



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

06 RM 053

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Re: Oregon Adult Foster Home Program

QUESTIONS

1. How does the Oregon Adult Foster Home program operate?
2. Is the program funded through Medicaid or are private funds involved?
3. What, if any, legal requirements are imposed by Oregon for operation of the Adult Foster Care Program?

ANSWERS

1. The Oregon Adult Foster Home program is designed to offer an alternative to nursing homes and other assisted care facilities by providing personal and health care to individuals in private residences. Licensed providers may accommodate up to five adult foster home residents in their home or facility and provide a variety of services, depending on need. Adult foster homes are often more affordable than other assisted care facilities and the homelike setting and increased resident independence may appeal to some members of the assisted living population, according to program documents.

Oregon currently has around 1,700 licensed adult foster homes each of which could accommodate a maximum of 5 adult foster home residents at any one time. According to Oregon Adult Foster Home program staff, adult foster homes have an average occupancy rate of around 85 percent. The Oregon Adult Foster Home program does not have complete figures on placements. By LSO calculation, the number of residents in adult foster homes may be, at a maximum, 7,225, assuming 5 residents per facility and an 85 percent occupancy rate. In reality, the number of residents is likely less because not all facilities may accommodate 5 residents and there is a high fluctuation of residents moving in and out of adult foster homes.

2. The Adult Foster Home program is funded mainly through personal (or private) funding though residents who qualify for Medicaid may receive Medicaid assistance. Approximately 67 percent of all residents rely on private funds and 33 percent of residents are Medicaid eligible. For Medicaid eligible residents, the program operates through a Medicaid waiver. All adult foster home residents who are not receiving Medicaid funding must have a private service contract with the adult foster home provider. Adult foster home providers are not required to accept Medicaid assisted individuals into their adult foster home.

For private contracts, providers' charges are based on the care needs of the individual, bedroom accommodations, other specified services, as well as location, setting, and other amenities. Adult foster home residents who qualify for Medicaid are required to pay for room and board but the payments for care needs and services are covered by Medicaid, in whole or in part, based on the individual's ability to pay, which is determined by the state of Oregon. The provider is paid a base amount for each Medicaid eligible resident with additional payments depending on the level of care. Medicaid pays the difference between the

total amount to be paid and the resident's ability to pay amount. (See Attachment A for a copy of the Medicaid resident monthly rates. The adult foster home rate is in the Community Based Care Rates section under the title "RCF & Non-Relative Adult Foster Homes." Note: There is also an adult foster home program for relatives.)

3. The Oregon Department of Human Services, Division of Seniors and People with Disabilities writes the rules and regulations regarding adult foster homes, but the actual licensing is done from local offices. Adult foster home providers must: (1) pass a criminal record check; (2) complete a basic training course and pass an exam; (3) be physically and mentally able to provide care; (4) and provide care in a home that meets structural and safety requirements. An adult foster home license is valid for one year, and then must be renewed. (See Attachment B for a copy of the Oregon Statutes related to adult foster homes.)

Specific and detailed standards are applied to all licensing, provider qualifications, facility standards (sanitation, bathrooms, bedrooms, meals, telephone, safety, construction, etc.), care and services, inspections, complaints, violations, administrative sanctions, and license revocation or non-renewal. Details of these standards can be found in the Oregon Administrative Rules on Adult Foster Homes, included as Attachment C. All providers are required to complete 12 hours of continuing education annually, which is approved by the Oregon Department of Human Services, for renewal of their adult foster home license.

There are three adult foster care license classifications depending on the qualifications of the applicant. A Class I license is for providers and resident managers that complete the basic training requirements outlined in the Adult Foster Home Rules, which are generically described above. A Class II license includes the same basic training requirements as a Class I license, but the applicant must also have the equivalent of two years of full time experience providing direct care to persons who are elderly or physically disabled. A Class III license includes the same basic training requirements as the first two classes, but requires the applicant to be a health care professional, or have the equivalent of three years of full time experience providing direct care to persons who are elderly and physically disabled and dependent in four or more activities of daily living (eating, dressing, toileting, mobility, etc.) and can provide at least two satisfactory references from medical professionals. The classification level determines the level of adult foster home resident dependence the provider may care for. Put differently, a Class I provider may provide care to relatively independent adult foster home residents while a Class III provider may accommodate much more dependent adult foster home residents, with Class II providers being in between.

Several different categories of adult foster home providers exist. Providers, typically called owner/operators and resident managers, generally require the same training but a provider typically owns the facility while a resident manager may only manage a facility for an owner/operator. The other main category is a substitute caregiver, who provides assistance and care to residents under the direction of an owner/operator or resident manager. The qualifications and training of substitute caregivers is determined and provided by owner/operators or resident managers, though a background check is conducted by the state office. A substitute caregiver allows the owner/operator or resident manager time off and assists with the care of adult foster home residents.

If you have any further questions, do not hesitate to contact me at 777-7881.

ATTACHMENT A

RATE SCHEDULE (Revised July 1, 2006)

Rates apply to Home and Community-Based Care and Nursing Facility Services provided by Seniors and People with Disabilities.

Aged & Physically Disabled and Developmental Disabilities/Mental Health		
Room and Board	SSI ONLY PIF	SSI/SSB PIF
AB \$ 468.70	\$ 161.00 *	\$ 173.00
OAA 468.70	136.00	154.30
AD 468.70	136.00	154.30

* Includes \$25.00 for transportation

Community-Based Care Rates

	RCF & Non-Relative Adult Foster Homes	Relative Adult Foster Homes
Base	\$ 949/Month	\$ 725/Month
Base plus 1 add-on	1,181	957
Base plus 2 add-on's	1,413	1,189
Base plus 3 add-on's	1,645	1,421

Assisted Living Facilities	
Level 1	\$ 712/Month
Level 2	942
Level 3	1,245
Level 4	1,628
Level 5	2,010

Nursing Facility Daily Rate	
Basic Rate	\$ 173.14
Complex Medical Rate	242.40
Pediatric Rate	274.19

**Maximum Community-Based Care Rate
\$3,723.00**

Providence Elder Place
Capitated Rate: \$2,254.99/Month

Home Care Workers	Hourly	Live-in
24-hour availability	n/a	\$4.05
Self-management tasks	\$9.53	4.05
Activities of Daily Living		
Minimal Assistance	9.53	9.53
Substantial Assistance	9.53	9.53
Full Assistance	9.76	9.76
Local office approval amount: \$2,403 per month		

Mileage 40 cents per mile, non-medical
 Prof. Ser. Contract RN \$28.44 per hour
 HK Shelter \$59.09/month, \$1.94/day
 Home Delivered Meals \$6.13 per meal

<u>Adult Day Care</u>	<u>Ceiling Rate</u>
Half Day (5 hours or less)	\$ 30.65
Full Day	\$ 60.00

ADULT FOSTER HOMES

ATTACHMENT B**443.705 Definitions for ORS 443.705 to 443.825.** As used in ORS 443.705 to 443.825:

- (1) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.
- (2) "Department" means the Department of Human Services.
- (3) "Director" means the Director of Human Services.
- (4) "Licensed adult foster home" means a home which has been investigated and approved by the department. This includes an on-site inspection of the facility.
- (5) "Provider" means any person operating an adult foster home and includes a resident manager. "Provider" does not include the owner or lessor of the building in which the adult foster home is located or the owner or lessor of the land on which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.
- (6) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation.
- (7) "Substitute caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the department in the absence of the provider or resident manager. [1983 c.629 §1; 1985 c.663 §1; 1987 c.430 §1; 1991 c.960 §1; 1995 c.180 §1; 1995 c.667 §8; 2001 c.900 §187]

443.715 Exclusions from definition of "adult foster home." For purposes of ORS 443.705 to 443.825, "adult foster home" does not include:

- (1) Any house, institution, hotel, or other similar place that supplies board and room only, or room only, or board only, if no resident thereof requires any element of care.
- (2) Any specialized living situation for physically disabled persons where the Department of Human Services provides payment for personal care services other than to an adult foster home provider.
- (3) Any residential facility, as defined in ORS 443.400, licensed and funded by the department.
- (4) Any residential treatment home, as defined in ORS 443.400, licensed and funded by the department. [1983 c.629 §2; 1985 c.663 §2; 1989 c.224 §103; 1991 c.801 §5; 2001 c.900 §188]

443.720 Findings of Legislative Assembly. (1) The Legislative Assembly finds that:

- (a) Adult foster homes provide needed care and services to thousands of elderly and disabled Oregonians who might otherwise be institutionalized;
 - (b) The protection of the health, safety and well-being of the residents of adult foster homes is an important function of the Department of Human Services; and
 - (c) Consistent interpretation, application and enforcement of regulatory standards is necessary and desirable for the protection of adult foster home residents.
- (2) It is legislative intent that:
- (a) The department provide training and guidelines for employees assigned to licensing and enforcement to encourage consistency; and
 - (b) The department take vigorous action to ensure that inspections and investigations are carried out as required by law. [1995 c.667 §7]

443.725 License required; resident manager required; when other resident staff required. (1) Every provider of adult foster care shall be licensed with the Department of Human Services before opening or operating an adult foster home caring for adult residents.

- (2) A provider must live in the home that is to be licensed or hire a resident manager to live in the home.
- (3) There must be a provider, resident manager or substitute caregiver on duty 24 hours per day in an adult foster home under the jurisdiction of the Department of Human Services. [1983 c.629 §3; 1985 c.663 §3; 1991 c.960 §4; 1995 c.667 §9]

443.730 Information regarding substitute caregivers required; standards; educational requirements.

- (1) The provider shall furnish the names, addresses and telephone numbers of the substitute caregivers

employed or used by the provider to the Department of Human Services upon the request of the department.

(2) The department shall require the provider to furnish information describing the planned operation of the adult foster home, including the use of substitute caregivers and other staff, as part of the license application.

(3) The provider shall not allow a substitute caregiver or other caregiver to provide care to a resident unless the following standards are met and documented:

(a) The department has completed a criminal records check for the State of Oregon and has completed or initiated a national criminal records check, if appropriate under ORS 443.735 (3), for the person. The department shall adopt rules to provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

(b) The substitute caregiver has successfully completed the training required by the department.

(c) The caregiver is able to understand and communicate in oral and written English.

(d) The provider has oriented the caregiver to the residents in the adult foster home, their care needs and the physical characteristics of the home.

(e) The provider has trained the caregiver to meet the routine and emergency needs of the residents.

(4) The department shall establish educational requirements for substitute caregivers and other caregivers designed to impart the practical knowledge and skills necessary to maintain the health, safety and welfare of residents. The training shall include a test established by the department to be completed by the caregiver. The test shall be completed by the caregiver without the help of any other person. [1995 c.667 §18]

Note: 443.730 and 443.740 were added to and made a part of 443.705 to 443.825 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

443.735 Issuance of license; fee; standards; renewal; burden of proof. (1) Applications for a license to maintain and operate an adult foster home shall be made on forms provided by the Department of Human Services. Each application shall be accompanied by a fee of \$20 per bed requested for licensing.

(2) Upon receipt of an application and fee, the department shall conduct an investigation.

(3) The department shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the department;

(b) The department has completed an inspection of the adult foster home;

(c) The department has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check shall be conducted in accordance with rules adopted under ORS 181.534;

(d) The department has checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678; and

(e) The applicant has demonstrated to the department the financial ability and resources necessary to operate the adult foster home. The department shall adopt rules as the department deems appropriate that establish the financial standards an applicant must meet to qualify for issuance of a license and that protect financial information from public disclosure. The demonstration of financial ability under this paragraph shall include, but need not be limited to, providing the department with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the department regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the department may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(4) The department may not renew a license under this section unless:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the department;

(b) The department has completed an inspection of the adult foster home;

(c) The department has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check under this paragraph shall be conducted in accordance with rules adopted under ORS 181.534; and

(d) The department has checked the record of sanctions available, including the list of nursing assistants

who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678.

(5)(a) In seeking an initial license and renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

(b) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the department to establish noncompliance with ORS 443.705 to 443.825 and the rules of the department.

(6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of the department, are substantially related to the qualifications, functions or duties of a provider, resident manager, substitute caregiver or other household member of an adult foster home shall be prohibited from operating, working in or residing in an adult foster home.

(b) The department shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from the convictions and types of abuse that do not permanently prohibit the person from operating, working in or living in an adult foster home.

(c) A provider may not hire, retain in employment or allow to live in an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse.

(7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner revoked. Each license shall state the name of the resident manager of the adult foster home, the names of all providers who own the adult foster home, the address of the premises to which the license applies, the maximum number of residents and the classification of the home. If, during the period covered by the license, a resident manager changes, the provider must within 15 days request modification of the license. The request must be accompanied by a fee of \$10.

(8) No license under ORS 443.725 is transferable or applicable to any location, persons operating the adult foster home or the person owning the adult foster home other than that indicated on the application for licensing.

(9) The department shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing licensed home or homes and has demonstrated the ability to provide care to the residents of those homes that is adequate and substantially free from abuse and neglect.

(10) All moneys collected under ORS 443.725 to 443.780 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Services.

(11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the department may issue a 60-day provisional license to a qualified person if the department determines that an emergency situation exists after being notified that the licensed provider of an adult foster home is no longer overseeing operation of the adult foster home. [1983 c.629 §4; 1985 c.663 §4; 1991 c.960 §5; 1995 c.180 §2; 1995 c.667 §10; 1999 c.205 §1; 2001 c.900 §189; 2005 c.730 §24]

443.738 Educational standards for providers, managers and caregivers; rules; exception; duties of providers. (1) Except as provided in subsection (3) of this section, all providers, resident managers and substitute caregivers for adult foster homes shall satisfactorily meet all educational requirements established by the Department of Human Services. After consultation with representatives of providers, educators, residents' advocates and the Long Term Care Ombudsman, the department shall adopt by rule standards governing the educational requirements. The rules shall require that a person may not provide care to any resident prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety and welfare of the resident. Each provider shall document compliance with the educational requirements for persons subject to the requirements.

(2) The rules required under subsection (1) of this section shall include but need not be limited to the following:

(a) A requirement that, before being licensed, a provider successfully completes training that satisfies a

defined curriculum, including demonstrations and practice in physical caregiving, screening for care and service needs, appropriate behavior towards residents with physical, cognitive and mental disabilities and issues related to architectural accessibility;

(b) A requirement that a provider pass a test before being licensed or becoming a resident manager. The test shall evaluate the ability to understand and respond appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, residents' preferences and conflicts; and

(c) A requirement that, after being licensed, a provider or resident manager successfully completes continuing education as described in ORS 443.742.

(3) After consultation with representatives of providers, educators, residents' advocates and the Long Term Care Ombudsman, the department may adopt by rule exceptions to the training requirements of subsections (1) and (2) of this section for persons who are appropriately licensed medical care professionals in Oregon or who possess sufficient education, training or experience to warrant an exception. The department may not make any exceptions to the testing requirements.

(4) The department may permit a person who has not completed the training or passed the test required in subsection (2)(a) and (b) of this section to act as a resident manager until the training and testing are completed or for 60 days, whichever is shorter, if the department determines that an unexpected and urgent staffing need exists. The licensed provider must notify the department of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the person has met the requirements for a substitute caregiver for the adult foster home and that the provider will provide adequate supervision.

(5) Providers shall serve three nutritionally balanced meals to residents each day. A menu for the meals for the coming week shall be prepared and posted weekly.

(6) Providers shall make available at least six hours of activities each week which are of interest to the residents, not including television or movies. The department shall make information about resources for activities available to providers upon request. Providers or substitute caregivers shall be directly involved with residents on a daily basis.

(7) Providers shall give at least 30 days' written notice to the residents, and to the legal representative, guardian or conservator of any resident, before selling, leasing or transferring the adult foster home business or the real property on which the adult foster home is located. Providers shall inform real estate licensees, prospective buyers, lessees and transferees in all written communications that the license to operate an adult foster home is not transferable and shall refer them to the department for information about licensing.

(8) If a resident dies or leaves an adult foster home for medical reasons and indicates in writing the intent to not return, the provider may not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the resident has left the adult foster home. The provider has an affirmative duty to take reasonable actions to mitigate the damages by accepting a new resident. However, if a resident dies or leaves an adult foster home due to neglect or abuse by the provider or due to conditions of imminent danger to life, health or safety, the provider may not charge the resident beyond the resident's last day in the home. The provider shall refund any advance payments within 30 days after the resident dies or leaves the adult foster home.

