated to reflect any change and a copy of the updated floor plan must be submitted to the Department.

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

(f) If an individual accesses the community independently, the provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

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

(A) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise;

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the AFH-DD, such as a pandemic or an earthquake;

(C) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place, when unable to relocate, for at least three days under the following conditions:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food supplies; and

(iv) Caregivers unable to report as scheduled.

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

(i) The duties of caregivers during evacuation, transporting, and housing of individuals including instructions to caregivers to notify the Department and local CDDP of the plan to evacuate or the evacuation of the AFH-DD as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the AFH-DD;

(iv) A method that provides persons unknown to the individual the ability to identify each individual by name, and to identify the name of the supporting provider for the individual; and

(v) A method for tracking and reporting to the Department and the local CDDP the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheet and the emergency information identified in OAR 411-360-0170, and other information necessary to obtain care, treatment, food, and fluids for individuals;

(ii) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

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

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

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

(G) Applicable parts of the Emergency Plan must coordinate with each applicable employment provider or day program provider to address the possibility of an emergency or disaster during day time hours.

(9) SPECIAL HAZARDS.

(a) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by individuals and vandals.

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

(c) To protect the safety of an individual in an AFH-DD, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the individuals in the AFH-DD. Ammunition must be secured in a locked area separate from the firearms.

(d) For AFH-DDs with one or more employees, smoking regulations in compliance with the Indoor Clean Air Act must be adopted to allow smoking only in outdoor designated areas. Signs must be posted prohibiting smoking in the workplace per OAR 333-015-0040.

~~(e) Smoking is prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.~~

(A) Designated smoking areas must be at least 10 feet from any entrance, exit, window that opens, ventilation intake, or accessibility ramp. ~~Smoking is prohibited in vehicles when individuals or employees occupy the vehicle.~~

(B) Smoking is prohibited in bedrooms.

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

(D) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

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

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

411-360-0140 Standards and Practices for Health Care

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

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

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

(c) The AFH-DD must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(d) A written and signed order from a physician or licensed health care provider is required prior to the use or implementation of any of the following:

(A) Prescription medications;

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

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The provider must implement the order of a physician or licensed health care provider.

(f) Injections may be --

(A) sSelf-administered by the individual; or

(B) aAdministered by --

(i) ~~a~~A relative of the individual~~,~~;

(ii) ~~a~~A currently licensed registered nurse~~,~~;

(iii) ~~a~~A licensed practical nurse under registered nurse supervision~~,~~; or

(iv) ~~t~~The provider, resident manager, or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851, division 047. Documentation regarding the training or delegation must be maintained in the record for the individual.

(2) REQUIRED DOCUMENTATION.

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

(A) A list of known health conditions, medical diagnoses, any known allergies, immunizations, Hepatitis B status, previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of the individual, and history of emotional or mental health status that may be pertinent to current care and services;

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

(C) A record of known hospitalizations and surgeries;

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

(E) Medication administration records (MARs);

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

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

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

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

(a) Kept in the original containers;

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

(c) Kept in a secured, locked container and stored as indicated by the product manufacturer.

(4) MEDICATION ADMINISTRATION.

(a) All medications and treatments must be recorded on an individualized MAR. The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of the physician or licensed health care provider including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For over the counter topical medications without a written order from a physician or licensed health care provider, a transcription of the printed instructions from the topical medication package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (as needed) medication was administered;

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

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

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

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

(5) SELF-ADMINISTRATION OF MEDICATION.

(a) For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

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

(6) USE OF MEDICAL MARIJUANA.

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

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

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

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

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

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

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

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual must agree to arrange for a "designated primary caregiver". The designated primary caregiver must be authorized by the OMMP and identified on the OMMP registry card for the individual;

(iv) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot be designated as the OMMP-approved designated primary caregiver of the

individual and identified on the OMMP registry card for the individual;

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

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

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

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

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

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

(c) An individual must self-administer medical marijuana by ingesting the marijuana or inhaling the marijuana with a vaporizer. Smoking marijuana in or on the premises of the AFH-DD is prohibited. Marijuana must be administered privately in a room that is not shared with another person. The individual may not have visitors, other individuals, or any other person in this private space while self-administering the marijuana.

