



TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

APD 21-2026

CHAPTER 411

DEPARTMENT OF HUMAN SERVICES

AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

FILED: 08/03/2026 5:40 PM

ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL

FILING CAPTION: APD: Updating OAR 411 054 to implement SB739, SB1532, and other related safety changes

EFFECTIVE DATE: 08/10/2026 THROUGH 02/05/2027

AGENCY APPROVED DATE: 08/03/2026

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NEED FOR THE RULE(S):

The Oregon Department of Human Services (Department) is amending OAR chapter 411, division 054 to implement four separate bills:

- Senate Bill 739 (2025 Regular Session). SB 739 establishes timelines and processes for investigations and inspections, criteria outlining when an applicant will require a consultant, requirements for exceptions being granted by the Department, process for establishing a resident-designated contact person, requirements for adding survey and licensing process to the facility consumer summary statement.
 - Senate Bill 1532 (2026 Regular Session). SB 1532 establishes immediate jeopardy preliminary findings. Provides the facility has an opportunity to provide initial information or evidence before the Department can make a preliminary finding of immediate jeopardy. Requires the Department to develop a model consent form for electronic monitoring devices in resident rooms.
 - House Bill 4115 (2026 Regular Session). HB 4115 establishes portability requirements for background checks across multiple entities. Extends background check renewal cycle from two years to three years.
 - Senate Bill 1556 (2021 Regular Session). Establishes the online public caregiver registry. The rules establish quarterly reporting requirements to align with new rule division being developed for the caregiver registry.
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JUSTIFICATION OF TEMPORARY FILING:

The Department could not meet original deadline for Senate Bill 739 (2025 Regular Session), needing to work with the legislator for an implementation fix in Senate Bill 1532 (2026 Regular Session).

Senate Bill 1532 (2026) and House Bill 4115 (2026) are required to be implemented on the 91st day after signature. To meet this requirement the Department is adopting temporary rules to establish requirements and hold facilities accountable.

Senate Bill 1556 (2022) took effect upon passage in 2022. The Department is establishing reporting requirements to a new rule division being established.

Failure to act promptly and immediately to amend OAR chapter 411, division 054 will result in serious prejudice to the public interest, and to residents who reside in Residential Care and Assisted Living facilities. These rules need to be adopted promptly so that the Department will follow SB 739 (2025), SB 1532 (2026), HB 4115 (2026), and SB 1556 (2022).

OAR chapter 411, division 54 needs to be amended promptly because of statutory implementation deadlines.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate Bill 1556 Enrolled (2021 Short Session):

<http://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1556>

Senate Bill 739 Enrolled (2025 Regular Session):

<https://olis.oregonlegislature.gov/liz/2025r1/Measures/Overview/SB739>

Senate Bill 1532 Enrolled (2026 Regular Session):

<https://olis.oregonlegislature.gov/liz/2026R1/Measures/Overview/SB1532>

House Bill 4115 Enrolled (2026 Regular Session):

<https://olis.oregonlegislature.gov/liz/2026R1/Measures/Overview/HB4115>

RULES:

411-054-0005, 411-054-0013, 411-054-0016, 411-054-0017, 411-054-0019, 411-054-0025, 411-054-0026, 411-054-0034, 411-054-0035, 411-054-0070, 411-054-0100, 411-054-0105, 411-054-0110, 411-054-0120

AMEND: 411-054-0005

RULE SUMMARY: Adds new definitions "Complainant", "Designated Contact Person", "Guardian", "Inconclusive", "Preliminary Finding", "Substantiated", and "Unsubstantiated". Amended, "Legal Representative."

CHANGES TO RULE:

411-054-0005

Definitions ¶¶

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

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

(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing and grooming,

bathing and personal hygiene, mobility, elimination, and cognition.¶¶

(3) "Acuity-Based Staffing Tool (ABST)" means the tool described in ORS 443.432 or an acuity-based staffing tool adopted by a facility that meets requirements established by the Department in OAR 411-054-0037. An ABST is used by a facility to assess the acuity of each resident and determine the amount of staff time necessary to meet the 24-hour scheduled and unscheduled needs of each resident. Facilities may choose to use the ABST established by the Department, or use another Department-approved ABST.¶¶

(4) "ABST Care Elements" means the required individual care elements that must be addressed and documented in a resident's ABST evaluation as outlined in OAR 411-054-0037(3).¶¶

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

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

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

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

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

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

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

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

(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor, each partner in a partnership, and each member with a five percent or more ownership interest in a limited liability company, corporation, or entity that:¶¶

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

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

(10) "Approved Dementia Training" means a dementia training curriculum approved by an entity selected by the Department to be an approving entity pursuant to a Request for Application (RFA) process.¶¶

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

(a) Conducting inspections and investigations regarding protective service, abuse, and neglect.¶¶

(b) Monitoring.¶¶

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

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

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

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

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

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

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

(a) Broken bones.¶¶

(b) Stroke, heart attack, or other acute illness or condition onset.¶¶

- (c) Unmanaged high blood sugar levels.¶
- (d) Uncontrolled pain.¶
- (e) Fast decline in activities of daily living.¶
- (f) Significant unplanned weight loss.¶
- (g) Pattern of refusing to eat.¶
- (h) Level of consciousness change.¶
- (i) Pressure ulcers (stage 2 or greater).¶
- (18) "Choice" means a resident has viable options that enable the resident to exercise greater control over their life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.¶
- (19) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶
- (20) "Competency" means to possess specific knowledge, technical skill, and the ability to perform tasks related to the role and responsibilities of direct care staff.¶
- (21) "Competency Assessment" means an evaluation of knowledge, technical skill and ability to carry out care pursuant to the requirements in OAR 411-054-0070. Evaluation shall include verification and documentation of direct care staff competency through observation, written testing or verbal testing.¶
- (22) "Complainant" means a person or entity who initiates a complaint or grievance to the Department.¶
- (23) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.¶
- (234) "Consistently" means regularly and typically. This means occurring steadily and with regularity over a period of time.¶
- (245) "Consumer Summary" means a summary of services provided by the facility. This statement also includes a summary of services not provided. This summary is one of the documents that must be provided to potential residents before move-in.¶
- (256) "Conversion Facility (CF)" means a nursing facility that has followed the requirements in these rules to become a residential care facility through the conversion facility process.¶
- (267) "Department" means the Oregon Department of Human Services (ODHS).¶
- (278) "Designated Contact Person" means the individual identified by the resident, the resident's guardian, or the resident's legal representative to receive notices required under OAR 411-054-0035 and ORS 443.444.¶
- (a) The designated contact person may be the same individual as the resident's designated representative or legal representative.¶
- (b) A resident is not required to identify a designated contact person if the resident, guardian, or legal representative declines to do so as permitted by ORS 443.444.¶
- (29) "Designated Representative" means:¶
 - (a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:¶
 - (A) Chosen by the individual or, as applicable, the legal representative;¶
 - (B) Not a paid provider for the individual; and¶
 - (C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.¶
 - (D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.¶
 - (b) An individual or the legal representative of the individual is not required to appoint a designated representative.¶
- ~~(2830)~~ "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.¶
- ~~(2931)~~ "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. ¶
 - (a) These personal care services may include:¶
 - (A) Medication administration.¶
 - (B) Individualized resident-focused activities, as outlined in a resident's person-centered service plan.¶
 - (C) Assistance with activities of daily living.¶
 - (D) Supervision and support of residents.¶
 - (E) Serving meals, but not meal preparation.¶
 - (b) Employees such as activity staff, activity coordinators, and activity directors whose primary or sole responsibility is to provide social activities are not considered direct care staff.¶
- ~~(302)~~ "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.¶
- ~~(313)~~ "Director" means the Director of the Department or that individual's designee.¶

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

(335) "Disclosure Statement" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.¶

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

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

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

(379) "Guardian" means the resident's legal guardian appointed by a judge as outlined in ORS chapter 125. ¶

(40) "Gender expression" means an individual's gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the individual was assigned at birth. ¶

(3841) "Gender identity" means an individual's internal, deeply held knowledge or sense of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth or name and sex as it appears in medical records or as it is described by any other individual, including a family member, conservator or legal representative of the individual. An individual's gender identity is the last gender identity expressed by an individual who lacks the present ability to communicate.¶

(3942) "Gender nonconforming" means having a gender expression that does not conform to stereotypical expectations of one's gender. ¶

(403) "Gender transition" means a process by which an individual begins to live according to that individual's gender identity rather than the sex the person was assigned at birth. The process may or may not include changing the individual's clothing, appearance, name or identification documents or undergoing medical treatments. ¶

(414) "Harass" or "harassment" means to act in a manner that is unwanted, unwelcomed or uninvited, or that demeans, threatens or offends a resident. ¶

(a) This includes bullying, denigrating or threatening a resident based on a resident's actual or perceived status as a member of one of the protected classes in Oregon, as provided:¶

(A) Race.¶

(B) Color.¶

(C) National origin.¶

(D) Religion.¶

(E) Disability.¶

(F) Sex (includes pregnancy).¶

(G) Sexual orientation.¶

(H) Gender identity.¶

(I) Age.¶

(J) Marital status.¶

(b) An example of "harassment" includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom or other area of a facility that is available to other individuals of the same gender identity as the resident.¶

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

(436) "HCB" means "Home and Community-Based."¶

(447) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. ODHS, Safety, Oversight and Quality and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.¶

(458) "Health Care Facility" means a facility, as defined in ORS 442.015(12)(a), that provides acute care or a higher level of care to a resident according to OAR 411-054-0080.¶

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

(4750) "Hospice Program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life-threatening disease with a limited medical prognosis. A hospice program is an institution for purposes of ORS 146.100.¶

(4851) "Immediate Jeopardy" means a situation where the failure of a residential care facility to comply with a

Department rule has caused, or is likely to cause, a resident:¶¶

(a) Serious injury;¶¶

(b) Serious harm;¶¶

(c) Serious impairment; or¶¶

(d) Death.¶¶

~~(49)~~(52) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.¶¶

~~(50)~~(3) "Inconclusive" means that, after analyzing all evidence collected during a complaint investigation, a determination cannot be made regarding whether a licensing violation occurred. For the definition of inconclusive for the purpose of abuse findings refer to OAR 411-020-0002.¶¶

~~(54)~~ "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.¶¶

~~(54)~~(5) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.¶¶

~~(52)~~(6) "Individual" means a person enrolled in or utilizing HCBS.¶¶

~~(53)~~(7) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 (1)(d) and (2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual, or as applicable, the legal representative, as described in OAR 411-004-0040.¶¶

~~(54)~~(8) "Informed Consent" means options, risks, and benefits have been explained to an individual, and, as applicable, the legal representative of the individual, in a manner that the individual, and, as applicable, the legal representative, comprehends.¶¶

~~(55)~~(9) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.¶¶

~~(56)~~(0) "Intensive Intervention Community (IIC)" means an RCF endorsed to house fewer than six socially dependent individuals or individuals with physical disabilities. The purpose of the IIC is to serve individuals with co-occurring mental, emotional, or behavioral disturbances who are more appropriately served in smaller settings.¶¶

~~(57)~~(6)(1) "Involuntary Move-Out" means a move out of a resident to which the resident or the resident's legal representative does not agree.¶¶

~~(58)~~(6)(2) "Language Access" means the facility must take reasonable steps to provide meaningful language access to a resident with limited English proficiency or a resident with a disability that makes it difficult to communicate using standard English.¶¶

~~(59)~~¶¶

~~(63)~~ "Legal Representative" means a person who has the legal authority to act for an individual.¶¶

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

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

~~(c) The legal representative may be the same individual as the resident's designated representative or designated contact person.¶¶~~

~~(64)~~ "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation. These terms are defined below:¶¶

(a) "Lesbian" means the sexual orientation of a person who is female, feminine or nonbinary and who is physically, romantically or emotionally attracted to other women. Some lesbians may prefer to identify as gay, a gay woman, queer or in other ways.¶¶

(b) "Gay" means the sexual orientation of a person attracted to people of the same gender. Although often used as an umbrella term, it is used more specifically to describe men attracted to men. ¶¶

(c) "Bisexual" means a person who has the potential to be physically, romantically and/or emotionally attracted to people of more than one gender, not necessarily at the same time, in the same way or to the same degree.¶¶

(d) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.¶¶

(e) "Queer" means individuals who do not identify as exclusively straight or individual who have non-binary or gender-expansive identities and is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole. This

term was previously used as a slur; but has been reclaimed by many parts of the LGBTQIA2S+ movement. It can also include transgender people who identify as male or female. The term should only be used to refer to a specific person if that person self-identifies as queer. ¶

(f) "Intersex" means someone born with a variety of differences in their sex traits and reproductive anatomy. Intersex traits greatly vary, including differences in, but limited to, hormone production and reproductive anatomy. ¶

(g) "Asexual" or "Ace" means a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little or conditional sexual attraction. Many people who are asexual still identify with a specific romantic orientation. ¶

