



## PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 309

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILING CAPTION: Permanent changes which enhance resident protections, make clarifications, and reduce administrative burden.

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#### RULES:

309-040-0300, 309-040-0305, 309-040-0307, 309-040-0310, 309-040-0315, 309-040-0320, 309-040-0325, 309-040-0335, 309-040-0340, 309-040-0345, 309-040-0350, 309-040-0355, 309-040-0360, 309-040-0365, 309-040-0370, 309-040-0375, 309-040-0380, 309-040-0385, 309-040-0390, 309-040-0393, 309-040-0394, 309-040-0395, 309-040-0400, 309-040-0405, 309-040-0410, 309-040-0415, 309-040-0420, 309-040-0425, 309-040-0430, 309-040-0435, 309-040-0440, 309-040-0445, 309-040-0455, 309-040-0470

AMEND: 309-040-0300

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifications made. Changes made in this section and throughout revisions include changing "shall" to "must"; "individual" to "resident"; and "emotional disorders" to (mental) "health conditions".

#### CHANGES TO RULE:

309-040-0300

##### Purpose and Scope ¶¶

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

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for home and community-based services authorized under section 1915(i) of the Social Security Act; and¶¶

(b) These rules establish requirements to ensure individual residents receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving these services consistent with the standards set out in OAR Oregon Administrative Rule (OAR) chapter 411, division 004.¶¶

(2) These rules apply to adult foster homes providing care and services to five or fewer adults with mental or ~~emotional disorder~~ health conditions, regardless of whether the provider receives public funds.  
Statutory/Other Authority: ORS 413.042, 413.032, 413.085  
Statutes/Other Implemented: ORS 443.705 - 443.825

RULE SUMMARY: Several definitions added, revised, and removed for alignment, clarification, and simplification purposes.

CHANGES TO RULE:

309-040-0305

Definitions ¶¶

(1) "Abuse" includes but is not limited to the following:¶¶

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;¶¶

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;¶¶

(c) Willful infliction of physical pain or injury;¶¶

(d) Sexual harassment or exploitation including but not limited to any sexual contact between an employee of an AFH or community program or provider or other caregiver and the individual. For all other situations, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the individual;¶¶

(e) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;¶¶

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the individual.¶¶

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and OAR 943-045-0000, or any other rules established by the Division applicable to allegations of abuse of individuals residing at an AFH licensed by the Division.¶¶

(3) "Activities of Daily Living (ADL)" means those individual skills necessary for an individual's continued well-being including eating and nutrition, dressing, personal hygiene, mobility, and toileting.¶¶

(4) "Administration of Medication" means administration of medicine or a medical treatment to an individual as prescribed by a Licensed Medical Practitioner.¶¶

(5) "Adult Foster Home (AFH)" means any home licensed by the Health Systems Division of the Authority in which residential care is provided to five or fewer individuals who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. If an adult family member of the provider receives care, they shall be included as one of the individuals within the total license capacity of the AFH. An AFH or individual that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults is considered an AFH. For the purpose of these rules, an AFH does not include facilities referenced in ORS 443.715.¶¶

(6) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.¶¶

(7) "Applicant" means any individual or entity that makes an application for a license that is also the owner of the business.¶¶

(8) "Assessment" means an evaluation of an individual and the individual's level of functioning completed by a qualified provider and provides the basis for the development of the individual's residential care plan and person-centered service plan.¶¶

(9) "Authority" means the Oregon Health Authority or designee.¶¶

(10) "Behavioral Interventions" means interventions that modify the individual's behavior or the individual's environment.¶¶

(11) "Bill of Rights" means civil, legal, or human rights afforded to those individuals residing in an AFH that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the AFH Bill of Rights as outlined in OAR 309-040-0410.¶¶

(12) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47 and ORS 678.010 to 678.445.¶¶

(13) "Care" means the provision of but is not limited to services of room, board, services and assistance with ADLs, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum individual independence and enhance

quality of life.¶¶

(14) "Caregiver" means the provider, resident managers, or substitute caregivers who provide services to an individual.¶¶

(15) "Case Manager" means an individual employed by a local, regional, or state allied agency approved by the Division to provide case management services and assist in the development of the personal care plan. Case manager's evaluate the appropriateness of services in relation to the consumer's assessed need and review the residential care plan every 180 days.¶¶

(16) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶¶

(17) "Community Mental Health Program (CMHP)" means the organization of all services for individuals with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse problems operated by or contractually affiliated with a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.¶¶

(18) "Compensation" means payments made by or on behalf of an individual to a provider in exchange for room and board, care and services, including services described in the individual's residential care plan and person-centered service plan¶¶

(19) "Competitive Integrated Employment" means full-time or part-time work:¶¶

(a) At minimum wage or higher, at a rate that is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer, and who have similar training, experience, and skill;¶¶

(b) With eligibility for the level of benefits provided to other employees;¶¶

(c) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and¶¶

(d) As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.¶¶

(20) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, or inaction, that is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.¶¶

(21) "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.¶¶

(22) "Contested Case Hearing" means a hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or the Division in response to an action, sanction, or notice of finding issued by the Division that results in the loss of license of the provider or other sanctions that adversely affects the license of the provider. The hearing group is composed of:¶¶

(a) The provider and if the provider chooses, the provider's attorney;¶¶

(b) The Division as represented by the Attorney General's Office; and¶¶

(c) The Office of Administration Hearings Administrative Law Judge.¶¶

(23) "Contract" means a written agreement between a provider and the Division to provide room and board, care and services for compensation for individuals of a licensed AFH.¶¶

(24) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.¶¶

(25) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).¶¶

(26) "Day Care" means care and services in an AFH for a person who is not an individual of the AFH.¶¶

(27) "Declaration for Mental Health Treatment" means a document that states the individual's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.¶¶

(28) "Designated Representative" means:¶¶

(a) Any adult who is not the individual's paid provider, who:¶¶

(A) The individual has authorized to serve as his or her representative; or¶¶

(B) The individual's legal representative is authorized to serve as the individual's representative.¶¶

(b) The power to act as a designated representative is valid until the individual or the individual's legal representative modifies the authorization and notifies the Division of the modification, the individual or the individual's representative notifies the provider that the designated representative is no longer authorized to act the individual's behalf, or there is a change in the legal authority upon which the designation was based. Notice shall include the individual's or the representative's signature as appropriate;¶¶

(c) An individual or the individual's legal representative is not required to appoint a designated representative;

and¶¶

(d) For the purposes of these rules, the term "individual" shall be considered to include the individual's designated representative.¶¶

(29) "Director" means the Director of the Oregon Health Authority or designee.¶¶

(30) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the individual's residential care plan and person-centered service plan, regardless of outcome or attainment of goals described in the individual's individualized personal care plan. In addition, the discharge summary addresses individual's monies, financial assets and monies, medication, and personal belongings at the time of discharge.¶¶

(31) "Division" means the Health Systems Division of the Oregon Health Authority or designee.¶¶

(32) "Division Staff" means an employee of the Division, the Division's designee, or the designee of the local Community Mental Health Program.¶¶

(33) "Employee" means an individual employed by a licensed AFH and who receives wages, a salary, or is otherwise paid by the AFH for providing the service. The term also includes employees of other providers delivering direct services to an individual.¶¶

(34) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Division to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.¶¶

(35) "Family Member" means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶¶

(36) "HCB" means Home and Community Based.¶¶

(37) "Home" means the Adult Foster Home (AFH) and as indicated by the context of its use may refer to the one or more buildings and adjacent grounds on contiguous properties used in the operation of the AFH.¶¶

(38) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 4. HCBS are services provided in the individual's home or community.¶¶

(39) "Home-Like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individuals.¶¶

(40) "House Rules" means the written standards governing house activities developed by the provider and approved by the Division. These standards may not conflict with the AFH Bill of Rights or other individual rights set out by these rules.¶¶

(41) "Incident Report" means a written description and account of any occurrence including but not limited to any injury, accident, acts of physical aggression, use of physical restraints, medication error, or any unusual incident involving an individual, the home, or provider.¶¶

(42) "Individual" means any individual being considered for placement or currently residing in a licensed home receiving residential, HCBS and other services regulated by these rules on a 24-hour basis except as excluded under ORS 443.400.¶¶

(43) "Individual Care Services" means services prescribed by a physician or other designated individual in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those AFH individuals who are Medicaid eligible, personal care services are funded under Medicaid.¶¶

(44) "Individually-Based Limitation" means a limitation to the qualities outlined in OAR 309-040-0393(1)(a) through (g), due to health and safety risks. An individually-based limitation is based on a specific assessed need and implemented only with the informed consent of the individual or the individual's legal representative as outlined in 309-040-0393.¶¶

(45) "Informed Consent" means:¶¶

(a) Options, risks, and benefits of the services outlined in these rules have been explained to an individual and in a manner that the individual comprehends; and¶¶

(b) The individual consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.¶¶

(46) "Initial Residential Care Plan (IRCP)" means a written document developed for an individual, within 24 hours of admission to the home, that addresses the care and services to be provided for the individual during the first 30 days or less until the residential care plan can be developed.¶¶

(47) "Legal Representative" means an individual who has the legal authority to act for an individual and only within the scope and limits to the authority as designated by the court or other agreement. A legal representative may include the following:¶¶

- (a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian; or¶¶
- (b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative;¶¶
- (c) For purposes of these rules, the term individual shall be considered to include the individual's legal representative.¶¶
- (48) "Level One AFH" means an AFH licensed by the Division to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.¶¶
- (49) "License" means a document issued by the Division to applicants who are determined by the Division to be in substantial compliance with these rules.¶¶
- (50) "Licensed Medical Practitioner (LMP)" means any individual who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:¶¶
- (a) Physician licensed to practice in the State of Oregon; or¶¶
- (b) Nurse practitioner licensed to practice in the State of Oregon.¶¶
- (51) "Licensee" means the individual or entity to whom a license is issued and whose name is on the license.¶¶
- (52) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation that directly contracts with the Division to operate a CMHP for that county.¶¶
- (53) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or any individual with whom the official contact while acting in an official capacity has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under 40.225 to 40.295.¶¶
- (54) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any individual.¶¶
- (55) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the individual's social, educational, or economic functioning. Medical diagnosis and classification shall be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-V). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."¶¶
- (56) "Mistreatment" means the following behaviors displayed by an employee, program staff, caregiver, provider, or volunteer of an AFH when directed toward an individual:¶¶
- (a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;¶¶
- (b) "Financial Exploitation" means:¶¶
- (A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;¶¶
- (B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual reasonably believes that the threat conveyed would be carried out;¶¶
- (C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;¶¶
- (D) Failing to use the income or assets of an individual effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.¶¶
- (c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a caregiver or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to their room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short-term basis when an individual's presence poses a risk to health or safety to themselves or others;¶¶
- (d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;¶¶
- (e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:¶¶

- (A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule;¶
- (B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;¶
- (C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an individual;¶
- (D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;¶
- (E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.¶
- (f) "Wrongful Restraint" means any use of a physical or chemical restraint except for the following:¶
- (A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or¶
- (B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming themselves or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.¶
- (57) "Naloxone" means an FDA-approved short-acting, non-injectable, opioid antagonist medication used for the emergency treatment and temporary rapid reversal of known or suspected opioid overdose.¶
- (58) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources in accordance with OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).¶
- (59) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.¶
- (60) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.¶
- (61) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to individuals other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶
- (62) "Nursing Delegation" means that a registered nurse authorizes an unlicensed individual to perform special tasks for individuals in select situations and indicates that authorization in writing. The delegation process includes nursing assessment of an individual in a specific situation, evaluation of the ability of the unlicensed person, teaching the task, and ensuring supervision.¶
- (63) "Opioid" means natural, synthetic, or semi-synthetic chemicals normally prescribed to treat pain. This class of drugs includes, but is not limited to, illegal drugs such as heroin, natural drugs such as morphine and codeine, synthetic drugs such as fentanyl and tramadol, and semi-synthetic drugs such as oxycodone, hydrocodone, and hydromorphone.¶
- (64) "Opioid Overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of taking opiates in an amount larger than can be physically tolerated.¶
- (65) "Opioid Overdose Kit" means an ultraviolet light-protected hard case containing a minimum of two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication, one pair non-latex gloves, one face mask, one disposable face shield for rescue breathing, and a short-acting, non-injectable, opioid antagonist medication administration instruction card.¶
- (66) "Person-Centered Service Plan" means written documentation that includes 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.¶
- (67) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agent, and other individual designated by the Division to provide person-centered service planning for and with individuals.¶
- (68) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching, and supervising care that promotes the person's optimum health and independence.¶
- (69) "Program Staff" means an employee or individual who by contract with an AFH provides a service to an individual.¶
- (70) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program or contracted directly with the Division for the direct delivery of mental

health services and supports to adults receiving residential and supportive services in an AFH.¶

(71) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400.¶

(72) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS chapter 678 and OAR chapter 851.¶

(73) "Related" means the following relationships: Spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶

(74) "Relative" means any individual identified as a family member.¶

(75) "Representative" means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.¶

(76) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual when the individual receives services from the provider.¶

(77) "Resident Manager" means an employee of the provider who is approved by the Division to live in the AFH and is responsible for the care and services of individuals on a day-to-day basis.¶

(78) "Residential Care" means the provision of room, board, and services that assist the individual in activities of daily living such as assistance with bathing, dressing, grooming, eating, medication management, money management, or recreation. Residential care includes 24-hour supervision; being aware of the individual's general whereabouts; monitoring the activities of the individual while on the premises of the AFH to ensure the individual's health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.¶

(79) "Residential Care Plan (RCP)" means a written plan outlining the care and services to be provided to an individual. The RCP is based upon the review of current assessment, referral, observations, individual preference, and input from members of the residential care plan team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the individual's recovery and independence.¶

(80) "Residential Care Plan Team (RCP Team)" means a group composed of the individual, the case manager or other designated representative, CMHP representative, the provider, resident manager, and others needed including the individual's legal guardian, representatives of all current service providers, advocates, or others determined appropriate by the individual receiving services. If the individual is unable or does not express a preference, other appropriate team membership shall be determined by the RCP team members.¶

(81) "Residents' Bill of Rights" means the AFH residents have the rights set forth in ORS 443.739.¶

(82) "Respite Care" means the provision of room, board, care, and services in an AFH for a period of up to 14 days. Respite care for individuals shall be counted in the total licensed capacity of the home. Respite care is not crisis respite care.¶

(83) "Restraints" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of an individual.¶

(84) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.¶

(85) "Seclusion" means the involuntary confinement of an individual to a room or area where the individual is physically prevented from leaving.¶

(86) "Self-Administration of Medication" means the act of an individual placing a medication in or on the individual's own body. The individual identifies the medication and the times and manners of administration and placed the medication internally or externally on the individual's own body without assistance.¶

(87) "Self-Preservation" means in relation to fire and life safety the ability of individuals to respond to an alarm without additional cues and be able to reach a point of safety without assistance.¶

(88) "Services" means those activities that are intended to help the individual develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure the individual's access to necessary medical care, treatment, or services identified in the individual's personal care plan.¶

(89) "Substitute Caregiver" means any individual meeting the qualifications of a caregiver who provides care and services in an AFH under the Division's jurisdiction in the absence of the provider or resident manager. An individual may not be a substitute caregiver.¶

(90) "Unit" means the bedroom and other space of an individual residing in an AFH as agreed to in the residency agreement. Unit includes the following:¶

- (a) Private single occupancy spaces; and¶
- (b) Shared units with roommates as allowed by these rules.¶

(91) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of an individual requiring a non-routine visit to a health care practitioner, suicide attempts,



death of an individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.¶

(92) "Variance" means an exception from a regulation or provision of these rules granted in writing by the Division upon written application from the provider.¶

(93) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving services in an AFH or other provider and who is not a paid employee of the AFH or other provider. The services shall means abuse as defined in ORS 430.735.¶