(d) An individual must designate a grower to provide the marijuana as necessary. The grower must not be the provider, resident manager, caregiver, or any occupant in or on the premises of the AFH-DD. The

grower designated by the individual must be authorized by OMMP and identified on the OMMP registry card for the individual.

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

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

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

(f) If a provider, resident manager, or caregiver also has an OMMP card for medical purposes, a substitute caregiver must be available to support the individuals when the provider, resident manager, or caregiver is under the influence of the medical marijuana. Any OMMP card holder in or on the premises of the AFH-DD must not smoke marijuana in or on the premises of the AFH-DD but may ingest the marijuana or inhale the marijuana with a vaporizer.

(7) PSYCHOTROPIC MEDICATIONS.

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

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

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

(b) A provider, resident manager, or any caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for an individual without direction from a physician or licensed health care provider.

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

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

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

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

(i) In case of urgent medical need;

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

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

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

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

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

(i) The legal guardian of the young adult, or the ~~caseworker~~ case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(C) The required mental health assessment:

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

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

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

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

(i) The legal guardian of the young adult, or the ~~caseworker~~ case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

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

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

(ii) The name of the medication;

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

(iv) The dosage administration schedule prescribed; and

(v) The reason the medication was prescribed.

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

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

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

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

(f) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing physician or licensed health care provider using the Balancing Test Form (form ~~SDS~~ APD 4110), or by inserting the required form content into a form maintained by the provider.

(A) The provider must present the physician or licensed health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed; and

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

(8) MEDICATION SAFEGUARDS.

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

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

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

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

(b) ~~An individual's~~The record for an individual must include documentation of the reason when all medications are not provided through a single pharmacy.

(9) MEDICATION DISPOSAL. All unused, discontinued, outdated, recalled, and contaminated medications including over-the-counter medications may not be kept in the AFH-DD and must be disposed of within 10 days of expiration, discontinuation, or the knowledge of the provider of recall or contamination. A provider may contact the local Department of Environmental Quality waste management company in the area for instructions on proper disposal of medications. Disposal of all controlled medications must be documented and witnessed by at least one other person who is 18 years of age or older. A written record of the disposal of the medication must be maintained that includes documentation of:

(a) Date of disposal;

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

(c) Name of the individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(10) ~~DIRECT~~ NURSING SERVICES.

(a) When ~~direct~~ nursing services are provided to an individual the provider must:

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

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

(~~11~~b) COMMUNITY NURSING SERVICES. When community nursing services as described in OAR chapter 411, division 048 are provided to an individual, the foster care provider must:

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

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

~~(a) Community nursing services include:~~

~~(A) Nursing assessments, including medication reviews;~~

(B) Care coordination;

(C) Monitoring;

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

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

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

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

(c) Community nursing services exclude direct nursing care.

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

(e) When community nursing services are provided to an individual the provider must:

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

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

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

~~(A) Provider record and documentation requirements referenced in OAR chapter 411, division 048 for financial, clinical, and other records including the Provider Enrollment Agreement and electronic billing procedures;~~

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

~~(C) Service record requirements outlined in this rule.~~

(c) PRIVATE DUTY NURSING. Under OAR chapter 410, division 132, private duty nursing services may be allocated to a young adult aged 18 through 20 that resides in a foster home and meets the clinical criteria described in OAR 411-300-0120.

(A) A Nursing Service Plan must be present when Department funds are used for private duty nursing services. A services coordinator must authorize the provision of private duty nursing services as identified in an ISP.

(B) When private duty nursing services are provided to a young adult, the provider must:

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

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

(d) DIRECT NURSING SERVICES. Direct nursing services may be provided to individuals 21 years of age and over as described in OAR chapter 411, division 380.

(A) A Nursing Service Plan must be present when Department funds are used for direct nursing services. A services coordinator must authorize the provision of direct nursing services as identified in an ISP.