(h) "2S" or "Two-Spirit" means a term used within some Indigenous communities, encompassing cultural, spiritual, sexual and gender identity. The term reflects complex indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. The definition and common use of the term two-spirit may vary among Tribes and Tribal communities. ¶

(i) The "+" means all other identities and expressions of gender, romantic and sexual orientation, including minority gender identities. ¶

(j) "Nonbinary" means a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid. ¶

~~(605)~~ "Licensed Nurse" means an Oregon licensed practical or registered nurse. ¶

~~(646)~~ "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued. ¶

~~(627)~~ "Licensing Complaint Unit (LCU)" means the Safety, Oversight and Quality staff who investigate allegations of licensing violations. ¶

~~(63)~~ "Legal Representative" means a person who has the legal authority to act for an individual. ¶

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

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

~~(648)~~ "Major Alteration": ¶

(a) Means: ¶

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

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

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

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

~~(659)~~ "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility. ¶

~~(6670)~~ "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes). ¶

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

(A) Small frequent meals; ¶

(B) No added salt; ¶

(C) Reduced or no added sugar; and ¶

(D) Simple textural modifications. ¶

(b) Medically complex diets are not included. ¶

~~(671)~~ "New Construction" means: ¶

(a) A new building. ¶

(b) An existing building or part of a building that is not currently licensed. ¶

(c) A major alteration to an existing building. ¶

(d) Additions, conversions, renovations, or remodeling of existing buildings. ¶

~~(6872)~~ "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851. ¶

~~(6973)~~ "OHA" means the Oregon Health Authority. ¶

~~(704)~~ "Owner" means an individual with an ownership interest. ¶

~~(745)~~ "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity. ¶

~~(726)~~ "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030.¶¶

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

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

~~(737)~~ "Person-Centered Service Plan Coordinator" means a:¶¶

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

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

~~(748)~~ "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.¶¶

~~(759)~~ "Preferred Language" means the chosen language of for the resident. Preferred language must be legally recognized language.¶¶

~~(7680)~~ "Preliminary Finding" means an objective finding based on the available evidence at the time that the Department conducts an initial investigation of a complaint.¶¶

~~(81)~~ "Pre-Service Training" means training that must be completed before direct care staff provide care to residents.¶¶

~~(7782)~~ "Primary Care Provider" means the health care provider primarily responsible for the on-going diagnosis and treatment of the resident where they currently reside.¶¶

~~(783)~~ "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.¶¶

~~(7984)~~ "Provider" means any person or entity providing HCBS.¶¶

~~(805)~~ "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.¶¶

~~(816)~~ "Psychotropic Medications" means any drug that affects brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories:¶¶

(a) Anti-psychotic.¶¶

(b) Anti-depressant.¶¶

(c) Anti-anxiety.¶¶

(d) Hypnotic.¶¶

~~(827)~~ "Qualified facility staff," for purposes of OAR 411-054-0080, means the facility nurse, administrator, or administrator's designee.¶¶

~~(838)~~ "Quality Measurement Program" means the quality metrics program, as described in OAR 411-054-0320.¶¶

~~(849)~~ "Quality Measurement Council" means a group of individuals appointed by the Governor to develop and oversee the Quality Metric Reporting Program as described in OAR 411-054-0320.¶¶

~~(8590)~~ "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR ~~333-675-0000~~ chapter 333 division 675.¶¶

~~(8691)~~ "Renovate" means to restore to good condition or to repair.¶¶

~~(8792)~~ "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting. This agreement is one of the documents that must be provided to potential residents before move-in.¶¶

~~(8893)~~ "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.¶¶

~~(894)~~ "Resident Evaluation" means an evaluation that uses the information obtained when addressing the elements required in OAR 411-054-0034(5).¶¶

~~(905)~~ "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.¶¶

~~(916)~~ "Residential Care Facility Administrator (RCFA)" means an administrator of a residential care or assisted living facility, as defined in ORS 678.710 and licensed by the Oregon Health Licensing Office, according to OAR

chapter 853. All individuals serving as administrators in residential care or assisted living facilities will be required to hold this license as of January 1, 2022. ¶

~~(927)~~ "Restraint" means:¶

(a) Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached to or adjacent to the individual's body that the individual cannot remove easily, which restricts freedom of movement or normal access of the individual to the individual's body. Any manual method includes physically restraining someone by manually holding someone in place.¶

(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the individual's medical or psychiatric condition.¶

~~(938)~~ "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).¶

~~(949)~~ "Risk Agreement" means a process where a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.¶

~~(95100)~~ "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.¶

~~(96101)~~ "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident. For IICs, the term "interdisciplinary team" is synonymous with "service planning team."¶

~~(97102)~~ "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.¶

~~(98103)~~ "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.¶

~~(99104)~~ "Staffing Assessment" means a review conducted by the Department to determine if a facility is using an acuity-based staffing tool according to administrative rule. ¶

~~(1005)~~ "Staffing Levels" means the number of staff required to provide the levels, intensity and qualifications of staff necessary to meet the scheduled and unscheduled needs of each resident 24 hours a day, seven days a week. Staffing levels are established by using an acuity-based staffing tool to determine the amount of time and expertise necessary to provide services to assist with activities of daily living and related tasks.¶

~~(1046)~~ "Staffing Plan" means a plan outlining the staffing levels required to meet the scheduled and unscheduled needs of all residents within a facility. Staffing plans should incorporate and be consistent with the facility's acuity-based staffing tool data.¶

~~(1027)~~ "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.¶

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

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

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

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

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

(A) Residents and visitors of residents.¶

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

~~(1038)~~ "Substantial Compliance" means a level of compliance with state law and rules of the Department such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents of a facility.¶

~~(1049)~~ "Substantiated" means sufficient evidence was found during a complaint investigation to conclude that a rule violation occurred. For the definition of substantiated for the purpose of abuse findings refer to OAR 411-020-0002.¶

~~(110)~~ "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.¶

~~(10511)~~ "These Rules" mean the rules in OAR chapter 411, division 054.¶

~~(10612)~~ "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify

as straight, gay, lesbian, bisexual, etc.¶¶

~~(10713)~~ "Underserved" means services are significantly unavailable within the service area in a comparable setting for:¶¶

(a) The general public.¶¶

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

~~(10814)~~ "Unit" means the personal and sleeping space of an individual receiving services in an RCF or ALF setting, as agreed to in the Residency Agreement.¶¶

~~(10915)~~ "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.¶¶

~~(1106)~~ "Unsubstantiated" means sufficient evidence was not found during a complaint investigation to conclude that a rule violation occurred. For the definition of unsubstantiated for the purpose of abuse findings refer to OAR 411-020-0002.¶¶

~~(117)~~ "Voluntary Move-Out" means the facility and the resident, or resident's legal representative, have mutually agreed the facility can no longer meet the resident's health, behavior or care needs.

Statutory/Other Authority: ORS 410.070, 441.122, 443.450, 443.738

Statutes/Other Implemented: ORS 441.111, 443.400 - 443.455, 443.738, 443.991, 678.710

RULE SUMMARY: Added applicants must provide required policies, procedures, and documents outlined in OAR 411-054-0012(9) and OAR 411-054-0025(8) for Department review and approval. Department shall conduct an inspection of the facility for no less than 90 days and no more than 120 days after an initial license is issued, or upon receipt of a licensing renewal application and fee. Align reasons to deny or delay a license renewal.

CHANGES TO RULE:

411-054-0013

Application for Initial Licensure and License Renewal ¶

(1) APPLICATION. Applicants for initial licensure and license renewal must complete the Department's application form. A licensing fee, as described in ORS 443.415, must be submitted to the Department.¶

(a) The application form must be signed by the applicant's legally authorized representative, dated, and contain all information requested by the Department.¶

(b) A licensing fee must be submitted to the Department. The initial licensing fee for a new building or recently purchased building is paid according to number of beds, as required by ORS 443.415:¶

(A) For 1 to 15 beds: application fee shall be \$2,000 and the biennial renewal fee shall be \$1,000.¶

(B) For 16 to 49 beds: application fee shall be \$3,000 and the biennial renewal fee shall be \$1,500.¶

(C) For 50 to 99 beds: application fee shall be \$4,000 and the biennial renewal fee shall be \$2,000.¶

(D) For 100 to 150 beds: application fee shall be \$5,000 and the biennial renewal fee shall be \$2,500.¶

(E) For 151 or more beds: application fee shall be \$6,000 and the biennial renewal fee shall be \$3,000.¶

(c) Applicants must provide all information and documentation as required by the Department including but not limited to identification of financial interest of any individual, including stockholders who have an incident of ownership in the applicant representing an interest of 10 percent or more. For purposes of rule, an individual with a 10 percent or more incident of ownership is presumed to have an effect on the operation of the facility with respect to factors affecting the care or training provided, unless the individual establishes the individual has no involvement in the operation of the facility. For those who serve the Medicaid population, the applicant must identify any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.¶

(d) If the owner of the facility is a different entity from the operator or management company of the facility, both the operator and the owner must complete an application for licensure. Only one license fee is required.¶

(e) The application shall require the identification of any individual with a 10 percent or more incident of ownership that has ever been convicted of a crime associated with the operation of a long-term, community-based, or health care facility or agency under federal law or the laws of any state. For those who serve the Medicaid population, any individual with a 5 percent or more incident of ownership must be identified, regardless of the individual's effect on the operation of the facility.¶

(f) The application shall require the identification of all states where the applicant, or individual having a 10 percent or more incident of ownership in the applicant, currently or previously has been licensed as owner or operator of a long-term, community-based, or health care facility or agency under the laws of any state including any facility, currently or previously owned or operated, that had its license denied or revoked or received notice of the same under the laws of any state. For those who serve the Medicaid population, all states where the applicant or any individual having a 5 percent or more incident of ownership must be identified, regardless of the individual's effect on the operation of the facility.¶

(g) The Department may deny, revoke, or refuse to renew the license if the applicant fails to provide complete and accurate information on the application and the Department concludes that the missing or corrected information is needed to determine if a license shall be granted.¶

(h) Each application for a new license must include a completed background check request form for the applicant and for each individual with 10 percent or more incident of ownership in the applicant. For those who serve the Medicaid population, a background check request form is required for the applicant and for each individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.¶

(i) The Department may require financial information as stated in OAR 411-054-0016 (New Applicant Qualifications), when considering an applicant's request for renewal of a license.¶

(j) Applicants must identify the Department-approved acuity-based staffing tool the facility will implement and use as outlined in OAR 411-054-0037. ¶

(k) Applicants must provide other information and documentation as the Department may reasonably require for the proper administration of these rules, including but not limited to information about incident of ownership and

involvement in the operation of the facility or other business enterprises, as relevant.¶

(l) For facilities that serve the Medicaid population and are managed by a Board of Directors, the Centers for Medicare and Medicaid Services (CMS) require a social security number and date of birth for each board member.¶

~~(2m) LICENSE RENEWAL. Application for a license renewal must be made at least 45 days prior to the expiration date of the existing license. Filing of an application for renewal and submission of the required non-refundable fee before the date of expiration extends the effective date of expiration until the Department acts upon such application, provide the facility's required documentation as outlined in OAR 411-054-0012(9) and OAR 411-054-0025(8) for Department review and approval.¶~~

~~(2) The Department shall conduct an inspection of the facility no less than 90 days and no more than 120 days after an initial license is issued.¶~~

~~(3) LICENSE RENEWAL. Application for a license renewal must be made at least 45 days prior to the expiration date of the existing license.¶~~

~~(a) The Department shall refuse to renew a license if +when:¶~~

~~(A) The facility is not substantially in compliance with all applicable laws and rules or if the State Fire Marshal or authorized representative has given notice of noncompliance regulations.¶~~

~~(B) The facility is in substantial compliance with kitchen inspections as required in paragraph (5) of this rule, and¶~~

~~(C) The State Fire Marshal or authorized representative has given notice of compliance.¶~~

~~(b) The Department may not deny, delay, or refuse to renew a license:¶~~

~~(A) For a facility's first failure to pass a kitchen inspection; or¶~~

~~(B) If the Department fails to conduct a kitchen inspection in a timely manner.¶~~

~~(b) (c) An applicant for license renewal must provide the Department with a completed background check request form for the applicant and for each individual with incident of ownership of 10 percent or more in the applicant when required by the Department. For those who serve the Medicaid population, a background check request form is required for the applicant and each individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.¶~~

~~(e) (d) A building inspection may be requested at the Department's discretion. The Department may require physical improvements if the health or safety of residents is negatively impacted.¶~~

~~(3e) Upon receipt of a licensing renewal application and fee, the Department shall conduct an inspection.¶~~

~~(f) Filing an application for renewal and submitting the required non-refundable licensing fee before the date of expiration extends the expiration date of the license until the Department acts upon such application. Failure to submit an application for renewal and licensing fee will result in the license not being renewed.¶~~

~~(g) The license will be renewed once an application and all corresponding documents have been submitted, the renewal fee has been paid, the required inspections have been completed, and the licensee is operating in substantial compliance.¶~~

~~(4) DEMONSTRATED CAPABILITY.¶~~

~~(a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of the Department that the applicant can provide services in a manner consistent with the requirements of these rules.¶~~

~~(b) The Department may consider the background and qualifications of any individual with a 10 percent or more incident of ownership in the applicant when determining whether an applicant may be licensed. For those who serve the Medicaid population, the background and qualifications of any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.¶~~

~~(c) The Department may consider the applicant's history of compliance with Department rules and orders including the history of compliance of any individual with a 10 percent or more incident of ownership in the applicant. For those who serve the Medicaid population, the history of compliance of the applicant and any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.¶~~

~~(45) KITCHEN INSPECTION. The Department shall annually conduct an in-person inspection of each facility's kitchen and other places where food is prepared.¶~~

~~(a) During a year in which the facility is surveyed, the kitchen inspection shall be completed as part of the standard survey.¶~~

~~(b) During a year in which a facility is not surveyed, the kitchen inspection shall require a separate visit and inspection by the Department. The fee for this separate kitchen inspection is \$200.¶~~

~~(c) This section (4) will not go into effect until July 1, 2022.~~

Statutory/Other Authority: ORS 410.070, ~~443.417~~, 443.450

Statutes/Other Implemented: ORS 443.400—~~443.455~~, 443.991

RULE SUMMARY: Clarified applicants who have no Oregon community-based care experience must hire a qualified consultant or management entity for at least six months.