(9) Chemical and physical restraints may be used only after considering all other alternatives and only when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Restraints may not be used for discipline of a resident or for the convenience of the adult foster home. Restraints may be used only as follows:

(a) Psychoactive medications may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.

(b) Physical restraints may be used only pursuant to a qualified practitioner's order that specifies the type, circumstances and duration of use in accordance with rules adopted by the department. The rules adopted by the department relating to physical restraints shall include standards for use and training.

(10) If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the provider shall demonstrate how regular positive contact will occur. Providers may not place residents who are unable to walk without assistance in a basement, split-level, second story or other area that does not have an exit at ground level. Nonambulatory residents shall be given first floor rooms.

(11)(a) The provider may not transfer or discharge a resident from an adult foster home unless the transfer

or discharge is necessary for medical reasons, for the welfare of the resident or for the welfare of other residents, or due to nonpayment. In such cases, the provider shall give the resident written notice as soon as possible under the circumstances.

(b) The provider shall give the resident and the resident's legal representative, guardian or conservator written notice at least 30 days prior to the proposed transfer or discharge, except in a medical emergency including but not limited to a resident's experiencing an increase in level of care needs or engaging in behavior that poses an imminent danger to self or others. In such cases, the provider shall give the resident written notice as soon as possible under the circumstances.

(c) The resident has the right to an administrative hearing prior to an involuntary transfer or discharge. If the resident is being transferred or discharged for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the transfer or discharge. The provider shall hold a space available for the resident pending receipt of an administrative order. ORS 441.605 (4) and the rules thereunder governing transfer notices and hearings for residents of long term care facilities shall apply to adult foster homes.

(12) The provider may not include any illegal or unenforceable provision in a contract with a resident and may not ask or require a resident to waive any of the resident's rights.

(13) Any lessor of a building in which an adult foster home is located may not interfere with the admission, discharge or transfer of any resident in the adult foster home unless the lessor is a provider or coprovider on the license. [1991 c.960 §3; 1995 c.180 §3; 1995 c.667 §11; 2001 c.300 §70; 2003 c.14 §260; 2005 c.226 §1]

443.739 Rights of residents. Residents of adult foster homes have the following rights. Providers shall guarantee these rights and help residents exercise them. The provider shall post a copy of the Residents' Bill of Rights in the entry or other equally prominent place in the adult foster home. The Residents' Bill of Rights states that each resident of an adult foster home has the right to:

- (1) Be treated as an adult, with respect and dignity.
- (2) Be informed of all resident rights and all house rules.
- (3) Be encouraged and assisted to exercise legal rights, including the right to vote.
- (4) Be informed of the resident's medical condition and the right to consent to or refuse treatment.
- (5) Receive appropriate care and services, and prompt medical care as needed.
- (6) A safe and secure environment.
- (7) Be free from mental and physical abuse.
- (8) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner.
- (9) Complete privacy when receiving treatment or personal care.
- (10) Associate and communicate privately with any person the resident chooses.
- (11) Send and receive personal mail unopened.
- (12) Participate in activities of social, religious and community groups.
- (13) Have medical and personal information kept confidential.
- (14) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.
- (15) Manage the resident's own money and financial affairs unless legally restricted.
- (16) Be free from financial exploitation. The provider shall not charge or ask for application fees or nonrefundable deposits and shall not solicit, accept or receive money or property from a resident other than the amount agreed to for services.
- (17) 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.
- (18) Not to be transferred or moved out of the adult foster home without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge a resident only for medical reasons including a medical emergency described in ORS 443.738 (11)(b), or for the welfare of the resident or other residents, or for nonpayment.
- (19) Be free of discrimination in regard to race, color, national origin, sex or religion.
- (20) Make suggestions and complaints without fear of retaliation. [1991 c.960 §11; 1995 c.667 §12; 2003 c.14 §261]

443.740 Information on licensed adult foster homes; availability; content. (1) The Department of Human Services shall maintain current information on all licensed adult foster homes and shall make that information available to prospective residents and other interested members of the public at local department offices or area agencies on aging licensing offices throughout the state.

(2) The information shall include:

(a) The location of the adult foster home;

(b) A brief description of the physical characteristics of the home;

(c) The name and mailing address of the provider;

(d) The license classification of the home and the date the provider was first licensed to operate that home;

(e) The date of the last inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;

(f) Copies of all complaint investigations involving the home, together with the findings of the department, the actions taken by the department and the outcome of the complaint investigation;

(g) An explanation of the terms used in the investigation report;

(h) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and

(i) Whether care is provided primarily by the licensed provider, a resident manager or other arrangement.

(3) Any list of adult foster homes maintained or distributed by the department or a local licensing office shall include notification to the reader of the availability of public records concerning the homes. [1995 c.667 §17; 1997 c.741 §1; 2001 c.447 §3; 2003 c.14 §262]

Note: See note under 443.730.

443.742 Annual continuing education requirements; rules. (1) The Department of Human Services shall require all providers and resident managers to complete annually 12 hours of continuing education approved by the department, related to:

(a) Care of the elderly and persons with disabilities; and

(b) Business operations of adult foster homes.

(2) Providers and resident managers may not fulfill the continuing education requirements described in subsection (1) of this section with more than four hours of continuing education related to the business operations of adult foster homes.

(3) The department may, by rule, establish continuing education requirements for caregivers who are not providers. [2005 c.226 §3]

Note: 443.742 was added to and made a part of 443.705 to 443.825 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

443.745 Denial, suspension or revocation; conditional license; review. (1) A license may be denied, suspended, revoked or have conditions attached upon a finding by the Department of Human Services of any of the following:

(a) There exists a threat to the health, safety or welfare of any resident.

(b) There is reliable evidence of abuse, neglect or exploitation of any resident.

(c) The facility is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted thereunder.

(d) Such other circumstances as may be established by the department by rule.

(2) Conditions attached to a license shall be effective upon order of the Director of Human Services.

(3) Suspension or revocation of a license authorized by this section for any reason other than abuse, neglect or exploitation of the resident shall be preceded by a hearing under ORS chapter 183 if requested by the provider.

(4) If the license is suspended or revoked for the reason of abuse, neglect or exploitation of a resident, the provider may request a review in writing within 10 days after notice of the suspension or revocation. If a request is made, the director shall review all material relating to the allegation of abuse, neglect or exploitation and to the suspension or revocation within 10 days of the request. The director shall determine, based on review of the

material, whether or not to sustain the decision to suspend or revoke. If the director determines not to sustain the decision, the license shall be restored immediately. The decision of the director is subject to judicial review as a contested case under ORS chapter 183.

(5) In the event the license to maintain an adult foster home is ordered suspended or revoked, the department may withhold service payments until the defective situation is corrected. For protection of residents, the department may arrange for them to move.

(6) A provider whose license has been revoked or whose application has been denied shall not be permitted to make a new application for one year from the date the revocation or denial is final, or for a longer period specified in the order revoking or denying the license.

(7) The department shall deny the application or revoke the license of any person who falsely represents that the person has not been convicted of a crime. [1983 c.629 §5; 1985 c.663 §5; 1987 c.431 §1; 1995 c.667 §13]

443.755 Entry and inspection of homes; access to residents; inspection report; fire inspection. (1) The Department of Human Services staff shall be permitted access to enter and inspect all licensed adult foster homes. The department shall be permitted access to enter and inspect any unlicensed adult foster home upon the receipt of an oral or written complaint, or in case the department itself has cause to believe that an adult foster home is operating without a license or there exists a threat to the health, safety or welfare of any resident. The department staff shall be permitted access to the residents of adult foster homes in order to interview residents privately and to inspect residents' records.

(2) The state or local fire inspectors shall be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the department.

(3)(a) The Department of Human Services shall provide to each licensed adult foster home in the state in writing in clear concise language readily comprehensible by the average person a copy of the inspection report of the most recent inspection of that home conducted by the department.

(b) The provider shall post the inspection report in the entry or equally prominent place and shall, upon request, provide a copy of the information to each resident of, or person applying for admission to, the home, or the legal representative, guardian or conservator of the resident or applicant. [1983 c.629 §6; 1985 c.663 §6; 1991 c.960 §6]

443.760 Application of single family dwelling code requirements to home; rules; evacuation requirement; lease rate. (1) Adult foster homes that are certified as residential homes as defined in ORS 197.660 shall meet all state and local building, sanitation, utility and fire code requirements applicable to single family dwellings. However, by rule, the Department of Human Services may adopt more stringent standards upon a finding that there is a significant health or safety threat to residents that necessitates a standard not imposed on other single family dwellings.

(2) In adopting more stringent standards, the department shall consult with the Department of Consumer and Business Services and the office of the State Fire Marshal to insure adequate evacuation of residents.

(3) As used in this section, "adequate evacuation" means the ability of a provider to evacuate all residents from the dwelling within three minutes.

(4) If a licensed provider rents or leases the premises where the adult foster home is located, the lessor shall charge a flat rate for the lease or rental. [1993 c.146 §1; 1995 c.180 §4]

443.765 Complaint procedure; retaliation prohibited; notice of rates and rules; liability for complaints. (1) Complaints against adult foster homes may be filed with the Department of Human Services by any person, whether or not a resident of the home. The department shall investigate complaints regarding adult foster homes and shall adopt by rule standards governing investigations pursuant to this section.

(2) The department shall prepare a notice which must be posted in a conspicuous place in each adult foster home stating the telephone number of the department and the procedure for making complaints.

(3) The department shall maintain a file of all complaints and the action taken on the complaint, indexed by the name of the owner or operator. When the department concludes the investigation of a complaint, the department shall clearly designate the outcome of the complaint investigation in the complaint file. The filed complaint forms shall protect the privacy of the complainant, the resident and the witnesses.

(4) Any person has a right to inspect and photocopy the complaint files maintained by the department.

(5)(a) The owner or operator of an adult foster home may not prohibit, discourage or use intimidation against any person to prevent the filing of a complaint with the department.

(b) If a resident, or a person acting on the resident's behalf, files a complaint with the department, the owner or operator of an adult foster home may not retaliate against the resident by:

- (A) Increasing charges;
- (B) Decreasing services, rights or privileges;
- (C) Threatening to increase charges or decrease services, rights or privileges;
- (D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or
- (E) Abusing or threatening to harass or abuse a resident in any manner.

(c) The owner or operator of an adult foster home may not retaliate against any person who files a complaint or any witness or employee of a facility interviewed about the complaint, including but not limited to retaliation by restriction of otherwise lawful access to the adult foster home or to any resident thereof, or, if an employee, to dismissal or harassment.

(6) The provider shall give all residents, upon admission, a notice of the monthly rates and the house rules.

(7) Anyone participating in good faith in the filing of a complaint pursuant to this section is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the filing or substance of the complaint. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from the complaint. A person does not act in good faith for the purposes of this subsection if the substance of the complaint is false and:

(a) The person knows that the substance of the complaint is false; or

(b) The person makes the complaint with the intent to harm the owner or operator of the adult foster home, or the adult foster home, and the person shows a reckless disregard for the truth or falsity of the substance of the complaint. [1983 c.629 §7; 1985 c.651 §3; 1991 c.960 §7; 2001 c.447 §1]

443.767 Investigation of complaint; rules. (1) When the Department of Human Services receives a complaint that alleges that a resident of a licensed adult foster home has been injured, abused or neglected, and that the resident's health or safety is in imminent danger, or that the resident has died or been hospitalized, the investigation shall begin immediately after the complaint is received. If the investigator determines that the complaint is substantiated, the department shall take appropriate corrective action immediately.

(2) When the department receives a complaint that alleges the existence of any circumstance that could result in injury, abuse or neglect of a resident of a licensed adult foster home, and that the circumstance could place the resident's health or safety in imminent danger, the department shall investigate the complaint promptly. If the investigator determines that the complaint is substantiated, the department shall take appropriate corrective action promptly.

(3) After public hearing, the department shall by rule set standards for the procedure, content and time limits for the initiation and completion of investigations of complaints. The time limits shall be as short as possible and shall vary in accordance with the severity of the circumstances alleged in the complaint. In no event shall the investigation exceed a duration of 60 days, unless there is an ongoing concurrent criminal investigation, in which case the department may take a reasonable amount of additional time in which to complete the investigation.

(4) The department shall take no longer than 60 days from the completion of the investigation report to take appropriate corrective action in the case of any complaint that the investigator determines to be substantiated.

(5)(a) The department shall mail a copy of the investigation report within seven days of the completion of the report to:

- (A) The complainant, unless the complainant requests anonymity;
- (B) The resident, and any person designated by the resident to receive information concerning the resident;
- (C) The facility; and
- (D) The Long Term Care Ombudsman.

(b) The copy of the report shall be accompanied by a notice that informs the recipient of the right to submit additional evidence.

(6) The complaint and the investigation report shall be available to the public at the local department office or the type B area agency on aging, if appropriate. When the department or type B area agency on aging concludes the investigation of a complaint, the department or type B area agency on aging shall clearly

designate the outcome of the complaint investigation and make the designation available to the public together with the complaint and the investigation report.

(7) A copy of the report shall be forwarded to the department whether or not the investigation report concludes that the complaint is substantiated. [1991 c.960 §8; 2001 c.447 §2; 2001 c.900 §190]

443.775 Rules; level of care; exception to limit on residents with nursing care needs; reports on exceptions; provider duties; enforcement; civil penalties. (1) The Department of Human Services shall adopt rules governing adult foster homes and the level of care provided in such homes, including the provision of care to more than one person with nursing care needs under specified conditions and department approval, such as are necessary to protect the health, safety or welfare of the residents and to provide for an appropriate continuum of care, but shall not be inconsistent with the residential nature of the living accommodations and the family atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

(a) An exception to the limit of one resident with nursing care needs may be granted if the provider proves to the department by clear and convincing evidence that such an exception will not jeopardize the care, health, safety or welfare of the residents and that the provider is capable of meeting the additional care needs of the new resident.

(b) The department, and the counties acting under the exemption granted pursuant to ORS 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions granted during the quarter pursuant to paragraph (a) of this subsection.

(2) The provider may not employ a resident manager who does not meet the classification standard for the adult foster home.

(3) The provider shall be able to meet the night care needs of a resident before admitting the resident. The provider shall include night care needs in the resident's care plan.

(4) The provider shall screen a prospective resident before admitting the resident. The screening shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall be given to the prospective resident or the prospective resident's representative.

(5) The department shall make rules to assure that any employee who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation.

(6) For adult foster homes in which clients reside for whom the department pays for care, including homes in which the provider and the resident are related, the department may require substantial compliance with its rules relating to standards for care of the client as a condition for paying for care.

(7) By order the Director of Human Services may delegate authority under this section to personnel other than of the department.

(8) The department may commence a suit in equity to enjoin maintenance of an adult foster home if:

(a) The home is operated without a valid license under this section; or

(b) After the license to maintain the home is ordered suspended or revoked, a reasonable time for placement of residents in other facilities has been allowed but such placement has not been accomplished.

(9) The department shall establish by rule the maximum capacity of adult foster homes, including all nonrelated and related persons receiving residential care and day care.

(10) Any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted thereunder may be subjected to the imposition of a civil penalty, to be fixed by the director by rule, not to exceed \$100 per violation, to a maximum of \$250 or, per occurrence of substantiated abuse, a maximum of \$1,000. [1983 c.629 §8; 1985 c.663 §7; 1987 c.369 §2; 1987 c.430 §2; 1987 c.431 §2; 1991 c.960 §9; 1995 c.667 §14; 2001 c.900 §191]

443.780 Exemption where county has licensing and inspection program. (1) The Director of Human Services may exempt from the license, inspection and fee provisions of ORS 443.705 to 443.825 adult foster homes in those counties where there is a county agency which provides similar programs for licensing and inspection that the director finds are equal to or superior to the requirements of ORS 443.705 to 443.825.