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and OAR 943-045-0000, or any other rules established by the Authority applicable to allegations of abuse of residents residing at an AFH licensed by the Authority.¶

(3) "Activities of Daily Living (ADL)" means those personal and functional activities required by a resident for continued well-being, that are essential for health and safety. ADLs include eating, bathing, dressing, toileting, transferring (including mobility and ambulation) and maintaining continence.¶

(4) "Administration of Medication" means administration of medicine or a medical treatment to a resident as prescribed by a Licensed Medical Practitioner.¶

(5) "Adult" means a person 18 years of age or older with a severe and persistent mental illness who is receiving mental health treatment from a community program¶

(6) "Adult Foster Home (AFH)" means any home licensed by the Health Systems Division of the Authority in which residential care is provided to five or fewer residents who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. An AFH or any person, organization, or business entity that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults is considered an AFH. For the purpose of these rules, an AFH does not include any house, institution, hotel or other similar place that supplies room and/or board only, if no resident thereof requires any element of care, or any residential facility as defined in ORS 443.400.¶

(7) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions in the event the resident is no longer able to give directions regarding their wishes, as described in ORS 127.505 to 127.660. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).¶

(8) "Aid to egress" means an object used to access a window egress.¶

(9) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the resident's physical functioning.¶

(10) "Applicant" means any individual or entity that applies for a license to operate and AFH that is also the owner of the business.¶

(11) "Authority" means the Oregon Health Authority (OHA) or designee.¶

(12) "Back-Up Provider Agreement" means an agreement between the AFH provider and another AFH provider or resident manager, including an AFH provider or resident manager licensed by Aging and People with Disabilities or Office of Developmental Disability Services, who does not live in the home, has satisfied the testing requirements as described in 309-040-0335(3), and has agreed to oversee the operation of an AFH in the event of an emergency (See "Succession Plan").¶

(13) "Background Check" means a criminal records check and an abuse check.¶

(14) "Bedroom" for the purposes of this rule means any room designated as the primary sleeping quarters of an individual, staff, guests, or any other person.¶

(15) "Behavioral Interventions" means interventions that are designed to modify the resident's behavior or the resident's environment.¶

(16) "Bill of Rights" means those rights delineated in the AFH Bill of Rights as outlined in OAR 309-040-0410.¶

(17) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 047 and ORS 678.010 to 678.445.¶

(18) "Care" means the provision of, but is not limited to, services of room, board, services and assistance with ADLs, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. "Care" also includes services that promote maximum resident independence and enhance quality of life.¶

(19) "Caregiver" means the provider, resident managers, or substitute caregivers who provide care and services to a resident.¶

(20) "Case Manager" means an individual employed by a local, regional, or state allied agency approved by the Division to provide case management services and assist in the development of the personal care plan. Case manager's evaluate the appropriateness of services in relation to the consumer's assessed need and review the

residential care plan every 180 days.

(21) "Certificate of Occupancy" is a formal notice issued by a local building code authority confirming the building is allowed to be occupied for its intended use.

(22) "Change of Use" means a change in the use of a building or a portion of a building, within the same occupancy group classification, for which there is a change in application of the code requirements.

(23) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(24) "Community Mental Health Program (CMHP)" means an entity that is responsible for planning and delivery of safety net services for persons with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse in a specific geographic area of the state under a contract with the Division or a local mental health authority, as described in ORS 430.620 and 430.630.

(25) "Compensation" means payments made by or on behalf of a resident to a provider in exchange for room and board, care and services, including services described in the resident's residential care plan and person-centered service plan.

(26) "Competitive Integrated Employment" means full-time or part-time work:

(a) At minimum wage or higher, at a rate that is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not residents with disabilities, and who are similarly situated in similar occupations by the same employer, and who have similar training, experience, and skill;

(b) With eligibility for the level of benefits provided to other employees;

(c) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(d) As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(27) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, or inaction, that is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.

(28) "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 provider.

(29) "Contested Case Hearing" means a hearing under ORS chapter 183.411-183.417.

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

(31) "Criminal Records Check" means the Oregon Criminal Records Check and when required, a National Criminal History check or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).

(32) "Critical Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of a resident triggering a non-routine visit to a health care practitioner, suicide attempts, death of a resident, a fire requiring the services of a fire department, or any incident that triggers an abuse investigation.

(33) "Day Care" means care and services in an AFH for a person who is not a resident of the AFH.

(34) "Declaration for Mental Health Treatment" means a document that states the resident's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.

(35) "Delegation" means the process where a registered nurse teaches and supervises a nursing procedure to an unlicensed person. The Oregon State Board of Nursing defines an unlicensed person as any caregiver or certified nursing assistant (CNA). (See OAR chapter 851, division 047).

(36) "Designated Representative" means:

(a) Any adult who is not the resident's paid provider, who:

(A) The resident has authorized to serve as his or her representative; or

(B) The resident's legal representative is authorized to serve as the resident's representative.

(b) The power to act as a designated representative is valid until the resident or the resident's legal representative modifies the authorization and notifies the Division of the modification, the resident or the resident's legal representative notifies the provider that the designated representative is no longer authorized to act the resident's behalf, or there is a change in the legal authority upon which the designation was based. Notice must include the resident's or the resident's legal representative's signature as appropriate; and

(c) A resident or the resident's legal representative is not required to appoint a designated representative.

(37) "Director" means the Director of the Oregon Health Authority or designee.

(38) "Disaster" means a sudden emergency occurring beyond the control of the provider, whether natural, technological, or man-made, that renders the provider unable to operate the facility or renders the facility

uninhabitable.¶

(39) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the resident's residential care plan and person-centered service plan, regardless of outcome or attainment of goals described in the resident's individualized personal care plan. In addition, the discharge summary addresses the resident's monies, financial assets and monies, medication, and personal belongings at the time of discharge.¶

(40) "Division" means the Health Systems Division of the Oregon Health Authority or designee.¶

(41) "Division Staff" means an employee of the Division, the Division's designee, or the designee of the local Community Mental Health Program.¶

(42) "Emergency Escape and Rescue Opening" means an operable exterior window or door that provides a means of escape and access for rescue in an emergency.¶

(43) "Emergency Preparedness Plan" means a written procedure that identifies a facility's response to an emergency or disaster for minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.¶

(44) "Employee" means an individual employed by a licensed AFH and who receives wages, a salary, or is otherwise paid by the AFH for providing the service. The term also includes employees of other providers delivering direct services to a resident.¶

(45) "Evacuation Capability" means the ability to evacuate all residents from the facility within 3 minutes to a point of safety, which is exterior to and away from the structure, and has access to a public way.¶

(46) "Exclusion Lists" mean the following federal lists that exclude listed individuals from receiving federal awards, not limited to Medicaid and Medicare programs: ¶

(a) The U.S. Office of Inspector General's Exclusion List at [www.exclusions.oig.hhs.gov/](http://www.exclusions.oig.hhs.gov/); and ¶

(b) The U.S. General Services Administration's System for Award Management Exclusion List at [www.sam.gov/](http://www.sam.gov/)¶

(47) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Division to license, inspect, and collect fees according to the provisions of 443.705 to 443.825.¶

(48) "Family Member" means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father in law, mother in law, son in law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶

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

(50) "Gender identity" means a person's internal, deeply held knowledge or sense of the person'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 person, including a family member, conservator, or legal representative of the person. A person's gender identity is the last gender identity conveyed by a person who lacks the present ability to communicate.¶

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

(52) "Gender transition" means a process by which a person begins to live according to that person's gender identity rather than the sex the person was assigned at birth. The process may include changing the person's clothing, appearance, name or identification documents or undergoing medical treatments.¶

(53) "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 care facility that is available to other person of the same gender identity as the resident.¶

(54) "HCB" means Home and Community Based.

(55) "Home" means the Adult Foster Home (AFH) and as indicated by the context of its use may refer to the one or more buildings and adjacent grounds on contiguous properties used in the operation of the AFH.

(56) "Home and Community-Based Services" or "HCBS" means Home and Community Based Services as defined in OAR chapter 411, division 004 and OAR chapter 410, division 173. HCBS are services provided in the resident's home or community.

(57) "Homelike" means an environment that promotes the dignity, security, and comfort of residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the residents.

(58) "House Rules" means the written standards governing house activities developed by the provider and approved by the Division. These standards may not conflict with the AFH Bill of Rights or other resident rights set out by these rules.

(59) "Imminent Danger" means a situation in which a facility's non-compliance with one or more licensing requirements has caused or is likely to cause serious injury, harm, impairment, or death to one or more residents in the near future if the facility does not take immediate action to correct and protect resident health and safety.

(60) "Incident Report" means a written description and account of any occurrence including but not limited to any injury, accident, acts of physical aggression, use of physical restraints, medication error, or any unusual incident involving an resident, the home, or provider.

(61) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity. This term includes an ownership interest in any entity that has an indirect -----ownership interest in the disclosing entity.

(62) "Individual Care Services" means services prescribed by a physician or other designated individual in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those AFH individuals who are Medicaid eligible, personal care services are funded under Medicaid.

(63) "Individually Based Limitation" means a limitation to the qualities outlined in OAR 309-040-0393(1)(a) through (g), due to health and safety risks. An individually based limitation is based on a specific assessed need and implemented only with the informed consent of the resident or the resident's legal representative as outlined in 309-040-0393.

(64) "Informed Consent" means:

(a) Options, risks, and benefits of the services outlined in these rules have been explained to a resident and in a manner that the resident comprehends; and

(b) The resident consents to a person-centered service plan of action, including any individually based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually based limitation.

(65) "Initial License Application" or "New License" refers to a home or facility that is being licensed for the first time specific to a provider, setting type, and licensing authority.

(66) "Initial Residential Care Plan (IRCP)" means a written document developed for a resident, within 24 hours of admission to the home, that addresses the care and services to be provided for the resident during the first 30 days or less until the residential care plan can be developed.

(67) "Instrumental Activities of Daily Living (IADLs)" means those self-management activities performed by an individual on a day-to-day basis that are essential to basic self-care and independent living. IADLs include, but are not limited to, housekeeping, including laundry, shopping, transportation, medication management, and meal preparation.

(68) "Legal Representative" means an individual who has the legal authority to act for an individual and only within the scope and limits to the authority as designated by the court or other agreement. A legal representative may include the following:

(a) For a resident under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian; or

(b) For a resident 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative.

(69) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation.

(a) "Lesbian" means the sexual orientation of an individual 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 an individual 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 an individual who has the potential to be physically, romantically, 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 an individual who has non-binary or gender-expansive identities.¶

(A) Queer is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole.¶

(B) 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 not 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" is 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 other identities and expressions of gender, romantic and sexual orientation, including minority gender identities.¶

(70) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any individual.¶

(71) "License" means a document issued by the Division to applicants who are determined by the Division to be in substantial compliance with these rules.¶

(72) "Licensed Medical Practitioner (LMP)" means any individual who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:¶

(a) Physician licensed to practice in the State of Oregon; or¶

(b) Nurse practitioner licensed to practice in the State of Oregon; or¶

(c) Physician's assistant licensed to practice in the State of Oregon.¶

(73) "Living Quarters" means accessible, occupiable non-bedroom space in a home not including bathroom, utility, or storage spaces.¶

(74) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public or private corporation that directly contracts with the Division to operate a CMHP for that county.¶

(75) "Means of Egress" means a continuous and unobstructed path to exit from a home without requiring travel through a garage or carport to a public way.¶

(76) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any individual or resident.¶

(77) "Mental Health Assessment" means the process of obtaining sufficient information through interview, observation, testing and review of medical and treatment records to determine a diagnosis and to plan personal care and individualized services and supports. Mental health assessment must be completed, signed and dated by a provider meeting the qualifications of Qualified Mental Health Professional (QMHP) who performed the assessment. ¶

(78) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the resident's social, educational, or economic functioning. Medical diagnosis and classification must be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-V). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."¶

(79) "Naloxone" means an FDA-approved short-acting, non-injectable, opioid antagonist medication used for the emergency treatment and temporary rapid reversal of known or suspected opioid overdose.¶

(80) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders, such as information from the Federal Bureau of Investigation through the use of fingerprint cards and from other

criminal information resources in accordance with OAR 943-007-0001 through 943-007-0501 (Criminal History Checks).¶

(81) "Nurse Practitioner" means a registered nurse who has been certified by the Oregon State Board of Nursing as qualified to practice in an expanded specialty role within the practice of nursing.¶

(82) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to individuals other than licensed nursing personnel, which is governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.¶

(83) "Nursing Delegation" means the process where a registered nurse authorizes an unlicensed person to perform special tasks for residents in select situations and indicates that authorization in writing. The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the unlicensed person, teaching the task, and ensuring supervision.¶

(84) "Occupancy Classification" means the formal building codes designation of the primary purpose of the building, structure, or portion thereof.¶

(85) "Occupant" includes any household member and anyone receiving or delivering services in the setting, including residents and staff.¶

(86) "Opioid" means natural, synthetic, or semi-synthetic chemicals prescribed to treat pain. This class of drugs includes, but is not limited to, illegal drugs such as heroin, natural drugs such as morphine and codeine, synthetic drugs such as fentanyl and tramadol, and semi-synthetic drugs such as oxycodone, hydrocodone, and hydromorphone.¶

(87) "Opioid Overdose" means a medical condition that causes depressed consciousness and mental functioning, decreased movement, depressed respiratory function and the impairment of the vital functions as a result of taking opiates in an amount larger than is physically tolerated.¶

(88) "Opioid Overdose Kit" means an ultraviolet light-protected hard case containing a minimum of two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication, one pair non-latex gloves, one face mask, one face shield for rescue breathing that is maintained according to manufacturer's recommendations, and a short-acting, non-injectable, opioid antagonist medication administration instruction card.¶

(89) "Ownership Interest" means the possession of equity in the capital, stock or profits of the adult foster home. Persons with an ownership or control interest mean a person or corporation that:¶

(a) Has an ownership interest totaling 5 percent or more;¶

(b) Has an indirect ownership interest equal to 5 percent or more;¶

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

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

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

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

(90) "Person-Centered Service Plan" means written documentation that includes the details of the supports, desired outcomes, activities, and resources required for a resident to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.¶

(91) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agent, and other individual designated by the Division to provide person-centered service planning for and with residents.¶

(92) "Point of Safety" means a location where occupants evacuate in the event of an emergency and for the purpose of conducting of evacuation drills that is no less than 25 feet away from the home and has unobstructed direct access to a public street or sidewalk. The point of safety may not be in the backyard of the home unless the backyard directly accesses a public street or sidewalk.¶

(93) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, dentist, ophthalmologist, pharmacist, or other healthcare practitioner with prescribing authority.¶

(94) "PRN (pro re nata) Medications and Treatments" mean those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.¶

(95) "Program Staff" means an employee or individual who by contract with an AFH provides a service to a resident.¶

(96) "Provider" means a qualified person or an organizational entity operated by or contractually affiliated with a community mental health program or contracted directly with the Division for the direct delivery of mental health services and supports to adults receiving residential and supportive services in an AFH.¶

(97) "Provisional License" means a 60-day license issued to a qualified person or organizational entity in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person or organizational entity must meet the standards of OAR 309-040-0360.¶

(98) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400.¶

(99) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS chapter 678 and OAR chapter 851.¶

(100) "Related" means the following relationships: Spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶

(101) "Relative" means any individual identified as a family member.¶

(102) "Representative" means both "Designated Representative" and "Legal Representative" as defined in these rules unless otherwise stated.¶

(103) "Residency Agreement" means the written, legally enforceable agreement between a provider and a resident or a resident's representative when the resident receives services from the provider.¶

(104) "Resident" means any person who currently resides in an adult foster home who is receiving personal care, services or supports on a 24-hour basis.¶

(105) "Resident Manager" means an employee of the provider who is approved by the Division to live in the AFH and is responsible for the care and services of residents on a day-to-day basis.¶