CHANGES TO RULE:

411-054-0016

New Applicant Qualifications ¶¶

For the purpose of this rule, "applicant" means each entity, as defined in OAR 411-054-0005, who holds 10 percent or more incident of ownership in the applicant as described in OAR 411-054-0013(1)(b). For those who serve the Medicaid population, "applicant" means each entity, as defined in OAR 411-054-0005, who holds 5 percent or more incident of ownership regardless of the individual's effect on the operation of the facility. Applicants for licensure (excluding license renewal, but including all conversion facilities, changes of ownership, management, or operator) must meet the following criteria:¶¶

(1) BACKGROUND CHECK. Each applicant may not have convictions of any of the crimes listed in OAR 407-007-0275 and must complete a background check conducted by the Department in accordance with OAR 407-007-0200 to 407-007-0370.¶¶

(2) PERFORMANCE HISTORY. The Department shall consider an applicant's performance history, including repeat sanctions or rule violations, before issuing a license.¶¶

(a) Each applicant must be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill, or individuals with disabilities that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.¶¶

(b) Applicants must be free of incident of ownership history in any facility in any state that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.¶¶

(c) Failure to provide accurate information or demonstrate required performance history may result in the Department's denial of a license.¶¶

(3) FINANCIAL HISTORY. Each applicant must:¶¶

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years.¶¶

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, utilities, or other costs necessary for facility operation during the past five years.¶¶

(c) Submit proof of fiscal responsibility, including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:¶¶

(A) An unencumbered line of credit;¶¶

(B) A performance bond; or¶¶

(C) Any other method satisfactory to the Department.¶¶

(d) Provide a pro forma (revenues, expenditures, and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.¶¶

(4) EXPERIENCE. If an applicant does not have experience ~~in the management of operating or managing an assisted living or residential care facilities~~ in Oregon, the applicant must ~~employ~~ retain the services of a Department- approved consultant or management component entity with experience ~~in the provision of assisted living or residential care for a period of at least six months of operation. The consultant~~ operating or managing an assisted living or residential care facility in Oregon.¶¶

(a) The applicant must contract with a consultant or management entity at least one month before the facility is licensed. The applicant must retain the consultant or management entity for a period of at least six months from the date the initial license is issued.¶¶

(b) Prior to ending the consultant or management entity services, the licensee must notify the Department, in writing, of the request to end the services. The request to terminate must be submitted at least two business days before terminating services.¶¶

(A) The Department will review the request and provide a decision in writing concerning termination of the consultant or management entity services within five business days of receiving the request. Consultant or

management entity services shall continue until a decision is made by the Department. The consultant or management entity, and the terms and length of employment, are subject to the approval of the Department.

¶

(a) Conversion Facilities: Unless the applicant has a history of managing an ALF or RCF, a) The Department may require the licensee to extend the duration of the period of consultation beyond six months if the Department determines, from an on-site inspection, from a review of the required monthly reports, or both, that the facility is not in substantial compliance with applicable state or federal laws, rules or regulations.

(c) The facility is responsible for implementing recommendations from the consultant or management entity or taking any other appropriate alternative steps to achieve substantial compliance with applicable state or federal laws, rules or regulations.

(d) If the applicant is applying for a license to operate an assisted living facility or a residential care facility with a memory care endorsement under ORS 443.886, the applicant must contracted with a consultant with experience providing residential care must be retained by a CF for six months of operation.

(b) or management entity that has experience operating or managing an assisted living facility or a residential care facility with a memory care endorsement under ORS 443.886.

(e) Conversion Facilities: Subsections (a), (b), and (c) above also apply to Conversion Facilities.

(f) Intensive Intervention Communities: Subsections (a), (b), and (c) above also apply to Intensive Intervention Communities. In addition, Intensive Intervention Community applicants must have history of an unencumbered license from the Department or have operated a specialized living contract with the Department.

Statutory/Other Authority: ORS 410.070, 443.450

Statutes/Other Implemented: ORS 443.400 - 443.455, 443.991

RULE SUMMARY: Added new consultant or management entity requirements for minimum qualifications and Request for Application process for licensee with no Oregon community-based care experience. Added tasks to be completed by a consultant or management entity.

CHANGES TO RULE:

411-054-0017

Consultants

(1) As required by OAR 411-054-0016(4), the applicant must retain a consultant or management entity that meets the following minimum qualifications:¶

(a) Holds, or employs a person who holds, an active residential care facility administrator license issued under ORS 678.710 to 678.820 that is in good standing.¶

(b) Within the last five years, has at least three years of demonstrated experience operating or managing an assisted living facility or a residential care facility in Oregon in a satisfactory manner. ¶

(c) Within the last five years, has at least three years of demonstrated experience operating or managing an assisted living or residential care facility with a memory care endorsement under ORS 443.886 in Oregon in a satisfactory manner. This is required if the consultant or management entity is consulting with an applicant applying for a license to operate an assisted living or residential care facility with a memory care endorsement under ORS 443.886. ¶

(d) Is not listed as an excluded provider on the comprehensive listing maintained by the United States Department of Health and Human Services' Office of Inspector General of providers that are excluded from participation in federal health care programs.¶

(2) The consultant or management entity must submit an application to the Department. The consultant and management entity will be required to demonstrate the minimum qualifications listed in paragraph (1) above and provide any other required materials as outlined in the application process. The Department will review these materials, and review any prior investigations, sanctions and enforcement actions initiated by the Department. ¶

(3) The consultant or management entity must comply with the Department's rules and perform the following tasks required by OAR 411-054-0016(4) including but not limited to: ¶

(a) Review of the facility's policies, procedures and quality improvement program.¶

(b) Conduct audits at least monthly as well as conduct periodic on-site compliance audits, which must include a review of facility systems.(c) Submit monthly reports to the Department and the licensee after the facility begins operation. Each of the reports must include documentation evaluating the facility systems, policies and procedures. Each report must include the facility's actions taken to correct any deficient practices.¶

(4) The Department retains the right to rescind approval of a consultant or management entity as outlined in the application process.

Statutory/Other Authority: ORS 410.070, 443.420, 443.450

Statutes/Other Implemented: ORS 443.400-443.455, 443.991

RULE SUMMARY: Clarified applicants who have no Oregon community-based care experience must hire a qualified consultant or management entity for at least six months. Added the requirement the current licensee must disclose current Department granted exceptions to prospective licensees. The Department shall conduct an on-site inspection no less than 90 days and no more than 120 days after an initial license is issued.

CHANGES TO RULE:

411-054-0019

Change of Ownership or Management ¶¶

(1) The licensee and the prospective licensee must each notify the Department in writing of a contemplated change in ownership or management entity. The written notification must be received at least 60 days prior to the proposed date of change.¶¶

(a) The prospective licensee or management entity must submit ~~at least 60 days in advance of the proposed date change~~ all required documents at least 60 days before the expected date of initial licensure. The following must be submitted to the Department: ¶¶

(A) A completed application form; ¶¶

(B) Background checks and performance history as outlined in OAR 411-054-0016. ¶¶

~~(C) A copy of policies, procedures, rental/sidecacy agreements, service plans, required disclosure information statements, including the Consumer Summary Statement, and identification of the Department-approved Acuity-Based Staffing Tool the facility will implement and use as outlined in OAR 411-054-0037; and, ¶¶~~

~~(D) A licensing fee, as described in ORS 443.415, submitted according to Department policy. ¶¶~~

(b) The prospective licensee must notify the residents in writing 30 days in advance of a change in ownership or management entity. The notice to residents must include any changes to rates or policies.¶¶

(c) The prospective licensee or operator may not assume possession or control of the facility until the Department has notified the prospective licensee or operator that the license application has been approved.¶¶

(d) The licensee is responsible for the operation of the facility and resident services until a new license is issued to the new owner.¶¶

(2) The licensee must disclose current Department-granted exceptions to prospective licensee.¶¶

(3) A building inspection may be requested at the Department's discretion. The Department may require physical improvements if the health or safety of residents is negatively impacted.¶¶

~~(34)~~ Resident records maintained by the licensee must be turned over to the new owner when the license application is approved, and the new licensee assumes possession or control of the facility.¶¶

~~(45)~~ The new owner or licensee shall send a revised copy of the Consumer Summary Statement to the Department prior to a change of ownership or management. The revised copy must include new ownership or management information and any other amendments to the document. All Consumer Summary Statements are posted to the Department's licensing webpage.¶¶

(6) If an applicant does not have experience in the operation or management of an assisted living or residential care facility in Oregon, the applicant must follow requirements outlined in OAR 411-054-0016. The applicant must contract with a consultant or management entity at least one month before the scheduled change of ownership. ¶¶

(7) The Department shall conduct an inspection of the facility no less than 90 days and no more than 120 days after a change of ownership.

Statutory/Other Authority: ORS 410.070, 443.450

Statutes/Other Implemented: ORS 443.400 - 443.455, 443.991

RULE SUMMARY: Amended background check portability and frequency of background checks from two years to three years. Added facility reporting requirements for the Home and Community-Based Services Caregiver Registry. Amended policies and procedures facilities are required to develop and implement. Added the Department will develop an electronic monitoring consent model form.

CHANGES TO RULE:

411-054-0025

Facility Administration ¶¶

(1) FACILITY OPERATION.¶¶

- (a) The licensee is responsible for the operation of the facility and the quality of services rendered in the facility.¶¶
- (b) The licensee is responsible for the supervision, training, and overall conduct of staff when staff are acting within the scope of his or her employment duties.¶¶
- (c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.¶¶
- (d) The licensee is responsible for obtaining background checks on all subject individuals.¶¶

(2) BACKGROUND CHECK REQUIREMENTS.¶¶

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

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

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

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

(b) PORTABILITY OF BACKGROUND CHECK APPROVAL. ~~A subject individual may be~~¶¶

(A) A new criminal records check is not required when a subject individual with a valid background check approval moves to another care setting listed in ORS 443.004(2) or (3), provided there is no new potentially disqualifying information. The facility must submit the individual's identifying information, as required by the Background Check Unit, to verify the approval status and update employer information.¶¶

(B) If a subject individual was previously approved to work in multiple facilities under the same operational entity: The Department's B, and that intent was identified in the original background C check R request must be completed by the subject individual to show intent to work at various facilities and approved by the Background Check Unit, an additional submission to the Background Check Unit is not required when moving between facilities within that operational entity.¶¶

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

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

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

(a) Facility license.¶¶

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

(c) The current facility staffing plan, with date(s).¶¶

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

(e) The Ombudsman Notification Poster.¶¶

(f) Resident Rights and Protections, as described in OAR 411-054-0027, including the LGBTQIA2S+ Rights and Protections.¶¶

(g) The LGBTQIA2S+ Nondiscrimination Notice, as described in paragraph (7)(i) of this section, must be posted in

all places and on all materials where that notice or those written materials are posted.¶

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

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

(a) Any change of the administrator of record through the submission of the Administrator Reference Summary (SDS 0566).¶

(b) Severe interruption of physical plant services where the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food.¶

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable.¶

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility.¶

(e) Unusual resident death or suicide.¶

(f) A resident who has eloped from the facility and has not been found within 24 hours.¶

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

(a) The facility must develop and implement the following policies and procedures: ¶

~~(a) A policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in his or her daily living.¶~~

~~(b) A written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.¶~~

~~(c) Effective methods of responding to and resolving resident complaints.¶~~

~~(d) All additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition and Monitoring), OAR 411-054-0045 (Resident Health Services), and OAR 411-054-0085 (Refunds and Financial Management).¶~~

~~(e) A policy on smoking. The facility may designate itself as non-smoking.¶~~

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

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

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

~~(iii) Any other applicable state and local laws.¶~~

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

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

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

~~(h) Protocols for preventing and controlling infection, as described in OAR 411-054-0050.¶~~