(2) ORS 443.775 (5) applies regardless of any exceptions granted to a county agency. [1985 c.663 §11; 1995 c.667 §19]

443.785 Admission of Medicaid recipients. The Department of Human Services may not require an adult foster home that elects to provide care for a Medicaid recipient to admit an additional Medicaid resident under a contract with the department. [1999 c.204 §2]

443.790 Authority of director to impose civil penalty; factors to be considered; rules. (1) In addition to any other liability or penalty provided by law, the Director of Human Services may impose a civil penalty on a person for any of the following:

- (a) Violation of any of the terms or conditions of a license issued under ORS 443.735.
 - (b) Violation of any rule or general order of the Department of Human Services that pertains to a facility.
 - (c) Violation of any final order of the director that pertains specifically to the facility owned or operated by the person incurring the penalty.
 - (d) Violation of ORS 443.745 or of rules required to be adopted under ORS 443.775.
- (2) The director shall impose a civil penalty of not to exceed \$500 on any adult foster home for falsifying resident or facility records or causing another to do so.
- (3) The director shall impose a civil penalty of \$250 on a provider who violates ORS 443.725 (3).
- (4) The director shall impose a civil penalty of not less than \$250 nor more than \$500 on a provider who admits a resident knowing that the resident's care needs exceed the license classification of the provider if the admission places the resident or other residents at grave risk of harm.
- (5)(a) In every case other than those involving the health, safety or welfare of a resident, the director shall prescribe a reasonable time for elimination of a violation but except as provided in paragraph (b) of this subsection shall not prescribe a period to exceed 30 days after notice of the violation.
- (b) The director may approve a reasonable amount of time in excess of 30 days if correction of the violation within 30 days is determined to be impossible.
- (6) In imposing a civil penalty, the director shall consider the following factors:
- (a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.
 - (b) Any prior violations of statutes, rules or orders pertaining to facilities.
 - (c) The economic and financial conditions of the person incurring the penalty.
 - (d) The immediacy and extent to which the violation threatens or threatened the health, safety or welfare of one or more residents.
- (7) The department shall adopt rules establishing objective criteria for the imposition and amount of civil penalties under this section. [1987 c.431 §§4,6; 1991 c.413 §6; 1991 c.960 §10; 1995 c.667 §15]

443.795 Civil penalty; notice; hearing. (1) Any civil penalty under ORS 443.790 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the Director of Human Services.

(3) The Department of Human Services shall conduct the hearing and issue the final order within 180 days after any hearing request. [1987 c.431 §5; 1991 c.734 §25; 1991 c.960 §12; 2003 c.14 §263]

443.805 [1987 c.431 §7; repealed by 1991 c.734 §122]

443.815 Judicial review of penalties. Judicial review of civil penalties imposed under ORS 443.790 shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty. [1987 c.431 §8]

443.825 Disposition of penalties recovered. All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [1987 c.431 §9]

ATTACHMENT C

DEPARTMENT OF HUMAN SERVICES SENIORS AND PEOPLE WITH DISABILITIES

OREGON ADMINISTRATIVE RULES Chapter 411, Division 050

ADULT FOSTER HOMES

411-050-0400 Definitions (Effective 03/01/2001)

For the purpose of these rules, authorized under ORS 443.705 to 443.825, the following definitions apply:

- (1) "AAA" means a Type B Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of Seniors and People with Disabilities programs. For the purpose of this rule AAAs contract with the Division to perform specific activities in relation to licensing adult foster homes including processing applications, conducting inspections and investigations, issuing licenses, establishing conditions on licenses; and making recommendations to the Division regarding adult foster home license denial, revocation, suspension, non-renewal and civil penalties.
- (2) "Abuse" means any act or absence of action inconsistent with prescribed resident care. This includes but is not limited to:
 - (a) Physical assault such as hitting, kicking, scratching, pinching, choking or pushing;
 - (b) Neglect of care, including improper administration of medication(s), failure to seek appropriate medical care, inadequate changing of beds or clothes and failure to help with personal grooming;
 - (c) Denying meals, clothes, or aids to physical functioning;
 - (d) Use of derogatory or inappropriate names, phrases, or profanity; ridicule; harassment; coercion; threats; cursing; intimidation or inappropriate sexual comments;

- (e) Sexual exploitation of residents including inappropriate physical contact between staff and residents, or failure of staff to discourage sexual advances of residents toward staff or other residents;
 - (f) Violating the rights guaranteed to the resident by the Bill of Rights in OAR 411-050-0447;
 - (g) Using psychoactive medications or physical restraints without a written order or contrary to a written order from a physician, Nurse Practitioner, or Christian Science practitioner; or to discipline or punish a resident; or for the convenience of the adult foster home;
 - (h) Financial exploitation which includes, but is not limited to, unreasonable rate increases; borrowing from or loaning money to a resident; witnessing wills in which a provider, caregiver, or any member of their families is a beneficiary; adding a provider's name to a resident's bank account or other property; inappropriately expending a resident's personal funds; commingling a resident's funds with a provider's, a caregiver's or another resident's funds; perfecting or foreclosing a lien in violation of ORS Chapter 87 or acting as a resident's guardian, conservator, trustee or attorney-in-fact (under a power of attorney). See OAR 411-050-447;
 - (i) Abandonment, including desertion or willful forsaking of a resident.
- (3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well-being including eating/nutrition, dressing, personal hygiene, mobility, toileting and behavior management.
- (a) "Independent" means the resident can perform the ADL without help;
 - (b) "Assistance" means the resident is able to help with an ADL, but cannot do it entirely alone;
 - (c) "Dependent" means the resident is unable to do any part of an ADL; it must be done entirely by someone else.
- (4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer adults who are elderly or physically disabled and are not related to the provider by blood or marriage. For the purpose of this rule, adult foster home does not include any house, institution, hotel or other similar living situation that supplies room and/or board only, if no resident thereof requires any element of care.

- (5) "Advance Directive" means the legal document signed by the resident giving instructions for health care should she/he no longer be able to give directions regarding her/his wishes. The directive gives the resident the means to continue to control her/his own health care in any circumstance.
- (6) "Applicant" means any person who completes an application for a license who will also be an owner of the business.
- (7) "Authorized Division Representative" (ADR) means an employee of the Department of Human Services, Seniors and People with Disabilities or an Area Agency on Aging who is qualified to have access to the Law Enforcement Data System (LEDS) information.
- (8) "Behavioral Interventions" means those interventions which will modify the resident's behavior or the resident's environment.
- (9) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the Statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR Chapter 851, Division 047.
- (10) "Care" means the provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules. Care also means services that encourage maximum resident independence and enhance quality of life.
- (11) "Caregiver" means any person responsible for providing care and services to residents, including the provider; the resident manager; and any temporary, substitute or supplemental staff or other person designated to provide care and services to residents.
- (12) "Care Plan" means the provider's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services will be provided. The care plan is developed at the time of admission and is reviewed and updated at least semi-annually and when the condition of the resident changes.
- (13) "Classification" means a designation of license assigned to a provider based on the provider's and resident manager's qualifications if a resident manager is employed in the home.
- (14) "Client" means a resident in an adult foster home for whom the Division pays for care

and/or for whom case management services are provided.

- (15) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a provider in exchange for room and board, care and services. Compensation does not include the voluntary sharing of expenses between or among roommates.
- (16) "Complaint" means an allegation that a provider has violated the adult foster home rules or an expression of dissatisfaction relating to the condition of the adult foster home or the resident(s).
- (17) "Condition" means a provision attached to a new or existing license which limits or restricts the scope of the license or imposes additional requirements on the licensee.
- (18) "Criminal History Clearance Rules" means OAR Chapter 411, Division 009 of SPD's Administrative Rules.
- (19) "Day Care" means care, assistance, and supervision of a person who does not stay overnight.
- (20) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.
- (21) "Department" means the State of Oregon Department of Human Services.
- (22) "Director" means the Director of the Department of Human Services or that person's designee.
- (23) "Disabled" means a person with a physical, cognitive, or emotional impairment which, for the individual, constitutes or results in a functional limitation in one or more activities of daily living.
- (24) "Division" means Seniors and People with Disabilities (SPD) of the Department of Human Services. Division also includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.
- (25) "Elderly" or "Aged" means any person age 65 or older.
- (26) "Exception" means a variance from a regulation or provision of these rules, granted in writing by the Division, upon written application by the provider.
- (27) "Exempt Area" means a county where there is a county agency which provides similar programs for licensing and inspection of adult foster homes which the Director finds

are equal to or superior to the requirements of ORS 443.705 to 443.825 and which the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules must be submitted to the Director for review and approval prior to implementation.

- (28) "Family Member", for the purposes of these rules, means husband or wife, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.
- (29) "Fit" means the Oregon criminal history check and, if required, the national criminal history check have been completed and the subject individual has been found to have no potentially disqualifying criminal history; or following evaluation of the factors identified in OAR 411-009-0060(3), the ADR determined the subject individual's history does not indicate a likelihood of behavior that could endanger the welfare of persons receiving care.
- (30) "Fitness Determination" means an evaluation by an Authorized Division Representative (ADR) of the subject individual's criminal history and any mitigating information that is provided by that subject individual.
- (31) "Home" means the physical structure in which residents live; synonymous with adult foster home.
- (32) "Home-like" means an environment which promotes the dignity, security and comfort of residents through the provision of personalized care and services which encourages independence, choice, and decision-making by the residents.
- (33) "House Policies" mean written and posted statements addressing house activities in an adult foster home.
- (34) "Legal Representative" means a person who has the legal authority to act for the resident. On matters involving care, this is a legal guardian, a health care representative under an Advance Directive, or Power of Attorney for Health Care. On financial matters, this is a legal conservator, an agent under a power of attorney, or a representative payee.
- (35) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.
- (36) "Licensee" means the person(s) who applied for, was issued a license, and whose

name(s) is on the license.

- (37) "Limited License" means a license issued to a person who intends to provide care for compensation to a specific individual who is unrelated to the provider but with whom there is an established relationship.
- (38) "Liquid Resource" means cash or those assets that can readily be converted to cash, i.e., a life insurance policy that has a cash value or stock certificates.
- (39) "Mitigating Information" means the circumstances surrounding any criminal history either disclosed by the subject individual or revealed by a criminal history check and the subsequent events in the subject individual's life.
- (40) "National Criminal History Check" means a review by the Division of criminal history and supplemental information from the Federal Bureau of Investigation. The information is obtained through the submission of fingerprint cards.
- (41) "Neglect" (whether intentional, careless, or due to inadequate experience, training, or skill) means failure to provide care necessary to ensure the health, safety, and well-being of a resident; failure to follow the care plan; failure to make a reasonable effort to discover what care is necessary for the well-being of a resident; or failure to provide a safe and sanitary environment .
- (42) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, as governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.
- (43) "Occupant" means anyone residing in or using the facilities of the adult foster home including residents, providers, resident managers, friends or family members, day care persons, and boarders.
- (44) "Ombudsman" means the State of Oregon Long Term Care Ombudsman or an individual designee appointed by the Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the adult foster home residents.
- (45) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident cannot easily remove and restricts freedom of movement or normal access to his/her body. Physical restraints include, but are not limited to, leg restraints, soft ties

or vests, hand mitts, wheelchair safety bars, lap trays, any chair that prevents rising, and gerichairs. Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. When a resident requests a side rail (e.g. for the purpose of assisting with turning), the side rail is not considered a restraint.

- (46) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments which have been ordered by a qualified practitioner to be administered as needed.
- (47) "Provider" means the person licensed to operate an adult foster home. The provider is responsible for the provision of room, board, care and services in the daily operation of the home. Applicant, provider, licensee, and operator are all synonymous terms. "Provider" does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.
- (48) "Potentially Disqualified" means the Division has determined a subject individual has a conviction for a potentially disqualifying crime or there is a discrepancy between the history disclosed by the subject individual and the information obtained through the criminal history check. A fitness determination must then be made.
- (49) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person meets the standards of OAR 411-050-0440 and OAR 411-050-0443 except for completing the training and testing requirements.
- (50) "Psychoactive Medications" means various medications used to alter mood, anxiety, behavior or cognitive processes. For the purpose of these rules, they include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.
- (51) "Relative" means those persons identified as family members in Section (28) of this rule.
- (52) "Relative Foster Home" means a home in which care and services are provided only to adult family members of the provider who are 18 years or older and are elderly or physically disabled. The adult family member receiving care must be eligible for Medicaid assistance from the Division.
- (53) "Reside" means for a person to make an adult foster home their residence on a frequent or continuous basis.

- (54) "Resident" means any person who is receiving room, board, care, and services for compensation in an adult foster home on a 24-hour per day basis.
- (55) "Residential Care" means the provision of care on a 24-hour per day basis.
- (56) "Resident Manager" means an employee of the provider who lives in the home and is directly responsible for the care of residents on a 24 hour per day basis.
- (57) "Resident Rights" or "Rights" means civil, legal or human rights, including but not limited to those rights listed in the Adult Foster Home Residents' Bill of Rights (see ORS 443.739).
- (58) "Respite Resident" means a person who receives care for a period of 14 days or less or who only stays overnight.
- (59) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping for compensation to persons who do not need activities of daily living care services. Room and Board for two or more persons require registration with the Division under OAR Chapter 411, Division 068.
- (60) "Self-Administration of Medication" means the act of a resident placing a medication in or on their own body. The resident identifies the medication and the times and manners of administration, and places the medication internally or externally on their own body without assistance.
- (61) "Self-Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and be able to reach a point of safety without assistance.
- (62) "Services" means activities which help the residents develop skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living or individual social activities.
- (63) "Shift Caregivers" means caregivers who, by written exception of the Division, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours, in homes where there is no provider or resident manager living in the home.
- (64) "Subject Individual" means any person, 16 years of age or older who is residing, receiving training, or working in an adult foster home or is the recipient of a medicaid service payment in a relative adult foster home. A resident receiving care and services is not a "subject individual."

- (65) "Substitute Caregiver" means any person other than the provider, resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of Seniors and People with Disabilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705

411-050-0401 Purpose (Effective 03/01/2001)

The purpose of these rules is to establish standards and procedures for adult foster homes that provide care for persons who are elderly or physically disabled in a home-like environment that is safe and secure. The goal of adult foster care is to provide necessary care while emphasizing the resident's independence. This goal is reached through a cooperative relationship between the care provider and the resident (or legal guardian) in a setting that protects and encourages resident dignity, choice, and decision-making. Residents needs are to be addressed in a manner that supports and enables the residents to maximize their ability to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.720

411-050-0405 License Required (Effective 03/01/2001)

- (1) Any facility which meets the definition of an adult foster home as defined in OAR 411-050-0400 must apply for and obtain a license from the Division or an exempt area county.
- (2) A person or entity must not represent themselves as operating an adult foster home or accept placement of a person without being licensed.
- (3) No person may be a provider, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, or employed by the provider, or reside in or on the property of an adult foster home who:
 - (a) Has not complied with the Criminal History Clearance process in accordance with the procedures defined in OAR Chapter 411, Division 009 (Criminal History Clearance) and the adult foster home rules; or
 - (b) Has been found responsible for a disqualifying type of abuse. See OAR 411-050-0412;

- (c) This provision does not apply to residents of the adult foster home or to persons who live or work on the property who do not access the home for meals or use the appliances or facilities.
- (4) Any home which meets the definition of a Relative Foster Home must have a license from the Division if receiving compensation from the Division. To qualify for this license and for compensation from the Division, the applicant/provider must submit a completed application and physician's statement, obtain a criminal history clearance, demonstrate a clear understanding of the resident's care needs, meet minimal fire safety compliance including the installation of smoke detectors and fire extinguishers, and obtain any training deemed necessary by the Division to provide adequate care for the resident. A spouse is not eligible for compensation as a relative foster care provider. If services are provided to a relative without compensation to the provider from the Division, the home is not required to be licensed.
- (5) Any home that meets the definition of a Limited License Foster Home, must be licensed by the Division if compensation is received from the Division or is privately paid to the provider. The person requesting a limited license must meet the standards of a relative adult foster home and acquire any additional training necessary to meet the needs of the resident. The person receiving care will be named on the license. The license will be limited to the care of the named person only.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.725

411-050-0408 Capacity (Effective 03/01/2001)

- (1) Residents must be limited to five persons unrelated to the provider by blood or marriage and who require care.
- (2) Respite residents are included in the licensed limit of the home.
- (3) The number of residents permitted to reside in an adult foster home will be determined by the ability of the staff to meet the care needs of the residents, the fire safety standards for evacuation, and compliance with the physical structure standards of these rules. Determination of maximum capacity must include consideration of total household composition including children and relatives requiring care and supervision. In determining maximum capacity, consideration must be given to whether children over the age of five have a bedroom separate from their parents.