(106) "Residential Care" means the provision of room, board, and services that assist the resident in activities of daily living such as assistance with bathing, dressing, grooming, eating, medication management, money management, or recreation. Residential care includes 24-hour supervision; being aware of the resident's general whereabouts; monitoring the activities of the resident while on the premises of the AFH to ensure the resident's health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.¶

(107) "Residential Care Plan (RCP)" means a written plan outlining the care and services to be provided to an resident. The RCP is based upon the review of current assessment, referral, observations, resident preference, and input from members of the residential care plan team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the resident's recovery and independence.¶

(108) "Residential Care Plan Team (RCP Team)" means a group composed of the resident, the case manager or other designated representative, CMHP representative, the provider, resident manager, and others needed including the resident's legal guardian, representatives of all current service providers, advocates, or others determined appropriate by the resident receiving services. If the resident is unable or does not express a preference, other appropriate team membership will be determined by the RCP team members.¶

(109) "Residential Setting" includes homes licensed by the Department or the Authority to serve individuals in accordance with OARs 309-035; 309-040; 411-050; 411-325; and 411-360.¶

(110) "Residents' Bill of Rights" means the civil, legal, or human rights AFH residents have as set forth in ORS 443.739.¶

(111) "Respite Care" means the provision of room, board, care, and services in an AFH for a period of up to 14 days. Respite care is not crisis respite care.¶

(112) "Restraints" means any physical hold, device, or chemical substance that restricts or is meant to restrict the movement or normal functioning of a resident.¶

(113) "Room and Board" means the provision of meals, a place to sleep, laundry, and housekeeping.¶

(114) "Screening" means the assessment process used to identify a resident's ability to perform activities of daily living and address health and safety concerns.¶

(115) "Seclusion" means the involuntary confinement of a resident to a room or area where the resident is physically prevented from leaving.¶

(116) "Self-Administration of Medication" means the act of a resident placing a medication in or on the resident's own body. The resident identifies the medication and the times and manners of administration and places the medication internally or externally on the resident's own body without assistance.¶

(117) "Self-Preservation" means the ability of residents to respond to an alarm or emergent situation without additional cues and be able to reach a point of safety without assistance.¶

(118) "Services" means those activities that are intended to help the resident develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure the resident's access to necessary medical care, treatment, or services identified in the resident's personal care plan.¶

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

(120) "Staff" means any person responsible for care, services, and support of individuals. Staff includes providers, administrators, managers, supervisors, caregivers, and volunteers.¶

(121) "Substantial Compliance" means a level of compliance with these rules where any deficiencies pose no greater risk to resident health or safety than the potential for causing minor harm.

(122) "Succession Plan" means the provider or administrator's written plan addressing coverage, continuance of care and services for residents, and AFH operations should the provider or administrator be unable to fulfill their duties due to illness, death, or other unexpected absence (See "Back-up Provider Agreement").

(123) "Substitute Caregiver" means any person meeting the qualifications of a caregiver who provides care and services in an AFH under the Division's jurisdiction in the absence of the provider or resident manager. A resident may not be a substitute caregiver.

(124) "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.

(125) "Unit" means the bedroom and sleeping space of an resident residing in an AFH as agreed to in the residency agreement. Unit includes the following:

(a) Private single occupancy spaces; and

(b) Shared units with roommates as allowed by these rules.

(126) "Variance" means an exception from a regulation or provision of these rules granted in writing by the Division upon written application from the provider.

(127) "Volunteer" means a person who provides a service or who takes part in a service provided to individuals receiving services in an AFH or other provider and who is not a paid employee of the AFH or other provider. The services must be non-clinical unless the person has the required credentials to provide a clinical service.

Statutory/Other Authority: ORS 413.042; 413.032

Statutes/Other Implemented: ORS 426.072, 443.705 - 443.825



RULE SUMMARY: Clarifications made to food access rights. Incorporation of ORS language regarding weekly activity.

CHANGES TO RULE:

309-040-0307

Required Home-like Qualities ¶

~~This rule becomes effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).¶~~

(1) Each AFH ~~shall~~must have all of the following:¶

(a) The home ~~shall~~must be integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for ~~an individual resident to:~~¶

(A) Seek employment and work in competitive integrated employment settings;¶

(B) Engage in greater community life;¶

(C) Control personal resources; and ¶

(D) Receive services in the greater community.¶

(b) The ~~individual resident or designated representative~~ selects the AFH from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:¶

(A) Identified and documented in the ~~individual resident's~~ person-centered service plan;¶

(B) Based on the ~~individual resident's~~ needs and preferences; and ¶

(C) Based on the ~~individual resident's~~ available resources for room and board.¶

(c) The AFH ~~shall~~must ensure ~~individual resident's rights as described in ORS 443.739, including but not limited to~~ rights of privacy, dignity, respect, and freedom from coercion and restraint;¶

(d) The AFH ~~shall optimize, but not regiment, individual~~must promote, but not require, resident initiative, autonomy, self-direction, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact;¶

(e) The AFH ~~shall~~must facilitate ~~individual resident~~ choice regarding services and supports and who provides the services and supports.¶

(2f) ~~The provider shall maintain the AFH as follows:~~¶

(a) ~~The home shall be physically accessible to each individual;~~¶

(b) ~~The provider shall provide the~~AFH must make available at least six hours of activities each week which are of interest to and selected by the residents, not including television or movies, as described in ORS 443.738.

Activities must be oriented to individual with a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable residency agreement;¶

(c) ~~The provider shall provide and include in the residency agreement that the individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of the State of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, th~~preferences as indicated in the resident's person centered service plan.

Documentation of the activities offered to each resident, the resident's engagement in those activities, and the reasons the resident did not engage in those activities must be recorded in the individual resident's record. Resident progress notes must reflect staff efforts to engage residents, such as surveying their interests, during times of non-engagement in activities being made available.¶

(2) ~~The provider must maintain the AFH as follows:~~¶

(a) ~~The home must be physically accessible to each resident;~~¶

(b) ~~The provider must provide the resident with a unit of specific physical place that the resident may occupy under a legally enforceable residency agreement shall provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes shall be substantially equivalent to the processes provided under landlord-tenant laws;~~¶

(c) ~~The provider must provide and include in the residency agreement that the resident has, at a minimum, the responsibilities and protections from an involuntary transfer or discharge as described in ORS 443.738(7), (8), (11), (12), and (13).~~ ¶

(d) The provider ~~shall~~must ensure that each ~~individual resident~~ has privacy in their own unit;¶

(e) The provider ~~shall~~must maintain units with entrance doors lockable by the ~~individual resident~~ and ensure that only the ~~individual, the individual resident, the resident's roommate, and only appropriate staff, as idescrib~~identified in the ~~individual resident's~~ person-centered service plan, have keys to access the unit;¶

(f) The provider ~~shall~~must ensure that ~~individual residents~~ sharing units have a choice of roommates;¶

- (g) The provider ~~shall~~must provide that individual resident's have the freedom to decorate and furnish their unit as agreed to within the Residency Agreement;¶
- (h) The provider ~~shall~~must permit each individual resident to have visitors of their choosing at any time;¶
- (i) The provider ~~shall~~must ensure each individual resident has the freedom and support to control their own schedule and activities;¶
- (j) The provider ~~shall~~must ensure each individual resident has the freedom and support to have access to ~~food at any time.~~¶
- ~~(3) The provider shall take reasonable steps to ensure that the program maintains the qualities identified in this rule. Failure to take reasonable steps may include, but is not limited to, failure to:¶~~
- ~~(a) Maintain a copy of the person-centered service plan at the home;¶~~
- ~~(b) Cooperate or provide necessary information to the person-centered service plan coordinator; or¶~~
- ~~(c) Attend or schedule a person-centered planning meeting when necessary~~a variety of food, condiments, snacks, and means of cooking/preparing food at any time, unless an individually based limitation applies. Providers may not restrict where food/beverages are consumed.¶
- (43) When a provider is unable to ensure the qualities as outlined in section (2)(d) through (2)(j) of this rule due to threats to the health and safety of the individual resident or others, the provider may seek an individually-based limitation with the individual resident's consent through the process outlined in OAR 309-040-0393. The provider may not apply an individually-based limitation until the limitation is approved and documented as required by OAR 309-040-0393.

Statutory/Other Authority: ORS 413.042, 413.032

Statutes/Other Implemented: ORS 413.085, 443.705 - 443.825

AMEND: 309-040-0310

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Adds requirement to have a back-up provider or succession plan. Clarifications made. Requirement for provider/RM involvement in the home at least five days per week.

CHANGES TO RULE:

309-040-0310

License Required ¶

(1) ~~License Required.~~ In accordance with ORS 443.725, every provider of ~~An adult Foster Care shall~~ home must be licensed by the Division before opening or operating an AFH ~~or providing care for compensation to a resident.~~ ¶

(a) The provider ~~shall~~ must live in the home that is to be licensed or hire a resident manager to reside in and manage the daily operations of the home at least five days per week live in the home. ¶

(b) There must be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH under the jurisdiction of the Division. ¶

(2) ~~Placement. An AFH may not accept placement of an individual~~ sufficient in number to meet the 24 hour needs of each resident. ¶

(c) ~~The provider must have a w~~ without first being licensed by the Division. ¶

(3) ~~Unlicensed AFH. No individual shall be placed in an AFH that is not licensed.~~ ¶

(4) ~~Criminal History Check Requirements. P~~ ten succession plan or back-up provider agreement addressing care and services for residents in the event that the provider is unable to fulfill their duties in the AFH. The succession plan must be readily available to the Division upon request. ¶

(2) ~~A license is valid for one year unless the Division revokes the license. the providers, resident managers, substitute caregivers, volunteers, and occupant~~ linquishes the license, or the provider stops over the age of 16, excluding individuals, shall have documentation of an approved criminal history background check in accordance with ORS 181A.200, 443.735 and OAR 943-007-0001 through 0501 ~~ating the AFH.~~ ¶

(3) ~~Placement. An AFH may not accept placement of an resident without first being licensed by the Division under these rules.~~ ¶

(4) ~~Unlicensed AFH. No resident may be placed in an AFH that is not licensed.~~

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0315

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifies and adds some additional license application requirements such as verification of completion of all required training, requirements for initial licensure, CPR training requirement clarifications, and requirement of a plan of operation.

CHANGES TO RULE:

309-040-0315

License Application and Fees ¶

(1) A completed, written application ~~shall~~must be submitted by the applicant ~~in a forms supplied by the Division, and manner required by the Division along with the required \$20 per bed non-refundable fee.~~ The application is not complete until all information is received by the Division. ¶

~~(2) Incomplete initial applications are void 60 days after initial receipt by the Division, after 60 calendar days from the date the Division receives the application and non-refundable fee. The Division will deny the incomplete application if not withdrawn.¶~~

~~(23)~~ An applicant ~~shall~~must submit a separate complete application packet for each location operated as an AFH. ¶

~~(34)~~ The application ~~shall~~must include the following: ¶

~~(a)~~ The location of the AFH;¶

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

~~(c)~~ The name, address, telephone number, and email address of the provider;¶

~~(d)~~ The distinct name of the AFH;¶

~~(e)~~ The maximum capacity requested and a written statement describing family members needing care, individual residents who receive respite care, individual persons who receive day care, or individual residents who receive room and board; only;¶

~~(f)~~ A written statement from an LMP physician, nurse practitioner, or physician assistant regarding the mental and physical ability of the applicant to provide care ~~to individual and services to residents~~ and to operate the AFH. If the applicant employs a resident manager, the applicant ~~shall~~must provide a written statement from a physician ~~or a LMP, nurse practitioner, or physician assistant~~ regarding the mental and physical ability of the resident manager to ~~operate the AFH and to provide care to individuals; provide personal care and services to residents and to operate the AFH;¶~~

~~(g)~~ A completed financial information form provided ~~by the Division. The applicant shall demonstrate~~ing to the Division the applicant's financial ability and ~~the resources necessary to operate the AFH. Financial ability shall~~must include, but is not limited to, providing the Division with a current credit report, list of unsatisfied judgments, pending litigation, and unpaid taxes and notifying the Division regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required, the Division may require the applicant to furnish a financial guarantee as a condition of initial licensure in accordance with ORS 443.735(3)(e); ¶

~~(d)~~ A completed Facility Provider Enrollment Application; ¶

~~(e)~~ A signed letter of ~~support~~acknowledgment from the ~~Local Community Mental Health Authority Program~~ or designee for the applicant to be licensed to operate the AFH; ¶

~~(f)~~ ~~Documentation of a Criminal History Check approval~~Proof of experience providing direct care and services to adults with mental illness;¶

~~(j)~~ Documentation of an approved check in accordance with OAR 943-007-0001 through 0501 for the provider, the resident manager, caregivers, volunteers, and other occupants ~~over the age of 16~~16 years of age or older, excluding individual residents and other persons as defined in ORS 443.735; ¶

~~(k)~~ Written background information pertaining to any current or previous licensure or certification by a state agency, including those licenses or certificates granted to a business or person affiliated with the business, including: ¶

(A) Copies of all current licenses or certificates; ¶

(B) Disclosure of any adverse action taken or proposed on any current or previous license or certificate, and documentation showing the final disposition of any suspension, denial, revocation, or other disciplinary actions initiated on any current or previous license or certificate, including settlement agreements, where applicable; and¶

(C) Documentation of any substantiated allegations of abuse or neglect pertaining to the applicant or anyone employed by or contracted with the applicant.¶

(h) ~~A floor plan of the AFH showing the location and size of rooms, exits, secondary emergency egress, smoke detectors and fire extinguishers, and evidence of compliance with facility safety requirements as outlined in OAR 309-040-0370; ¶~~

(i) ~~A completed AFH Self-Inspection Guide; and Verification of completion of all required trainings for the provider, resident manager if applicable, and all substitute caregivers including, but not limited to:¶~~

~~(A) Division-approved AFH Provider Orientation;¶~~

~~(B) Mandatory Abuse Reporting;¶~~

~~(C) Current CPR and First Aid certification;¶~~

~~(i) Accepted CPR and First Aid courses must be provided by or meet the standards of the American Heart Association or the American Red Cross. ¶~~

~~(ii) CPR or First Aid courses conducted online are only accepted by the Department when an in-person skills competency check is conducted by a qualified instructor meeting the standards of the American Heart Association, the American Red Cross.¶~~

~~(m) Verification of home ownership or copy of current lease or rental agreement that includes:¶~~

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

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

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

~~(n) A floor plan of the AFH containing the required components as outlined in OAR 309-040-0370(3). ¶~~

~~(o) One copy of written approved certificate of occupancy based on the change of use of the setting, issued by the city or county building codes authority having jurisdiction;¶~~

~~(p) A completed AFH Self-Inspection related to HCBS compliance and Fire Safety, using division approved forms;¶~~

~~(q) The AFH plan of operation, including:¶~~

~~(jA) Each application must be accompanied by a fee of \$20 per bed requested for license. The use of substitute caregivers and other staff;¶~~

~~(B) A description of how the providers or substitute caregivers must be directly involved with residents on a daily basis ¶~~

~~(C) How the providers and substitute caregivers will be prepared to communicate with all residents who live in the home including residents with limited English proficiency.¶~~

~~(D) Detail how transportation and community engagement will occur. ¶~~

~~(45) The Division shall must determine compliance with these rules based on receipt of the completed application material and fees, a review of information submitted, and investigation of information submitted, an in-person inspection of the AFH, and interviews with the provider determined by the Division applicant and other individuals as identified determined necessary by the Division.¶~~

~~(56) The applicant may withdraw the application at any time during the application process by notifying the Division in writing.¶~~

~~(67) The Division may elect to deny an application prior to review when:¶~~

~~(a) The applicant has previously had any adverse action taken on a certificate or license by the oversight body; or¶~~

~~(b) Action taken on a certificate or license may includes but is not limited to denial, suspension, conditions, intent to revoke, nonrenewal, or revocation by the Division, the Authority, the Oregon Department of Human Services, or any other state agency;¶~~

~~(c) The applicant fails to provide accurate information; and¶~~

~~(d) The applicant may appeal the denial of the application by submitting a request for reconsideration in writing to the Division within 14 calendar days from receipt of the denial notice. The Division shall must make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Division shall be final.¶~~

~~(78) An applicant whose license has been revoked or voluntarily surrendered, following a receipt of Notice of Intent to Revoke or Notice of Intent to Not Renew from the Division, or whose application has been denied by the Division for reasons relating to, but not limited to, criminal convictions, civil proceedings against the applicant, or substantiated allegations of abuse by the applicant, may not be permitted to submit an application for one year from the date that the revocation, non-renewal, surrender, or denial is made final. A longer period may be specified in the order revoking or denying the license.¶~~

~~(89) Enforcement of Home and Community-Based Required Qualities: ¶~~

~~(a) An AFH licensed on or after July 1, 2016, shall be in full compliance with all requirements under these rules at the time of initial licensure; ¶~~

~~(b) An AFH licensed prior to July 1, 2016, shall come into compliance with applicable rules as follows: ¶~~

~~(A) All AFH's shall be in full compliance with all applicable rules no later than January 1, 2017; ¶~~

~~(B) For those rules designated by the Division to become effective July 1, 2016, the provider must make measurable progress towards compliance with those rules. The Division may not issue sanctions or penalties for~~

~~failure to meet these rules effective July 1, 2016, or those obligations imposed by OAR chapter 411, division 4, until January 1, 2017, if the provider demonstrates measurable progress towards compliance. The AFH must be in full compliance with all Home and Community Based required qualities of 42CFR §441.710(a)(1), OAR 410-173-0035, and OAR 411-004. ¶~~

(10) At or about 90 days after initial licensure, the Division will inspect the AFH to ensure compliant operation.