~~(i) LGBTQIA2S+ Nondiscrimination Notice:¶~~

LGBTQIA2S+ Nondiscrimination Notice.¶

(H) The LGBTQIA2S+ Nondiscrimination Notice must include the following language: "(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual's association with another individual on account of the other individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Oregon Department of Human Services at (provide current contact information)." ¶

(j) The facility must develop and implement the policies and procedures for the following rules: ¶

(A) Food preparation including temperatures and distribution policy as outlined in the Food Sanitation Rules. ¶

(B) Service planning policy as outlined in OAR 411-054-0036.¶

(C) Medication administration policy as outlined in OAR 411-054-0055. ¶

(D) Facility closure policy as outlined in OAR 411-054-0010. ¶

(E) Abuse reporting policy as outlined in OAR 411-054-0028. ¶

(F) Change of condition and monitoring policy as outlined in OAR 411-054-0040. ¶

(G) Resident health services policy as outlined in OAR 411-054-0045. ¶

(H) Staffing training policy as outlined in OAR 411-054-0070. ¶

(I) Facility safety program as outlined in OAR 411-054-0090. ¶

(J) Emergency and disaster planning policy(s) as outlined in OAR 411-054-0093. ¶

(K) Safe cooking appliances policy as outlined in OAR 411-054-0200. ¶

(L) ABST Policy for accurate and consistent implementation of the ABST as outlined in OAR 411-054-0037. The policy must explain how a facility evaluates and accounts for both scheduled and unscheduled resident needs, 24 hours of the day, 7 days a week. ¶

(M) Protocols for preventing and controlling infection, as described in OAR 411-054-0050. ¶

(N) All additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), and OAR 411-054-0085 (Refunds and Financial Management). ¶

(O) If licensed as an assisted living or residential care facility with an endorsed memory care, the facility must follow all OAR chapter 411, division 57 policy and procedure requirements. ¶

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

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

(b) Unless required or allowed by state or federal law, a facility ~~shall~~must not disclose any personally identifiable information regarding: ¶

(A) A resident's sexual orientation; ¶

(B) Whether a resident is LGBTQIA2S+; ¶

(C) A resident's gender transition status; or ¶

(D) A resident's human immunodeficiency virus status. ¶

(c) The facility ~~shall~~must take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (b) of this section to other residents, visitors or facility staff, except to the minimum extent necessary for facility staff to perform their duties. Facilities must notify residents or resident representatives if the facility inadvertently or accidentally discloses such information to unauthorized persons. ¶

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

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

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

(10) ELECTRONIC MONITORING CONSENT MODEL FORM. If a resident or their designated representative chooses to have a camera or electronic monitoring device in the resident's room, the resident or their designated representative must complete an Electronic Monitoring Consent form. The form is maintained on the Department's website for facilities to use. Facilities may develop and use their own forms. The signed form must be maintained in the resident's records.

Statutory/Other Authority: ORS 181.534, 410.070, 441.122, 443.004, 443.012, 443.450

Statutes/Other Implemented: ORS 181.534, 441.112, 441.114, 443.004, 443.400—~~443.455~~, 443.991

RULE SUMMARY: Added survey and licensing process notification to the facility Consumer Summary Form. Amended requirement that facilities must use the Department form instead of creating their own for federal accessibility rules. Added notification requirements to prospective residents if the facility is enrolled in the Facility Enhanced Oversight and Supervision program.

CHANGES TO RULE:

411-054-0026

Disclosure and Notification to Potential Residents.

The facility must provide the following documents to potential residents before move-in:¶

- (1) UNIFORM DISCLOSURE STATEMENT. This is a Department-designated form (form APD 9098A) to provide to each individual who requests information about the facility.¶
- (2) RESIDENCY AGREEMENT. This is an agreement prepared by the facility. The residency agreement must be reviewed by the Department before distribution and must include the following:¶
 - (a) Terms of occupancy, including policy on the possession of firearms and ammunition.¶
 - (b) Payment provisions including the basic rental rate and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable.¶
 - (c) The method for evaluating a resident's service needs and assessing the costs for the services provided.¶
 - (d) Policy for increases, additions, or changes to the rate structure. The disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan.¶
 - (e) Refund and proration conditions.¶
 - (f) A description of the scope of resident services available according to OAR 411-054-0030.¶
 - (g) A description of the service planning process.¶
 - (h) Additional available services.¶
 - (i) The philosophy of how health care and ADL services are provided to the resident.¶
 - (j) Resident rights and responsibilities.¶
 - (k) The facility's system for packaging medications including the option for residents to choose a pharmacy that meets the requirements of ORS 443.437.¶
 - (l) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move consistent with OAR 411-054-0080.¶
 - (m) Resident rights pertaining to notification of involuntary move-out.¶
 - (n) Notice that the Department has the authority to examine resident records as part of the evaluation of the facility.¶
 - (o) The facility's staffing plan.¶
 - (p) Additional elements as listed in OAR 411-054-0027(2).¶
- (3) CONSUMER SUMMARY STATEMENT. The facility must ~~develop a~~ use the Department-designated Consumer Summary Statement ~~specific to the facility form (APD 9098CS)~~. This form is separate from the residency agreement. ~~For a model consumer summary that may be used as an example, please see the Department form (form APD 9098CS).~~¶
 - (a) Similar to the residency agreement, this summary statement must be provided to a potential resident before move-in. The consumer summary must include the following:¶
 - (A) A summary of the services provided by the facility.¶
 - (B) A summary of the services and types of care the facility does not provide.¶
 - (C) A statement that, if the facility is not capable of meeting the resident's needs for care and services, the facility may require the resident to move to another facility or care setting, in accordance with OAR 411-054-0080.¶
 - (D) A statement explaining that, if a resident leaves the facility to receive acute medical, psychiatric, nursing or other specialized care, the facility will evaluate the facility's ability to meet the resident's care needs before the resident is permitted to return to the facility, in accordance with OAR 411-054-0080(6).¶
 - (E) An explanation of the resident's right to appeal should the facility either require the resident to leave the facility, or not permit the resident to return following treatment as described in paragraph (D). Appeal rights are explained in OAR 411-054-0080(7).¶
 - (F) A statement as to whether the facility will arrange or coordinate hospice care for a resident upon request.¶
 - (G) A summary explanation of the licensing and survey process including information about where to find licensing and survey results for the facility.¶
 - (b) The information in the summary statement outlined in subsection (a) above must:¶

- (A) Be in writing.¶
 - (B) Be written in plain English.¶
 - (C) Be explained to the individual or the person acting on behalf of the individual in a manner the individual or representative understands.¶
 - (D) Be provided separately from all other disclosure documents, such as the Uniform Disclosure Statement (APD form 9098A), and the facility's Residency Agreement.¶
 - (E) Be signed by the individual or the person acting on behalf of the individual, acknowledging that the individual or representative understands the content and implications of the information.¶
 - (c) The facility must submit an updated Consumer Summary Statement to the Department any time the facility has a management or ownership change. The Consumer Summary Statement must be submitted to the Department 60 days prior to the change of ownership or management. ¶
 - (d) The facility must submit an updated Consumer Summary Statement to the Department any time the facility makes changes to the form. ¶
 - (e) All Consumer Summary Statements will be posted on the Department's licensing webpage.¶
 - (4) LGBTQIA2S+ PROTECTIONS. A facility shall provide a copy of the LGBTQIA2S+ Protections as described in OAR 411-054-0027(2), and the facility's LGBTQIA2S+ Nondiscrimination Notice, as described in OAR 411-054-0025(~~78~~)(g).¶
 - (5) All disclosure information and residency agreements must be written in compliance with these rules.¶
 - (a) The facility may not include any provision in the residency agreement, summary statement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.¶
 - (b) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to the resident's designated representative.¶
 - (c) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed, emailed, or mailed to the Department before distribution.¶
 - (6) Prior to admission, the facility must provide written notification to prospective residents of the facility's enrollment in the Facility Enhanced Oversight and Supervision (FEOS) Program.
- Statutory/Other Authority: ORS 410.070, 441.122
- Statutes/Other Implemented: ORS 441.112, 441.114, 443.443

RULE SUMMARY: Added the requirement to gather the residents "designated contact person" information.

CHANGES TO RULE:

411-054-0034

Resident Move-In and Evaluation ¶¶

(1) INITIAL SCREENING AND MOVE-IN.¶¶

- (a) The facility must determine whether a potential resident meets the facility's admission requirements.¶¶
 - (b) Before the resident moves in, the facility must conduct an initial screening to determine the prospective resident's service needs and preferences. The screening must determine the ability of the facility to meet the potential resident's needs and preferences, including evaluating staff time required to meet estimated acuity needs for the resident, while considering the needs of the other residents and the facility's overall service capability.¶¶
 - (c) Each resident record must, before move-in and when updated, include the following information:¶¶
 - (A) Legal name for billing purposes.¶¶
 - (B) To promote person-centered care, any variance from legal records, as indicated by the resident, regarding:
 - (i) Name.¶¶
 - (ii) Pronouns.¶¶
 - (iii) Gender identity.¶¶
 - (C) Prior living arrangements;¶¶
 - (D) Emergency contacts;¶¶
 - (E) Service plan involvement - resident, family, and social supports;¶¶
 - (F) Financial and other legal relationships, if applicable, including, but not limited to:¶¶
 - (i) Advance directives;¶¶
 - (ii) Guardianship;¶¶
 - (iii) Conservatorship; and¶¶
 - (iv) Power of attorney.¶¶
 - (G) Primary language;¶¶
 - ~~(H) Community connections; and¶¶~~
 - (I) Designated contact person, to be notified by the facility as outlined in OAR 411-054-0035. ¶¶
 - (i) Facility must obtain full name, preferred contact information and preferred language of the individual to be contacted. ¶¶
 - (ii) Facility shall immediately update contact information upon written notification from the resident or the designated contact person. ¶¶
 - (iii) The resident, or resident's legal representative may choose to decline to name a designated contact person. Facility must document if the resident declines. ¶¶
 - (iv) The facility must document if the resident or the resident's legal representative declines to name a designated contact person. ¶¶
 - ~~(H) Primary language.¶¶~~
 - ~~(I) Community connections.¶¶~~
 - ~~(J) Health and social service providers.¶¶~~
- (2) RESIDENT EVALUATION - GENERAL. The resident evaluation identifies the resident's preferences, strengths, and relationships, as well as activities that are meaningful to the individual. The evaluation describes the resident's physical health status, mental status, and the environmental factors that help the individual function at their optimal level. The evaluation is the foundation that a facility uses to develop the resident's service plan. The evaluation information may be collected using tools and protocols established by the facility, but must contain the elements stated in this rule.¶¶
- (a) Resident evaluations must be:¶¶
 - (A) Performed before the resident moves into the facility, with updates and changes as appropriate within the first 30 days; and¶¶
 - (B) Performed at least quarterly, to correspond with the quarterly service plan updates.¶¶
 - (C) Reviewed and any updates must be documented each time a resident has a significant change in condition.¶¶
 - (D) Done in person and the facility must gather data that is relevant to the needs and current condition of the resident.¶¶
 - (E) Documented, dated, and indicate who was involved in the evaluation process.¶¶
 - (b) 24 months of past evaluations must be kept in the resident's files in an accessible, on-site location.¶¶
 - (c) The facility administrator is responsible for ~~ensuring~~ only trained and experienced staff perform resident

evaluations.¶¶

(3) EVALUATION REQUIREMENTS AT MOVE-IN.¶¶

(a) The resident evaluation must be completed before the resident moves into the facility. This evaluation provides baseline information of the resident's physical and mental condition at move-in.¶¶

(b) If there is an urgent need and the evaluation is not completed before move-in, the facility must document the reasons and complete the evaluation within eight hours of move-in.¶¶

(c) The initial evaluation must contain the elements specified in section (5) of this rule and address sufficient information to develop an initial service plan to meet the resident's needs.¶¶

(d) The initial evaluation must be updated and modified as needed during the 30 days following the resident's move into the facility.¶¶

(e) After the initial 30 day move-in period, the initial evaluation must be retained in the resident's file for 24 months. Future evaluations must be separate and distinct from the initial evaluation.¶¶

(4) QUARTERLY EVALUATION REQUIREMENTS.¶¶

(a) Resident evaluations must be performed quarterly after the resident moves into the facility.¶¶

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

(c) The most recent quarterly evaluation, with documented change of condition updates, must be in the resident's current record and available to staff.¶¶

(d) If the evaluation is revised and updated at the quarterly review, changes must be dated and initialed and prior historical information must be maintained.¶¶

(5) The resident evaluation must address the following elements:¶¶

(a) For service planning purposes, if indicated by the resident, ¶¶

(A) Name.¶¶

(B) Pronouns.¶¶

(C) Gender identity.¶¶

(b) Resident routines and preferences including:¶¶

(A) Customary routines, such as those related to sleeping, eating, and bathing;¶¶