- (4) When there are relatives requiring care, day care residents, or room and board occupants, the allowable number of unrelated residents may continue to be the maximum capacity of five if the following criteria are met:
- (a) The provider can demonstrate the ability to evacuate all occupants from the adult foster home within three minutes;
 - (b) The provider has adequate staff and has demonstrated the ability to provide appropriate care for all residents;
 - (c) There is an additional 40 square feet of common living space for each person above the five residents;
 - (d) Bedrooms and bathrooms meet the requirements of OAR 411-050-0445(3)(4);
 - (e) The care needs of the day care person(s) are within the classification of the license and any conditions imposed on the license;
 - (f) The well-being of the household including any children or other family members will not be jeopardized; and
 - (g) If day care persons are in the home, they must have arrangements for sleeping in areas other than a resident's bed or a resident's private room or space designated as common use.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705 & 443.775

411-050-0410 License Application and Fees (Effective 03/01/2001)

- (1) The Division's application form SDS 448 must be completed and submitted with the non-refundable fee by the person responsible for the operation of the adult foster home. The application is not complete until all of the required application information is submitted to the Division. Incomplete applications are void after 60 days from the date the application form and non-refundable fee are received by the licensing office. Failure to provide accurate information may result in the denial of the application.
- (2) A separate application is required for each location where an adult foster home is to be operated.

- (3) An application for a home which has a resident manager must include a completed application for the resident manager on Division form SDS 448B.
- (4) The application must include:
 - (a) The maximum resident capacity requested, relatives needing care, room and board occupants, and day care persons. The application must also include the name(s) of any other occupants;
 - (b) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Division;
 - (c) A physician's statement regarding ability to provide care, form SDS 903;
 - (d) A completed financial information sheet, form SDS 448A;
 - (A) The applicant must submit a budget for operating the home including payroll expenses; and
 - (B) If the home is leased or rented, the name of the owner and landlord and verification that the rent is a flat rate must be included. The financial information will not be included in the public file;
 - (e) A signed Criminal History Clearance Release Authorization form SDS 303 and, if needed, the Mitigating Information and Fitness Determination form SDS 303B for each person who will have regular contact with the residents, including the provider(s), the resident manager, caregivers, and other occupants over the age of 16 (excluding residents);
 - (f) A floor plan of the house showing the location and size of rooms and indicating the rooms that are to be resident bedrooms or caregiver sleeping room(s); location of windows and exit doors, and wheelchair ramps if applicable;
 - (g) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;
 - (h) A \$20 per bed non-refundable fee for each non-relative resident;
 - (i) Application references must be three non-relatives that have current knowledge of the applicant's character and capabilities;

- (j) If the provider uses a resident manager, a written plan on coverage for resident manager absences must be submitted;
 - (k) Shift caregivers may be used in lieu of a resident manager if granted a written exception by the Division. Use of shift caregivers detracts from the intent of a home-like environment, but will be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs such as those with Alzheimer's Disease, AIDS, or head injuries. If shift caregivers are used, they must meet the standards of a resident manager and the classification of the home; and
 - (l) Written information describing the planned operation of the adult foster home, including the use of substitute caregivers and other staff.
- (5) After receipt of the completed application materials, including the non-refundable fee the Division must investigate the information submitted, inspect the home, and conduct a personal interview with the applicant. Applicants must attend a local orientation program offered by the local licensing authority prior to being licensed.
 - (6) If cited violations from the home inspection are not corrected within the time frames specified by the Division, the issuance of the license must be denied.
 - (7) The applicant may withdraw his/her application at any time during the application process by notifying the Division.
 - (8) An applicant whose license has been revoked, voluntarily surrendered during a revocation/non-renewal process, or whose application for licensure has been denied shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial is final, or for a longer period if specified in the order revoking or denying the license.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

411-050-0412 Criminal History Clearance (Effective 03/01/2001)

- (1) No person, 16 years of age or older, excluding residents, will be allowed to operate, receive training, work, or reside in an adult foster home before submitting a completed Criminal History Clearance Release Authorization form SDS 303 and if needed a Mitigating Information and Fitness Determination form SDS 303B to the Division and

being determined “fit” in accordance with OAR Chapter 411, Division 009, (Criminal History Clearance).

- (2) In a Relative Adult Foster Home, the person receiving Medicaid payment for services to the client is the only person required to have a criminal history clearance.
- (3) The Division will conduct criminal history checks and obtain information from the Law Enforcement Data System(LEDS) and if necessary, the Federal Bureau of Investigation, other law enforcement agencies or the courts.
- (4) A national criminal history check is required for any subject individual who has lived outside the State of Oregon for sixty (60) or more consecutive days during the previous three (3) years or for the reasons described in OAR Chapter 411, Division 009 (Criminal History Clearance.) The Division may determine a national criminal history check is not required if the subject individual, according to the Division’s Criminal Record Clearance Registry, passed a national check within the previous three years and has not lived outside of Oregon during those three years.
- (5) An Authorized Division Representative (ADR) will make the fitness determination on all licensee applicants, all licensed providers and all subject individuals.
- (6) A subject individual must NOT work, receive training or reside in an adult foster home if the subject individual refuses to cooperate with the criminal history clearance process (e.g., refuses to be fingerprinted when requested, refuses to complete the SDS 303 or fails to complete the SDS 303B when required).
- (7) The provider must have written verification that the required criminal history checks have been completed for all employees, trainees and occupants of the home other than residents. All SDS 303 and 303B forms must be maintained as a confidential file that is in the facility and available for inspection by the Division.
- (8) The Division must provide for the expedited completion of a criminal history check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

Stat. Auth.: Chapter 181, ORS 410.070, and Chapter 443
Stats. Implemented: ORS 181.537 and 443.735

411-050-0415 Issuance (Effective 03/01/2001)

- (1) The Division will issue a license within 60 days after the completed application materials have been received if the home and provider are in compliance with these rules. The license will state the name of the resident manager, the names of all providers who have met the requirements to operate the adult foster home, the address of the premises to which the license applies, the classification for which the applicant is qualified, the maximum number of residents and the expiration date. The license must be posted in a prominent place in the home and be available for inspection at all times.
- (2) The provider will be given a copy of the Division inspection reports forms SDS 517 and 517A, identifying any areas of non-compliance and specifying a time frame for correction, not exceeding sixty (60) days from date of inspection. The provider must post the most recent inspection reports in the entry or equally prominent place and must, upon request, provide a copy of the reports to each resident, or person applying for admission to the home, or the legal representative, guardian or conservator of the resident or applicant.
- (3) The Division may attach conditions to the license which limit, restrict or specify other criteria for operation of the home. The conditions must be posted with the license (OAR 411-050-0483).
- (4) A limited license may be issued to a provider for the care of a specific person(s). No other admissions will be made by a provider with this limitation. A provider with a limited license must meet, at a minimum, the requirements of licensure for a relative adult foster home and may be subject to the requirements for the Standards and Practices for Care and Services (OAR 411-050-0447).
- (5) The Division shall not issue an initial license unless:
 - (a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825, OAR Chapter 411, Division 050, and Chapter 411, Division 009;
 - (b) The Division has completed an inspection of the adult foster home;
 - (c) The Division has completed a criminal history check in accordance with OAR Chapter 411, Division 009, on the applicant, caregivers and any occupant, other than a resident, 16 years of age or older who will be residing in or employed by the adult foster home;

- (d) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and
 - (e) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the adult foster home.
- (6) If a resident manager (or shift caregiver) changes during the period the license covers, the provider must notify the Division immediately and identify who will be providing care. The provider must submit a request for a change of resident manager to the Division along with a completed resident manager application form SDS 448B, a completed Physicians Report form SDS 903, a Criminal History Clearance Release Authorization form SDS 303 and if needed, the Mitigating Information and Fitness Determination form SDS 303B, and a \$10 non-refundable fee. Upon a determination by the Division that the applicant meets the requirements of a resident manager and the applicant has received the Division's required training and passed the test, a revised license will be issued with the name of the new resident manager. The classification of the home will be reevaluated based on the qualifications of the new resident manager and changed accordingly (see OAR 411-050-0040).
- (7) A license to operate an adult foster home is not transferable and does not apply to any location or person(s) other than the location and the person(s) indicated on the license obtained from the Division.
- (8) The provider must inform real estate agents, prospective buyers, lessees, and transferees in all written communication including advertising and disclosure statements that the license to operate an adult foster home is not transferable and must refer them to the Division for information about licensing.
- (9) When a home is to be sold or otherwise transferred to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the Division prior to the transfer of operation of the home.
- (10) A license is valid for one year unless sooner revoked or suspended by the Division.
- (11) In seeking an initial license, the burden of proof will be upon the provider of the adult foster home to establish compliance with ORS 443.705 to 443.825, OAR Chapter 411, Division 050, and Chapter 411, Division 009.

- (12) The Division will not issue a license to operate an additional adult foster home to a provider who has failed to achieve and maintain substantial compliance with the rules and regulations while operating their existing home or homes.
- (13) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home. A person will be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

411-050-0420 Renewal (*Effective 03/01/2001*)

- (1) At least sixty (60) days prior to the expiration of a license, a reminder notice and application for renewal form SDS 448C will be mailed by the Division to the licensed provider. Submittal of a renewal application and non-refundable fee prior to the expiration date will keep the license in effect until the Division takes action. If the renewal application and fee are not submitted prior to the expiration date, the home will be treated as an unlicensed facility subject to Civil Penalties (OAR 411-050-0487).
- (2) The provider, resident manager and shift caregivers must submit complete and accurate renewal applications form SDS 448C. The renewal application must include a Criminal History Clearance Release Authorization form SDS 303 and, if needed, Mitigating Information and Fitness Determination form SDS 303B, and verification of current Cardiopulmonary Resuscitation (CPR) Certification. A completed Financial Information form SDS 448A must also be submitted if the provider's financial information has changed since the prior application. A Physician/Nurse Practitioner Statement form SDS 903 must be completed every third year or sooner if there appear to be health concerns.
- (3) A provider's application for renewal must also include completed Criminal History Clearance Release Authorization form SDS 303 and, if needed, Mitigating Information and Fitness Determination form SDS 303B for all current employees and any other person 16 years or older, other than residents, who live in the adult foster home.

- (4) The Division may investigate any information in the renewal application and will conduct an unannounced inspection of the adult foster home prior to the license renewal.
- (5) The provider will be given a copy of the Division’s inspection report forms SDS 517 and 517A citing any violations and a time frame for correction, which must be no longer than 30 days from the date of inspection.
- (6) The Division will require the home to correct violations relating to the health, safety, and welfare of residents prior to issuing the renewal license. If cited violations are not corrected within the time frame specified by the Division, the renewal license may be denied.
- (7) The Division will not renew a license unless the following requirements are met.
 - (a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825, OAR Chapter 411, Division 050 and Chapter 411, Division 009.
 - (b) The Division has completed an inspection of the adult foster home.
 - (c) The Division has completed a criminal history check on the applicant and any person other than a resident, 16 years of age or older who will be residing in or employed by the adult foster home provider (see OAR 411-050-0415).
 - (A) All such persons must have been determined “fit” in accordance with OAR Chapter 411, Division 009 (Criminal History Clearance).
 - (B) The resident manager or caregiver may continue to work in the home pending the national criminal history check providing that the Oregon criminal history check does not reveal any potentially disqualifying crimes and no out of state convictions were self disclosed.
 - (d) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678.
- (8) In seeking a renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof will be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825, OAR Chapter 411, Division 050 and Chapter 411, Division 009.

- (9) In proceedings for renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof will be upon the Division to establish noncompliance with ORS 443.705 to 443.825, OAR Chapter 411, Division 050 and Chapter 411, Division 009.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

411-050-0430 Exceptions *(Effective 03/01/2001)*

- (1) A provider or applicant must apply in writing to the Division for an exception from a provision of these rules. The provider or applicant must prove to the Division by clear and convincing evidence that such an exception does not jeopardize the care, health, welfare or safety of the residents. Evidence will indicate that all residents' needs can be met and all occupants can be evacuated from the adult foster home within three minutes.
- (2) Notwithstanding section (1) of this rule, no exception will be granted from a regulation or provision of these rules pertaining to the standards and practices, inspections of the facility, resident rights, and inspection of the public files. Exceptions related to fire and life safety will not be granted by the Division without prior consultation with the State Fire Marshal or its designee.
- (3) An exception, if approved, will be granted in writing. Each exception will be reviewed at each renewal period.
- (4) Residents whose care needs exceed the licensed classification of the adult foster home must not be admitted without prior approval of the Division.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

411-050-0435 Rates and Contracts *(Effective 03/01/2001)*

- (1) Providers who care for Division clients must enter into a contract with the Division, sign a completed Provider Enrollment form SDS 738 and follow Division rules and contract terms. The Division cannot make a service payment to a licensed provider without a valid contract. In addition:

- (a) The rate of compensation established by the Division is considered payment in full;
 - (b) Division service payments for the current month will be issued at the beginning of the following month;
 - (c) The Division will not make payment for the date of discharge or for any time period thereafter; and
 - (d) The provider who elects to provide care for a medicaid recipient is not required to admit more than one Medicaid recipient. However, if the provider has signed a Medicaid contract for that home, private pay residents who become eligible for Medicaid assistance cannot be asked to leave for that reason.
 - (e) Medicaid contracts may be terminated with a 30-day written notice by either party.
- (2) Providers who care for private paying residents must enter into a written contract with the resident or person paying for care. A copy of the contract is subject to review prior to licensure by the Division. The contract must include, but not be limited to:
- (a) Services to be provided and the rate to be charged;
 - (b) Conditions under which the rates can be changed;
 - (c) The home's refund policy in instances of a resident's hospitalization, death, discharge, transfer to a nursing facility or other care facility, or voluntary move. The discharge and refund policy must be in compliance with OAR 411-050-0437, and clearly state whether or not the provider requires the resident's notification of intent not to return be in writing;
 - (d) Charges for storage of belongings that remain in the adult foster home for more than 15 days after the resident has left the home; and
 - (e) A statement indicating residents are not liable for damages considered normal wear and tear on the adult foster home and its' contents.
- (3) The provider must not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.
- (4) The provider must give a copy of the signed contract to the resident or their representative.

- (5) The provider must not include any illegal or unenforceable provision in a contract with a resident and must not ask or require a resident to waive any of the resident's rights or provider's liability for negligence.
- (6) Prior to admitting a private paying individual to an adult foster home, the facility must advise the individual seeking admission, of the availability of Long Term Care Assessment services provided through the Division or Certified Assessment Program.
- (7) The facility must certify on the Division's form SDS 913 that the individual has been advised of their right to receive a long term care assessment. The facility must maintain a copy of the form in the individual's client record and make a copy available to the Division upon request.
- (8) Thirty days prior to any general rate increases, additions, or other modifications of the rates, the provider must give written notice of the proposed changes to private residents and their family or other representatives unless the change is due to the resident's increased care or service needs and the rate schedule in the resident's contract has specified charges for changes in resident impairment levels and/or services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

411-050-0437 Refunds (Effective 03/01/2001)

- (1) If a resident dies, the provider must not retain nor require payment for more than 15 days after the date of the resident's death, or the time specified in the provider contract, whichever is less.
- (2) If a resident leaves an adult foster home for medical reasons and the resident or their representative indicates the intent to not return, the provider must not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the date the provider receives notification from the resident or their representative.
- (3) The provider has an obligation to act in good faith to reduce the charge to the resident who has left the home, by seeking a new resident to fill the vacancy.
- (4) The provider must refund any unused advance payments to the resident/representative within 30 days after the resident dies or leaves the home.

- (5) If the adult foster home closes or the provider gives written notice for the resident to leave, the provider waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.
- (6) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Division investigator, or due to conditions of imminent danger of life, health or safety, the provider shall not charge the resident beyond the resident's last day in the home.
- (7) Refund policies must also apply to the moves, transfers and discharges section of OAR 411-050-0447.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

411-50-0440 Qualifications for Providers, Resident Managers and Other Caregivers
(Effective 03/01/2001)

- (1) An adult foster home provider must meet the following qualifications:
 - (a) Be at least 21 years of age;
 - (b) Live in the home which is to be licensed, unless a resident manager lives in the home;
 - (c) Provide evidence satisfactory to the Division regarding education, experience, and training to meet requirements of the requested classification levels (see OAR 411-050-0443);
 - (d) Possess physical health, mental health, good judgment and good personal character determined necessary by the Division to provide 24-hour care for adults who are physically disabled or elderly. Applicants must have a statement from a physician or other qualified practitioner indicating they are physically, cognitively, and emotionally capable of providing care to residents. Applicants with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment/rehabilitation or references regarding current condition;
 - (e) Must submit a completed Criminal History Clearance Release Authorization form SDS 303 and if needed the Mitigating Information and Fitness Determination form SDS 303B to the Division to conduct a criminal history

check and be determined fit in accordance with OAR Chapter 411, Division 009, Criminal History Clearance, prior to receiving training or working in an adult foster home.