Statutory/Other Authority: ORS 413.042, ORS 443.420

Statutes/Other Implemented: ORS 443.705 - 443.825

REPEAL: 309-040-0320

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Unnecessary as 1 is the only level licensed

CHANGES TO RULE:

~~309-040-0320~~

~~Classification of AFHs~~

~~(1) The Division licenses Level 1 AFHs. Level 1 AFHs provide care and services to individuals with severe and persistent mental illness who may also have limited medical conditions.~~

~~(2) A Level 1 AFH license may be issued by the Division based upon a determination that an AFH is in substantial compliance with these rules and a review of the qualifications of the provider and the resident manager if applicable, and is in compliance with the OAR 309-040-0300 through 0455 and has met the training requirements set forth in OAR 309-040-0335.~~

~~Statutory/Other Authority: ORS 413.042~~

~~Statutes/Other Implemented: ORS 443.705 - 443.825~~

AMEND: 309-040-0325

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Moves respite care guidelines to this section.

CHANGES TO RULE:

309-040-0325

Capacity ¶

(1) The Division ~~shall~~must determine the number of ~~individual residents~~ permitted to reside in an AFH based on the ability of the ~~caregiver~~provider to meet the care needs of the ~~individual residents~~, the fire and life safety standards, and compliance with the physical structure standards of these rules. Determination of maximum licensed capacity may include consideration of total household composition including children. Sleeping requirements for children are:¶

(a) Sleeping arrangements for children ~~in care shall~~must be safe and appropriate, based on the child's age, gender, special needs, behavior, and history of abuse and neglect;¶

(b) Each child ~~in care shall~~must have a safe and adequate bed in which to sleep.¶

(2) The following limits apply:¶

(a) The maximum number of ~~individual residents~~ is limited to five;¶

(b) In the determination of the Division, the following ~~individual persons~~ may be included in the licensed capacity of five:¶

(A) Respite care ~~individual residents~~;¶

(B) Day care persons;¶

(C) Adult family members of the provider or resident manager who need care; and¶

(D) Child family members of the provider or resident manager who need care.¶

(3) If the number of ~~individual resident's~~ who receive care exceeds the ability of the provider to meet the care, health, life, and safety needs of the ~~individual residents~~, the Division may reduce the AFH licensed capacity.¶

(4) The Division may place conditions, restrictions, or limitations on the AFH license as necessary to maintain the health, life, and safety of the ~~individual residents~~.¶

(5) Providers may not exceed the licensed capacity of the AFH. However, respite care of no longer than two weeks duration may be provided an individual resident if the addition of the respite individual resident does not cause the total number of residents to exceed five. Thus, a provider may exceed the licensed number of residents by one respite individual resident for two weeks or less if approved by the CMHP or the Division, and if the total number of residents does not exceed five.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825



RULE SUMMARY: Clarifications made. Staff orientation and training requirements added. Opioid overdose kit and LGBTQIAS+ training required.

CHANGES TO RULE:

309-040-0335

Training Requirements for Providers, Resident Managers, and Substitute Caregivers ¶¶

(1) All providers, resident managers, and substitute caregivers ~~shall~~must satisfactorily meet all educational requirements established by the Division. Providers and staff may not provide care to any ~~individual~~resident prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety, and welfare of the ~~individual~~resident. Required course work and necessary skills may include, but are not limited to, physical caregiving; screening for care and service needs; appropriate behavior towards ~~individual~~residents with physical, cognitive, and emotional disabilities; emergency procedures; medication management; personal care products; food preparation; home environment and safety procedures; residents' rights; issues related to architectural accessibility; and mandatory abuse reporting.¶¶

(2) The provider, resident manager, and substitute caregivers ~~shall~~must be able to understand and communicate in oral and written English in accordance with ORS 443.730.¶¶

(3) Training for all ~~provider licensees~~, resident managers, and substitute caregivers ~~shall~~must comply with ORS 443.738. ~~The~~All provider ~~shall~~must satisfactorily pass any testing requirements established by the Division before being licensed or becoming a resident manager or substitute caregiver. The test ~~shall~~must be completed by the ~~licensee, resident managers, and substitute caregivers~~ without the help of any other ~~individual~~. ~~The provider person, and must be proctored by the CMHP. The licensee, resident manager, and substitute caregiver shall~~must have the ability to, but not be limited to, understand and respond appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, and ~~individual~~residents' preferences and conflicts.¶¶

(4) The Division may make exceptions to the training requirements for individuals who are appropriately licensed medical care professionals in Oregon or who possess sufficient education, training, or experience to warrant an exception. The Division may not make any exceptions to the testing requirements.¶¶

(5) In accordance with ORS 443.738, the Division may permit a person who has not completed the training or passed the required test to act as a resident manager until the training and testing are completed or for 60 days, whichever is shorter, if the Division determines that an unexpected and urgent staffing need exists. ~~The provider shall~~licensee must notify the Division of the situation and demonstrate that the ~~provider licensee~~ is unable to find a qualified resident manager, that the individual meets the requirements for a substitute caregiver for the AFH, and that the ~~provider shall~~licensee must provide adequate supervision.¶¶

(6) Prior to providing care to any resident, the provider or resident manager must orient all caregivers to the home and to the residents. Orientation includes, but is not limited to:¶¶

(a) Location of all fire extinguishers;¶¶

(b) Demonstration of evacuation procedures;¶¶

(c) Instruction of the Emergency Preparedness Plan;¶¶

(d) Location of and documentation within resident records;¶¶

(e) Location of phone numbers for telephone numbers of the local fire department, police department, the poison control center, the provide-adequate supervision.r, and the residents' LMP;¶¶

(f) Location of medications, proper medication administration and proper documentation in medication administration records;¶¶

(g) Introduction to each resident;¶¶

(h) Review of care and services required for each resident; and¶¶

(i) Registered Nurse delegation necessary to provide care and services to residents. ¶¶

(67) The provider or resident manager shall~~must~~ maintain current documentation of the training, and testing, and qualifications of substitute caregivers including but not limited to:¶¶

(a) Documentation of eriminal historyan approved background check in compliance with OAR 943-007-0001 through 0501;¶¶

(b) A new background check must be completed:¶¶

(A) Every two years;¶¶

(B) Prior to any subject individual's change in employment position; and¶¶

(C) If the Division has reason to believe a new background check is needed.¶¶

(c) Documentation that a substitute caregiver has successfully completed the training required by the Division;¶  
 (ed) Documentation that the provider has trained the caregiver to meet the routine and emergency needs of the individual residents;¶  
 (de) Documentation that the provider has oriented the caregiver to the individual residents in the AFH, their care needs and skills training, personal care plan, and the physical characteristics of the AFH.¶  
 (78) ~~The Division shall require a~~ minimum of twelve hours of training annually directly related to the care and services for individual residents with mental illness. ~~The is required annually. All~~ providers, resident managers, and substitute caregivers of an AFH must complete required training and document the training in the provider, resident manager, and substitute caregiver's training records. The training is in addition to any orientation that is attended by applicants prior to licensing and ~~shall~~ must include, but is not limited to:¶  
 (a) ~~Understanding and recognizing severe and persistent mental illness;~~¶  
 (b) ~~Mandatory mental and emotional conditions ;~~¶  
 (b) Understanding the mental health assessment and implementing the residential care plan¶  
 (c) Medication management; ¶  
 (d) Cardiopulmonary Resuscitation (CPR) which includes in-person competency check by a qualified instructor, and First Aid; ¶  
 (e) Opioid overdose kits and administration of an FDA-approved short-acting, non-injectable, opioid antagonist medication. ¶  
 (f) Have a clear understanding of their job responsibilities, have knowledge of the residents' residential care plans, and the ability to provide the care specified for each resident; ;¶  
 (g) Resident rights;¶  
 (h) Safety, emergency, and emergency preparedness planning;¶  
 (i) Behavior management including positive engagement, redirection, and de-escalation techniques;¶  
 (j) Complaints, grievances, incident and abuse reporting; ¶  
 (c) ~~Medication management, dispensing, and documentation;~~¶  
 (d) ~~Incident report writing;~~¶  
 (e) ~~Individual rights;~~ k) Nutrition and food services; and¶  
 (l) Other information relevant to the job description and scheduled shifts.¶  
 (m) All caregivers, including licensees, resident managers, and substitute caregivers are required to complete the Authority-approved HCBS training, as provided below:¶  
 (A) Effective June 30, 2025, all caregivers must have completed the required training. ¶  
 (B) All new caregivers, hired on or after July 1, 2025, must complete the required training prior to beginning job responsibilities.¶  
 (9) Providers, resident managers, and substitute caregivers must complete the Authority approved LGBTQIA2S+ residents and residents living with human immunodeficiency virus training as mandated by ORS 441.111 to 441.122. The Authority approved training shall address the elements described in 309-040-0335(11)(c) of this rule. The following dates apply to the initial LGBTQIA2S+ residents and residents living with human immunodeficiency virus trainings: ¶  
 (a) Effective June 30, 2025, all staff must have completed the required training. ¶  
 (b) All new staff, hired on or after July 1, 2025, must complete the required training prior to beginning job responsibilities.¶  
 (10) Providers, resident managers, and caregivers are required to complete biennial training addressing LGBTQIA2S+ residents and residents living with human immunodeficiency virus protections, as described in this section. Providers are responsible for the cost of providing this training to all staff.¶  
 (a) The provider or administrator must select the LGBTQIA2S+ residents and residents living with human immunodeficiency virus training to be used by the AFH by either: ¶  
 (A) Choosing to use the standard Department-approved biennial LGBTQIA2S+ residents and residents living with human immunodeficiency virus training; or ¶  
 (fB) AFH emergency planning;plying to the Department to request approval of a biennial LGBTQIA2S+ residents and residents living with human immunodeficiency virus training to be developed and provided by the licensee or administrator. ¶  
 (gb) Fire safety; ORS 441.116 requires all LGBTQIA2S+ residents and residents living with human immunodeficiency virus trainings address: ¶  
 (hA) Complaints and grievanceearing for LGBTQIA2S+ residents and residents living with human immunodeficiency virus; and,¶  
 (i) Cardiopulmonary Resuscitation (CPR) and First Aid. B) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression or human immunodeficiency virus status. ¶  
 (C) The defined terms commonly associated with LGBTQIA2S+ individuals and human immunodeficiency virus status. ¶

(D) 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. ¶

(jE) ~~Opioid overdose kits and administration of an FDA-approved short-acting, non-injectable, opioid antagonist medication~~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+ residents and residents living with human immunodeficiency virus community associated with such discrimination. ¶

(F) 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. ¶

(G) The 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. ¶

(c) The proposal for training submitted by a provider, administrator, entity, or individual shall include: ¶

(A) The regulatory criteria described in section 309-040-0335(11)(c). ¶

(B) The following elements must be included in the proposal: ¶

(i) A statement of the qualifications and training experience of the 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. ¶

(8C) ~~The Division may require 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 licensee or administrator in writing of the Department's decision. ¶

(11) The Division may require a provider, resident manager, or substitute caregiver to obtain additional training, whether or not the twelve-hour annual training requirement has already been met. ¶

(912) Providers, resident managers, or substitute caregivers who perform delegated or assigned nursing care services as part of the residential care plan shallmust receive training and appropriate monitoring from a registered nurse on performance and delivery of those services.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0340

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Exclusion list requirements clarified. Adds that applicant may not be licensed to operate any additional facilities without first demonstrating a history of substantial compliance for previous and currently licensed facilities.

CHANGES TO RULE:

309-040-0340

Issuance of a License ¶

~~(1) Applicants shall be in substantial compliance with these rules ORS 443.705 through 443.825 before the Division shall issue a license if cited deficiencies are not corrected within time frames specified by the Division, the application may be denied. The license shall~~The license must include but is not limited to the name of the applicant, name of the AFH, address of the home to which the license applies, the maximum number of ~~individuals, residents, the name of the~~ resident manager if applicable, conditions, if applicable, license number, ~~payment received, effective date and, expiration date, and the signature of the assistant administrator of the Division. The license shall be visible~~Division's designee. The license must be prominently posted in the AFH and available for inspection at all times.¶

(2) The Division may attach conditions to the license that limit, restrict, or specify other criteria for operation of the AFH. Conditions to a license may include but are not limited to care of a specifically identified ~~individual resident~~. The conditions ~~shall~~must be posted with the license in the AFH and be available for inspection at all times.¶

(3) Each provider ~~shall~~must report promptly to the Division any ~~significant~~ changes to information supplied in the application or subsequent correspondence. Changes include but are not limited to changes in the AFH name, owner entity, resident manager, telephone number, or mailing address, ~~information discovered about past license or certification history~~, and staffing changes if those changes are significant or impact the health, safety, or well-being of ~~individual residents~~.¶

(4) ~~When~~Before an AFH is sold, the prospective new owner ~~shall~~must apply for a license in accordance with OAR 309-040-0315 if the new owner intends to operate an AFH.¶

(5) An AFH license is not transferable or applicable to any location or individuals other than those specified on the license.¶

(6) A license is valid for one year from the effective date on the license unless sooner revoked or ~~suspend~~relinquished.¶

(7) Applicants ~~shall~~must be in substantial compliance with these rules before a license is issued. If cited deficiencies are not corrected within the time frames specified by the Division, the license ~~shall~~application must be denied.¶

(8) The Division may not issue an initial license unless:¶

(a) The applicant and the AFH are in compliance with ORS 443.705 to 443.825 and the rules of the Division;¶

(b) The Division has completed an inspection of the AFH. If cited deficiencies are not corrected within the time frames specified by the Division, the application ~~shall~~must be denied;¶

(c) The Division has received an approved ~~criminal history~~background records check on the applicant, resident manager, substitute caregiver, and any occupant (other than an ~~individual resident~~) 16 years of age or older or is identified in ORS 443.735 and who will be residing in or employed by the AFH, as identified in OAR chapter 943 division 007 and any other rules established by the Division;¶

~~(9d) The applicant shall demonstrate to the Division the financial ability and resources necessary to oper~~Division has determined thate the AFH. The demonstration of financial ability shall include, but is not be limited to, providing the Division with a list of any unsatisfied judgments, pending litigation and unpaid taxes, and notifying the Division regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required in this section, the Division may require registry maintained under ORS 441.678 contains no finding that the applicant or any person employed by the applicant has been responsible for abuse.¶

~~(e) The Division has determined~~ the applicant to furnish a financial guarantee as a condition of initial licensure.¶

~~(10) If a resident manager leaves during the period of the license, the provider shall notify the Division immediately and identify a plan for providing care to the individuals. The provider shall submit a completed resident manager application on forms supplied by the Division that include a copy of the documentation of criminal history background check and approval in accordance with OAR chapter 943, division 007, a physician statement, and payment of a \$10 fee. If the original plan includes changing the resident manager during the license~~

renewal process, the \$10 is not applicable.¶¶

~~(11)~~ Upon receipt of the completed resident manager application and Division approval, a revised license may be issued in accordance with ORS 443.738(1) through (4) is not excluded from receiving federal awards including:¶¶

~~(A)~~ The U.S. Office of Inspector General's Exclusion List at [www.exclusions.oig.hhs.gov](http://www.exclusions.oig.hhs.gov) and¶¶

~~(B)~~ The U.S. General Services Administration's System for Award Management Exclusion List at [www.sam.gov](http://www.sam.gov).¶¶

~~(f)~~ An applicant may not be licensed to operate any additional programs without first demonstrating a history of substantial compliance for previous and current licenses and certificates.¶¶

~~(129)~~ Notwithstanding any other provision of ORS 443.735, 443.725, or 443.738, the Division may issue a 60-day provisional license to a qualified ~~individual~~ resident if the Division determines that an emergency situation exists after being notified that the licensed provider of an AFH is no longer overseeing operation of the AFH.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0345

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Change in required timeline to submit renewal application. Adds allowance to require financial info form at renewal.