(B) Interests, hobbies, and social and leisure activities;¶¶

(C) Spiritual and cultural preferences and traditions; and¶¶

(D) Additional elements as listed in OAR 411-054-0027(2).¶¶

(c) Physical health status including:¶¶

(A) List of current diagnoses;¶¶

(B) List of medications and PRN use;¶¶

(C) Visits to health practitioners, emergency room, hospital, or nursing facility in the past year; and¶¶

(D) Vital signs if indicated by diagnoses, health problems, or medications.¶¶

(d) Mental health issues including:¶¶

(A) Presence of depression, thought disorders, or behavioral or mood problems;¶¶

(B) History of treatment; and¶¶

(C) Effective non-drug interventions.¶¶

(e) Cognition, including:¶¶

(A) Memory;¶¶

(B) Orientation;¶¶

(C) Confusion; and¶¶

(D) Decision-making abilities.¶¶

(f) Personality, including how the person copes with change or challenging situations.¶¶

(g) Communication and sensory abilities including:¶¶

(A) Hearing;¶¶

(B) Vision;¶¶

(C) Speech;¶¶

(D) Use of assistive devices; and¶¶

(E) Ability to understand and be understood.¶¶

(h) Activities of daily living including:¶¶

(A) Toileting, bowel, and bladder management;¶¶

(B) Dressing, grooming, bathing, and personal hygiene;¶¶

(C) Mobility - ambulation, transfers, and assistive devices; and¶¶

(D) Eating, dental status, and assistive devices.¶¶

(i) Independent activities of daily living including:¶¶

(A) Ability to manage medications;¶¶

(B) Ability to use call system;¶¶

(C) Housework and laundry; and¶¶

(D) Transportation.¶¶

(j) Pain - pharmaceutical and non-pharmaceutical interventions, including how a person expresses pain or discomfort.¶¶

(k) Skin condition.¶¶

(l) Nutrition habits, fluid preferences, and weight if indicated.¶¶

(m) List of treatments - type, frequency, and level of assistance needed.¶¶

(n) Indicators of nursing needs, including potential for delegated nursing tasks.¶¶

(o) Review of risk indicators including:¶¶

(A) Fall risk or history;¶¶

(B) Emergency evacuation ability;¶¶

(C) Complex medication regimen;¶¶

(D) History of dehydration or unexplained weight loss or gain;¶¶

(E) Recent losses;¶¶

(F) Unsuccessful prior placements;¶¶

(G) Elopement risk or history;¶¶

(H) Smoking. The resident's ability to smoke without causing burns or injury to themselves or others or damage to property must be evaluated and addressed in the resident's service plan; and¶¶

(I) Alcohol and drug use. The resident's use of alcohol or the use of drugs not prescribed by a physician must be evaluated and addressed in the resident's service plan.¶¶

(p) Environmental factors that impact the resident's behavior including, but not limited to:¶¶

(A) Noise.¶¶

(B) Lighting.¶¶

(C) Room temperature. ¶¶

(6) If the information has not changed from the previous evaluation period, the information does not need to be repeated. A dated and initialed notation of no changes is sufficient. The prior evaluation must then be kept in the current resident record for reference.

Statutory/Other Authority: ORS 410.070, 441.122, 443.450

Statutes/Other Implemented: ORS 441.111, 441.114, 443.400 - 443.455, 443.991

ADOPT: 411-054-0035

RULE SUMMARY: Establishes when the facility must provide the summary report in writing to the residents and their designated contact person.

CHANGES TO RULE:

411-054-0035

Designated Contact Person

(1) The facility must provide written notice to residents and their designated contact person: ¶

(a) Upon receipt of a notice of substantiated abuse findings as defined in ORS 430.735.¶

(b) Upon receipt of a notice of enrollment in the Facility Enhanced Oversight and Supervision (FEOS) Program.¶

(2) The facility must notify the residents and their designated contact person in writing and must make the Department's summary report available in a routinely accessible and clearly visible location, within 72 hours of receiving the report. This requirement applies when the Department's summary report includes a finding of a substantiated rule violation that is pervasive or represents a systemic failure at the facility and the Department has: ¶

(a) Found a rule violation resulting in serious harm, serious physical injury or death of a resident; or ¶

(b) Imposed a licensing condition that includes a restriction of admissions.

Statutory/Other Authority: ORS 410.070, 443.436, 443.441, 443.875, Or Laws 2025, ch. 619, § 5

Statutes/Other Implemented: ORS 443.400-443.455, 443.991

RULE SUMMARY: General housekeeping and alignment with current rule language.

CHANGES TO RULE:

411-054-0070

Staffing Requirements and Training ¶¶

(1) STAFFING REQUIREMENTS. Facilities must consistently have qualified awake direct care staff, sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident. Direct care staff provide services for residents that include assistance with activities of daily living, medication administration, resident-focused activities, supervision, and support.¶¶

(a) If a facility employs universal workers whose duties include other tasks (e.g., housekeeping, laundry, food service), in addition to direct resident care, staffing must be increased to maintain adequate resident care and services.¶¶

(b) Prior to providing care and services to residents, direct care staff must be trained as required in sections (2) - (4) of this rule.¶¶

(c) The following facility employees are ancillary to the caregiver requirements in this section:¶¶

(A) Individuals whose duties are exclusively housekeeping, building maintenance, clerical, administrative, or food preparation.¶¶

(B) Licensed nurses who provide services as specified in OAR 411-054-0045 (Resident Health Services).¶¶

(C) Administrators.¶¶

(d) The Department retains the right to require minimum staffing standards based on acuity, complaint investigation or survey inspection.¶¶

(e) Based on resident acuity and facility structural design there must be adequate direct care staff present at all times, to meet the fire safety evacuation standards as required by the fire authority or the Department.¶¶

(f) The licensee is responsible for assuring that staffing is increased to compensate for the evaluated care and service needs of residents at move-in and for the changing physical or mental needs of the residents.¶¶

(g) A minimum of two direct care staff must be scheduled and available at all times whenever a resident requires the assistance of two direct care staff for scheduled and unscheduled needs.¶¶

(h) In facilities where residents are housed in two or more detached buildings, or if a building has distinct and segregated areas, a designated caregiver must be awake and available in each building and each segregated area at all times.¶¶

(i) Facilities must have a written, defined system to determine appropriate numbers of direct care staff and general staffing based on resident acuity and service needs. Such systems may be either manual or electronic.¶¶

(A) Guidelines for systems must also consider physical elements of a building, use of technology if applicable and staff experience.¶¶

(B) Facilities must be able to demonstrate how their staffing system works.¶¶

(j) All staff will have a written position description that specifies their specific duties and responsibilities.¶¶

(2) REQUIREMENTS APPLICABLE TO ALL TRAINING. The facility shall:¶¶

(a) Have a training program that includes methods to determine competency of direct care staff through evaluation, observation, or written testing. Facility ~~shall~~must also maintain documentation regarding ~~each direct care staff's demonstrated competency. the demonstrated competency of each direct care staff.~~¶¶

(b) Maintain written documentation of all trainings completed by each employee. ¶¶

(3) PRE-SERVICE ORIENTATION FOR ALL EMPLOYEES. Prior to beginning their job responsibilities, all employees must complete orientation training regarding:¶¶

(a) A review of their written position description with their job responsibilities.¶¶

(b) RESIDENTS' RIGHTS. Residents' rights and the values of community-based care, including the Department-approved LGBTQIA2S+ trainings. ¶¶

(A) Effective December 31, 2024, all staff must have completed the required training. All new staff, hired on and after January 1, 2025, must complete the required training prior to beginning job responsibilities.¶¶

(B) The Department-approved LGBTQIA2S+ trainings shall address the elements described in paragraph (6)(b) of this rule.¶¶

(c) Abuse and reporting requirements.¶¶

(d) Fire safety and emergency procedures, per OAR 411-054-0090 and 411-054-0093.¶¶

(e) INFECTIOUS DISEASE PREVENTION. Prior to beginning their job responsibilities, unless the employee received the training described below within the 24-month period prior to the time of hiring, all employees must complete training addressing the prevention, recognition, control and reporting of the spread of infectious disease.

¶

(A) The Department, in consultation with the Oregon Health Authority, ~~has determined this~~ training must address the following curricula:¶

- (i) Transmission of communicable disease and infections, including development of a policy with criteria directing staff to stay home when ill with a communicable disease, so as not to transmit disease.¶
- (ii) Policy addressing respiratory hygiene and coughing etiquette.¶
- (iii) Standard precautions.¶
- (iv) Hand hygiene.¶
- (v) Use of personal protective equipment.¶
- (vi) Cleaning of physical environment, including, but not limited to disinfecting high-touch surfaces and equipment, and handling, storing, processing and transporting linens to prevent the spread of infection.¶
- (vii) Isolating and cohousing of residents during a disease outbreak.¶
- (viii) Employees must also receive training on the rights and responsibilities of employees to report disease outbreaks under ORS 433.004 and safeguards for employees who report disease outbreaks.¶

(B) INFECTIOUS DISEASE TRAINING CURRICULUM. Pre-service infectious disease training curriculum must be approved by the Department before facilities may offer training to staff.¶

- (i) The pre-service training may be provided in person, in writing, by webinar or by other electronic means.¶
- (ii) Facilities or other entities that want to provide training curriculum to facilities must first present that curriculum to the Department for review and approval.¶

(f) HOME AND COMMUNITY-BASED SERVICES (HCBS) TRAINING. All staff are required to complete the Department-approved HCBS training, as provided below:¶

(A) Effective March 31, 2024, all staff must have completed the required training.¶

(B) All new staff, hired on or after April 1, 2024, must complete the required training prior to beginning job responsibilities.¶

(g) FOOD HANDLING. If the staff member's duties include preparing food, they must have a food handler's certificate.¶

(4) PRE-SERVICE TRAINING FOR ALL DIRECT CARE STAFF.¶

(a) DEMENTIA. Prior to providing care to residents, all direct care staff must complete an approved pre-service dementia training.¶

(A) Documentation of dementia training:¶

(i) A certificate of completion shall be issued to direct care staff who satisfactorily complete approved dementia training. Facilities shall also maintain records of all direct care staff who have successfully completed pre-service dementia training.¶

(ii) Each facility shall maintain written documentation of continuing education completed, including required pre-service dementia training, for all direct care staff.¶

(B) Portability of pre-service dementia training: After completing the pre-service training, if a direct care staff person is hired within 24 months by a different facility, the hiring facility may choose to accept the previous training or require the direct care staff to complete the hiring facility's pre-service dementia training.¶

(C) A certificate of completion must be made available to the Department upon request.¶

(D) Pre-service dementia care training must include the following subject areas:¶

- (i) Education on the dementia disease process, including the progression of the disease, memory loss, and psychiatric and behavioral symptoms.¶
- (ii) Techniques for understanding, communicating, and responding to distressful behavioral symptoms, including, but not limited to, reducing the use of antipsychotic medications for non-standard uses.¶
- (iii) Strategies for addressing social needs of ~~person~~ residents with dementia and engaging them with meaningful activities.¶
- (iv) Information concerning specific aspects of dementia care and ensuring the safety of residents with dementia, including, but not limited to, how to:¶

(I) Identify and address pain.¶

(II) Provide food and fluids.¶

(III) Prevent wandering and elopement.¶

(IV) Use a person-centered approach.¶

(b) ORIENTATION TO RESIDENT. Pre-service orientation to resident:¶

(A) Prior to providing personal care services for a resident, direct care staff must receive an orientation to the resident, including the resident's service plan.¶

(B) Direct care staff members must be directly supervised by a qualified person until they have successfully demonstrated satisfactory performance in any task assigned and the provision of individualized resident services, as applicable.¶