(B) When direct nursing services are provided to an individual the provider must:

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

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

(C) An AFH-DD provider licensed by the Department may provide direct nursing services to individuals in the AFH-DD under the following conditions:

(i) The provider must meet the qualifications to provide direct nursing services described in OAR 411-380-0060;

(ii) More than one individual resides in the AFH-DD and requires direct nursing services;

(iii) The AFH-DD provider is the choice of the individual or the legal representative of the individual and is not for the convenience of the AFH-DD provider; and

(iv) The AFH-DD provider meets the requirements as an enrolled Medicaid Provider as described in OAR 411-380-0060 and has a separate and distinct Medicaid provider number.

(D) LIMITATIONS.

(i) While delivering a direct nursing service singularly to an eligible individual in the AFH-DD, the provider must assure the needs of other individuals in the home are met up to and including additional staffing, such as resident managers, substitute caregivers, or additional nurses in the home. Documentation must record staffing coverage; and

(ii) To assure the health and safety of individuals with medically complex conditions in an AFH-DD, an AFH-DD provider delivering direct nursing services in the licensed AFH-DD is limited to 40 total hours per week of direct nursing services.

(~~12~~11) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a provider, resident manager, and a substitute caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

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

411-360-0160 Behavior Support

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

(a) A foster care provider must implement a Behavior Support Plan as developed by a qualified Behavior Consultant.

(b) If an ISP team authorizes development of a Behavior Support Plan or interaction guidelines, the provider must participate as requested by the Behavior Consultant.

(c) A Behavior Support Plan may not be altered by the provider.

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

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

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

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

(A) An effort to communicate;

(B) The result of a medical condition;

(C) The result of a psychiatric conditions; or

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

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

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

(3) BEHAVIOR SUPPORT PLAN.

(a) A Behavior Support Plan must include:

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

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

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

(D) Prevention strategies, including environmental modifications and arrangements;

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

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

(G) A plan to address post crisis issues;

(H) A procedure for evaluating the effectiveness of the Behavior Support Plan, including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(I) Specific instructions for caregivers who provide support to follow regarding the implementation of the Behavior Support Plan; and

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

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

(4) PROTECTIVE PHYSICAL INTERVENTION.

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

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

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

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

(C) As a health related protection prescribed by a physician or licensed health care provider if absolutely necessary during the conduct of a specific medical or surgical procedure or for the

~~individual's~~ protection of an individual during the time that a medical condition exists.

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

(d) MODIFICATION OF TECHNIQUES. A provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of protective physical intervention techniques must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. The provider must maintain documentation of the approval of the OIS Steering Committee~~'s approval~~ in the ~~individual's~~ record for the individual.

(e) USE IN EMERGENCY SITUATIONS.

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

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

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

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

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

(f) INCIDENT REPORT.

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

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

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

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

(iv) Documentation of any injury;

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

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

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

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

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

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

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

411-360-0170 Documentation and Record Requirements

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

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

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

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

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

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

(iii) The dentist preferred by the individual;

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

(v) The services coordinator; and

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

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

(A) The name of the individual;

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

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

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

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

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

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

(i) How the individual communicates;

(ii) The language the individual uses and understands;

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

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

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

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

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

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

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

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

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

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

(G) The emotional and behavioral support needs of the individual including:

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

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

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

(I) The supervision requirements of the individual and why; and

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

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

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

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

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

(a) The account record must include:

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

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

(C) The signature of the provider or caregiver making each entry.

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

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

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

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

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

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

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

(b) Date of inclusion in the record;

(c) Date and reason for removal from record;

(d) Signature of provider making each entry; and

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

(4) INDIVIDUAL SUPPORT PLAN.

(a) The ~~following information must be collected~~provider must collect and ~~summarized~~summarize the following information prior to ~~the~~an ISP meeting:

(A) One page profile reflecting, at a minimum, information gathered by the provider of the AFH-DD~~site where the person is served,~~;

(B) Person-centered information reflecting, at a minimum, information gathered by the provider of the AFH-DD~~site where the person is served,~~; and

(C) Information about known, identified serious risks.

(b) The following information must be developed by the provider and shared with the services coordinator and the individual, or if applicable the legal or designated representative of the individual, as directed by the ISP or Services Agreement.

(A) Implementation strategies, such as action plans, for desired outcomes or goals.

(B) Necessary protocols or plans that address health, behavioral, safety, and financial supports.