CHANGES TO RULE:

309-040-0345

Renewal ¶¶

(1) ~~The provider shall~~licensee must submit a completed renewal application packet and the required fee, as applicable, at least ~~165~~20 days prior to the expiration date of the license. ~~If the renewal application is not received by the Division within the time period described, the provider shall request the application from the Division or the County Mental Health partner.~~ If the completed renewal application and fee are not submitted prior to the expiration date, the AFH ~~shall~~will be treated as an unlicensed home subject to civil penalties.¶¶

(2) The renewal application must include the same information and fee as required for a new application, ~~except that a.~~ A renewed physician's statement and financial information form are ~~not~~ required if the Division can reasonably assume this information has ~~not~~ changed.¶¶

(3) The Division may require the applicant to submit a current, ~~within six months,~~ physician's statement and, a current, ~~within six months,~~ criminal history check approved background check, and a current financial information form if investigation by the Division for license renewal ~~indicates that~~determines it is necessary.¶¶

(4) The Division ~~shall~~must investigate any information in the renewal application and ~~shall~~must conduct an in-person inspection of the AFH.¶¶

(5) The provider ~~shall~~must be given a formal written report from the inspection citing any deficiencies and a time frame for correction that does not exceed 30 days from the date of the inspection report unless otherwise noted in the inspection report.¶¶

(6) The AFH provider ~~shall~~must correct cited deficiencies prior to the Division issuing a renewed license. If cited deficiencies are not corrected within the time frame specified by the Division, the renewal application ~~shall~~must be denied and administrative sanctions may be imposed.¶¶

(7) The Division ~~may~~ust not renew a license unless:¶¶

(a) The applicant and the AFH are in compliance with ORS 443.705 to 443.825 and these rules;¶¶

(b) The Division has completed an inspection of the AFH;¶¶

(c) The Division has completed a eriminal records background check, as required by ORS 181.536 through ~~181.537, A.195,~~ ORS 443.735 and OAR chapter 943, division 007, on the applicant and any occupant, other than an individual resident, 16 years of age or older or is identified in ORS 443.735(5)(a)(b), ~~(6)(a)(b4)(c)~~ and who will ~~shall~~ be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFH provider.¶¶

(8) The Division will deny renewal of a license if the provider does not submit a complete renewal application packet and bed fee, if applicable, prior to the expiration of the license.¶¶

(9) The provider, resident manager, substitute caregiver, ~~or volunteer,~~ or individual occupant residing in the AFH may continue to work or reside in the home pending the national criminal records check ~~provided that the Oregon criminal record check was clear and no convictions were self-disclosed in accordance with OAR chapter 943, division 007.~~¶¶

(9) ~~A criminal records~~ final fitness determination in accordance with OAR 407-007-0315. ¶¶

(10) A background check ~~shall~~must be completed for the applicant and any occupant, other than an individual resident, 16 years of age or older who ~~shall~~must be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver, or volunteer for the AFH provider if the Division believes there is reason to justify a new criminal history background check in accordance with OAR chapter 943, division 007.¶¶

(10~~1~~) An AFH provider seeking initial licensing or that has been in operation for less than 24 months has the burden of proof to establish compliance with ORS 443.705 to 443.825 and the Division rules.¶¶

(11~~2~~) The burden of proof ~~shall~~be upon the Division to establish compliance with ORS 443.705 to 443.825 and the Division rules if an AFH provider is seeking renewal of a license and has been in continuous operation for more than 24 months.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0350

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Provides clarification on variance requests and what cannot be variance. Adds that no variance allows more than one resident to be alone in the AFH at any one time.

CHANGES TO RULE:

309-040-0350

Variance ¶

(1) A provider or applicant may apply to the Division for a variance from a provision of these rules using the Division's Variance Request form. The provider ~~shall~~must provide justification that a clear and convincing evidence the variance does not jeopardize the health, life, or safety of the individual residents and would not violate or compromise an applicable ORS.¶

(2) The Division may not grant a variance from a regulation or provision of these rules pertaining to the ~~the~~ ¶

(a) License capacity of the AFH; i¶

(b) Minimum age of provider, resident manager and substitute caregivers;¶

(c) Background checks;¶

(d) Training requirements of the provider, resident manager and substitute caregivers ¶

(e) Standards and practices for care and services;¶

(f) Inspections of the AFH; e¶

(g) Civil, legal, and human rights; and i¶

(h) Inspection of the public files. ¶

(3) The Division may not grant a variance related to fire and life safety without prior consultation with the local fire authority or designee.¶

~~(34)~~ The Division may not grant a variance related to Oregon Revised Statute 443.705 through 443.825.¶

(5) A provider or applicant may apply to the Division for a variance specific to each individual resident under ORS 443.725, subject to the following requirements:¶

(a) The variance is effective only for the specific individual resident who has been assessed and meets the safety requirements prescribed by the Division. This assessment ~~shall~~must become part of the individual resident's RCP;¶

(b) A variance allowing a specific individual resident to be in the AFH alone may not exceed four hours in a 24-hour period;¶

(c) No variance allows a provider to leave an individual resident alone in the AFH between the hours of ~~14~~10 p.m. to 6 a.m.; ¶

~~(d)~~ No variance allows more than one resident to be alone in the AFH at any one time; and¶

~~(e)~~ Twenty-four hour per day care shallmust continue for any individual resident that does not qualify to be in the AFH alone.¶

~~(46)~~ Variances shall be granted or denied in writing. The Division must consider the provider's history of compliance with the rules governing AFHs and other programs serving residents with mental health or substance abuse issues. ¶

(7) Variances will be granted or denied in writing. Variances are not effective until granted in writing by the Division. All variances granted shallmust be reviewed for continued approval with each license renewal under OAR 309-040-0345. A variance granted to one AFH provider or a variance granted regarding a specific individual resident does not constitute a precedent for any other AFH provider, applicant, or individual resident.¶

~~(58)~~ The AFH provider or applicant may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Division. The Division shallmust make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Division ~~sh~~will be final.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0355

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Substantial clarifications made regarding providers responsibilities regarding Medicaid Provider Enrollment.

CHANGES TO RULE:

309-040-0355

Contracts ¶¶

(1) Providers who care for public assistance individuals must enter into a contract residents who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Division and comply with Division rules governing reimbursement for services and refunds.¶¶

(2) Providers who care for private paying individuals must enter into a signed contract with the individual and terms governing provider participation in the Oregon Medicaid program. Applicable Division rules in addition to these rules include, but are not limited to:¶¶

(a) OAR 407-120;¶¶

(b) OAR 410-120;¶¶

(c) OAR 410-172;¶¶

(d) OAR 410-173; and¶¶

(e) OAR 943-120.¶¶

(2) Providers must be qualified, professionally competent and actively licensed where required by law to perform work under the Medicaid Provider Enrollment Agreement.¶¶

(3) The rate established by the Division is considered payment in full. The licensee may not request or accept additional funds or in-kind payment from any source.¶¶

(4) An approved Medicaid provider enrollment agreement is valid so long as the license remains valid unless earlier person paying for care. This contract shall include, but is not limited to, an RCP, a schedule of rates, condition terminated by the provider or the Division. ¶¶

(5) The Division may terminate a Medicaid provider enrollment agreement under the following circumstances:¶¶

(a) The provider fails to maintain substantial compliance with all related federal, state and local laws, ordinances and under which the rates may be changed, and the AFH's policy on refunds at the time of hospitalization, death, discharge, or voluntary move. regulations; or¶¶

(b) The license to operate the adult foster home has been voluntarily surrendered, revoked or non-renewed.¶¶

(6) The Division must terminate a Medicaid provider enrollment agreement under the following circumstances:¶¶

(a) The provider fails to permit access by the Department, the local licensing authority or the Centers for Medicare and Medicaid Services to any adult foster home licensed to and operated by the provider;¶¶

(3b) The provider shall provide a 30-day prior written notification to private pay individuals of increases, additions, and other modifications to the rates. Unless the change is due to a medical emergency resulting in a greater level of care, in which case the provider shall give notice within ten days of the change submits false or inaccurate information;¶¶

(c) Any person with five percent or greater direct or indirect ownership interest in the adult foster home did not submit timely and accurate information on the Medicaid provider enrollment agreement form or fails to submit fingerprints if required under OAR 407-007-0200 to 407-007-0370;¶¶

(d) Any person with five percent or greater direct or indirect ownership interest in the adult foster home has been convicted of a criminal offense related to the person's involvement with Medicare, Medicaid or title XXI programs in the last 10 years; or¶¶

(e) Any person with an ownership or control interest or who is an agent or managing employee of the adult foster home fails to submit timely and accurate information on the Medicaid provider enrollment agreement form.¶¶

(7) If the provider submits notice of termination of the Medicaid provider enrollment agreement, the provider must concurrently issue the Division's Notice of Involuntary Move, Transfer or Discharge of Resident form to each resident eligible for Medicaid services residing in the AFH and must issue written notification to all residents who pay with private funds. Provider must also immediately update the house policies.¶¶

(8) If either the provider or the Division terminates the Medicaid provider enrollment agreement, a new Medicaid provider enrollment agreement will not be approved for a period of no less than 180 days.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825



RULE SUMMARY: CPR training clarifications made. Specifies requirement to self-report disqualifying conditions. Requires appropriate initial training for mandatory reporters. Requires staff possess the physical health and mental health determined necessary by the Division to provide 24-hour care for adults who are mentally ill.

CHANGES TO RULE:

309-040-0360

Qualifications for AFH Providers, Resident Managers, and Other Caregivers ¶

(1) An AFH provider must meet the following qualifications:¶

(a) Be at least 21 years of age;¶

(b) Live in the AFH to be licensed, unless an approved resident manager lives in the AFH;¶

(c) Provide evidence satisfactory to the Division regarding experience, training, knowledge, interest, and concern in providing care to persons with severe and persistent mental illness. Evidence may include, but is not limited to the following:¶

(A) Certified nurse's aide training;¶

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

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

(D) Division approved training;¶

(E) Experience in caring for individuals with severe and persistent mental illness ~~at home~~; and¶

(F) Home management skills.¶

(d) Have and maintain current CPR and First Aid certification.¶

(A) Accepted CPR and First Aid courses must be provided by or meet the standards of the American Heart Association or the American Red Cross.¶

(B) CPR or First Aid courses conducted online are only accepted by the Division when an in-person skills competency check is conducted by a qualified instructor meeting the standards of the American Heart Association or the American Red Cross.¶

~~(de)~~ Possess the physical health and mental health determined necessary by the Division to provide 24-hour care for adults who are mentally ill. Applicants ~~shall~~must have a statement from a physician ~~on a, nurse practitioner, or physician assistant on the~~ Division approved form that they are physically ~~and ment, mentally, and emotionally~~ capable of providing care;¶

~~(e) Undergo a criminal history~~ (f) Have an approved background check in accordance with OAR chapter 943 division 007 and be found eligible for licensure by the Division. The Division shall evaluate and verify;¶

(A) All subject individuals must self-report to the provider any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290; and¶

(B) The provider must notify the Division of self-reported information regarding criminal history; within 24 hours.¶

~~(fg)~~ Provide evidence of sufficient financial resources to operate an AFH for at least two months, unless the application is for renewal of an AFH that is already in operation. A credit ~~reference check~~port may be required;¶

~~(gh) Be literat~~proficient in the English language and capable of understanding written and oral orders and communicating with individuals, physicians, case managers, and appropriate others and band communicating orally and in writing with residents, medical professionals, case managers, and others involved in the care of residents; ¶

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

~~(hj)~~ Not be listed on either of the Exclusion Lists.¶

~~(k) If transporting individual~~residents by motorized conveyance, shall have a current driver's license in compliance with the Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.¶

(l) Provide evidence of completion of the approved course Mandatory Reporting for Individuals Working in Community Mental Health Programs, or another equivalent course.¶

(2) The resident manager ~~shall~~must meet the provider qualifications listed in section (1)(a) through ~~(h)~~ of this rule. A resident manager applicant may work in the home pending outcome of the national criminal history check, if the Oregon ~~criminal history~~background check was clear and no convictions were self-disclosed on the criminal record authorization.¶

(3) Substitute caregivers ~~left in charge of an individual for any period of time shall~~must have access to ~~individual~~resident records and must meet the following qualifications:¶

(a) Be at least 18 years of age;¶

- ~~(b) Be subject to a criminal history check~~ Have an approved background check in accordance with OAR chapter 943 division 007. A substitute caregiver may work in the home pending outcome of the national criminal history check providing the Oregon criminal history background check was clear and no convictions were self-disclosed on the criminal record authorization;¶
- ~~(c) Be able to proficient in the English language and capable of understanding and communicateing orally and in writing with individuals, physicians, case managers, and appropriate others;~~¶
- ~~(d) Know fire safety and emergency procedures;~~¶
- ~~(e) Have a clear understanding of job responsibilities, have knowledge of RCPs, and be able to provide the care specified for each individual;~~¶
- ~~(f) Be able to meet the requirements of a resident manager when left in charge of an AFH for 30 days or longer; residents, medical professionals, case managers, and others involved in the care of residents;~~¶
- (d) Know fire safety and emergency procedures and have the ability to respond appropriately to emergency situations at all times;¶
- (e) Have a clear understanding of job responsibilities, have knowledge of RCPs, and be able to provide the care specified for each resident;¶
- (f) Possess the physical health and mental health determined necessary by the Division to provide 24-hour care for adults who are mentally ill. ¶
- (g) Have and maintain current CPR and First Aid certification.¶
- (A) Accepted CPR and First Aid courses must be provided by or meet the standards of the American Heart Association or the American Red Cross.¶
- (B) CPR or First Aid courses conducted online are only accepted by the Division when an in-person skills competency check is conducted by a qualified instructor meeting the standards of the American Heart Association or the American Red Cross.¶
- (h) Not be a resident; and¶
- (gi) Not be an individual; and¶
- (h) listed on either of the Exclusion Lists.¶
- (A) The provider must verify the substitute caregiver is not listed on either of the Exclusion Lists; and¶
- (B) Verification must be clearly documented in the facility's records.¶
- ~~(j) If transporting individual residents by motorized conveyance, shall have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.~~¶
- (k) Provide evidence of completion of the approved course Mandatory Reporting for Individuals Working in Community Mental Health Programs, or another equivalent course.¶
- ~~(4) The provider may not hire or continue to employ a resident manager or substitute caregiver who does not meet the requirements of this rule.~~¶
- ~~(5) A~~The provider shall~~must~~ supervise and train resident managers and substitute caregivers and monitor their general conduct when acting within the scope of their employment or duties.¶
- (6) After receipt of the completed resident manager application, and Division approval, a revised license must be issued in accordance with ORS 443.738(1) through (4). ¶
- (a) If a resident manager leaves during the period of the license, the provider must notify the Division immediately;¶
- (b) and identify a plan for providing care to the residents.¶
- (7) Volunteers, and occupants over the age of 16, excluding residents, must have documentation of an approved background check in accordance with ORS 181A.200, 443.735 and OAR 943-007-0001 through 0501.
- Statutory/Other Authority: ORS 413.042
- Statutes/Other Implemented: ORS 443.705 - 443.825

RULE SUMMARY: Adds specifications around address numbers. Clarifications around toxic substances and hazards. Clarifies bedrooms used by the provider, resident manager, and substitute caregiver, as applicable, must be in the AFH and must have direct access to the individuals through an interior hallway or common use room. Reference to Oregon Indoor Clean Air Act added.