- (f) Be literate in the English language and demonstrate the understanding of written and oral orders and communications with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times; and
 - (g) The applicant must have the financial ability and must provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential resident income. The applicant must provide the Division with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The Division may require or permit the applicant to provide a current credit report to satisfy this financial requirement. The Division will not issue an initial license to an applicant who has been adjudged bankrupt more than once. If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens or unpaid taxes, the Division will require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims. If the applicant is unable to demonstrate the financial ability and resources required by this subsection, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.
- (2) The resident manager or shift caregiver must meet the provider qualifications listed in subsections (1)(a) through (f) of this rule. A resident manager applicant may work in the home pending the outcome of the national criminal record check, if the Oregon criminal history check does not reveal any potentially disqualifying crimes and no out of state convictions were self disclosed on the Criminal History Clearance Release Authorization form SDS 303.
- (3) Substitute Caregivers, or any other person left in charge of residents for any period of time, must meet the following qualifications:
- (a) Be at least 18 years of age;
 - (b) The caregiver must submit a completed Criminal History Clearance Release Authorization form SDS 303 and if needed the Mitigating Information and Fitness Determination form SDS 303B to the Division and be determined fit in

accordance with OAR Chapter 411, Division 009 of the Criminal History Clearance rules before receiving training or working in the adult foster home.

- (c) The substitute caregiver may work in the home pending the national criminal records check providing the Oregon criminal history check did not reveal any potentially disqualifying crimes and no out of state convictions were self disclosed;
- (d) Be literate in the English language and demonstrate the understanding of written and oral orders and communications with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times;
- (e) Have a clear understanding of job responsibilities, have knowledge of residents' care plans and be able to provide the care specified for each resident's needs including appropriate delegation or consultation by a registered nurse;
- (f) Not be a resident; and
- (g) Possess physical health, mental health, good judgment, and good personal character necessary to provide care for adults who are elderly or disabled, as determined by reference checks and other sources of information.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735 & 443.738

411-050-0441 Training Requirements for Providers and Resident Managers
(Effective 03/01/2001)

- (1) In addition to prior education and experience, all providers and resident managers must complete the following training requirements:
 - (a) The Division's Basic Training Course, taught by a Division approved instructor, must be completed by both the provider and resident manager, which includes taking and passing an examination on course work and necessary skills. Required course work and necessary skills will include but are not limited to demonstrations and practice in physical caregiving, screening for care and service needs, appropriate behavior towards residents with physical, cognitive and emotional disabilities and issues related to architectural accessibility. The examination must evaluate the ability to understand and respond appropriately to emergency situations, changes in medical conditions, physician's orders,

medication management and professional instructions, nutritional needs, resident's preferences and problem solving.

- (b) All provider, resident manager, and shift caregiver applicants must complete the Division's Basic Training Course and pass the Examination prior to becoming a licensed provider or a qualified resident manager. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application will be denied;
 - (c) A resident manager or shift caregiver applicant who has not completed the Basic Training Course must complete the Caregiver Preparatory Training Course approved by the Division before providing care to any resident. The Caregiver Preparatory Training Course will include emergency procedures, medication management, personal care procedures, food preparation, home environment and safety procedures, and residents' rights;
 - (d) If the Division determines an unexpected and urgent staffing situation exists, the Division may, in writing, permit a person who has not completed the Basic Training or passed the test to act as a resident manager until training and testing are completed or for 60 days, whichever period is shorter. The provider must notify the Division of the situation and demonstrate that they are unable to find a qualified resident manager, that the person is 21 years of age and meets the requirements for a substitute caregiver for the adult foster home and that the provider will provide adequate supervision to ensure the needs of the residents are being met;
 - (e) Within the first year after obtaining an initial license the provider, resident managers, and shift caregivers must complete a Basic First Aid course, CPR (cardiopulmonary resuscitation) course, and attend Fire and Life Safety training as available. The Fire and Life Safety training will be coordinated by the Division and Office of the State Fire Marshal or the local fire prevention authority.
 - (f) Each year after the first year of licensure , providers, resident managers and shift caregivers are required to complete at least ten hours of Division approved ongoing training related to the care of persons who are elderly or physically disabled. Registered nurse delegation or consultation, CPR certification and First Aid training do not count toward the ten hours.
- (2) If a provider is not in compliance with one or more of these rules or the classification for which they are licensed, the Division may require, by condition, additional training in the deficient areas.

- (3) Documentation of training must be kept in the facility's records including the date of training, subject matter, name of agency or organization providing training and number of classroom hours.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

411-050-0442 Training Requirements for Substitute Caregivers (Effective 03/01/2001)

- (1) A substitute caregiver left in charge of the home in the provider's or resident manager's absence for any length of time must complete the Division's Caregiver Preparatory Training Study Guide (SDS 9030) and Workbook (SDS 9031) prior to giving care. The Workbook must be completed by the substitute caregiver without the help of any other person and be considered part of the required orientation to the home and residents.
- (2) Substitute caregivers left in charge of an adult foster home for any period that exceeds 48 hours, may be required to meet the education, experience and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home.
- (3) Substitute caregivers working in the home while providers or resident managers are present must receive instruction in specific care responsibilities from the provider/resident manager prior to giving care, and in addition must complete the Caregiver Preparatory Training Study Guide and Workbook as part of their on-the-job instruction.
- (4) The Division may grant an exception to the training requirements in section (1) of this rule for a substitute caregiver who holds a current Oregon license as a health care professional such as a physician, registered nurse, or licensed practical nurse who demonstrates the ability to provide adequate care to residents based on similar training or at least one year of experience providing direct care to adults who are elderly or physically disabled. A certified nursing assistant (CNA) must complete the Caregiver Preparatory Training Workbook and have a certificate of completion signed by the provider.
- (5) The provider or resident manager must orient any substitute caregiver to the home and to the residents, including location of fire extinguisher; demonstration of evacuation procedures; location of residents' records; location of telephone numbers for the residents' physicians, the provider and other emergency contacts; location of

medications and key for medication cabinet; introduction to residents; instructions for caring for each resident; and delegation by a registered nurse for nursing tasks if applicable.

- (6) The provider or resident manager must keep documentation of the training and orientation of substitute caregivers in the adult foster home and available for inspection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

411-050-0443 Classification of Adult Foster Homes (Effective 03/01/2001)

- (1) A Class I, Class II, or Class III adult foster home license will be issued by the Division based upon the qualifications of the applicant and the resident manager, if there is one, and compliance with the requirements of OAR Chapter 411, Division 050.
 - (a) A Class I license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-050-0441;
 - (b) A Class II license may be issued if the applicant and resident manager complete the training requirements outlined in OAR 411-050-0441 and each has the equivalent of two years' full time experience in providing direct care to persons who are elderly or physically disabled;
 - (c) A Class III license may be issued if the applicant, and resident manager or shift caregivers complete the training requirements outlined in OAR 411-050-0441; and
 - (A) Is a health care professional such as a registered nurse, licensed practical nurse (LPN), pharmacist, doctor, occupational therapist, or physical therapist; or
 - (B) Each has the equivalent of three years' full time experience in providing direct care to persons who are elderly and physically disabled and dependent in four or more ADLs; and
 - (C) Each can provide current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experience as a caregiver.

- (2) A provider with a Class I license may only admit residents who need assistance in up to four activities of daily living (ADLs).
- (3) A provider with a Class II license may provide care for residents who require assistance in all activities of daily living, but are not dependent in more than three activities of daily living. A Class II provider may request an exception to provide care to a Level III resident.
- (4) A provider with a Class III license may provide care for residents who are dependent in four or more activities of daily living, except that no more than one bed-care or totally dependent person may be in residence at any time.
- (5) Providers may only admit or continue to care for residents whose impairment levels are within the classification level of the home. A provider may request in writing an exception to care for a more impaired resident, or request a reclassification of the license if:
 - (a) A new resident wishes to be admitted whose impairment level exceeds the license classification level; or
 - (b) A current resident becomes more impaired, exceeding the license classification level; or
 - (c) There is more than one totally dependent or bed care resident in the home.
- (6) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home if the provider proves the following criteria are met by clear and convincing evidence:
 - (a) It is the choice of the resident to reside in the home; and
 - (b) The provider is able to provide appropriate care of the resident in addition to the care of the other residents; or
 - (c) Additional staff is hired to meet the additional care requirements of all residents in the home; or
 - (d) Outside resources are available and obtained to meet the resident's care needs; and

- (e) The exception will not jeopardize the care, health, safety or welfare of the residents; and
 - (f) The three-minute fire evacuation standard for all occupants can be met.
- (7) A licensee may submit to the Division a written request for a change in license classification. The Division's determination will be made within 60 days of receipt of the licensee's written request .
- (8) A provider may not employ a resident manager or shift caregiver who does not meet or exceed the experience and training classification standard for the adult foster home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

411-050-0445 Facility Standards (Effective 03/01/2001)

In order to qualify for or maintain a license, an adult foster home shall comply with the following provisions:

- (1) General Conditions
- (a) Each adult foster home must meet all applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations for a single family residence. A current floor plan of the house must be on file with the local adult foster home licensing authority.
 - (b) The building and furnishings must be clean and in good repair. Grounds must be well maintained. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. There must be no accumulation of garbage, debris, rubbish or offensive odors;
 - (c) Interior and exterior stairways must be equipped with handrails. Adequate lighting, based on the needs of the individual, must be provided in each room, stairway, and exitway; incandescent light bulbs must be protected with appropriate covers. Yard, approved exits and exterior steps must be accessible and appropriate to the condition of the residents;
 - (d) The heating system must be in working order. Areas of the home used by residents must be maintained at a comfortable temperature. Minimum temperatures will be no less than 68 degrees and no higher than 85 degrees

- during the day and no less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in the care plan.
- (A) During times of extreme summer heat, the provider must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.
 - (B) If the facility is air conditioned, the system must be functional and must be checked yearly and the filters cleaned or changed as needed to ensure proper maintenance.
 - (C) If the provider is unable to maintain a comfortable temperature for residents during times of extreme summer heat, air conditioning or other cooling system may be required.
- (e) There must be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space must not be located in an unfinished basement or garage(s) unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space will be required for each day care person, board and room occupant, or relative receiving care for remuneration who exceeds the limit of five;
 - (f) Interior doorways used by residents must be wide enough to accommodate wheelchairs/walkers if used by residents;
 - (g) Providers must be able to provide or arrange for appropriate resident transportation;
 - (h) Providers must not permit residents to access or use swimming or other pools, hot tubs, saunas, or spas on the premises without supervision . Swimming pools, hot tubs, spas, or saunas must also be equipped with safety barriers and devices designed to prevent injury;
 - (i) There must be current, readily available basic first-aid supplies and a first-aid manual; and

(j) Providers must own, rent or lease the home to be licensed. Exceptions may be granted by the local licensing authority to churches, hospitals, non-profit associations or similar organizations. If a licensed provider rents or leases the premises where the adult foster home is located, the provider must not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located must not allow the owner to interfere with the admission, discharge or transfer of any resident in the adult foster home unless the owner is a provider or co-provider on the license.

(k) Ventilator Dependent Resident Care

(A) Providers intending to care for ventilator dependent residents must, in addition to the standards set forth in these rules, meet the following requirements and must not admit any such resident without approval by the Division:

- (i) Have in the home an interconnected smoke detection system with battery back-up;
- (ii) Have a functioning emergency back-up generator adequate to maintain electrical service for resident needs until regular service is restored;
- (iii) Have a primary care physician identified for each resident being considered for admission;
- (iv) Retain the services of Registered Nurses to work in the home who are trained in the care of ventilator dependent persons. RN services include, but are not limited to, the provision of medical consultation for and supervision of resident care, skilled nursing care as needed and delegation of nursing care to caregivers;
- (v) Develop individual resident care plans with the consulting RN which address the expected frequency of nursing supervision, consultation and direct service intervention;
- (vi) Have physician, RN and respiratory therapist consultation services available on a 24 hour basis and for in home visits as appropriate. The provider must call the appropriate medical professional to attend to the emergent care needs of the resident; and

(vii) Demonstrate the provision of adequate care and services for ventilator dependent residents for a minimum of one year before requesting approval for or accepting ventilator dependent residents in any additional home;

(B) The license application process will be jointly conducted by the local licensing authority and the Seniors and People with Disabilities Central Office. The SPD Central Office has the final decision making authority for homes having ventilator dependent residents; and

(C) Providers must not have more than three residents who are either dependent in four or more activities of daily living or ventilator dependent without prior approval by the Division.

(2) Sanitation

(a) A public water supply must be utilized if available. If a non-municipal water source is used, a sample must be collected yearly by the licenser, sanitarian, or a technician from a certified water testing laboratory. The water sample must be tested at the provider's expense for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(b) Septic tanks or other non-municipal sewage disposal system must be in good working order. Commodes must be emptied frequently and incontinence garments disposed of in closed containers;

(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 closed containers in an area separate from food storage, kitchen and dining areas. Pre-wash attention must be given to soiled and wet bed linens;

(e) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and must not present a danger to residents or guests;

(f) There will be adequate control of insects and rodents including screens in good repair on doors and windows that are used for ventilation;

- (g) Universal precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids; and
- (h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(3) Bathrooms

Bathrooms must :

- (a) Provide individual privacy and have a finished interior, with a door which opens to a hall or common use room; a mirror; a window that opens or other means of ventilation; and a window covering. No person must have to walk through another person's bedroom to get to a bathroom;
- (b) Be clean and free of objectionable odors (including the commodes used in resident rooms);
- (c) Have tubs or showers, toilets and sinks in good repair. A sink must be located near each toilet, and a toilet and sink provided on each floor with resident rooms. There must be at least one toilet, one sink, and one tub or shower for each six household occupants (including residents, day care persons, board and room occupants, provider and provider's family excluding children under two years old);
- (d) Have hot and cold water at each tub, shower, and sink in sufficient supply to meet the needs of the residents. Hot water temperature in bathing areas must be supervised for persons unable to regulate water temperature;
- (e) Have nonporous surfaces for shower enclosures; 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/or showers for resident's safety and have barrier-free access to toilet and bathing facilities; and

- (g) Have adequate supplies of toilet paper and soap provided by the operator. Residents must be provided with individual towels and wash cloths which are laundered in hot water at least weekly or more often if necessary. Residents must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in dispenser must be provided for residents' use.

(4) Bedrooms

- (a) Bedrooms for all household occupants must have been constructed as a bedroom when the home was built, or remodeled under permit; be finished with walls or partitions of standard construction which go from floor to ceiling; have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom; be adequately ventilated, heated and lighted with at least one window that opens which meets fire regulations (see subsection (7)(e) of this rule); be at least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and have no more than two persons per room;
- (b) Providers, resident managers or family members must not sleep in areas designated as living areas, nor share bedrooms with residents;
- (c) There must be an individual bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases must be laundered at least weekly, and more often if soiled. Waterproof mattress covers will be used for incontinent residents. Day care persons may use a cot or rollaway bed if bedroom space is available which meets the requirements of subsection (4)(a) of this rule. Resident beds may not be used by day care persons;
- (d) Each bedroom must have sufficient separate, private dresser and closet space for each resident's clothing and personal effects including hygiene and grooming supplies. Residents must be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for residents;

- (e) Residents who are non-ambulatory, have impaired mobility, or are cognitively impaired must have bedrooms on ground level. Residents on the second floor or in the basement must demonstrate their self-preservation capability to self exit or barricade, i.e., close the door or stop smoke from coming under the door; and
- (f) Resident bedrooms must be in close enough proximity to the provider to alert the provider to night time needs or emergencies, or must be equipped with a call bell or intercom. Intercoms must not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request. Use of interior video monitors detracts from a home-like environment and providers must not use them in resident bedrooms, bathrooms or living areas, unless requested by the resident.

(5) Meals

- (a) Three nutritious meals will be served daily at times consistent with those in the community. Each daily menu will include food from the five basic food groups and fresh fruit and vegetables in season. There must be no more than a 14-hour span between the evening meal and breakfast. Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements. Consideration must be given to residents' cultural and ethnic background in food preparation. Special consideration must be given to residents with chewing difficulties and other eating limitations. Food not be used as an inducement to control the behavior of a resident;
- (b) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families. Meal substitutions in compliance with subsection 5(a) of this rule and with resident approval are acceptable;
- (c) Home-canned foods must be processed according to the current guidelines of the Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized;
- (d) Special diets are to be followed as prescribed in writing by the resident's physician/nurse practitioner;
- (e) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator;

- (f) The household utensils, dishes, glassware and food stuffs must not be stored in resident bedrooms, bathrooms, or living areas;
- (g) Meals must be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the provider (restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing by choice are the responsibility of the resident;
- (h) Utensils, dishes and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sanicycle is recommended; and
- (i) Food preparation areas and equipment (utensils and appliances) must be clean, free of offensive odors and in good repair.