(56) TRAINING WITHIN 30 DAYS OF HIRE FOR DIRECT CARE STAFF.¶

- (a) The facility is responsible ~~to~~for verifying that direct care staff have demonstrated satisfactory performance in any duty they are assigned.-¶
- (b) Knowledge and performance must be demonstrated in all areas within the first 30 days of hire, including, but not limited to:-¶
 - (A) The role of service plans in providing individualized resident care.-¶
 - (B) Providing assistance with the activities of daily living.-¶
 - (C) Changes associated with normal aging.-¶
 - (D) Identification of changes in the resident's physical, emotional and mental functioning and documentation and reporting on the resident's changes of condition.-¶
 - (E) Conditions that require assessment, treatment, observation and reporting.-¶
 - (F) General food safety, serving and sanitation.-¶
 - (G) If the direct care staff person's duties include the administration of medication or treatments, appropriate facility staff, in accordance with OAR 411-054-0055 (Medications and Treatments) must document that they have observed and evaluated the individual's ability to perform safe medication and treatment administration unsupervised.-¶
- ~~(6Z)~~ ANNUAL AND BIENNIAL INSERVICE FOR ALL STAFF.-¶
 - (a) Annual infectious disease training requires the following:-¶
 - (A) Administrators and employees will be required to complete annual training on infectious disease outbreak and infection control. Such training will be included within the current number of required annual training hours and will not necessitate additional hours of training.-¶
 - (B) Annual in-service training must be documented in the employee record.-¶
 - (b) Biennial LGBTQIA2S+ training requires the following:-¶
 - (A) Administrators and employees shall be required to complete biennial training addressing LGBTQIA2S+ protections, as described in this section. The facility is responsible for the cost of providing this training to all facility staff.-¶
 - (i) Each facility shall designate two employees, one who represents management and one who represents direct care staff ~~by July 1, 2024~~. It is acceptable for the designated employee representing management to generally be housed off-site, but the direct care representative must be onsite.-¶
 - (ii) The designated employees shall serve as points of contact for the facility regarding compliance with the preservice and biennial training requirements. These individuals shall develop a general training plan for the facility.-¶
 - (B) Facilities must select the LGBTQIA2S+ training to be used by the facility by either:-¶
 - (i) Choosing to use the standard Department-approved biennial LGBTQIA2S+ training, or-¶
 - (ii) Applying to the Department to request approval of a biennial LGBTQIA2S+ training to be provided by the facility.-¶
 - (C) ORS 441.116 requires all LGBTQIA2S+ trainings address:-¶
 - (i) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency virus.-¶
 - (ii) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression or human immunodeficiency virus status.-¶
 - (iii) The defined terms commonly associated with LGBTQIA2S+ individuals and human immunodeficiency virus status.-¶
 - (iv) Best practices for communicating with or about LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including the use of an individual's chosen name and pronouns.-¶
 - (v) A description of the health and social challenges historically experienced by LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including discrimination when seeking or receiving care at care facilities and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination.-¶
 - (vi) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including suggested changes to care facility policies and procedures, forms, signage, communication between residents and their families, activities, in-house services and staff training.-¶
 - (vii) The facility, individual or entity providing the training must demonstrate a commitment to advancing quality care for LGBTQIA2S+ residents and residents living with human immunodeficiency virus in this state.-¶
 - (D) The proposal for training submitted by a facility, entity, or individual shall include:-¶
 - (i) The regulatory criteria described in paragraph (C) of this section as part of the proposal.-¶
 - (ii) The following elements must be included in the proposal:-¶
 - (I) A statement of the qualifications and training experience of the facility, individual or entity providing the training;-¶
 - (II) The proposed methodology for providing the training either online or in person.-¶
 - (III) An outline of the training.-¶

(IV) Copies of the materials to be used in the training.-¶¶

(iii) The Department will review the materials and determine whether to approve or deny the training. No later than 90 days after the request is received, the Department will inform the facility in writing of the Department's decision.-¶¶

(c) Annual Home and Community-Based Services (HCBS) training requires the following:-¶¶

(A) All staff will be required to complete annual training concerning the Home and Community-Based Services regulations.-¶¶

(B) Annual in-service training must be documented in the employee record.-¶¶

~~(C) These annual trainings will be required as of April 1, 2025.-¶¶~~

~~(78)~~ ANNUAL IN-SERVICE TRAINING FOR DIRECT CARE STAFF.-¶¶

(a) All direct care staff must complete and document a minimum of 12 hours of in-service training annually on topics related to the provision of care for persons in a community-based care setting, including training on chronic diseases in the facility population, LGBTQIA2S+ and dementia training. Annual in-service training hours are based on the anniversary date of hire.-¶¶

(b) Requirements for annual in-service dementia training:-¶¶

~~(A) Except as provided in paragraph (B) of this section, each direct care staff must complete 6 hours of annual in-service training on dementia care.-¶¶~~

~~(B) Exception: Staff hired prior to January 1, 2019 must complete 6 hours of dementia care in-service training by the anniversary of their hire date in 2020 and annually thereafter.-¶¶~~

~~(C)~~ Dementia care training may be included in the required minimum 12 hours of annual in-service training described in subsection (a) above.-¶¶

~~(D)~~ Dementia care training must reflect current standards for dementia care and be informed by the best evidence in the care and treatment of dementia.-¶¶

~~(E)~~ The facility shall must determine the competency of direct care staff in dementia care in the following ways:-¶¶

(i) Utilize approved dementia care training for its direct care staff, coupled with methods to perform a competency assessment as defined in OAR 411-054-0005(219).-¶¶

(ii) Ensure direct care staff have demonstrated competency in any duty they are assigned. Facility staff in a supervisory role shall perform assessment of each direct care staff.-¶¶

(iii) Maintain written documentation of all dementia care training completed by each direct care staff and shall must maintain documentation regarding each employee's assessed competency.-¶¶

~~(82)~~ APPROVAL OF DEMENTIA TRAINING CURRICULUM. All dementia care training provided to direct care staff must be approved by a private or non-profit organization that is approved by the Department through a "Request for Application" (RFA) process.-¶¶

~~(910)~~ ADDITIONAL REQUIREMENTS. Staff:-¶¶

(a) Under 18 years of age may not perform medication administration or delegated nursing tasks. Staff under the age of 18 must be directly supervised when providing bathing, toileting, incontinence care or transferring services.-¶¶

(b) Must be trained in the use of the abdominal thrust and First Aid. Cardiopulmonary resuscitation (CPR) training is recommended; but not required.-¶¶

(c) Must have sufficient communication and language skills to enable them to perform their duties and communicate with residents, other staff, family members, and health care professionals, as needed.-¶¶

~~(101)~~ Contractors who provide services or supports directly to residents must complete the required LGBTQIA2S+ trainings outlined in paragraph ~~(67)~~(b)(C) of this rule.-¶¶

(a) Contractors who must be trained include, but are not limited to, RN and administrative consultants, housekeeping services, dietary services, beauticians, barbers, or other contractors who provide services or supports directly to residents.-¶¶

(b) Exempt from this training requirement are contractors who contract directly with the resident or the resident's representative, and contractors who do not generally provide services or supports directly to residents, including, but not limited to, contractors for landscaping, pest control, deliveries and building repairs.-¶¶

(c) By December 31, 2024, facilities shall ensure that all contracts entered into with entities described in paragraph (a) of this section shall include language requiring contractors provide Department-approved LGBTQIA2S+ training to their employees within 12 months of entering into the contract with the facility and every two years thereafter.-¶¶

(d) For existing contracts in effect January 1, 2025, facilities shall require the contractor provide Department-approved LGBTQIA2S+ training to employees by December 31, 2025, and every two years thereafter.-¶¶

(e) For new contracts created after January 1, 2025, facilities shall require contractors provide the Department-approved LGBTQIA2S+ training to employees within 12 months of entering into the contract with the facility, and every two years thereafter.-¶¶

(f) Facilities must inform contractors that the cost of all LGBTQIA2S+ trainings for contracted employees shall be

paid by the contractor.

Statutory/Other Authority: ORS 410.070, 441.112, 443.450

Statutes/Other Implemented: ORS 441.116, 443.400 - 443.455, 443.991

RULE SUMMARY: Added the requirement the current licensee must disclose current Department granted exceptions to prospective licensees. Added requirement for the Department to notify the Long-Term Care Ombudsman's office of the intent to approve exceptions.

CHANGES TO RULE:

411-054-0100

~~Exceptions and Waivers~~

~~(1) SPD may grant exceptions to these rules as provided.~~ The facility seeking an exception must submit a completed Application for Exception form (SDS 0563) to the Department, explaining the reasons for the exception request.

~~(2) The Department may grant an exception to these rules. An exception will not be granted that is if the Department determines, in the discretion of SPD, to be detrimental to the residents. The facility seeking an exception must submit to SPD, in writing, reasons for the exception request, that granting the exception is detrimental to the residents.~~

~~(3) The Department may not grant a facility's request for an exception to the requirements of ORS 443.400 to 443.455 or any other statutory licensing requirements, unless expressly authorized by statute to grant an exception or to temporarily modify a licensing requirement due to a declaration of a state of emergency.~~

~~(24)~~ No exception will be granted from a regulation or provision of these rules pertaining to the monitoring of the facility, resident rights, and inspection of the public files.

~~(35)~~ Exceptions granted by ~~SPD~~ the Department must be in writing ~~and on form SDS 0563 and may be reviewed periodically. Exceptions and waivers may be rescinded at any time if SPD statute or regulations change or the Department determines that continuance of the waiver exception has a potential adverse impact on resident well-being, privacy, or dignity. SPD~~ The Department will send written notice to the ~~provider facility~~ with reason(s) why a ~~waiver exception~~ is denied or rescinded.

~~(46)~~ ~~If applicable, exceptions will not be granted by SPD without prior consultation with other agencies involved.~~ the Department intends to grant an exception to a licensing requirement, the Department must notify the office of the Long-Term Care Ombudsman of the exception request and the Department's intent to grant the request no fewer than seven days prior to the effective date.

~~(57)~~ For assisted living facilities: an individual exception is required for each resident who chooses to share a unit with someone other than his/her spouse or partner.

~~(8)~~ If applicable, exceptions will not be granted by the Department without prior consultation with other agencies involved.

~~(9)~~ The licensee must disclose current Department granted exceptions to prospective licensee, when applicable.

~~(10)~~ Exceptions are specific to the licensee and individuals at the time the exception is granted and do not transfer to prospective licensee or individuals. Prospective licensees may apply for an exception to these rules. The Department will consider each request and make a decision based on the prospective licensee's compliance history, experience, and alternative plan to meet the intent of the rule.

Statutory/Other Authority: ORS 410.070, 443.450

Statutes/Other Implemented: ORS 443.400 - 443.455, 443.991

RULE SUMMARY: Added requirement for the Department to inspect between 90-120 days after initial licensure or change of ownership, upon receipt of a license renewal application and fee, or may conduct inspections at any time. Amended requirement to notify victims of substantiated abuse as defined in ORS 430.735 to include the residents designated contact person. Added investigation processes, timeline requirements, due process rights and distribution requirements for the Licensing Complaint Unit. Added requirements for a written plan of correction must be submitted and accepted for immediate jeopardy situations. Added the facility has an opportunity to provide initial information or evidence before the Department can make a preliminary finding of immediate jeopardy.

CHANGES TO RULE:

411-054-0105

Inspections and Investigations ¶

(1) The facility must cooperate with Department personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.¶

(a) Records must be made available to the Department upon request. Department personnel must have access to all resident and facility records and may conduct private interviews with residents. Failure to comply with this requirement shall result in regulatory action.¶

(b) The ~~State~~ Long Term Care Ombudsman must have access to all resident and facility records that relate to an investigation. Certified Ombudsman volunteers may have access to facility records that relate to an investigation and access to resident records with written permission from the resident or guardian. ¶

(c) The State Fire Marshal or authorized representative must be permitted access to the facility and records pertinent to resident evacuation and fire safety.¶

(d) The Oregon Health Authority and appropriate Local Public Health Authority must be permitted access to the facility and records pertinent to investigation of illness or outbreak, as authorized by law.¶

(2) The facility ~~shall~~must not interfere with a good faith disclosure of information by an employee ~~or~~, volunteer concerning abuse or other action affecting a resident's safety or welfare, as described in OAR 411-054-0028(4).¶

(3) ~~Staff of the Department shall~~must visit and inspect every licensed facility ~~at least but not limited to once every two years for a full in-person survey to determine whether the~~to determine whether the facility is maintained and operated in accordance with these rules.¶

~~(a) The Department must inspect every facility is at a maintained and operated in accordance with these rules.~~um:¶

(A) No less than 90 days and no more than 120 days after an initial license is issued or after a change in ownership of a facility. ¶

(B) Upon receipt of a license renewal application and fee.¶

~~(a)~~C For each year during which a facility does not have a full survey, the Department ~~shall~~must conduct an in-person inspection of the kitchen and other areas where food is prepared for residents. ¶

~~(b) Sub~~Inspection (a) will not go into effect until July 1, 2022. ¶

~~(c) Facilities not in compliance with these rules must submit, within ten days of receipt of the inspection report, a plan of correction that satisfies the Department.~~s may be conducted at other times as determined by the Department. ¶

(c) Facilities not in compliance with these rules must submit a plan of correction that satisfies the Department within 10 business days of receipt of the inspection report. ¶

(d) Facilities must correct deficiencies within timeframes outlined in the accepted plan of correction.¶

(e) Failure to be in substantial compliance upon reinspection may result in regulatory action to compel compliance.¶

(f) Achieving substantial compliance is ultimately the facility's responsibility, whether or not a plan of correction was followed.¶

~~(g)~~ The Department may impose sanctions for failure to comply with these rules.¶

(4) Department staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment, and other areas of operation.¶

(5) A copy of the most current inspection report and any conditions placed upon the license must be posted with the facility's license in public view near the main entrance to the facility.¶

~~(6) ABUSE OR RULE VIOLATION.~~ Upon completion of substantiation of abuse ~~or rule violation~~, the Division shall immediately provide written notification to the facility.¶