(C) A summary of the provider risk management strategies in place, including title of document, date, and where the document is located.

(D) A Nursing Service Plan, if applicable.

(E) Other documents required by the ISP team.

(c) When desired by the individual, ~~T~~the provider must participate in the ISP team meetings ~~when required by the services coordinator of the individual~~.

(d) A provider must agree in writing to implement the portion of the ISP for which the provider is responsible for implementing. Agreement may be recorded by a signature on the ISP or a Service Agreement.

(e) The provider must maintain a copy of the ISP or Service Agreement provided the CDDP.

(f) The provider must maintain documentation of implementation of each support and services specified in subsections (b)(A) to (b)(E) of this section. This documentation must be kept current and be available for review by the individual, the legal representative of the individual, CDDP, and Department representatives.

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

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

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

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

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

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

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

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

~~(d) The ISP must include at least six hours of activities each week that are of interest to the individual that do not include television or movies made available by the provider. Activities are those available in the community and made available or offered by the provider or the CDDP.~~

~~(A) Activities may include:~~

~~(i) Recreational and leisure activities; and~~

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

~~(B) Activities may not include:~~

~~(i) Rehabilitation;~~

~~(ii) Educational services; or~~

~~(iii) Employment services.~~

(5) INDIVIDUALLY-BASED LIMITATIONS.

(a) ~~No later than June 30, 2017~~For an initial or annual ISP authorized to begin on or after January 1, 2017, the provider must identify any individually-based limitations to the following freedoms:

(A) Support and freedom to access the individual's personal food at any time;

(B) Visitors of the individual's choosing at any time;

(C) A lock on the individual's bedroom, lockable by the individual;

(D) Choice of a roommate, if sharing a bedroom;

(E) Freedom to furnish and decorate the individual's bedroom as the individual chooses in accordance with the Residency Agreement; and

(F) Freedom and support to control the individual's schedule and activities.

(b) After January 1, 2018, all individually-based limitations must be included in the ISP.

(c) An individually-based limitation to any freedom in subsection (a) of this section must be supported by a specific assessed need due to threats to the health and safety of the individual or others. The licensee must incorporate and document all applicable elements identified in OAR 411-004-0040, including:

(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 condition that is directly proportionate to the specific assessed need;

(E) Regular reassessment and review to measure the ongoing effectiveness of the individually-based limitation;

(F) Established time limits for periodic review of the individually-based limitation to determine if the individually-based 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 resident and the consent of the legal representative; and

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

(~~5~~6) HOUSE RULES.

(a) House rules must be submitted and may be subject to review and approval by the Department or its designee prior to implementation and as changes occur.

(b) House rules must be posted in a conspicuous location in the AFH-DD that is accessible to individuals and visitors.

(~~b~~c) House rules may not violate the rights of an individual as stated in ORS 430.210, ORS 443.739, OAR 411-318-0010, and described in section (11~~9~~) of this rule.

(~~c~~d) House rules may not be in conflict with ~~the family atmosphere of the AFH-DD or any of~~ these rules~~.(d) House rules are subject to review and approval by the Department prior to the issuance of a license~~ or the home and community-based services and ~~prior to implementing changes.~~ settings rules in OAR chapter 411, division 004.

(e) A provider must ~~discuss~~review and provide a copy of the house rules to each individual, and as applicable the legal representative of the individual, at the time of entry and annually or as changes occur. The ~~provider~~reviews must ~~document in the file for~~be documented by having the individual ~~that~~, or as applicable the legal representative of the individual, sign and date a copy of the house rules ~~was provided.(f)~~. A copy of the signed and dated house rules must be ~~posted~~maintained in ~~a conspicuous location in the AFH-DD that is accessible to individuals and visitors~~the record for the individual.

(7) RESIDENCY AGREEMENTS. The provider must maintain a Residency Agreement with all individuals as described in OAR 411-360-0055, and if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.

(~~6~~8) UNUSUAL INCIDENTS. A written report of all unusual incidents relating to an individual must be sent to the CDDP within five business days of the incident. The report must include how and when the incident occurred, who was involved, what action was taken by the provider or

caregiver, the outcome to the individual, and what action is being taken to prevent the reoccurrence of the incident.