CHANGES TO RULE:

309-040-0365

Facility Standards ¶

(1) In order to qualify for or maintain a license, an AFH ~~shall meet~~ must meet and maintain the following provisions:¶

(a) Demonstrate compliance with Oregon Structural Specialty Code (OSSC) and Oregon Fire Code; ~~and;~~ ¶

(b) Maintain up-to-date documentation verifying they meet applicable local business license, zoning, and building and housing codes and state and local fire and safety regulations. It is the ~~du~~ responsibility of the provider to check with local government to be sure all applicable local codes have been met;¶

(c) For AFH's ~~establish~~ licensed on or after October 1, 2004, meet all applicable Americans with Disabilities Act standards, state building, mechanical, and housing codes for fire and life safety. The AFH ~~shall~~ must be inspected for fire safety by an inspector designated by the Division using the recommended standards established by the State Fire Marshal for facilities housing one to five persons. ~~Refer to as described in Appendix 1R of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Division, a request for fire inspection shall~~ must be made to the State Fire Marshal;¶

(d) The building and furnishings ~~shall~~ must be clean and in good repair and grounds ~~shall~~ must be maintained. Walls, ceilings, and floors ~~shall~~ must be of such character to permit frequent washing, cleaning, or painting. There ~~shall~~ must be no accumulation of garbage, debris, rubbish, or offensive odors;¶

(e) Stairways ~~shall~~ must be provided with handrails. A functioning light ~~shall~~ must be provided in each room, stairway, and exit way; ~~incandescent light bulbs shall~~ exterior light fixtures must be protected with appropriate covers as necessary. Yard and exterior steps ~~shall~~ must be accessible to ~~individual~~ residents;¶

(f) The heating system ~~shall~~ must be in working order. Areas of the AFH used by ~~individuals~~ residents must be maintained at no less than 68 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider ~~shall~~ must make a reasonable effort to make the ~~individual~~ residents comfortable using available ventilation ~~or fans, fans, or air conditioning;~~¶

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

(h) Pools ~~and~~, hot tubs ~~shall~~, and ponds must be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with ~~Section R116 of the Oregon Residential Specialty Code.~~¶

(2i) ~~Any accessibility improvements made to accommodate~~ The address numbers of the adult foster home must be placed on the home or within 10 feet of the driveway to the home in a position that is legible and clearly visible from the street or road fronting the property. Address numbers must be a minimum of 4 inches in height, made of reflective material and contrast with their background.¶

(j) The AFH must have a minimum of two unobstructed exits to the exterior of the home, the use of which is accessible within the capabilities of the persons residing in the home.¶

(k) All doors in the means of egress must be maintained clear and unobstructed an identified individual shall have an obvious method of operation. Exterior exit doors must have latching knob hardware. Hasp, sliding bolt, hook, and double-key dead bolts are not permitted.¶

(l) Any locks used inside of the home to secure space large enough for a person to fit inside must be in accordance with the specific needs of the individual and comply with Chapter 11 of the rule. The single action release function must be installed in a manner that prevents a person from being locked into the space.¶

(m) Manufactured or mobile home units must have been built since 1976 and designed for use as a home rather than a travel trailer. The units must have a manufacturer's label permanently affixed to the unit, which states it meets the requirements of the Department of Housing and Urban Development (HUD) or the authority having jurisdiction (AHJ).¶

(2) Any accessibility improvements made to accommodate an identified resident must be in accordance with the

specific needs of the resident and comply with the applicable building code.¶

(3) An AFH shall must have an accessible outdoor area that shall must be made available to individual residents.¶

(4) Storage of a reasonable size for an individual resident's belongings beyond that of the individual resident's unit shall must be made available:¶

(a5) All yard maintenance equipment shall must be maintained in a locked storage if such equipment poses a safety threat;¶

(b6) A locked storage area for individual resident medications separate from food, laundry, and toxic or hazardous materials shall must be made accessible to all caregivers. For individuals who are self-medicating residents who have a self-administration order, the provider shall must make a secured locked box available to assure the safety of all occupants of the home;¶

(c7) A locked storage area separate from food and medications shall be designated when there are toxic or hazardous materials on the premises. Nontoxic and nonhazardous materials must be used whenever possible. When necessary to the operation of the AHF, toxic or hazardous materials must be safely and properly stored in clearly labeled, original containers, separately from food and medications, and must be kept in locked storage.¶

(58) All bathroom equipment shall must be clean and in good repair, provide individual resident privacy, and shall must have but is not limited to, the following:¶

(a) A finished interior, a mirror, an operable window or other means of ventilation, and a window covering;¶

(b) Tubs or showers, toilets and sinks. A sink shall must be located near each toilet. A toilet and sink shall must be provided on each floor where rooms of non-ambulatory individuals or individual residents or residents with limited mobility are located. There shall must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;¶

(c) Hot and cold water in sufficient supply to meet the needs of individual residents for personal hygiene. Hot water temperature sources for bathing areas shall must not exceed 120 degrees Fahrenheit for residents identified as being at risk of personal injury associated with hot water access;¶

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

(e) Grab bars for toilets, tubs, or showers for safety as required by an individual's disability; for by residents identified as having balance or mobility impairments.¶

(f) The AFH may not be designed to allow an individual resident or employee to walk through another individual resident's bedroom to get to a bathroom. Individuals shall Residents must have barrier-free access to toilet and bathing facilities with appropriate fixtures.¶

(g) If there are non-ambulatory individual residents, alternative arrangements shall must be appropriate to meet the non-ambulatory individual resident's needs for maintaining good personal hygiene.¶

(h) Individuals shall Resident must have appropriate racks or hooks for drying bath linens.¶

(69) All furniture and furnishings shall must be clean and in good repair. ¶

(10) Units for all household occupants shall must have been constructed as a bedroom when the home was built or remodeled under permit; be finished, with walls or partitions of standard construction that go from floor to ceiling, and a door which opens directly to a hallway or common use room without passage through another unit or common bathroom; be adequately ventilated, heated, and lighted with at least one operable window that meets fire egress regulations. (See Section R310 Emergency Escape and Rescue Openings in the Oregon Residential Specialty Code. ¶

(a) Every sleeping room must have at least one operable window or door approved for emergency escape or rescue. Windows must have a net clear opening of not less than 5.7 square feet (0.53 m2) or 821 square inches (529 676 mm2). The net clear opening height of windows must be not less than 24 inches (610 mm). The net clear opening width of windows must be not less than 20 inches (508 mm). Where windows are provided as a means of egress, they must have a sill height of not more than 44 inches (1118 mm) above the floor. Grade floor windows with a clear opening of not less than 5 square feet (0.46 m2) or 720 square inches (464 515 mm2) with sill heights of 44 inches (1118 mm) may be accepted where approved by the local fire authority.¶

(b) Bedrooms and living quarters must have a minimum of two unobstructed exits.¶

(11) All units shall must include a minimum of 70 square feet of usable floor space for each individual resident or 120 square feet for two individual residents, have no more than two persons per room, and allow for a minimum of three feet between beds. In addition, the provider shall must ensure that:¶

(a) Each unit has a lockable entrance door for the individual with an interior lock for the resident's privacy;¶

(A) The locking device shall must release with a single-action lever on the inside of the unit and open to a hall or common-use room;¶

(B) The provider shall must provide each individual resident with a personalized key that operates only the door to his or her unit door from the corridor side;¶

(C) The provider shall must maintain a master key to access all of the units that is quickly available to the provider

or resident manager and documented in the individual's person-centered service plan and staff;¶

(D) The provider may not disable or remove a lock to a unit without first obtaining consent from the individual resident through the individually-based limitations process outlined in OAR 309-040-0393; and¶

(E) Section (6) is effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).¶

(b) Providers, resident managers, or their family members maynot sleep in areas designated as living areas or share units with individual residents;¶

(c) In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents;¶

(d) Units shall be on ground level for individual residents who are non-ambulatory or have impaired mobility;¶

(e) Individual Resident units shall be in close enough proximity to alert the provider or resident manager to night time needs or emergencies or be equipped with a call bell or intercom.¶

~~(7) Child monitoring devices may not be used as a substitute. ¶~~

(f) Bedrooms used by the provider, resident manager, and substitute caregiver, must be in the AFH and must have direct access to the individuals through an interior hallway or common use room.¶

(12) AFH's established on or after October 1, 2004, shall meet all applicable state building, residential, fire, mechanical, and housing codes for fire and life safety. The AFH shall be inspected for fire safety by an inspector designated by the Division using the recommended standards established by the State Fire Marshal for facilities housing one to five individual residents. Refer to Appendix 1R of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Division, a request for fire inspection shall be made to the State Fire Marshal.¶

(813) Special hazards such as the following:¶

(a) ~~Noncombustible and nonhazardous materials must be used whenever possible. When necessary to the operation of the AFH, flammable and combustible liquids, and hazardous materials shall~~ be safely and properly stored in original, properly labeled containers, or safety containers and secured to prevent tampering by individual residents or others. Firearms stored on the premises of an AFH shall be stored in a locked cabinet. The firearms cabinet shall be located in an area of the home that is not readily accessible to individual residents, and all ammunition shall be stored in a separate, locked location; that is not readily accessible to residents.¶

(b) Smoking regulations shall be adopted to allow smoking only in outside designated areas and in compliance with the Oregon Indoor Clean Air Act as outline in OAR 333-015-0035. Smoking shall be prohibited in all indoor areas including sleeping rooms and upon all outdoor upholstered crevasse furniture. Ashtrays of noncombustible material and safe design shall be provided in areas where smoking is permitted.¶

(c) Cleaning supplies, poisons, and insecticides shall be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.¶

(914) All furniture and furnishings shall be clean and in good repair. There shall be at least 150 square feet of common space and sufficient comfortable furniture in the AFH to accommodate the recreational and socialization needs of ~~the~~ all occupants at one time. Common space may not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space shall be required if wheelchairs are to be accommodated.¶

(105) All laundry equipment shall be clean and in good repair. Laundry facilities shall be separate from food preparation and other individual resident use areas. The provider shall maintain the following:¶

(a) Locked storage area for chemicals that pose a safety threat to individual residents or family members identified to be at risk of personal injury;¶

(b) Sufficient, separate storage and handling space to ensure that clean laundry is not contaminated by soiled laundry; and¶

(c) Outlets, venting, and water hookups according to State Building Code requirements; and¶

~~(d) Washing machines shall have a minimum rinse temperature of 140 degrees Fahrenheit.¶~~

(11) All.¶

(16) All kitchen equipment shall be clean and in good repair. The provider shall maintain an area for dry storage, not subject to freezing, in cabinets or a separate pantry with a minimum of one week's supply of staple foods. The provider shall maintain the following:¶

(a) Sufficient refrigeration space maintained at 450 degrees Fahrenheit or less and freezer space maintained at 0 degree Fahrenheit or less for a minimum of two days' supply of perishable foods;¶

(b) A dishwasher ~~with a minimum final rinse of 140 degrees Fahrenheit;~~¶

(c) Smooth, nonabsorbent and cleanable counters for food preparation and serving;¶

(d) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;¶

(e) Stove and oven equipment for cooking and baking needs;¶

(f) Storage for a mop and other cleaning tools and supplies used for food preparation, dining, and adjacent areas.

Such cleaning tools shall must be maintained separately from those used to clean other parts of the home; and ¶  
(g) Dining Space where meals are served shall must be provided to seat all individuals at the same seating. ¶

(12) Details and Finishes: ¶

(a) The building and furnishings shall be clean and in good repair, and grounds shall be maintained. Walls, ceilings, and floors shall be of such character to permit frequent washing, cleaning, or painting; ¶

(b) Locks used on doors to individuals' units shall be in good repair with an interactive lock to release with operation of the inside door handle and be master keyed from the corridor side and comply with the requirements established by OAR 309-040-0365(6)(a) and its subsections: residents at the same seating. ¶

(17) Exit doors may not have locks that prevent evacuation except as permitted by Section 1008.1.8 of the applicable building code. An exterior door alarm or other acceptable system may be provided for security purposes and alert the provider when individual residents or others enter or exit the home. ¶

(c) Handrails. Handrails shall be secured on all stairways. ¶

(13) The heating system shall be in working order 18) The heating and if applicable, air conditioning system must be in good repair, used properly, and maintained according to the manufacturer's or a qualified inspector's recommendations: ¶

(a) Areas of the AFH used by individuals shall residents must be maintained at no less than 68 degrees Fahrenheit during daytime hours and no less than 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, ~~maximum temperatures must not exceed 78 degrees Fahrenheit.~~ The provider shall must make reasonable effort to make the residents comfortable using available ventilation or fans; ¶

(b) All toilets and shower rooms shall must be ventilated by a mechanical exhaust system or operable window; ¶

(c) Design and installation of fireplaces, furnaces, pellet stoves, and wood stoves shall must meet standards of the Oregon Mechanical and Residential Specialty Code, the manufacturer's specifications, under permit where applicable, and have annual inspections to assure no safety hazard exists; ¶

(dA) Hot water temperatures shall be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures for washing machines and dishwashers shall be at least 14A provider who does not have a permit verifying proper installation of an existing wood stove, pellet stove, or gas fireplace must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, National Fireplace Institute technician certified in wood or pellet stoves, or Oregon Hearth, Patio, and Barbecue Association member and follow the inspector's recommended maintenance schedule. ¶

(B) Approved and listed protective glass screens or metal mesh screens anchored top and bottom must be installed on working fireplaces and solid-fuel-burning appliances. ¶

(C) Heat sources such as woodstoves, working fireplaces and solid-fuel-burning appliances must have a 36-inch buffer or barrier space. ¶

(D) Unvented oil, gas, or kerosene heaters must not be used. ¶

(19) Hot water temperatures must be maintained within a range of 110 to 140 120 degrees Fahrenheit. ¶

(1420) All electrical systems shall must meet the standards of the Oregon Electrical Specialty Code in effect on the date of installation, electrical equipment and wiring must be in accordance with Chapter 6 of the Oregon Fire Code and other nationally recognized standards, and all electrical devices shall must be properly wired and in good repair: ¶

(a) When not fully grounded, GFI-type receptacles or circuit breakers as an acceptable alternative may protect circuits in individual resident areas; ¶

(b) Circuit breakers or non-interchangeable circuit-breaker-type fuses in fuse boxes shall must be used to protect all electrical circuits. There must be a minimum clear radius of not less than 36 inches around electrical panels to permit safe operation and maintenance. Nothing may be stored in front of electrical panels; ¶

(c) A sufficient supply of electrical outlets shall must be provided to meet individual resident and staff needs without the use of extension cords or outlet expander devices. Electrical outlets, light switches and other electrical box openings must have covers. Interior power outlets may not be sourced for power to exterior spaces. Listed and labeled re-locatable power strips or taps (RPTs) with circuit breaker protection are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPT must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), never connected to an extension cord, and may not be used in place of permanent wiring; ¶