(6) Telephone

- (a) A telephone, in good working order, in the home where the residents live, must be available and accessible for residents' use with reasonable accommodation for privacy for incoming and outgoing calls. Residents with hearing impairments (to the extent that they cannot hear normal telephone conversation) must be provided with a telephone that is amplified with a volume control or is hearing aid compatible. The telephone number for the adult foster home must be a listed number;
- (b) Emergency telephone numbers including an emergency number for the provider, if they do not live in the home, must be posted by the telephone or in another prominent place. . Telephone numbers for making complaints to the Long Term Care Ombudsman and the local Division office must also be posted; and
- (c) Restrictions and limitations on the use of the telephone by residents are to be specified in the written house policies and must not violate residents' rights. Individual restrictions must be specified in the care plan.

(7) Safety

- (a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home will be inspected for fire safety by the State Fire Marshal's Office at the request of the licensing authority or Division staff using the standards in this rule;

- (b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good repair. Providers who do not have a permit verifying proper installation of an existing woodstove must have the woodstove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around woodstoves to prevent residents with ambulation or confusion problems from coming in contact with the stove. Unvented 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 must not be used in place of permanent wiring;
- (d) Hardware for all exit doors and interior doors must have simple hardware which cannot be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more residents who have impaired judgment and are known to wander away from their place of residence must have an activated alarm system to alert a caregiver of an unsupervised exit by a resident;
- (e) Bedrooms must have at least one window or exterior door that will readily open from the inside without special tools and which 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 which can be used by residents. 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 designee. Smoking is not permitted in any bedroom including that of a resident, provider, resident manager, caregiver, boarder, or family member;
- (f) Construction:
 - (A) Buildings will be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials must not exceed

Class III (76-200) and smoke density must not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exitway is composed of readily combustible such as acoustical tile or wood paneling, such material must be treated with an approved intumescent surface coating. Exception: Buildings supplied with an approved automatic sprinkler system;

- (B) Mobile home units must have been built since 1976 and designed for use as a home rather than a travel trailer. The units must have a manufacturer's label permanently affixed on the unit itself which states it meets the requirements of the Department of Housing and Urban Development (HUD). The required label will read as follows:

"As evidence by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(C) If such a label is not evident and the provider believes the unit meets the required specifications, the provider must take the necessary steps to secure and provide verification of compliance from the manufacturer; and

(D) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated any further;
- (g) At least one fire extinguisher with a minimum classification of 2A-10BC must be in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified workman who 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;
- (h) Smoke detectors must be installed in accordance with the manufacturer's instructions and be installed in each bedroom; in hallways or access areas that adjoin bedrooms; family room or main living area where residents congregate; any interior designated smoking area; and in basements. In addition, in two-story houses, smoke detectors must be installed at the top of the stairway to the second floor. Ceiling placement of smoke detectors is recommended. Detectors must be equipped with a device that warns of low battery when battery operated

- or with a battery back-up if hard wired. All smoke detectors are to be maintained in functional condition. Bedrooms used by hearing impaired occupants who cannot hear a regular smoke alarm must be equipped with a visual/audio or vibration alerting smoke alarm as appropriate;
- (i) All smoke detectors must contain a sounding device or be interconnected to other detectors to provide, when actuated, an alarm which is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed. Intercoms and room monitors must not be used to amplify alarms.
 - (j) The provider must maintain exits, detectors and extinguishers in functional condition. If there are more than two violations in maintaining battery operated detectors in working condition, the Division may require the provider to hard wire the detectors into the electrical system;
 - (k) Flammable and combustible liquids and hazardous materials must be safely and properly stored in their original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals. Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not readily accessible to residents;
 - (l) Cleaning supplies, medical sharps containers, poisons and insecticides must be properly stored in their original, properly labeled containers in a safe area away from residents, food preparation and storage areas, dining areas, and medications;
 - (m) An emergency evacuation plan must be developed, and revised as necessary to reflect the current condition of the residents in the home. The plan must be rehearsed with all occupants. All caregivers are required to be able to demonstrate the ability to evacuate all residents from the facility within three minutes to the closest point of safety which is exterior to, and away from the structure. A record must be maintained of evacuation drills. Drills will be held at least once every 90 days, with at least one drill practice per year occurring during sleeping hours. Records of drills must be maintained for three years and include date, time for full evacuation, and names of residents requiring assistance for evacuation;
 - (n) Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a fire alarm, shown how to participate in an evacuation drill from the home in an emergency, and receive an orientation to basic fire safety. New caregivers will also be oriented in how to conduct a fire drill;

- (o) Providers and all caregivers must demonstrate the ability to evacuate all occupants from the dwelling within three minutes. If there are problems in demonstrating this evacuation time, conditions may be applied to the license which include, but are not limited to, reduction of residents under care, additional staffing, or increased fire protection. Continued problems will be grounds for revocation or non-renewal of the license;
- (p) The provider must post a current and accurate fire evacuation floor plan that contains the location of all fire extinguishers, fire exits and planned evacuation routes in a prominent place in the home.
- (q) Providers must not place residents who are unable to walk without assistance or not capable of self-preservation in a basement, split-level, second story or other area that does not have an exit at ground level. Such residents must be given first floor rooms. Stairs must have a riser height of between 6-8 inches and tread width of between 8 - 10 ½ inches. Stories above the second floor must not be used for sleeping purposes. Lifts or elevators are not an acceptable substitute for resident's capability to ambulate stairs;
- (r) All common use areas of the house and exitways must be barrier free and corridors and hallways must be a minimum of 32 inches wide or as approved by the authority having jurisdiction. Any bedroom window identified as an exit must be free of obstacles that would interfere with evacuation. There must be a wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. Wheelchair ramps must have non-skid surfaces, handrails, and have a maximum slope of 1 inch rise in each 12 inches of distance. The maximum rise for any run will be 30 inches. Wheelchair ramps approved prior to April 1, 1996 are accepted. Providers may need to bring existing ramps into revised compliance if necessary to meet the needs of new residents or current residents with increased care needs;
- (s) There must be a second safe means of egress. Providers whose sleeping rooms are above the first floor may be required to demonstrate a fire exit drill from that room, using the secondary egress, at the time of licensure, renewal, or inspection;
- (t) Adult foster homes located more than five miles distance from the nearest fire station or those of unusual construction characteristics may be required to have a complete fire alarm system meeting the requirements of the NFPA 72A and 72E and with approved automatic reporting to the local jurisdiction providing fire protection;

- (u) There must be at least one plug-in rechargeable flashlight available on each floor for emergency lighting;
- (v) Smoking regulations must be adopted to allow smoking only in designated areas. Smoking is prohibited in sleeping rooms, rooms where oxygen is used or anywhere flammable materials are stored. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted;
- (w) Providers whose homes are located in areas where there is a danger of natural disasters which require rapid evacuation such as forest fires, flash floods, or tsunami waves must be aware of community resources for evacuation assistance.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

411-050-0447 Standards and Practices for Care and Services (Effective 03/01/2001)

(1) Screening

- (a) Prior to admission of a resident, the provider must conduct and document a screening to determine that the prospective resident's care needs do not exceed the license classification. The screening must evaluate the ability of the prospective resident to evacuate the home within three minutes along with all occupants of the home. The screening must also determine if the provider and caregivers can meet the prospective resident's needs in addition to meeting the needs of the other residents of the home. The screening must include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information as needed to assure the person's care needs can be met; and
- (b) The screening interview process must include interviews with the prospective resident, the resident's family, prior care providers, and case manager as appropriate. The interview should also include as necessary, any physician, nurse practitioner, registered nurse, pharmacist, therapist or other health/mental health professional involved in the care of the resident. A copy of the screening document must be given to the prospective resident or their representative. Should the prospective resident become a resident in the home, a copy of the screening document must be placed in the resident record.

- (c) The provider is required to disclose to a prospective resident any house policies that will limit the resident's activities or preferences while living in the adult foster home. Examples include but are not limited to: the use of tobacco or alcohol, pets, religious practices, dietary restrictions, and the use of intercoms.

(2) Admission

- (a) Upon admission to the home, the provider must obtain and document general information regarding the resident. The information must include names, addresses, and telephone numbers of relatives, significant persons, case managers, and medical/mental health providers. The record must also include the date of admission and, if available, the resident's Social Security and medical insurance numbers, birth date, prior living facility and mortuary;
- (b) By the time of admission, the provider must have made every effort to obtain physician/nurse practitioner orders for medications, treatments, therapies and special diets. Any telephone orders must be followed with written signed orders. A physician, nurse practitioner, or pharmacist review of the resident's preferences for over-the-counter medications and home remedies must also be obtained at that time. The provider must also obtain and place in the record any medical information available including history of accidents, illnesses, impairments or mental status that may be pertinent to the resident's care;
- (c) At the time of admission, the provider must ask for copies of the following documents, if the resident has them: Advance Directive, Physician's Order for Life Sustaining Treatment (POLST), letters of guardianship, or letters of conservatorship. The copies must be placed in a prominent place in the resident record and sent with the resident when transferred for medical care; and
- (d) At the time of admission, the provider must discuss with the resident and/or their representative the Adult Foster Home Resident Bill of Rights, if the home is a Medicaid provider, and written house policies. The discussion must be documented by having the resident sign a copy of the house policies and the Residents' Bill of Rights form SDS 305A and must be filed in the resident's record.

(3) Assessment and Care Plan

- (a) During the initial 14 days following the resident's admission to the home, the provider must continue the assessment process which includes documenting the resident's preferences and care needs. The assessment must be completed by the

provider and documented within the initial 14 day period. The care plan must describe the resident's needs and preferences, the resident's capabilities and what assistance the resident requires for various tasks. The care plan must also include by whom, when and how often care and services will be provided. Specific information must include:

- (A) Ability to perform activities of daily living (ADLs);
 - (B) Special equipment used by the resident;
 - (C) Communication needs: hearing, vision, sign language, non-English speaking, and speech along with any aids used;
 - (D) Night Needs;
 - (E) Medical or physical health problems relevant to care and services;
 - (F) Cognitive, emotional, or physical disabilities or impairments relevant to care and services;
 - (G) Treatments, procedures or therapies;
 - (H) Registered nurse consultation;
 - (I) Behavioral interventions;
 - (J) Social/spiritual/emotional needs including lifestyle preferences, activities, and significant others involved;
 - (K) Emergency exit ability including assistance and equipment needed;
 - (L) Any use of physical restraints or psychoactive medications; and
 - (M) Dietary needs and preferences;
- (c) The care plan must be reviewed and updated every six months and as the resident's condition changes. A review note with the date and reviewer's signature must be documented in the record at the time of the review. If the care plan contains many changes and becomes less legible, a new care plan must be written.

(4) Standards for Medications, Treatments and Therapies

- (a) The provider and caregivers must demonstrate an understanding of each resident's medication administration regimen. The reason the medication is used, medication actions, any specific instructions and common side effects should be referenced by medication resource material available at the facility;
- (b) The provider must obtain and place a written signed order in the resident's record for any medications, dietary supplements, treatments, and/or therapies which have been prescribed by the physician/nurse practitioner. Orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. Changes may not be made without a physician/nurse practitioner's order and the physician/nurse practitioner must be notified if a resident refuses to consent to an order. Order changes obtained by telephone must be followed-up with written signed orders. Changes in the dosage or frequency of an existing medication require a new pharmacy label. If a new pharmacy label cannot be obtained, the change must be written on the existing pharmacy label and match the new medication order. Attempts to obtain the written changes must be documented in the resident's record. Over-the-counter medications or home remedies requested by the resident must be reviewed by the resident's physician/nurse practitioner or pharmacist as part of developing the initial care plan and at time of care plan review;
- (c) The provider is not required to obtain a copy of the physician's or nurse practitioner's order that has been given to them by a home health or hospice RN. However, the provider must have the order documented in the resident's record by the RN. The new medication information must be included on the resident's next medical visit report for the physician or the nurse practitioner to review.
- (d) Prescription medications ordered to be given "as needed" or "p.r.n." must have additional directions which show what the medication is for and specifically when, how much and how often it may be administered. These written directions may be given by a physician, nurse practitioner, registered nurse or pharmacist. P.R.N. medications with specific parameters must be recorded on the medication administration record. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.
- (e) Psychoactive Medications
 - (A) A provider must not request a psychoactive medication to treat a resident's behavioral symptoms without a consultation from the

physician, nurse practitioner, registered nurse or mental health professional. The consultation must include a discussion of alternative measures to medication use including behavioral interventions. These medications may be used only after documenting all other alternative considerations and only when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Psychoactive medications must never be given to discipline a resident or for the convenience of the adult foster home. Psychoactive medications as defined in these rules may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use;

- (B) The provider and all caregivers must know the specific reasons for the use of the psychoactive medication for an individual resident, the common side effects and when to contact the physician, nurse practitioner, or mental health professional regarding those side effects. All caregivers must also know the behavioral interventions to be used along with the medication; and
- (C) The frequency of the reassessment of the psychoactive medication use must be determined by the individual completing the initial assessment;
- (f) Each of the resident's medication containers must be clearly labeled with the pharmacist's label or be in the original labeled container or bubble pack and must be kept in a locked, central location, separate from medications of the provider or the provider's family. Residents must not have access to medications of the provider or other household members. Over-the-counter medications in stock bottles (with original labels) may be used in the home. Unused, outdated or discontinued medications must not be kept in the home and must be disposed of according to the pharmacist's recommendations. Disposal of medications must be documented on the medication administration record or in the resident's record;
- (g) The provider may set up each resident's medications for up to seven days in advance (excluding P.R.N. medications) by using a closed container manufactured for that purpose. If used, each resident must have their own container with divisions for the days and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route (if other than oral) and description of the medications. The container must be stored in the medication locked area;

- (h) A current, written medication administration record must be kept for each resident and must identify all of the medications administered by the caregiver to that resident, including over-the-counter medications and prescribed dietary supplements. The record must indicate the medication name, dosage, route (if other than oral), the date and time to be given. The record must be immediately initialed at the time of administration by the person giving the medications. Treatments and therapies must be immediately documented on the medication administration record showing times given, type of treatment or therapy, and initials of the person performing the procedure. The medication administration record must contain a legible signature which identifies each set of initials;
- (i) A discontinued or changed medication order must be marked and dated on the medication administration record as discontinued. The new order must be written on a new line showing the date of order. If a resident misses or refuses a medication, treatment, or therapy, the initials of the person administering the medication must be circled and a brief but complete explanation must be recorded on the back of the medication record. As needed (.P.R.N.) medication must be documented with the time, dose, the reason the medication was given, and the outcome;
- (j) Residents must have a physician/nurse practitioner's written order of approval to self-medicate. Persons able to handle their own medical regimen will keep medications in their own room in a small storage area that can be locked. The provider must notify the physician/nurse practitioner should the resident show signs of no longer being able to self-medicate safely;
- (k) Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident or administered by a relative of the resident, or an Oregon licensed registered nurse. A licensed practical nurse can also give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Board of Nursing rules may give subcutaneous injections. Intramuscular and intravenous injections cannot be delegated;
- (l) Physical Restraints
 - (A) Physical restraints may be used only after a physician/nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist assessment, consideration and documentation of all other alternatives, and only when required to treat a resident's medical symptoms, or to maximize a resident's physical functioning. If, following the assessment and trial of other measures, it

is determined that a restraint is necessary, the least restrictive restraint must be used and as infrequently as possible. All physical restraints must allow for quick release at all times;

- (B) A written signed order from the physician/nurse practitioner or Christian Science practitioner must be obtained and placed in the resident record. The order must include specific parameters including type, circumstances and duration of the use of the restraint. There must be no p.r.n. (as needed) orders for restraints;
- (C) The provider must place the restraint assessment in the resident record. The assessment must include procedural guidance for the correct use of the restraint, alternative less restrictive measures which must be used in place of the restraint whenever possible, and dangers and precautions related to the use of a restraint;
- (D) The frequency for reassessment of the physical restraint use must be determined by the prescriber based on the recommendations made in the initial assessment. The reassessment may be performed by the physician/nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupation therapist;
- (E) Physical restraints may only be used with the resident's or resident legal representative's consent which will be documented in the resident's record;
- (F) Physical restraints may not be used for discipline of a resident or for the convenience of the adult foster home;
- (G) Residents physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, exercised or provided range of motion during this period;
- (H) Physical restraint use at night is discouraged and shall be limited to unusual circumstances. If used, the restraint shall be of the design to allow freedom of movement with safety. The frequency of night monitoring for resident safety and need for assistance shall be determined in the assessment; There will be no tie restraints of any kind used to keep a resident in bed.