(~~7~~9) GENERAL INFORMATION. The provider must maintain all other information or correspondence pertaining to the individual.

(~~8~~10) MONTHLY PROGRESS NOTES. The provider must maintain and keep current monthly progress notes for each individual residing in the AFH-DD that include, at a minimum, the progress of the ISP supports, any medical, behavioral, or safety issues, or any other events that are significant to the individual.

(~~9~~11) BILL OF RIGHTS FOR INDIVIDUALS.

(a) As stated in ORS 443.739, each individual residing in an AFH-DD has the right to:

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

(B) Be informed of all rights and all house rules.

(C) Be encouraged and assisted to exercise legal rights, including the right to vote.

(D) Be informed of his or her medical condition and the right to consent to or refuse treatment.

(E) Receive appropriate care and services, and prompt medical care as needed.

(F) A safe and secure environment.

(G) Be free from mental and physical abuse.

(H) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner.

(I) Complete privacy when receiving treatment or personal care.

(J) Associate and communicate privately with any person the individual chooses.

(K) Send and receive personal mail unopened.

(L) Participate in activities of social, religious, and community groups.

(M) Have medical and personal information kept confidential.

(N) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(O) Manage the individual's own money and financial affairs unless legally restricted.

(P) Be free from financial exploitation. The provider may not charge or ask for application fees or nonrefundable deposits and may not solicit, accept, or receive money or property from an individual other than the amount agreed to for services.

(Q) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home.

(R) Not to be transferred or moved out of the AFH-DD without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge an individual only for medical reasons including a medical emergency described in ORS 443.738(11)(b), or for the welfare of the individual or other individuals residing in the AFH-DD, or for nonpayment.

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

(T) Make suggestions and complaints without fear of retaliation.

(U) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order.

(b) The provider must guarantee these rights and help individuals exercise them.

(c) The provider shall post a copy of the Bill of Rights in the entry or other equally prominent place in the AFH-DD. The Bill of Rights must include the name and phone number of the office to call in order to report a complaint.

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

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

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

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

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

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

~~(B) Be free from abuse and neglect;~~

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

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

~~(E) Have adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service, and medical professionals;~~

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

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

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

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

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

~~(K) Have a safe and secure environment;~~

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

~~(M) Voice grievance without fear of retaliation;~~

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

~~(O) Have freedom from mechanical restraint, except as approved by the Department;~~

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

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

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

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

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

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

(f) In addition to the rights described in subsection (1)(a) of this section, individuals receiving home and community-based services in residential and non-residential home and community-based settings have the right to home and community-based settings with the qualities described in OAR 411-004-0020(1).

(g) In addition to the rights described in subsections (1)(a) of this section, individuals receiving home and community-based services in provider owned, controlled, or operated residential settings have the right to provider owned, controlled, or operated residential settings with the qualities described in OAR 411-004-0020(2).

(~~10~~12) AFH-DD records must be kept current and maintained by the provider and be available for inspection upon request.

(~~11~~13) EMPLOYMENT RECORDS. AFH-DD records must include proof that the provider, resident manager, and any other caregivers have met the minimum qualifications as required by OAR 411-360-0110. The following documentation must be included in the AFH-DD record and made available for review upon request:

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

(b) Proof that the provider has the approval from the Department for each subject individual, as defined in OAR 411-360-0020, to have contact with older adults, adults with disabilities, or adults with intellectual or developmental disabilities as a result of a background check as defined in OAR 407-007-0210;

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

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

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

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

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

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

411-360-0180 General Practices

The provider must:

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

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

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

(4) In the ~~provider's~~ absence of the provider, have a substitute caregiver on the premises that is capable of providing care and services as required by the age and condition of the individuals. An AFH-DD service recipient may not be a substitute caregiver. For provider absences beyond 72 hours, the CDDP must be notified of the name of the substitute caregiver and the plan of operation in the ~~provider's~~ absence of the provider;

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

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

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

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

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

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

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

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

(13) Immediately notify the appropriate ISP team members (in particular the services coordinator and ~~an individual's~~the legal representative) of any unusual incidents that include the following:

(a) Any significant change in medical status;

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

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

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

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

(f) The individual dies.