- (a) WRITTEN NOTICE. The written notice shall:¶
- (A) Explain the nature of each allegation;¶
 - (B) Include the date and time of each occurrence;¶
 - (C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;¶
 - (D) For each substantiated allegation, state whether the violation was abuse or another rule violation;¶
 - (E) Include a copy of the complaint investigation report;¶
 - (F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 days to provide additional or different information; and¶
 - (G) For each allegation, explain the applicable appeal rights available.¶
- (b) APPORTIONMENT. If the Department determines there is substantiated abuse, the Department may determine that the facility, an individual, or both the facility and an individual are responsible for the abuse. In determining responsibility, the Department shall consider intent, knowledge and ability to control, and adherence to professional standards as applicable. ¶
- (A) FACILITY. Examples of when the Department shall determine the facility is responsible for the abuse include but are not limited to:¶
- (i) Failure to provide minimum staffing in accordance with these rules without reasonable effort to correct; ¶
 - (ii) Failure to check for or act upon relevant information available from a licensing board; ¶
 - (iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff; ¶
 - (iv) Failure to adequately provide oversight, training, or orientation of staff; ¶
 - (v) Failure to allow sufficient time to accomplish assigned tasks; ¶
 - (vi) Failure to provide adequate services; ¶
 - (vii) Failure to provide adequate equipment or supplies; or¶
 - (viii) Failure to follow orders for treatment or medication.¶
- (B) INDIVIDUAL. Examples of when the Department shall determine the individual is responsible for the abuse include but are not limited to:¶
- (i) Intentional acts against a resident including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse; ¶
 - (ii) Acts contradictory to clear instructions from the facility, unless the act is determined by the Department to be caused by the facility as identified in paragraph (A) above; ¶
 - (iii) Callous disregard for resident rights or safety; or¶
 - (iv) Intentional acts against a resident's property (e.g., theft, misuse of funds).¶
- (C) An individual may not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.¶
- (c) DUE PROCESS RIGHTS. ¶
- (A) NON-NURSING ASSISTANT. The written notice in cases of substantiated abuse by a person other than a nursing assistant shall explain the person's right to:¶
- (i) File a petition for reconsideration pursuant to OAR 137-004-0080; and¶
 - (ii) Petition for judicial review pursuant to ORS 183.484.¶
- (B) NURSING ASSISTANT. The written notice in cases of substantiated abuse by a nursing assistant shall explain:¶
- (i) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140; and¶
 - (ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140. ¶
- (C) FACILITY. The written notice ~~shall~~must advise the facility of the facility's due process rights as appropriate.¶
- (d) DISTRIBUTION.¶
- (A) The written notice shall be mailed to the facility, any person reported to have committed wrongdoing, the complainant (if known), and the Department or Type B AAA office; and¶
 - (B) A copy of the written notice shall be placed in the Department's facility complaint file.¶
- ~~(7)e) NOTIFICATION. Upon receipt of a notice of abuse for victims covered by ORS 430.735, the facility shall provide written notice of the findings to the person found to have committed abuse, the residents of the facility, the residents' case managers, and the residents' guardians.~~substantiated abuse finding for victims as defined in ORS 430.735, the facility must provide written notification to the individual substantiated for abuse, the residents of the facility, designated contact persons and the residents' case manager and guardian, if applicable. ¶
- (7) LICENSING RULE VIOLATION. The Licensing Complaint Unit (LCU) must investigate allegations of licensing violations, other than abuse, that allege harm, potential for harm or insufficient number of direct care staff. ¶
- (a) The Department will complete timely investigations. ¶

(A) LCU will initiate an on-site investigation within 24 hours or before the end of the next business day for complaints that allege a potential licensing violation which resulted in a resident's death. ¶

(B) Investigations of alleged licensing violations for harm, potential for harm or insufficient direct care staff will initiate an investigation without undue delay. ¶

(b) A licensing complaint investigation is separate from and not a replacement for an adult protective services investigation as outlined in OAR 411-020. To make determinations, LCU will base findings on the following factors, including but not limited to: ¶

(A) Obtain and review all available documents and records relevant to the allegation. ¶

(B) Objective observations, if applicable to the investigation. ¶

(C) Conduct interviews with all relevant witnesses who have been identified by any source as having personal knowledge relevant to the complaint, including but not limited to: ¶

(i) Identified resident(s). ¶

(ii) Facility staff. ¶

(iii) Providers. ¶

(iv) Complainant, or ¶

(v) Long Term Care Ombudsman, including volunteers. ¶

(D) Interviews will be conducted in private, unless requested by the individual to not be conducted privately. ¶

(E) Department will assess whether the facility has qualified awake direct care staff in sufficient numbers to consistently meet the scheduled and unscheduled needs of all residents 24 hours a day when: ¶

(i) A complaint involves an allegation of insufficient staffing. ¶

(ii) A complaint qualifies for an Acuity-Based Staffing Tool review as outlined in OAR 411-054-0037, or ¶

(iii) An LCU investigation determines that insufficient direct care staff may have contributed to the alleged licensing violation. ¶

(c) LCU investigations include the following, but are not limited to: ¶

(A) Conducting an unannounced site visit to the facility. ¶

(B) Upon complainant request, the complainant, a designee of the complainant, or both, shall be allowed to accompany LCU to the facility as outlined in ORS 441.690. ¶

(C) Notifying the Department's corrective action team if a situation requires the Department to provide an immediate regulatory response. ¶

(D) Meeting with facility administration or designee to review preliminary investigation findings. ¶

(E) Based on evidence gathered during the investigation, LCU must make a determination as to whether a licensing violation occurred. LCU will use the following determinations: ¶

(i) Substantiated ¶

(ii) Unsubstantiated ¶

(iii) Inconclusive. ¶

(d) The Department will complete complaint investigations within 90 days of receiving the initial complaint. ¶

(e) Investigation Report. Following completion of the licensing complaint investigation, the investigator must write a report supporting the findings. The report must include, at a minimum: ¶

(A) The investigator's observations. ¶

(B) A review of documents and records. ¶

(C) A summary of witness statements. ¶

(D) A statement of the factual basis for the findings. ¶

(E) For reviews regarding insufficient direct care staff, a statement containing the basis for the findings, including the investigator's assessment of staffing levels and whether the facility has qualified awake direct care staff in sufficient numbers to consistently meet the scheduled and unscheduled needs of each resident 24 hours a day. ¶

(f) DUE PROCESS RIGHTS. The written notice must advise the facility of their due process rights as appropriate, including a statement that the complainant and the facility have 10 calendar days from the mail date to provide additional evidence. ¶

(g) DISTRIBUTION. If a complaint investigation under these rules results in a substantiated finding of a rule violation, the Department shall: ¶

(A) Immediately notify the facility and the Long-Term Care Ombudsman in writing of the Department's findings and any license condition or other sanction imposed by the Department as a result of the violation; and ¶

(B) Provide the facility and the Long-Term Care Ombudsman with a summary report of the department's findings. The summary may not include any identifiable information about the resident, except that the report may not be redacted in a way that fails to disclose that death or injury occurred. The summary report must, at a minimum: ¶

(i) Be written in clear, concise language that is readily comprehensible by the average person; and ¶

(ii) Include the nature of the complaint, the type of violation found by the investigator in the course of the investigation, the nature of the harm experienced by any resident as a result of the violation, whether the violation led to death or physical injury of a resident or staff member and any license condition or other sanction imposed on

the facility as a result of the violation.¶

(h) A copy of the findings must be retained in the Department's facility complaint record. ¶

(8) IMMEDIATE JEOPARDY ¶

(a) When a situation of immediate jeopardy (IJ) has been determined during a licensing complaint investigation or inspection, a written plan of correction must be submitted and accepted while the Department is still at the facility.¶

(b) Before the Department may make a preliminary finding of immediate jeopardy, the Department must, at a minimum, provide an opportunity for the facility to provide initial information or evidence to the Department during an investigation regarding the allegation in the complaint.

Statutory/Other Authority: ORS 410.070, 443.417, 443.450

Statutes/Other Implemented: ORS 443.400—443.455, 443.991

RULE SUMMARY: Added timelines to remove conditions with a restriction of admissions based on a finding from a Licensing Complaint Investigation. Amended when the Department can impose a condition in response to an immediate jeopardy situation. Added requirements for summary of evidence for conditions imposed in response to a preliminary finding or substantiated finding of immediate jeopardy. Updated rule paragraphs to match formatting.

CHANGES TO RULE:

411-054-0110

Conditions ¶¶

(1) The Department may impose a condition on the license of a residential care or assisted living facility in response to a substantiated finding of rule violation, including, but not limited to a substantiated finding of abuse. ~~A condition shall be imposed in response to a finding of immediate jeopardy, whether or not the finding of immediate jeopardy is substantiated.~~¶

(2) IMMEDIATE JEOPARDY. ¶¶

(a) The Department must impose a condition in response to: ¶

(A) A preliminary finding of immediate jeopardy that is reasonably likely to result in a substantiated finding; or ¶

(B) A substantiated finding of immediate jeopardy. ¶

(b) For a license condition that is imposed in response to a preliminary finding or substantiated finding of immediate jeopardy, the order must also include a summary of the evidence demonstrating that: ¶

(A) The facility has failed to meet one or more health, safety or quality rules or regulations; ¶

(B) The result of the facility's noncompliance described in paragraph (2)(c)(A) of this rule, serious injury, serious harm, serious impairment or death has occurred or is likely to occur if the noncompliance is not corrected; ¶

(C) The facility has not demonstrated that the noncompliance described in paragraph (2)(c)(A) of this rule has been corrected; and ¶

(D) At the time the license condition is imposed.¶¶

~~(2) The Department shall immediately remove the license condition if the, there is a current need for immediate corrective action by the facility to prevent serious injury, serious harm, serious impairment or death from occurring or recurring.¶~~

(c) If the Department imposes a license condition based on a preliminary finding of immediate jeopardy and the preliminary finding is not substantiated within 30 calendar days after the imposition of the license condition.¶¶

~~(3), the Department must immediately notify the facility and remove the license condition.¶~~

(3) TERMS OF CONDITION. Conditions that may be imposed on a licensee include, but are not limited to:¶

(a) Restricting the total number of residents;¶¶

(b) Restricting the number and impairment level of residents based upon the capacity of the licensee and staff to meet the health and safety needs of all residents;¶¶

(c) Requiring additional staff or staff qualifications;¶¶

(d) Requiring additional training for staff;¶¶

(e) Requiring additional documentation; or¶¶

(f) Restriction on admissions, if the Department makes a finding of immediate jeopardy that is likely to present an immediate jeopardy to future residents upon admission.¶¶

(4) IMPENDING IMPOSITION OF LICENSE CONDITION.¶¶

(a) Except where the threat to residents is so imminent that the Department determines it is not safe or practical to give the facility advance notice, the Department shall provide the licensee with a Notice of Impending Imposition of License Condition (Notice) at least 48 hours prior to issuing an Order Imposing License Condition (Order). The Notice may be provided in writing, sent by certified or registered mail to the licensee, or provided orally in person or by telephone to the licensee or to the person represented by facility staff to be in charge at the facility. When the Notice is delivered orally, the Department must subsequently provide written notice to the licensee by registered or certified mail. The Notice must:¶¶

(A) Describe the acts or omissions of the licensee that support the imposition of the license condition and the circumstances that led to the substantiated finding of a rule violation, including, but not limited to, a:¶¶

(i) Substantiated finding of abuse.¶¶

(ii) Finding of immediate jeopardy.¶¶

(B) Describe why the acts or omissions and the circumstances create a situation for which the imposition of a condition is warranted.¶¶

(C) Provide a brief statement identifying the nature of the impending condition.¶¶

(D) Provide a brief statement describing how the license condition is designed to remediate the circumstances that lead to the condition.¶

(E) Provide a brief statement of the requirements for withdrawal of the condition.¶

(F) Identify a person at the Department whom the licensee may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order.¶

(G) Specify the date and time an informal conference will be held, if requested by the licensee.¶

(H) Specify the date and time the Order will take effect.¶

(b) If the threat to residents of a facility is so imminent the Department determines it is not safe or practical to give the facility advance notice of a license condition, the Department must provide the notice required under section (5)(a) within 48 hours after issuing an order imposing the license condition.¶

(5) INFORMAL CONFERENCE. If an informal conference is requested, the conference will be held at a location designated by the Department. If determined to be appropriate by the Department, the conference may be held by telephone.¶

(a) With Notice. If a Notice of Impending License Condition is issued, the licensee must be provided with an opportunity for an informal conference to object to the Department's proposed action before the license condition is scheduled to take effect. The Order Imposing License Condition may be issued at any time after the informal conference.¶

(b) Without Notice. If an Order Imposing License Condition is issued without a prior Notice of Impending License Condition, the licensee may request an immediate informal conference to object to the Department's action.¶

(6) ORDER IMPOSING LICENSE CONDITION. ¶

(a) When an Order Imposing License Condition (Order) is issued, the Department must serve the Order to the licensee either personally or by registered or certified mail.¶

(b) The Order must include the following statements:¶

(A) The authority under which the condition is being issued.¶

(B) A reference to the specific sections of the statute and administrative rules involved.¶