- (I) Side rails used to prevent a resident from getting in or out of bed are considered restraints. Side rails or half rails, which are requested by the resident, to allow the resident to easily get in and out of bed or improve functioning are not considered restraints;
- (J) Physical restraint use must be recorded on the care plan showing why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive alternative measures planned during the assessment and cautions for maintaining safety while restrained must also be recorded on the care plan; and
- (K) Use of restraints must not impede the three minute evacuation of all household members.

(5) Registered Nurse Consultation

- (a) The provider must obtain medical professional consultation/assessment to meet the care needs of the resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task (such as insulin injections, blood sugar monitoring and new ostomy care) has been ordered by a physician or other qualified practitioner.
- (b) The provider must also request a registered nurse consultation under the following conditions:
 - (A) When the resident has a medical/physical/health concern or behavioral symptoms which may benefit from a nursing assessment and provider education;
 - (B) Use of physical restraints when not assessed, taught and reassessed (as discussed in subsection (4)(k) of this rule) by the physician/nurse practitioner, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist;
 - (C) Use of psychoactive medications when not assessed, taught and reassessed (as discussed in subsection (4)(e) of this rule) by the physician/nurse practitioner or mental health practitioner; and
 - (D) When care procedures have been ordered, which are new for a specific resident and/or the provider;

- (c) The registered nurse may determine that a nursing care task is to be taught utilizing the delegation process. The care provider must not teach another individual the delegated task and must not perform the task for another resident without further delegation.

(6) Resident Care

- (a) Care and supervision of residents must be in a home-like atmosphere and must be appropriate to the needs, preferences, age and condition of the individual resident. The training of the provider or staff will be appropriate to the age, care needs and condition of the residents. Providers and resident managers will be required to meet the requirements for training according to the class for which they are licensed. Additional staff may be required if day care or respite residents are in the home;
- (b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure that it is implemented as instructed;
- (c) The provider is responsible for promptly informing the resident's physician/nurse practitioner, family, legal representative and case manager of changes in the health status of the resident. Changes in the resident condition must be documented and appropriate medical assistance obtained;
- (d) In the event of a serious medical emergency, the provider/staff must call 911 or the appropriate emergency number for their community. The physician/nurse practitioner, family or resident representative and the case manager (when applicable) must also be called. The provider must have copies of Advance Directives, Do Not Resuscitate (DNR) orders and/or pertinent medical information available when emergency personnel arrive;
- (e) Providers must not inflict, or tolerate to be inflicted, abuse or punishment; financial exploitation; or neglect of resident(s);
- (f) Providers must exercise reasonable precautions against any conditions which could threaten the health, safety or welfare of residents;
- (g) A caregiver must be present and available at the home at all times when residents are in the home. A resident must not be left in charge in lieu of a caregiver;

- (h) Providers must make available at least six hours of activities per week which are of interest to the residents, not including television and movies. Information regarding activity resources is available from the Division. Activities must be oriented to individual preferences as indicated in the resident's care plan. Documentation of resident activity participation must be recorded in the resident's records;
- (i) Providers or caregivers must be directly involved with residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the provider must demonstrate how regular positive contact will occur;
- (j) If the provider manages or handles a resident's money, a separate account record must be maintained in the resident's name. The provider must not under any circumstances commingle, borrow from, or pledge any funds of a resident. Personal Incidental Funds (PIF) for Division clients are to be used at the discretion of the client for such things as clothing, tobacco, and snacks (not part of daily diet). Providers/caregivers must not accept gifts from residents through undue influence or accept gifts of substantial value. Providers or caregivers must not influence, solicit from or suggest to any resident that they or their family give the caregiver or the caregiver's family money or property for any purpose. The caregiver or the caregiver's family shall not accept gifts of substantial value or loans from the resident or the resident's family; and
- (k) Upon the death of a Medicaid resident with no surviving spouse, the provider must forward all personal incidental funds (PIF) to the SPD, Estate Administration Unit, within ten (10) business days of the death of the resident.
- (l) A provider is responsible for the supervision, training and overall conduct of resident managers and other caregivers when acting within the scope of their employment, duties, or when present in the home.

(7) Resident Records

- (a) An individual resident record must be developed, kept current, and available on the premises for each person admitted to the adult foster home. The record must contain the following information:
 - (A) Initial screening assessment;
 - (B) General information;

- (C) Documentation on Form SDS 913 that the provider has informed private pay residents of the availability of a long term care assessment;
 - (D) Medical information, including:
 - (i) Medical history, if available;
 - (ii) Current physician/nurse practitioner orders;
 - (iii) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less; and
 - (iv) Letters of Guardianship and/or Conservatorship, Advance Directive and Physician's Order for Life Sustaining Treatment (POLST), if applicable.
 - (E) Care plan;
 - (F) Copies of the current written house policies and current Residents' Bill of Rights, signed by the resident or his/her representative;
 - (G) A written report of all significant incidents relating to the health or safety of a resident including how and when the incident occurred, who was involved, what action was taken by provider/staff and the outcome to the resident;
 - (H) Narrative entries describing the resident's progress must be documented at least weekly and be dated and signed by the person writing them; and
 - (I) Non-confidential information or correspondence pertaining to the care needs of the resident;
- (b) Resident records maintained by the provider must be readily available at the adult foster home for all caregivers and to representatives of the Division conducting inspections or investigations, as well as to residents, their authorized representative or other legally authorized persons. The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative (OAR 114-005-0030);

- (c) Records must be kept for a period of three years. If a resident moves or the adult foster home closes, copies of pertinent information must be transferred to the resident's new place of residence. Pertinent information must include at a minimum, copies of current medication sheets, and an updated care plan; and
- (d) In all other matters pertaining to confidential records and release of information, providers must be guided by the principles and definitions described in OAR Chapter 411, Division 05. A copy of these rules will be made available by Seniors and People with Disabilities upon request.

(8) Facility Records

Facility records must be maintained in the adult foster home and be available for inspection. Facility records include but are not limited to:

- (a) Proof of rabies vaccinations for domestic animals, well water tests, fire drill records, fire evacuation plan, and certificates of training;
- (b) Criminal history check records for subject individuals, which must be maintained in a confidential file; and
- (c) Financial records:
 - (A) Contracts with the Division, residents, relatives, or person(s) paying for care;
 - (B) Division financial planning sheets form SDS 512 if pertinent;
 - (C) Resident account record form SDS 713 or other expenditure forms may be used if the provider manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. All deposits and purchases of \$5 or more made on behalf of a resident must be documented by receipts; and
 - (D) Contracts signed by residents or their representatives who are paying privately may be kept in a separate file but must be made available for inspection by the Division.

(9) Residents' Bill of Rights

Providers, their families and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Division must be explained and a copy given to residents at admission. The Bill of Rights states each resident has the right to:

- (a) Be treated as an adult with respect and dignity;
- (b) Be informed of all resident rights and all house policies;
- (c) Be encouraged and assisted to exercise constitutional and legal rights including the right to vote;
- (d) Be informed of their medical condition and the right to consent to or refuse treatment;
- (e) Receive appropriate care and services and prompt medical care as needed;
- (f) Be free from mental and physical abuse;
- (g) Complete privacy when receiving treatment or personal care;
- (h) Associate and communicate privately with any person of choice and send and receive personal mail unopened;
- (i) Have access to and participate in activities of social, religious, and community groups;
- (j) Have medical and personal information kept confidential;
- (k) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;
- (l) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not used for discipline or convenience;
- (m) Manage own financial affairs unless legally restricted;
- (n) Be free from financial exploitation. The provider must not charge or ask for application fees or non-refundable deposits or solicit, accept or receive money or property from a resident other than the amount agreed to for services;

- (o) A written agreement regarding services to be provided and the rates to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home;
- (p) Not to be transferred or moved out of the adult foster home without 30 days' written notice and an opportunity for a hearing. A provider may transfer a resident only for medical reasons or for the welfare of the resident or other residents, or for nonpayment;
- (q) A safe and secure environment;
- (r) Be free of discrimination in regard to race, color, national origin, sex, or religion; and
- (s) Make suggestions or complaints without fear of retaliation.

(10) House Policies

House policies must be in writing and a copy given to the resident and the resident's family or representative at the time of admission if the provider has any policies that will limit the resident's activities or preferences, or if intercoms are used in the home. House policies may include the use of alcohol or liquor, whether pets are allowed, visiting hours, dietary restrictions or religious preferences. House policies established by the provider must:

- (a) Not be in conflict with the Residents' Bill of Rights or the family atmosphere of the home;
- (b) Be reviewed and approved by the Division prior to the issuance of a license and any time changes are made; and
- (c) Be posted in a place where they are obvious and accessible to residents and visitors.
- (d) If intercoms are used, a posted notice must state that the intercoms can be turned off by or at the resident's request.

(11) Involuntary Moves, Transfers and Discharges

- (a) A resident may not be involuntarily moved from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster

home for a temporary stay without 30 days' written notice to the resident and the resident's legal representative, guardian, conservator and case manager (if the resident has one). The written notice must be on the Division's Notice of Resident Move, Transfer or Discharge form (SDS 901). The notice will be completed by the provider and contain all required information. Residents may be moved or transferred for only the following reasons:

- (A) Medical reasons;
 - (B) Welfare of the resident or other residents;
 - (C) Behavior which poses an imminent danger to self, others or caregivers;
 - (D) Behavior which substantially interferes with the orderly operation of the home;
 - (E) Failure to make payment for care;
 - (F) The home has had its license revoked, not renewed, or voluntarily surrendered; or
 - (G) The resident's care needs exceed the ability (taking into account the provider's own health) or classification of the provider;
- (b) If the resident has a medical emergency or undue delay in moving the resident jeopardizes the health, safety or well being of the resident or others, the provider may give less than 30 days advance notice, but shall give the written notice, using the Division's Notice of Resident Move, Transfer or Discharge, as soon as possible under the circumstances. This includes situations in which the resident is hospitalized or is temporarily out of the home and the provider determines they are no longer able to meet the needs of the resident;
- (A) "Medical emergency" means a change in medical condition that requires immediate care of a level or type that the provider is unable to provide or behavior that poses an imminent danger to the resident or to other residents or people living in the home; and
 - (B) The written notice must include the resident's name; the reason for the proposed transfer, discharge or move; the date of the proposed change; the location to which the resident is going; the right to have the Division hold an informal conference and hearing; the name, address and

telephone number of the person giving the notice; and the date of the notice;

(c) A person who is to be involuntarily transferred, or refused the right of return or readmission, is entitled to an informal conference and hearing as provided in this rule;

(A) The Division will hold an informal conference as promptly as possible after the request is received. The Division will send written notice of the time and place of the conference to the provider and all persons entitled to the notice. Participants may include the resident, and at the resident's request, a family member, case manager, Ombudsman, legal representative of the resident; the provider; and a representative from the provider association if the provider requests it. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, the Division will document it in writing and no formal hearing will be held. If a resolution is not reached at the end of the informal conference, the resident or resident representative may request an administrative hearing;

(B) The resident has the right to an administrative hearing prior to an involuntary transfer or discharge. If the resident is being transferred or discharged for a medical emergency, or to protect the welfare of the resident or other residents, as defined by rule, the hearing must be held within seven days of the transfer or discharge. The provider must hold a space available for the resident pending receipt of an administrative order. ORS 441.605(4) and the rules thereunder governing transfer notices and hearings for residents of long term care facilities apply to adult foster homes.

(12) Closing

Providers must notify the Division prior to a voluntary closure of a home, proposed sale, or transfer of ownership, and give residents, families, and case managers for Division clients 30 days' written notice. In circumstances where undue delay might jeopardize the health, safety or well-being of residents, providers or staff, written notice will be given as soon as possible. If a provider has more than one home, residents cannot be shifted from one home to another home without the same period of notice unless prior written approval is given and agreement obtained from residents, family members and case managers.

(13) General Practices

- (a) The adult foster home license, attached conditions to the license if applicable, the Residents' Bill of Rights, the fire evacuation floor plan, house policies, the Division's most recent inspection form, Ombudsman Poster, and the Division's procedure for making complaints must be conspicuously posted in the entryway or other equally prominent place where they can be seen by residents and others;
- (b) The provider must cooperate with Division personnel in inspections, complaint investigations, planning for client care, application procedures and other necessary activities. Division personnel have access to all resident and facility records and may conduct private interviews with residents. The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to resident records with written permission from the resident and facility records relevant to caregiving;
- (c) Information related to resident(s) must be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation or sanction action under these rules; and
- (d) The provider must abide by the terms of these Administrative Rules, OAR Chapter 411, Division 050.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738, 443.739 & 443.775

411-050-0450 Inspections (Effective 03/01/2001)

- (1) The Division must conduct an inspection of an adult foster home:
 - (a) Prior to issuance of a license;
 - (b) Prior to annual renewal of a license the Division will conduct an unannounced inspection;
 - (c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or
 - (d) Anytime the Division has probable cause to believe a home has violated a regulation or provision of these Administrative Rules or is operating without a license.

- (2) The Division may conduct inspections:
 - (a) Any time such inspections are authorized by these Administrative Rules and any other time the Division considers it necessary to determine if a home is in compliance with these Administrative Rules or with conditions placed upon the license;
 - (b) To determine if cited violations have been corrected; and
 - (c) For the purpose of routine monitoring of the residents' care.
- (3) State or local fire inspectors must be permitted access to enter and inspect adult foster homes regarding fire safety upon request of the Division.
- (4) Division staff have full access and authority to examine and copy facility and resident records, including but not limited to, admission agreement, private pay resident contracts, and accounts. The Division staff will also have access to inspect the physical premises, including the buildings, grounds, equipment and any vehicles relating to licensing and complaint investigations in the adult foster home.
- (5) Division staff have authority to interview the provider, resident manager, staff, and residents. Interviews must be confidential and conducted privately. The provider must furnish the names, addresses, and telephone numbers of the substitute caregivers employed or used by the provider to the Division upon request of the Division.
- (6) Providers must authorize resident managers and substitute caregivers to permit entrance by Division staff for the purpose of inspection, investigation, and other duties within the scope of Division authority.
- (7) The Division has authority to conduct inspections with or without advance notice to the provider, staff, or a resident of the home. The Division must not give advance notice of any inspection if the Division believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these Administrative Rules.
- (8) If Division staff is not permitted access or inspection, a search warrant may be obtained.
- (9) The inspector must respect the private possessions of residents, providers and staff while conducting an inspection.

- (10) The Division must maintain current information on all licensed adult foster homes and must make all non-confidential information available to prospective residents and other interested members of the public at local Division offices or Area Agencies on Aging licensing offices throughout the state. The information must include:
- (a) The location of the adult foster home and the name and mailing address of the provider if different;
 - (b) A brief description of the physical characteristics of the home;
 - (c) The license and license classification of the home and the date the provider was first licensed to operate that home;
 - (d) The date of the last licensing inspection including any fire inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;
 - (e) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings of and actions taken by the Division and responses from the provider or complainant. All complaint terminology must be clearly defined and the final disposition clearly designated ;
 - (f) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the Division involving the home; and
 - (g) Whether care is provided primarily by the licensed provider, a resident manager or other arrangement

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.740 & 443.755

411-050-0455 Complaints (Effective 01/01/2002)

- (1) The Division must furnish each adult foster home with a Complaint Notice which must be posted in a conspicuous place and which states the telephone number of the Division and the Ombudsman and the procedure for making complaints.
- (2) Any person who believes these Administrative Rules have been violated may file a complaint with the Division.

- (3) The Division will investigate and act on complaints as quickly as possible. The primary purpose of the prompt response is to protect the residents and correct the situation. Investigations of complaints alleging injury, abuse or neglect must be completed as soon as possible and all investigations will be completed within 60 days unless there is a concurrent criminal investigation that requires additional time.
- (4) The adult foster home provider must not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint by increasing charges; decreasing services, rights or privileges; threatening to increase charges or decrease services, rights or privileges; by taking or threatening to take any action to coerce or compel the resident to leave the facility or by abusing or threatening to harass or abuse a resident in any manner;
- (5) Any complainant, witness or employee of a facility must not be subject to any retaliation by a provider for making a report or being interviewed about a complaint or being a witness, including restriction of access to the home or a resident or, if an employee, to dismissal or harassment; and
- (6) The complainant will have immunity from any civil or criminal liability with respect to the making or content of a complaint made in good faith. A person does not act in good faith if the substance of the complaint is false and the person:
 - (a) knows the substance of the complaint is false; or
 - (b) makes the complaint with the intent to harm the owner or operator of the adult foster home, or the adult foster home, and shows a reckless disregard for the truth or falsity of the substance of the complaint.