(d) A functioning light shall must be provided in each room, stairway, and exit way. Lighting fixtures shall must be provided in each individual resident bedroom and bathroom with a light switch near the entry door and in other areas as required to meet task illumination needs; ¶

(e) Incandescent light bulbs shall must be protected with appropriate covers, unless the bulb is designed by the manufacturer to be used without a cover. ¶

(215) All plumbing shall must meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures shall must be properly installed and in good repair. ¶

~~(16) Pools, hot tubs, and ponds shall be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.~~

~~(1722) Telephones:~~

~~(a) A telephone shall must be available and accessible in a common area of the home 24 hours a day for individual residents' use for incoming and outgoing calls in the AFH;~~

~~(b) Emergency telephone numbers for the local CMHP, Police, Fire, Medical, Poison Control, provid.; Resident restrictions to phone access can only be implemented with an individually based limitation.~~

~~(b) A list of emergency telephone number,s and other emergencies shall be posted by the individuals' telephone. The posting shall include ty contact information must be kept by the phone and must include:~~

~~(A) The name, address, and telephond emergency contact number ofor the AFH, telephone numbers for making complaints or a report of alleged abuse to the local CMHP, the Division, the Office of Adult Abuse Prevention and provider;~~

~~(B) An alternate caregiver name and phone number if the provider is not available;~~

~~(C) The street address of the AFH;~~

~~(D) Emergency dispatch (911) and non-urgent police and fire contact numbers;~~

~~(E) Poison control;~~

~~(F) The local hospital;~~

~~(G) The Office of Training, Investigations, and the Oregon Advocacy Center;Safety;~~

~~(H) Oregon SAFELINE [1-855-503-SAFE (7233)] and~~

~~(e) AFH telephone numbers shall be listed in the local telephone directory;Non-emergency numbers for contacting caseworkers, the CMHP, the HSD, Disability Rights Oregon, the local public health office and emotional support lines available in the area.~~

~~(d) The provider may establish reasonable rules governing telephone use to ensure equal access by all individuals. Each individual residents. Each resident or guardian (as applicable) shall be responsible for payment of long distance phone bills where calls were initiated by the individual, unless otherwise mutually agreed arrangements have been madecharges or fees associated with their phone use. Charges associated with phone use must be described in each resident's residential agreement.~~

~~(23) LGBTQIA2S+ Protections and the LGBTQIA2S+ Nondiscrimination Notice, as described in OAR 411-049-0135(1)(i), must be posted in all places and on all materials where that notice or those written materials are posted.~~

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0370

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifications and requirements added regarding emergency procedures, safety plans, and emergency preparedness plans.

CHANGES TO RULE:

309-040-0370

Safety ¶

(1) The provider ~~shall~~must train all program staff in staff safety procedures prior to beginning their first regular shift. All ~~individuals shall~~residents must be trained in ~~individual~~resident safety procedures ~~as soon as possible~~ during their first ~~724~~ hours of residency. ¶

(2) Emergency Procedures: ¶

(a) An emergency evacuation procedure ~~shall~~must be developed, posted, and rehearsed with ~~occupants. A record shall~~the residents residing in the home occupants. The emergency evacuation procedure must include training on when and how to safely evacuate the home, where to meet after the evacuation, who to contact, how to get assistance with evacuating if needed, and instructions for how to respond specifically to a smoke alarm, carbon monoxide alarm, or other emergency devices or notifications. ¶

(b) ~~A record must~~ be maintained of evacuation drills. ~~Evacuation drills shall~~must be scheduled at different times of the day ~~and, on different days of the week, with exit routes being varied, and with different locations designated as the origin of the fire for drill purposes.~~ ¶

(A) ~~Evacuation drills shall~~must be held at least once ~~a every 390 days;~~ ¶

(B) ~~One drill practice shall be held at least once every 90 days during individual's nighttime sleeping hours between 10 p.m. and 6 a.m. Fire drill records shall be maintained for three years and include date, time for full evacuation, safety equipment checked (to include fire extinguishers, smoke detector~~calendar days, with at least one drill per year conducted between the hours of 10:00 P.M. and 6:00 A.M.; ¶

(B) Evacuation drill records must include the date and time of the drill, the time for full evacuation and for each individual to evacuate, the location designated as the origin of the fire for drill purposes, the full names of all residents and staff present, comments on the drill results and any difficulties experienced, the names of residents requiring assistance for evacuation and the type of evacuation assistance provided by staff to individuals as specified in each individual's safety plan, and the signature of the staff person conducting the drill. ¶

(C) Evacuation drill records will also document safety checks of fire extinguishers, emergency lights, smoke and carbon monoxide alarms, protection equipment, egress paths, secondary egress points, flashlights, and furnace filters), comments on the drill results, and names of individuals requiring assistance for evacuation; (to be changed per manufacturer instructions), number of staff present; and ¶

(D) Evacuation drill records must be maintained for a minimum of three years. ¶

(~~b~~c) The residential care plan must document that within 24 hours of arrival, each new ~~individual~~resident has received an orientation to basic safety and has been shown how to respond to a fire alarm and how to exit from the AFH in an emergency; ¶

(~~e~~d) The provider ~~shall~~must demonstrate the ability to evacuate all ~~individual~~residents from the facility to a point of safety exterior to and away from the structure, with access to a public way, within three minutes. If there are problems in demonstrating this evacuation time, the Division may apply conditions to the license that include, but may not be limited to, reduction of individual residents under care, additional staffing, or increased fire protection, or revocation of the license; ¶

(~~d~~3) The provider ~~shall~~must provide to the Division, maintain as current, and post a floor plan on each floor containing room sizes, location of each ~~individual's bed, fire exits, resident's sleeping room, resident manager or provider's sleeping room, smoke detectors, fire extinguishers and escape rou~~the location of any ramps, any designated smoking areas, the location of all exits on each level of the residential setting including emergency exits such as windows, smoke and carbon monoxide alarms, fire extinguishers, escape routes and point of safety, and a list of major fire hazards associated with the normal use and occupancy of the premises. A copy of this drawing shallmust be submitted with the application and updated to reflect any change; ¶

(~~e~~4) There ~~shall~~must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including a basement. ¶

(~~3~~5) ~~A written disaster plan shall be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, and floods. The plan shall be posted by the phone and immediately available to the employees. The plan shall specify temporary and long-range habitable shelter where staff and individuals shall reside if the AFH becomes uninhabitable.~~ ¶



~~(4) Non-toxic cleaning supplies shall be use~~ Evacuation capability categories are based upon the ability of the residents and staff to evacuate the facility or relocate to the point of safety.¶

~~(a) Documentation of a resident's ability to safely evacuate from the facility, and when lever available. Poisonous and other toxic materials shall be properly labeled and stored in locked areas distinct and apart from all food and medications.~~ of assistance needed to safely evacuate the home, must be maintained in the resident's personal care plan.¶

~~(5b) Evacuation capability categories are based upon the ability of the~~ The provider must assess the resident's ability to evacuate the home in response to an alarm or simulated emergency.¶

~~(A) Prior to an individual's and staff as a group to evacuate the facility or relocate from a point of occupancy to a point of safety.~~¶

~~(a) Documentation of an individual's ability to safely evacuate from the facility shall be maintained in the individual's personal care plan; entry to the home; and~~¶

~~(B) Annually, or when there is a change in a resident's support needs that would likely impact a resident's emergency evacuation abilities, whichever occurs more frequently.~~¶

~~(bc) Individual~~ Resident's experiencing difficulty with evacuating in a timely manner shall must be provided assistance from staff and offered environmental and other accommodations, as practical. Under these circumstances, the provider shall must consider increasing staff levels, changing staff assignments, offering to change the individual resident's room assignment, arranging for special equipment, and taking other actions that may assist the individual.¶

~~(c) Individuals who still cannot evacuate the home safely in the allowable period of time of resident. The provider must document all actions and interventions attempted.~~¶

~~(d) Resident who regularly decline to participate in evacuation drills will be evaluated for their evacuation capability to determine whether or not they need special assistance to evacuate.~~¶

~~(e) Resident who cannot evacuate the home safely within three minutes must be assisted with transferring to another program with an evacuation capability designation consistent with the individual resident's documented evacuation capability.~~¶

~~(df) Written evacuation records shall be retained for at least three years. Records shall include documentation made at the time of the drill, specify~~ Only ambulatory residents capable of self-preservation must be housed on a second floor or in a basement. Lifts or elevators must not be used as a substitute for a resident's capability to ambulate stairs.¶

~~(g) The provider must develop a written individual fire safety and evacuation plan for residents who are unable to evacuate the residence withing the date and time of the drill, the location designated as required evacuation time or who decline to participate in fire drills on more than two occasions that includes the following:~~ ¶

~~(A) Documentation of the origin of the fire for drill purposes, the names of all individuals and staff psk to the resident's medical and physical condition, and behavioral status.~~¶

~~(B) Identification of how the resident evacuates his or her residence, including level of support needed.~~¶

~~(C) The routes to be used to evacuate the resident, the amount of to a point of safety.~~¶

~~(D) Identification of assistimye devices required tefor evacuate, notes of any difficulion.~~¶

~~(E) The frequency the plan is to be practiced and reviewed by the resident and staff.~~¶

~~(F) The alternative practices experienced, and the signature of the staff person conducting the drill.~~¶

~~(G) Approval of the plan by the resident or resident's legal representative (as applicable), case manager, and the provider, licensee, or resident manager; and~~¶

~~(H) A plan to encourage future participation.~~¶

~~(h) The residential setting must maintain documentation of the practice and review of the individual fire evacuation safety plan by the individual and the staff.~~¶

~~(6) All stairways, halls, doorways, passageways, and exits from rooms and from the home shall must be unobstructed.~~¶

~~(7) At least one 2A-10BC rated fire extinguisher shall must be in a visible and readily accessible location within 75 feet of travel distance in the AFH, on each floor, including basements, and shall be inspected at least once a year by a qualified worker that is well-versed in fire extinguisher maintenance. All recharging and hydrostatic testing shall be completed by a qualified agency properly trained and equipped for this purpose.~~¶

~~(8) Approved smoke detector systems or smoke alarms shall be must be maintained in accordance with Section 906 of the Oregon Fire Code.~~ ¶

~~(8) Fire extinguishers must:~~ ¶

~~(a) Be serviced annually and tagged by a qualified company or technician. New extinguishers manufactured within the last 12 months are exempted from this requirement.~~ ¶

~~(b) Be located in conspicuous locations along normal paths of travel where they will have ready access and be immediately available for use.~~¶

~~(c) Not be obscured from view. In rooms or areas in which visual obstruction cannot be completely avoided,~~

signage must be provided to indicate the locations of extinguishers;

(d) Be installed on the hangers or brackets supplied. Hangers or brackets must be securely anchored to the mounting surface in accordance with the manufacturer's installation instructions;

(e) Be installed so that the tops are not more than 3.5 feet above the floor;

(f) Be installed so that the bottoms are not less than 4 inches above the floor; and

(g) Not be locked.

(9) Approved smoke detector systems or smoke alarms, and carbon monoxide alarms must be UL- approved, and installed according to Oregon Residential Specialty Code and Oregon Fire Code requirements. These alarms shall be tested, and manufacturer's instructions. These alarms must be inspected and tested at least monthly, and during each evacuation drill. The provider shall must provide approved signal devices for individual resident's with disabilities who do not respond to the standard auditory alarms. If a resident is deaf or hard of hearing, smoke alarm(s) consistent with the resident's support needs must be provided. All of these devices shall must be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction. Ceiling placement of smoke alarms or detectors is recommended. Alarms shall must be installed in each bedroom, adjacent hallways, common living areas, basements and in multilevel homes, at the top of each stairway or attic spaces accessible by an interior stairway. Carbon monoxide alarms must be installed and maintained in all areas with a fuel-burning appliance or carbon monoxide source, including attached garages, and in each bedroom or within 15 feet (4572 mm) outside each bedroom door. Bedrooms on separate floor levels in a structure consisting of two or more stories must have separate carbon monoxide alarms serving each story. Alarms must be equipped with a device that warns of low battery when battery operated. All smoke detectors and alarms shall must be maintained in functional condition;

(9a) An AFH licensed on or after March 1, 2025 must have permanent, hard-wired, interconnected smoke alarms and carbon monoxide alarms with battery back-up.

(b) Alarms must be replaced when any of the following occur:

(A) The end-of-life signal is activated;

(B) The manufacturer's replacement date is reached; or

(C) The alarm(s) fail to respond to operability tests.

(10) Special hazards:

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

(A) Flammables and combustibles must not be stored in unvented rooms or spaces, or closets.

(B) Propane tanks must not be stored in the home interior.

(C) Measures, including locking materials and incendiary devices, must be implemented, as appropriate, to address individually-identified safety risks related to fire, flammables, and combustibles.

(b) Oxygen and other gas cylinders in service or in storage must be adequately secured in accordance with the Oregon Fire Code to prevent the cylinders from falling or being knocked over. No smoking signs must be visibly posted on all doors leading to oxygen use and storage areas. In accordance with the Oregon Fire Code, oxygen cylinders must not be used or stored in rooms where wood stoves, fireplaces, or open flames are located.

(c) Generators and generator fuel may not be stored or operated in the home interior.

(A) A gasoline or propane generator may be stored in a garage when not in use.

(B) Liquid propane gas must not be stored in an attached garage or enclosed storage space. Enclosed structures used for the storage of liquid propane gas may not share a wall or direct openings to the home.

(d) Firearms stored on the premises of an AFH must be stored in a locked cabinet. The firearms cabinet shall must be located in an area of the home that is not readily accessible to clients, and all ammunition must be stored in a separate, locked location;

(be) Smoking regulations shall be adopted to allow smoking only in safe designated areas. Smoking shall be prohibited in sleeping rooms and upon upholstered crevasse furniture away from the building. Ashtrays of noncombustible material and safe design shall must be provided in areas where smoking is permitted; and

(ef) Cleaning supplies, poisons, and insecticides shall must be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage of food, dining areas, and medications.

(101) Sprinkler systems, if used, shall must be installed in compliance with the Oregon Structural Specialty Code and Oregon Fire Code and maintained in accordance with rules adopted by the State Fire Marshal.

(112) First aid supplies shall must be readily accessible to staff. All supplies shall must be properly labeled.

(123) Portable heaters are a recognized safety hazard must be listed, labeled, and approved per Oregon Fire Code and may not be used, except must be plugged directly into an approved by the State Fire Marshal, or authorized representative outlet without the use of an extension cord, power strip or expander device. Heaters must be equipped with tip-over, shut-off capacity.