(C) The effective date of the condition.¶

(D) A short and plain statement of the matters asserted or charged.¶

(E) The specific terms of the license condition.¶

(F) A specific description of how the scope and manner of the license condition is designed to remediate the findings that lead to the license condition.¶

(G) A specific description of the requirements for withdrawal of the license condition.¶

(H) Statement of the licensee's right to request a hearing.¶

(I) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee must notify the Department.¶

(J) That, if a request for hearing is not received by the Department within 21 calendar days from the date of the Order, the licensee has waived the right to a hearing under ORS chapter 183.¶

(K) Findings of specific acts or omissions of the licensee that are grounds for the license condition, and the reasons the acts or omissions create a situation for which the imposition of a license condition is warranted.¶

(L) That the Department may combine the hearing on the Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the licensee.¶

(c) For Orders in response to a preliminary finding or substantiated finding of immediate jeopardy, the Order must also include a summary of the evidence demonstrating that: ¶

(A) The facility has failed to meet one or more health, safety or quality rules or regulations; ¶

(B) The result of the facility's noncompliance described in paragraph (6)(c)(A) of this rule, serious injury, serious harm, serious impairment or death has occurred or is likely to occur if the noncompliance is not corrected; ¶

(C) The facility has not demonstrated that the noncompliance described in paragraph (6)(c)(A) of this rule has been corrected; and ¶

(D) At the time the Order is imposed, there is a current need for immediate corrective action by the facility to prevent serious injury, serious harm, serious impairment or death from occurring or recurring.¶

(7) A licensee who has been ordered to restrict admissions to a facility must immediately post a "Restriction of Admissions Notice" that is provided by the Department, on both the inside and outside faces of each door of the facility through which any person enters or exits a facility. The notices must not be removed, altered or obscured until the Department has lifted the restriction or the restriction is automatically removed pursuant to subsection (4)(d) of this rule.¶

(8) HEARING.¶

(a) Right to Hearing. If the Department imposes an Order, the licensee is entitled to a contested case hearing pursuant to ORS chapter 183.¶

(b) Hearing Request. The Department must receive the licensee's request for a hearing within 21 calendar days of

the date of Order. If a request for hearing is not received by the Department within 21 calendar days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183.¶¶

(c) A licensee's request for a hearing does not delay enforcement.¶¶

(d) Date of Hearing. When a timely request for hearing is received, the hearing shall be held as soon as practical.¶¶

(e) Consolidation. If a request for hearing is received on an Order, and a subsequent Order is issued, the Department may consolidate the Orders into a single contested case hearing.¶¶

(9) REQUEST FOR REINSPECTION OR REEVALUATION.¶¶

(a) ~~A Facility's~~ assertion of substantial compliance. ~~Following the Order on a facility, the~~ on an Order Imposing License Condition (Order).¶¶

(A) For an Order based on Department ~~shall~~ findings:¶¶

~~(A)i~~ Within 15 business days of receiving the facility's written assertion of substantial compliance and request for reinspection, the Department ~~shall~~ must reinspect or reevaluate the facility to determine if the facility has achieved substantial compliance.¶¶

~~(B)ii~~ Notify the facility by telephone or electronic means of the findings of the reinspection or reevaluation within five business days after completion of the reinspection or reevaluation.¶¶

~~(C)iii~~ Issue a written report to the facility within 30 business days after the reinspection or reevaluation notifying the facility of the Department's determinations.¶¶

(B) For an Order based on Department findings from a licensing complaint investigation that includes a restriction of admissions:¶¶

(i) Within five calendar days of receiving the facility's written assertion of substantial compliance and request for reinspection, the Department must reinspect or reevaluate the facility to determine if the facility has achieved substantial compliance.¶¶

(ii) Notify the facility verbally or in writing of the findings of the reinspection or reevaluation.¶¶

(iii) The Department shall lift the restrictions of admissions requirement within 24 hours of the Department finding the facility is in substantial compliance.¶¶

(b) If the Department finds the facility has achieved substantial compliance and that systems are in place to ensure similar deficiencies do not reoccur, the Department shall withdraw the Order.¶¶

(c) If, after reinspection or reevaluation, the Department determines the violation continues to exist, the Department may not withdraw the Order and is not obligated to reinspect or reevaluate the facility again for at least 45 business days after the first reinspection or reevaluation.¶¶

(A) The Department shall provide the facility notice of the decision not to withdraw the Order in writing.¶¶

(B) The notice shall inform the facility of the right to a contested case hearing pursuant to ORS chapter 183.¶¶

(d) If the Department does not meet the requirements of this section, a license condition is automatically removed on the date the Department ~~failed~~ to meet the requirements of this section, unless the Director extends the applicable period for no more than 15 business days. The Director may not delegate the power to make a determination regarding an extension under this paragraph.¶¶

(e) Nothing in this section limits the Department's authority to visit or inspect the facility at any time.¶¶

(10) EXCEPTIONS TO ORDER IMPOSING LICENSE CONDITION. When a restriction of admissions is in effect pursuant to an Order, the Department, in its sole discretion, may authorize the facility to admit new residents for whom the Department determines that alternate placement is not feasible.¶¶

(11) Conditions may be imposed for the duration of the licensure period (two years) 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 will be indicated on the attachment to the license.

Statutory/Other Authority: ORS 183, 410.070, 443.450

Statutes/Other Implemented: ORS 183, 443.400 - 443.455, 443.991

RULE SUMMARY: Updated rule and statute citations.

CHANGES TO RULE:

411-054-0120

Civil Penalties ¶

(1) For purposes of imposing civil penalties, facilities licensed under ORS 443.400 to 443.455 and ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.¶

(2) For purposes of this rule:¶

(a) "Person" means a licensee under ORS 443.420 or a person who the Department finds shall be so licensed; but does not include any employee of such licensee or person.¶

(b) "Resident rights" means that each resident must be assured the same civil and human rights accorded to other citizens as described in OAR 411-054-0027.¶

(c) "Monitoring" means when a residential care or assisted living facility is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the State Fire Marshal.¶

(d) As used in this rule:¶

(A) "Harm" means a measurable negative impact to a resident's physical, mental, financial, or emotional well-being.¶

(B) "Minor harm" means harm resulting in no more than temporary physical, mental or emotional discomfort or pain without loss of function, or in financial loss of less than \$1,000.¶

(C) "Moderate harm" means harm resulting in temporary loss of physical, mental or emotional function, or in financial loss of \$1,000 or more, but less than \$5,000.¶

(D) "Serious harm" means harm resulting in long-term or permanent loss of physical, mental or emotional function, or in financial loss of \$5,000 or more.¶

(E) "Financial loss" means loss of resident property or money as a result of financial exploitation, as defined in ORS 124.050. Financial loss does not include loss of resident property or money that results from action or inaction of an individual not employed or contracted with the facility, or that arises from the action or inaction of an individual employed or contracted with the facility if the action or inaction occurs while the individual is not performing employment or contractual duties.¶

(e) The Director shall assess the severity of a violation using the following criteria:¶

(A) Level 1 - is a violation that results in no actual harm or in potential for only minor harm.¶

(B) Level 2 - is a violation that results in minor harm or potential for moderate harm.¶

(C) Level 3 - is a violation that results in moderate harm or potential for serious harm.¶

(D) Level 4 - is a violation that results in serious harm or death.¶

(f) The Director shall assess the scope of a violation using the following criteria:¶

(A) An isolated violation occurs when one or a very limited number of residents or employees are affected or a very limited area or number of locations within a facility are affected.¶

(B) A pattern violation occurs when more than a very limited number of residents or employees are affected, or the situation has occurred in more than a limited number of locations, but the locations are not dispersed throughout the facility.¶

(C) A widespread violation occurs when the problems causing the deficiency are pervasive and affect many locations throughout the facility or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees.¶

(3) Determining Civil Penalties.¶

(a) When the Director is considering imposition of a civil penalty under ORS 443.455(2)(a), ORS 441.710, or ~~OR Laws 2017, ch 679, § 4~~ ORS 441.731 on a residential care or assisted living facility the Director shall comply with the requirements of this section.¶

(b) When imposing a civil penalty on a facility pursuant to this section, the Director shall consider:¶

(A) Any prior violations of laws or rules pertaining to the facility and, as a mitigating factor, whether violations were incurred under prior ownership or management of the facility.¶

(B) The financial benefits, if any, realized by the facility as a result of the violation.¶

(C) The facility's past history of correcting violations and preventing the reoccurrence of violations.¶

(D) The severity and scope of the violation.¶

(4) Civil Penalty Amounts.¶

(a) The Director may impose civil penalties as follows, for a:¶

(A) Level 1 violation, the Director may not impose a civil penalty.¶

(B) Level 2 violation, the Director may impose a penalty in an amount no less than \$250 per violation, not to exceed \$500 per violation.¶¶

(C) Level 3 violation, the Director may impose a civil penalty in an amount no less than \$500 per violation, not to exceed \$1,500 per violation.¶¶

(D) Level 4 violation, the Director may impose a civil penalty in an amount no less than \$1,500 per violation, not to exceed \$2,500 per violation.¶¶

(E) Failure to report abuse of a resident to DHS as required by state law, the Director may impose a civil penalty in an amount of no more than \$1,000 per violation.¶¶

(b) The penalties imposed under paragraph (a)(A) to (D) of this section may not exceed \$20,000 in the aggregate for violations occurring in a single facility within any 90-day period.¶¶

(c) In imposing civil penalties under this section, the Director may take into account the scope of the violation.¶¶

(5) Additional Civil Penalties. The Department shall impose a civil penalty of not less than \$2,500 and not more than \$15,000 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed \$40,000 for all violations occurring in a single facility within any 90-day period.¶¶

(a) To impose this civil penalty, the Department shall establish all of the following occurred:¶¶

(A) The abuse arose from deliberate, or other than accidental action or inaction.¶¶

(B) The conduct resulting in the abuse was likely to cause a negative outcome by a person with a duty of care toward a resident of a facility.¶¶

(C) The abuse resulted in the serious injury, rape, sexual abuse, or death of a resident.¶¶

(b) For purposes of this civil penalty, the following definitions apply:¶¶

(A) "Negative Outcome" includes serious injury, rape, sexual abuse, or death.¶¶

(B) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.¶¶

(C) "Rape" means rape in the first degree as defined in ORS 163.375, rape in the second degree as defined in ORS 163.365, and rape in the third degree as defined in ORS 163.355.¶¶

(D) "Sexual Abuse" means any form of sexual contact between an employee of a residential care facility or a person providing services in the facility and a resident of that facility, including, but not limited to:¶¶

(i) Sodomy.¶¶

(ii) Sexual coercion.¶¶

(iii) Taking sexually explicit photographs.¶¶

(iv) Sexual harassment.¶¶

(6) A notice of a civil penalty shall be sent by registered or certified mail and shall include:¶¶

(a) A reference to the specific 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.¶¶

(d) A statement of the party's right to request a hearing.¶¶

(e) A description of specific remediation the facility must make in order to achieve substantial compliance.¶¶

(f) A statement specifying the amount of time for the elimination of the violation.¶¶

(A) The time specified shall not exceed 30 calendar days after the first notice of a violation; or¶¶

(B) In cases where the violation requires more than 30 days to correct, a reasonable time shall be specified in a plan of correction, as found acceptable by the Director.¶¶

(7) For a level 2 or level 3 violation, the Department shall hold in abeyance the penalty proposed for the period of time specified in the Notice pursuant to subsection (6)(f) above.¶¶

(8) Hearing Requests. The person to whom the notice is addressed shall have 10 calendar days from the date specified in the Notice pursuant to subsection (6)(f) of this rule to make written application for a hearing before the Department.¶¶

(9) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.¶¶

(10) If the person notified fails to request a hearing within the time specified in the notice, an order may be entered by the Department assessing a civil penalty.¶¶

(11) If, after a hearing, the Department prevails, an order may be entered by the Department assessing a civil penalty.¶¶

(12) A civil penalty imposed by the Department ~~shall~~must be remitted or reduced in a manner consistent with the public health and safety, as follows:¶¶

(a) The Department ~~shall~~must reduce the penalty by not less than 25 percent if the facility self-reports abuse that results in less than serious harm.¶¶

(b) The Department ~~shall~~must withdraw some or all of the penalty if the facility achieves substantial compliance for a level 2 or 3 violation.¶¶

(13) If the order is not appealed, the amount of the penalty is payable within 10 calendar days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 calendar days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.¶¶

(14) A violation of any general order or final order pertaining to a residential care or assisted living facility issued by the Department, other than a Level 1 violation, is subject to a civil penalty.¶¶

(15) Judicial review of civil penalties imposed under ORS 441.710 shall be as provided under ORS 183.480, except the court may, in its discretion, reduce the amount of the penalty.¶¶

(16) All penalties recovered under ~~ORS 443.455, Or Laws 2017, ch 679, § 4, and 441.710 to 441.740~~ and ORS 443.455 shall be paid to the Quality Care Fund.

Statutory/Other Authority: ORS 410.070, 443.450

Statutes/Other Implemented: ORS 441.705 - 441.745, 443.400 - 443.455, 443.991