Immunity under this subsection does not protect self-reporting providers from liability for the underlying conduct that is alleged in the complaint.

- (7) Standards will be followed for investigations related to abuse, neglect, or injury.
 - (a) The Division will cause an investigation within two hours if a complaint alleges that a resident has been injured, abused or neglected and that any resident's health or safety is in imminent danger or that the resident has died or been hospitalized due to abuse or neglect;
 - (b) The Division will cause an investigation to begin by the end of the next working day if circumstances exist which could result in the injury, abuse, or neglect and that the circumstances could place the resident's health or safety in imminent danger;

- (c) An unannounced on-site visit will be conducted;
 - (d) All available witnesses identified by any sources as having personal knowledge relevant to the complaint must be interviewed. Interviews must be confidential and conducted in private. The investigator must interview the provider and must advise the provider of the nature of the complaint and give the provider an opportunity to submit relevant information to the investigator;
 - (e) All evidence and physical circumstances that are relevant and material to the complaint must be observed;
 - (f) Immediate protection must be provided for the residents. The provider must correct any substantiated problem immediately;
 - (g) A report will be written within 60 days of receipt of a complaint which includes the investigator's personal observations, a review of documents and records, a summary of all witness statements, and a conclusion; and
 - (h) Reports indicating the need for a sanction by either the local licensing authority or the Division must be referred to the appropriate office for corrective action immediately upon completion of the investigation.
- (8) The Division, through its local offices, will mail a copy of the investigation report to the following people within seven days of the completion of the investigation:
- (a) The complainant (unless the complainant requests anonymity);
 - (b) The resident(s) involved and any persons designated by the resident(s) to receive the information;
 - (c) The provider; and
 - (d) The Long-Term Care Ombudsman;
 - (e) The report must protect as confidential the identity of the resident, the complainant, and any witnesses; and
 - (f) The report must be accompanied by a notice informing such persons of the right to give additional information about the content of the report to the Division's local office within seven days of receipt.

- (9) The SPD unit/Type B AAA must review the responses and reopen the investigation if additional evidence of a violation is received. A copy of the entire report must be sent to the Division upon completion of the investigation report, whether or not the investigation report concludes the complaint is substantiated.
- (10) The Division must take appropriate corrective action within 60 days from completion of the investigation report.
- (11) Providers who acquire substantiated complaints pertaining to the health, safety or welfare of residents may be assessed civil penalties, may have conditions placed on their licenses, and/or may have their licenses suspended, revoked or not renewed.
- (12) A record must be maintained by the Division of all complaints and any action taken on the complaint. The record must be indexed by the name of the provider, and must:
 - (a) Be placed into the public file. (Any information regarding the investigation of the complaint will not be filed in the public file until the investigation has been completed.) The investigation reports, including copies of the responses (with confidential information deleted), must be available to the public at the local Seniors and People with Disabilities office or the Type B Area Agency on Aging licensing office along with other public information regarding the adult foster home;
 - (b) Protect the privacy of the complainant and the resident;
 - (c) Treat the names of the witnesses as confidential information;
 - (d) Be clearly designated as to the final disposition of the complaint; and
 - (e) Be made available to any person to inspect and purchase a photocopy upon requesting an appointment to do so.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

411-050-0460 Procedures for Correction of Violations (Effective 03/01/2001)

- (1) If, as a result of an inspection or investigation, the Division determines that abuse has occurred, the provider must be notified verbally to immediately cease the abusive act. The Division will follow-up with a written confirmation of the warning to cease the abusive act and will include notification that further sanctioning may be imposed.

- (2) If an inspection or investigation indicates a violation of the rules other than abuse, the Division must notify the provider in writing of violations of these rules.
- (3) The notice of violation must state the following:
 - (a) A description of each condition that constitutes a violation;
 - (b) Each regulation that has been violated;
 - (c) Except in cases of imminent danger, a specific time frame for correction, but no later than 30 days after receipt of the notice;
 - (d) The Division may approve a reasonable time in excess of 30 days if correction of the violation(s) within 30 days is determined to be impossible.
 - (e) Sanctions that may be imposed against the home for failure to correct the violation(s);
 - (f) Right to contest the violation(s) if an administrative sanction is imposed; and
 - (g) The right to request an exception as provided in OAR 411-050-0430.
- (4) At any time after receipt of a notice of violation or an inspection report, the licensee or the Division may request a conference. The conference must be scheduled within ten (10) days of a request by either party.
- (5) The purpose of the conference is to discuss the violation(s) stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of these Administrative Rules.
- (6) The request by a licensee or the Division for a conference will not extend any previously established time limit for correction.
- (7) The licensee must notify the Division of correction of violation(s) no later than the date specified in the notice of violation.
- (8) The Division may conduct a reinspection of the home after the date the Division receives the report of compliance or after the date by which the violation(s) must be corrected as specified in the notice of violation.

- (9) For violation(s) that present an imminent danger to the health, safety or welfare of residents, the notice of violation must order the licensee to correct the violation(s) and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division must inspect the home after the 24-hour period to determine if the violation(s) has been corrected as specified in the notice of violation.
- (10) If residents are in immediate danger, the license may be immediately suspended and arrangements made to move the residents.
- (11) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more administrative sanctions.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

411-050-0465 Administrative Sanctions (Effective 03/01/2001)

- (1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:
 - (a) Attachment of conditions to a license;
 - (b) Civil penalties;
 - (c) Denial, suspension, revocation, or non-renewal of license; and/or
 - (d) Reclassification of a license.
- (2) If the Division imposes an administrative sanction, it must serve a notice of administrative sanction upon the licensee personally, by certified mail, or by registered mail.
- (3) The notice of administrative sanction must state:
 - (a) Each sanction imposed;
 - (b) A short and plain statement of each condition or act that constitutes a violation;
 - (c) Each statute or rule allegedly violated;

- (d) A statement of the licensee's right to a contested case hearing;
- (e) A statement of the authority and jurisdiction under which the hearing is to be held;
- (f) A statement that the Division's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and
- (g) A statement that the Division will issue a final order of default if the licensee fails to request a hearing within the specified time.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

411-050-0480 Denial, Revocation or Non-Renewal of License (Effective 03/01/2001)

- (1) The Division must deny, revoke, or refuse to renew a license where it finds:
 - (a) There has been substantial non-compliance with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of caring for residents in an adult foster home;
 - (b) The Division has conducted a criminal history check and determined the applicant or provider is not “fit” in accordance with OAR Chapter 411, Division 009 (Criminal History Clearance;)
 - (c) The provider employs caregivers, allows household members, or any other person (excluding the residents) to reside in the adult foster home who have been convicted of potentially disqualifying crimes and been determined “unfit” in accordance with OAR Chapter 411, Division 009 (Criminal History Clearance;) or
 - (d) The applicant or provider falsely represents that they have not been convicted of a crime.
- (2) The Division may deny, revoke, or refuse to renew an adult foster home license if the applicant or provider:
 - (a) Submits incomplete or untrue information to the Division;

- (b) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, termination of utility services due to failure to pay bill(s);
- (c) Has a prior denial, suspension, revocation or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state/county;
- (d) Is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse or neglect of the residents, or creating a threat to the residents or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents. For purposes of this subsection, an applicant or provider is "associated with" a person if the applicant or provider:
 - (A) Resides with the person;
 - (B) Employs the person in the foster home;
 - (C) Receives financial backing from the person for the benefit of the foster home;
 - (D) Receives managerial assistance from the person for the benefit of the foster home;
 - (E) Allows the person to have access to the foster home; or
 - (F) Rents the adult foster home from the person;
- (e) Has threatened the health, safety, or welfare of any resident;
- (f) Has abused, neglected, or exploited any resident;
- (g) Has a medical or psychiatric problem which interferes with the ability to provide foster care;
- (h) Has had a prior sanction imposed due to the operation of an unlicensed adult foster home;

- (i) Has reference(s) on the initial application indicating that the applicant does not possess the good judgment or character deemed necessary by the Division;
 - (j) Fails to correct a violation within the specified time frame allowed;
 - (k) Refuses to allow access and inspection;
 - (l) Fails to comply with a final order of the Division to correct a violation of the Administrative Rules for which an administrative sanction has been imposed such as a License Condition;
 - (m) Fails to comply with a final order of the Division imposing an administrative sanction, including the imposition of a Civil Penalty;
 - (n) Fails to pass the Basic Training Course Examination; or
 - (o) Repeatedly fails to submit a completed Criminal History Clearance Release Authorization form (SDS 303) to the Division before allowing persons 16 years or older to live, receive training or work in the adult foster home.
 - (p) Has previously surrendered a license while under investigation or administrative sanction during the last three years.
- (3) If the license is revoked for the reason of abuse, neglect or exploitation of a resident, the provider may request a review in writing within 10 days of the notice of the revocation. If a request is made, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect or exploitation and to the revocation within 10 days of the request. The administrator or designee will determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the license will be restored immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550.
- (4) If a license is revoked or not renewed, the licensee shall be entitled to a hearing preceding the effective date of the revocation or non-renewal if the licensee requests a hearing in writing within 21 days after receipt of the notice. If no written request for a timely hearing is received, the Division will issue the final order by default. The Division may designate its file as the record for purposes of default.
- (5) A license subject to revocation will remain valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.

- (6) If an initial license is denied for any reason other than the results of a test or inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within 60 days of the receipt of the notice. If no written request for a hearing is timely received, the Division will issue a final order by default. The Division may designate its file as the record for purposes of default.
- (7) If a license is revoked or not renewed, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

411-050-0481 Suspension of License (Effective 03/01/2001)

- (1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if the Division finds that the abuse, neglect or exploitation causes an immediate threat to any of the residents.
- (2) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 days of the notice and order of suspension. Within 10 days of receipt of the licensee's request for a review, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, including any written documentation submitted by the licensee within that time frame. The administrator or designee will determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension will be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days.
- (3) If a license is suspended, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

411-050-0483 Conditions (Effective 03/01/2001)

- (1) Conditions may be attached to a license and take effect immediately upon receipt. The type of condition attached to a license must directly relate to a risk of harm or potential risk of harm to residents. Conditions may be attached upon a finding that:
 - (a) Information on the application or initial inspection requires a condition to protect the health and safety of residents;
 - (b) There exists a threat to the health, safety, and welfare of a resident;
 - (c) There is reliable evidence of abuse, neglect, or exploitation;
 - (d) The home is not being operated in compliance with these rules; or
 - (e) The provider is licensed to care for a specific person(s) only and further placements will not be made into that home.

- (2) If conditions are imposed on a licensee, a copy of the Notice of License Condition must be sent to SPD Central Office. Any condition restricting admissions to or limiting the capacity of an adult foster home must be reviewed by SPD Central Office prior to imposition. Examples of conditions which may be imposed on a licensee include:
 - (a) Restricting the total number of residents based upon the capacity of the provider to meet the health and safety needs of the residents;
 - (b) Restricting the number and impairment level of residents allowed within a licensed classification level based upon the capacity of provider and staff to meet the health and safety needs of all residents;
 - (c) Reclassifying the level of residents that can be served if the care needs exceed the provider's ability to meet the resident's care needs;
 - (d) Requiring additional staff or staff qualifications to meet the resident's care needs;
 - (e) Requiring additional training of provider/staff to meet specific resident care needs;
 - (f) Restricting admissions or the use of a resident manager due to failure to pass the Basic Training Course Examination as required per OAR 411-050-0441;

- (g) Restricting admissions when there is a threat to the current residents of the home and admitting new residents would compound that threat; and
 - (h) Restricting a provider from allowing persons on the premises who may be a threat to resident safety or welfare.
- (3) In accordance with OAR 411-050-0465, the provider must be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.550. A provider must request a hearing in writing within 21 days from the receipt of the notice. Conditions shall take effect immediately and are a final order of the Division unless later rescinded through the hearings process.
 - (4) In addition to, or in-lieu of, a contested case hearing, a provider may request a review by the Division of conditions imposed by the AAAs or SPD local offices. The review does not diminish the provider's right to a hearing.
 - (5) Conditions may be imposed for the extent of the licensure period (one year) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition must be indicated on the attachment to the license. If the provider believes the situation that warranted the condition has been remedied, the provider may request the condition be removed.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

411-050-0485 Criminal Penalties (Effective 03/01/2001)

- (1) Operating an adult foster home without a license is punishable as a Class C misdemeanor ORS 443.991 (3).
- (2) Refusing to allow access and inspection of a home by Division staff or state or local fire inspection is a Class B misdemeanor ORS 443.991 (2).
- (3) The Division may commence an action to enjoin operation of an adult foster home:
 - (a) When an adult foster home is operated without a valid license; or

- (b) After notice of revocation or suspension has been given and a reasonable time for placement of individuals in other facilities has been allowed.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.991

411-050-0487 Civil Penalties (Effective 03/01/2001)

- (1) Civil penalties, not to exceed \$100 per violation to a maximum of \$250, may be assessed for a general violation of these rules.
- (2) Mandatory penalties up to \$500 will be assessed for falsifying resident or facility records or causing another to do so.
- (3) A mandatory penalty of \$250 will be imposed for failure to have either the provider, qualified resident manager, or qualified substitute caregiver on duty 24 hours per day in the adult foster home.
- (4) A mandatory penalty of \$250 will be imposed for dismantling or removing the battery from any required smoke detector.
- (5) The Division will impose a civil penalty of not less than \$250 nor more than \$500 on a provider who admits a resident knowing that the resident's care needs exceed the license classification of the provider if the admission places the resident or other residents at risk of harm.
- (6) Civil penalties of a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.
- (7) In addition to any other liability or penalty provided by law, the Division may impose a penalty for any of the following:
 - (a) Operating the home without a license;
 - (b) The number of residents exceeds the licensed capacity;
 - (c) The provider fails to achieve satisfactory compliance with the requirements of these Administrative Rules within the time specified, or fails to maintain such compliance;
 - (d) The home is unable to provide adequate level of care to residents;

- (e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home;
 - (f) The provider fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or
 - (g) The provider fails to obtain a criminal record clearance prior to employing a caregiver in the home.
- (8) A civil penalty may be imposed for violations other than those involving health, safety, or welfare of a resident and protection from retaliation of an employee who makes a complaint if the provider fails to correct the violation as stated in subsections (8)(a) and (8)(b) of this rule; and
- (a) A reasonable time has been prescribed for elimination of the violation not to exceed 30 days after first notice of violation; or
 - (b) Where more than 30 days are required to correct the violation, such time is specified in a plan of correction and found acceptable by the Division;
 - (c) The following rules relate to health, safety or welfare of residents and protection from retaliation for making a complaint: 411-050-0440 (1)(e) and (f) and (3)(b) and (d); 411-050-0443(2) through (6) and (8); 411-050-0445; 411-050-0447(1) through (11); and 411-050-0455 (4).
- (9) Any civil penalty imposed under this section becomes due and payable ten days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person, or sent by registered or certified mail and must include:
- (a) A reference to the particular sections of the statute, rule, standard, or order involved;
 - (b) A short and plain statement of the matters asserted or charged;
 - (c) A statement of the amount of the penalty or penalties imposed; and
 - (d) A statement of the right to request a hearing.

- (10) The person to whom the notice is addressed will have 10 days from the date of receipt of the notice in which to make written application for a hearing. If a written request for a hearing is not timely received, the Division will issue a final order by default.
- (11) All hearings will be conducted according to the applicable provisions of ORS 183.310 to 183.550.
- (12) When imposing a civil penalty the Division must consider the following factors:
 - (a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;
 - (b) Any prior violations of statutes, rules or orders pertaining to the facility;
 - (c) The economic and financial conditions of the person incurring the penalty;
 - (d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents;
 - (e) The degree of harm to resident(s).
- (13) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.
- (14) Unless the penalty is paid within 10 days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person. The Division may also initiate a Notice of Revocation for failure to comply with a final order.
- (15) Civil Penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.
- (16) All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775, 443.790 & 443.795

411-050-0490 Zoning for Adult Foster Homes (Effective 06/01/92)

Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.

Stat. Auth.: ORS 410, ORS 411 & ORS 443.705 - ORS 443.795

Stats. Implemented: ORS 197.660, ORS 196.670 & ORS 443.760

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Secretary of State, Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with published versions of the rule are satisfied in favor of the Administrative Order.