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

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

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

411-360-0190 Standards for Entry, Transfer~~s~~, ~~Relief Care, Crisis Placements~~Community Living Supports, Exit, and Closure~~s~~

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

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

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

(A) Be an Oregon resident;

(B) Be receiving a Medicaid Title XIX (OHP) benefit package through OSIPM or OCCS medical program~~Be eligible for OHP Plus~~;

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

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

(E) Be an individual who is not receiving other Department-funded in-home or other funded comprehensive residential services.

(b) Individuals receiving Medicaid OHP ~~Plus under OAR 410-200~~under OCCS medical coverage for services in a nonstandard living arrangement as defined in OAR 461-001-0000 are subject to the requirements in the same manner as if they were requesting these services under OSIPM, including the rules regarding:

(A) The transfer of assets as set forth in OAR 461-140-0210 to 461-140-0300; and

(B) The equity value of a home which exceeds the limits as set forth in OAR 461-145-0220.

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

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

~~(B) Be referred by a CDDP or Brokerage; and~~

~~(C) Not be receiving services in a 24-hour residential setting as described in OAR chapter 411, division 325 or a supported living setting as described in OAR chapter 411, division 328.~~

~~(c) TRANSFER OF ASSETS.~~

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

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

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

~~(iii) A loan evaluated according to OAR 461-145-0330; or~~

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

~~(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.~~

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

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

(b) Be placed with the agreement of the CDDP if the individual is either private pay or not eligible for developmental disability services.

(4) ~~DOCUMENTATION UPON~~ ENTRY.

(a) ENTRY MEETING. A provider must participate in an entry meeting prior to the individual moving in to the home.

(~~a~~b) At the time of a referral from the CDDP, a provider must ~~be given~~demonstrate efforts to acquire the following individual information from the referring CDDP:

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

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

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

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

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

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

(v) A record of major illnesses and hospitalizations.

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

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

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

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

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

~~(5) ENTRY MEETING. An ISP team meeting must be conducted prior to an individual entering an AFH-DD. The findings of the ISP team meeting must be recorded in the file for the individual and include, at a minimum:~~

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

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

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

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

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

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

(5~~6~~) The provider retains the right to deny the entry of any individual if the provider feels the support needs of the individual may not be met by the provider or for any other reason specifically prohibited by these rules.

(6~~7~~) An AFH-DD may not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the Department.

(7~~8~~) TRANSFERS.

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

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

(B) Failure to make payment for care and services;

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

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

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

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

(89) ~~RELIEF CARE~~ COMMUNITY LIVING SUPPORTS.

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

~~(A) Approved by the Department;~~

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

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

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

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

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

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

(i) The name of the physician or health care provider of the individual and the phone number for the physician or health care provider;

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

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

(iv) List of supports related to health supports;

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

(vi) List of supports related to challenging behaviors.

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

the fire evacuation procedures with the individual and document the review.

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

~~(10) CRISIS SERVICES.~~

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

~~(A) Be referred by the CDDP or Department;~~

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

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

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

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

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

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

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

(9~~11~~) IMMEDIATE EXIT.

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

(A) The AFH-DD provider was not notified prior to the entry of the individual to the AFH-DD that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

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

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

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

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

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

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

(d) Prior to the move, the AFH-DD licensee must orally review the notice and the right to object with the individual, or as applicable the legal representative of the individual, and determine if a hearing is requested. A request for hearing does not delay the exit. The AFH-DD must immediately telephone the Central Office of the Department when a hearing is requested. The hearing must be held within five business days of the exit of the individual. An informal conference may not be held prior to the hearing.

(10~~12~~) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers as described in section (~~8~~7)(a) of this rule or for an immediate exit as described in section (~~11~~9) of this rule.

(b) The provider must give at least 30 days written notice to an individual, the services coordinator, and the Department before termination of residency, unless an immediate exit as described in section (~~11~~9) of this rule or where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual requests a hearing to appeal an exit from an AFH-DD, the individual must receive the same services until the appeal is resolved. This does not apply to an immediate exit as described in section (~~11~~9) of this rule.

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

(~~13~~11) EXIT MEETING. ~~An ISP team~~A provider must ~~meet~~ participate in an exit meeting before any decision to exit is made~~. Findings of such a meeting must be recorded in~~ if required by the ~~file for an individual and include, at a minimum:~~case management entity.

~~(a) The name of the individual considered for exit;~~

~~(b) The date of the exit meeting;~~

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

~~(d) Documentation of the circumstances leading to the proposed exit;~~

~~(e) Documentation of the discussion of strategies to prevent the exit of the individual from the AFH-DD (unless the individual or the legal representative of the individual is requesting the exit or the individual must exit immediately as described in section (11) of this rule);~~

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

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

~~(14) WAIVER OF EXIT MEETING. Requirements for an exit meeting may be waived if an individual is immediately removed from the AFH-DD under the following conditions:~~

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

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

(~~15~~12) CLOSURE. Providers must notify the Department and CDDP in writing prior to announcing a voluntary closure of the AFH-DD to individuals and the legal representatives of the individuals.

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

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

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

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

411-360-0200 Adjustment, Suspension, or Termination of Payment

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

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

(b) Upon finding that the provider is failing to deliver any care or service as agreed to in an individual's ISP or Service Agreement;

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

(d) An individual'sThe care and service needs of an individual change;

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

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

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

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

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

411-360-0260 Civil Penalties

(1) A civil penalty of not less than $100 and not more than $250 per violation, except as otherwise provided in this rule, is imposed on a licensee for a general violation of these rules.

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

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

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

(5) A civil penalty of not less than $250 and not more than $500, unless otherwise required by law, is imposed on a licensee who admits knowing that ~~an individual's~~the care or service needs of an individual exceed the

license classification of the AFH-DD if the admission places the individual or other individuals at grave risk of harm.

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

(7) If the Department conducts an abuse investigation and the substantiated abuse resulted in the death, serious injury, rape, or sexual abuse of an individual, a civil penalty of not less than $2,500 is imposed for each violation.

(a) To impose the civil penalty in section (7) of this rule, the Department must establish that:

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

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

(C) The person with the substantiated finding of abuse had a duty of care and services toward the individual.

(b) For the purpose of the civil penalty in section (7) of this rule, the following definitions apply:

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

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

(C) "Sexual abuse" means any form of nonconsensual sexual contact including, but not limited to, unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate

parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

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

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

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

(b) The number of individuals exceeds the licensed capacity for the AFH-DD;

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

(d) The AFH-DD is unable to provide an adequate level of care and services to support individuals in the AFH-DD;

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

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

(g) The licensee fails to obtain an approved background check from the Department on a subject individual as defined in OAR 411-360-0020 prior to the subject individual operating, working, training in, or residing in an AFH-DD;

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

(i) Violations other than those involving the health, safety, or welfare of an individual if the licensee fails to correct the violation as required when a reasonable timeframe for correction was given.

(9) In imposing a civil penalty pursuant to this rule, except for a civil penalty imposed pursuant to section (7) of this rule, the following factors are considered by the Department:

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

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

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

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, and welfare of the individuals.

(10) The notice of civil penalty is delivered in person or sent by registered or certified mail and includes:

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

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the civil penalty or penalties imposed; and

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

(11) The licensee has10 calendar days after the receipt of the notice of civil penalty in which to make a written application for a contested case hearing

before the Department. A final order by default is issued by the Department if a written request for a contested case hearing is not timely received.

(12) All contested case hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

(13) Except as may be prohibited by state law, a civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Director of the Department considers proper and consistent with individual health and safety.

(14) If a final order is not appealed, the amount of the civil penalty is payable within 10 days after the final order is entered. If the final order is appealed and is sustained, the amount of the civil penalty is payable within 10 days after the court decision. The final order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with provisions of ORS chapter 18. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(15) A violation of any general order or final order pertaining to an AFH-DD issued by the Department is subject to a civil penalty in the amount of not less than $5 and not more than $500 for each and every violation.

(16) Judicial review of civil penalties imposed under ORS 441.710 is provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(17) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are to be paid into the Quality Care Fund.

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