(134) A Safety Plan shall must be developed and implemented to identify and prevent the occurrence of

hazards. Hazards may include, but are not limited to, dangerous substances, sharp objects, A safety plan will be developed identifying common hazards in the facility and that describes how staff should respond when specific hazards are identified. A safety record will be kept documenting the actions taken by staff to mitigate hazards when safety risks are identified. The safety plan should identify both environmental hazards and actions or behaviors of staff, residents, or guests that create an unsafe situation in the home. Potential situations that could cause health or safety risks in the home may include, the identification of dangerous substances or items; broken, chipped, or sharp objects, exposed electrical wiring or unprotected electrical outlets; the overuse of extension cords or other special plug-in adapters; slippery floors or stairs, damaged decks or walkways, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture unsafe smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards. The safety plan must also document monthly safety checks of fire extinguishers, emergency flashlights, smoke and carbon monoxide alarms, egress paths, secondary egress points and furnace filters. Monthly documentation of these checks must be maintained for a minimum of three years. Furnace filters must be changed per manufacturer instructions. ¶

(15) When hazards are identified concerning residents, the provider will determine if an incident report should be written or if behavior support plans need to be developed and included in the resident's residential care plan. The Safety record should include a description of the identified concerns, and how staff resolved the concern and whether additional action may be needed. ¶

(16) The provider must develop and implement a written Emergency Preparedness plan. The plan must include when emergency services will be contacted and describe procedures for staff to follow during smoking areas, unsafe ashtrays and ash disposal, and other such emergencies and disasters as fires, missing persons, accidents, earthquakes, floods, and tsunamis. The program must be immediately available to the program administrator and program staff. The plan must include diagrams of evacuation routes, and these must be posted. The plan must specify where staff and residents will reside if the setting becomes uninhabitable. Shelter plans should not depend on the availability of public shelters that may or may not be available at the time of an emergency. The program must update the plan and must include: ¶

(a) Emergency instructions for employees; ¶

(b) The telephone numbers of the local fire department, police department, the poison control center, the local public health office, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and ¶

(c) Instructions for the evacuation of residents and staff. ¶

(d) Resources for sheltering in place. ¶

(e) Alternative resources for utility outages. ¶

(f) Procedures for notifying public health when significant health risks are present, including but not limited to communicable and noncommunicable diseases and conditions, pest infestations, and other environmental hazards as described in OAR 333. ¶

(17) An Emergency Evacuation and Fire Safety Procedure shall be developed, postpotential fire hazard, and practiced with all occupants. The procedure must: ¶

(a) Meet standards consistent with Oregon Fire Code; and ¶

(b) Be readily available at all times within the AFH in a prominent location with other postings and the license. ¶

(18) An Emergency Evacuation and Fire Safety Procedure must include the following: ¶

(a) Emergency egress and escape routes, including assembly point for occupants following egress; ¶

(b) Procedures for assisting individuals who require support to use means of egress; ¶

(c) Procedures for accounting for occupants of the home after evacuation has been completed; ¶

(d) Preferred and any alternative means for notifying occupants of a fire or emergency; ¶

(e) Preferred and any alternative means of reporting fires and other emergencies to the fire department or designated emergency response organization; ¶

(f) Identification and assignment of personnel who can be contacted for further information or explanation of duties under the plan; ¶

(g) A description of the emergency voice/alarm communication system alert tone and preprogrammed voice messages, where applicable. ¶

(19) All staff must be trained in safety procedures including emergency evacuation procedures, and proper use of portable fire extinguishers prior to providing care. ¶

(20) All staff must review their duties and responsibilities under the fire safety evacuation plan no less than every three months. Such review must be documented and maintained in the provider records.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0375

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifications regarding the grounds maintenance and other sanitation items.

CHANGES TO RULE:

309-040-0375

Sanitation ¶

(1) The water supply in the home ~~shall~~must meet the requirements of the current Authority rules governing domestic water supplies:¶

(a) A municipal water supply ~~shall~~must be utilized if available;¶

(b) When the home is not served by an approved municipal water system, ~~and the home qualifies as a public water system according to OAR 333-061-0020(94) Authority rules for public sanitarian or a technician from a laboratory accredited for well water systems, then the provider shall comply with the OAR chapter 333. These include requirements that the drinking water be tested~~testing must collect and test a sample for total coliform bacteria at least quarterly, and nitrate at least annually, and reported to the Division. For adverse test results, these rules require that repeat samples and corrective action must be taken to assure compliance with water quality standards. Water testing and any necessary corrective action to ensure water is suitable for drinking must be completed at the provider's expense. Public notice ~~shall~~must be given whenever a violation of the water quality standards occurs, and records of water testing ~~shall~~must be retained ~~according to Division requirement~~for three years.¶

(2) All floors, walls, ceilings, windows, furniture, and equipment ~~shall~~must be kept in good repair, clean, neat, and orderly.¶

(3) Each bathtub, shower, lavatory, and toilet ~~shall~~must be kept clean, in good repair, and regularly sanitized.¶

(4) Kitchen sinks may not be used for the disposal of cleaning wastewater.¶

(5) Soiled linens and clothing ~~shall~~must be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.¶

(a) All soiled linens designated for cleaning and sanitation must be stored separately from soiled linens designated for personal hygiene. ¶

(6) All necessary measures ~~shall~~must be taken to prevent rodents and insects from entering the home. Should pests be found in the home, appropriate action ~~shall~~must be taken to eliminate them. All occurrences of bedbugs must be reported to the local Public Health Division and the CMHP. ¶

(7) The grounds of the facility ~~shall~~must be kept orderly and reasonably free of litter, unused articles, and refuse.¶

(a) Outdoor walkways must be free of trip hazards.¶

(b) Fencing, if present on the property, must meet minimum standards for safety.¶

(c) Roofing and gutters must be free of debris and moss buildup.¶

(d) All decks, railing, and siding must have a weather resistant coating free of cracks and chips.¶

(8) Garbage and refuse receptacles ~~shall~~must be clean, durable, watertight, insect and rodent proof, and ~~shall~~must be kept covered with tight-fitting lids. All garbage and solid waste ~~shall~~must be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality.¶

(9) All sewage and liquid wastes ~~shall~~must be disposed of in accordance with the Plumbing Code to a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes ~~shall~~must be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines and septic tanks or other non-municipal sewage disposal systems, where applicable, ~~shall~~must be maintained in good working order.¶

(10) Biohazard waste ~~shall be~~must be stored and disposed of in compliance with the rules of the Department of Environmental Quality as described in OAR 340-100-0002.¶

(11) Precautions ~~shall~~must be taken to prevent the spread of infectious or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards:¶

(a) In accordance with OAR 437-002-0368 through 2226 of the Oregon Occupational Safety and Health Code, program staff ~~shall~~must employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other blood borne pathogens;¶

(b) Bathroom facilities ~~shall~~must be equipped with an adequate supply of toilet paper, soap, and towels.¶

(12) If pets or other household animals exist at the home, sanitation practices ~~shall~~must be implemented to prevent health hazards:¶

(a) These animals ~~shall~~must be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations ~~shall~~must be maintained on the premises;¶

(b) Animals not confined in enclosures ~~shall~~must be under control and maintained in a manner that does not adversely impact ~~individual residents~~ or others.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0380

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Changes towels from personal hygiene items to house supplies.

CHANGES TO RULE:

309-040-0380

Individual Furnishings ¶

(1) Bedrooms and Units:¶

(a) Bedrooms for all household occupants and units for ~~individuals shall~~ residents must have been constructed as a bedroom when the home was built or remodeled under permit; be finished with walls or partitions of standard construction that go from floor to ceiling and a door that opens directly to a hallway or common use room without passage through another bedroom or unit or common bathroom; be adequately ventilated, heated and lighted with at least one operable window that meets the requirements of Section R310 of the Oregon Residential Specialty Code; have at least 70 square feet of usable floor space for each ~~individual resident~~ or 120 square feet for two ~~individual residents~~ and have no more than two ~~individual residents~~ per room;¶

(b) Providers, resident managers, or their family members may not sleep in areas designated as living areas, or share bedrooms or units with ~~individual residents~~;¶

(c) There ~~shall~~ must be an individual bed for each ~~individual resident~~ consisting of a mattress in good condition and springs at least 36 inches wide. Cots, rollaway, bunks, trundles, couches, and folding beds may not be used for ~~individual residents~~. Each bed ~~shall~~ must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases ~~shall~~ must be laundered at least weekly, and more often if necessary. Waterproof mattress covers ~~shall~~ must be used for incontinent ~~individual residents~~. Day care individuals may not use ~~individual resident~~ beds;¶

(d) Each unit ~~shall~~ must have sufficient separate, private dresser and closet space for each ~~individual resident's~~ clothing and personal effects, including hygiene and grooming supplies. ~~Individuals shall~~ Residents must be allowed to keep and use reasonable amounts of personal belongings and to have private, secure storage space. Drapes or shades for windows ~~shall~~ must be in good condition and provider privacy for ~~individual residents~~;¶

(e) Units ~~shall~~ must be on ground level for ~~individual resident~~ who are non-ambulatory or have impaired mobility;¶

(f) Units ~~shall~~ must be in close enough proximity to the provider to alert the provider to night time needs or emergencies or be equipped with a call bell or intercom.¶

(2) Each ~~individual shall~~ resident must be assisted in obtaining personal hygiene items in accordance with ~~individual resident~~ needs. Items ~~shall~~ must be stored in a clean and sanitary manner and may be purchased with the ~~individual resident's~~ personal allowance. Personal hygiene items include, but are not limited to, a comb or hairbrush, a toothbrush, toothpaste, menstrual supplies (if needed), ~~towels~~, and washcloths.¶

(3) Sufficient supplies of soap, shampoo, and toilet paper for all individuals ~~shall be provided~~.¶

(4) ~~An adequate supply of furniture for individual use in the living room, dining room, and other common areas shall be maintained in good condition, and towels for all residents must be provided.~~

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

RULE SUMMARY: Several clarifications made, including the provider cannot restrict a resident's right to have meals or snacks in their private living area in lieu of an IBL, residents rights to food, and how food is provided. Adds snacks.

CHANGES TO RULE:

309-040-0385

Food Services ¶

~~(1) Three nutritious meals shall be served~~ Providers must prepare and serve three nutritionally balanced meals and provide at least two snacks to residents each daily at times consistent with those in the community. ¶

~~(a) Meals shall be planned~~ must be prepared and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid the facility where the residents live. ¶

~~(A) Meals eaten away from the AFH for the convenience of the provider (e.g. restaurants, community meal sites) must be paid for as directed by~~ by the provider. ¶

~~(B) Meals and snacks eaten as part of a prescriber. Consideration shall be given to cultural and ethnic backgrounds of individuals in food preparation~~ resident's own recreational outing must be paid for by the resident. ¶

~~(b) Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDAs) My Plate, and regularly include fresh fruit and vegetables.~~ ¶

~~(2c) An order from an LMP must be obtained for each individual who for health reasons is on a modified or special diet. These diets shall be planned in~~ Meals and snacks must be planned and served with consideration for resident food preferences, allergies, and special or modified diets as well as cultural, religious and ethnic consideration with the individuals. ¶

~~(3d) Menus shall be prepared at least one week in advance and provide a sufficient variety of foods served in adequate amounts will be offered in family style, however, residents may choose to eat in their personal living space.~~ ¶

~~(e) A menu for the meals for the coming week must be prepared and posted weekly.~~ ¶

~~(2) Foods purchased under the resident's room and board agreements for~~ each individual at each meal and adjusted for seasonal changes. Records of menus as served shall be filed and maintained in the AFH for three years. Individual preferences and requests shall be considered in menu plans and snacks will include dietary standards such breads, condiments, dairy products, fruits and vegetables and other common foods as may be requested by a resident for their use. ¶

~~(3) Residents will have unrestricted access to food and drinks purchased for their use under the room and board agreement for meals or snacks and will have unrestricted access to common food preparation and storage appliances, equipment, cleaning. Religious and vegetarian preferences must be reasonably accommodated.~~ ¶

~~(4) Meals shall be prepared and served in the facility where the individuals live. Payment for meals eaten away from~~ supplies and preparation space needed for preparing food. ¶

~~(4) Food must not be used as an inducement to control~~ the AFH for the convenience of the provider (e.g. restaurants, senior meal sites) shall be paid for by the provider. Meals and snack behavior of a resident. ¶

~~(5) An order from an LMP must be obtained for each resident who for health reasons is on a modified or special diet. These diets must be planned in consultation with the~~ resident. ¶

~~(6) Records of menus as served must be filed and maintained in the AFH for two years.~~ ¶

~~(5) The provider shall~~ must maintain adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days at the setting. An emergency supply of potable water shall must be available such that the provider maintains seven gallons of water per individual resident. ¶

~~(6) Food shall~~ must be stored, prepared, and served in accordance with the Authority's Food Sanitation Rules: ¶

~~(a) All working refrigerators and freezers shall~~ must have a thermometer in working order; ¶

~~(b) Food storage areas and equipment shall~~ must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage. ¶

~~(7) Food preparation areas must be clean, free of obnoxious odors, and in good repair.~~ ¶

~~(10) Equipment shall~~ must be maintained in a safe and sanitary manner. Utensils, dishes, and glassware shall must be maintained in a sufficient number to accommodate the licensed capacity of the AFHs. Utensils, dishes, and glassware shall must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanitation cycle is recommended. ¶

~~(8) The provider shall~~ must support the individual resident's right to access food at any time. The provider may

only apply an individually-based limitation when there is a threat to the health and safety of an individual resident or others, and the provider complies with the requirements outlined in OAR 309-040-0393. ~~This section is effective July 1, 2016, and enforceable.~~

~~(12) The provider cannot restrict a resident's right to have meals or snacks in their private living area unless an individual limitation is documented in their care plan based on as described in OAR 309-040-0315(7) documented health or safety risk.~~

~~(13) If an individual resident misses a meal at a scheduled time, an alternative meal shall~~ must be made available.

~~(14) The provider may not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal (see, OAR 411-050-0645)~~

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825



RULE SUMMARY: Substantial changes made to this section include medication administration practice clarifications, medication storage requirements, resident records, and documentation standards.

CHANGES TO RULE:

309-040-0390

Standards and Practices for Care and Services ¶¶

- (1) There shall be a provider, resident manager, or substitute caregiver on duty 24 hours per day in an AFH in accordance with ORS 443.725(3). ¶¶
- (2) Medications and Prescriber's Orders: ¶¶
- (a) There shall be a copy of a medication, treatment, or therapy order signed by a physician, nurse practitioner, or other licensed prescriber in the individual's file for the use of any medications, including over the counter medications, treatments, and other therapies except as otherwise permitted under OAR 309-040-0390(3)-(4). ¶¶
- (b) A provider, resident manager, or substitute caregiver shall dispense medications, treatments, and therapies as prescribed by a physician, nurse practitioner, or other licensed prescriber. Changes to orders for the dispensing and administration of medication or treatment may not be made without a written order from a physician, nurse practitioner, or other licensed prescriber. A copy of the medication, treatment, or therapy order shall be maintained in the individual's record. The provider, resident manager, or substitute caregiver shall promptly notify the individual's case manager of any request for a change in the individual's orders for medications, treatments, or therapies; ¶¶
- (c) Each individual's medications shall be clearly labeled with the pharmacist's label or the manufacturer's originally labeled container and kept in a locked location except as otherwise permitted under OAR 309-040-0390(3)-(4). The provider or provider's family medication shall be stored in a separate locked location. All medication for pets or other animals shall be stored in a separate locked location. Unused, outdated, or recalled medications may not be kept in the AFH and shall be disposed in a manner to prevent diversion into the possession of people other than for whom it was prescribed. The provider shall document disposal of all unused, outdated, and recalled medication on individuals' drug disposal forms; ¶¶
- (d) Medications may not be mixed together in another container prior to administration except as packaged by the pharmacy or by physician order; ¶¶
- (3) The program must ensure at least one unexpired opioid overdose kit for emergency response to suspected overdose is available in the facility at all times. Opioid overdose kits do not require a prescription and are not specific to an individual (see ORS 689.684). ¶¶
- (a) All opioid overdose kits must include an ultraviolet light-protected hard case and must contain, but not be limited to: ¶¶
- (A) Two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication; ¶¶
- (B) One pair non-latex gloves; ¶¶
- (C) One face mask; ¶¶
- (D) One disposable face shield for rescue breathing; and ¶¶
- (E) One short-acting, non-injectable, opioid antagonist medication administration instruction card. ¶¶
- (b) Opioid overdose kits must be: ¶¶
- (A) Installed in an easily accessible, highly visible, and unlocked location; ¶¶
- (B) At a height of no more than 48 inches from the floor; ¶¶
- (C) In a location without direct sunlight; ¶¶
- (D) In an area where temperatures are maintained between 59 degrees Fahrenheit and 77 degrees Fahrenheit; and ¶¶
- (E) Have a sign clearly indicating the location and content of the kit. ¶¶
- (c) Short-acting, non-injectable, opioid antagonist medication not within installed opioid overdose kits must be stored in a locked cabinet with other resident medications. ¶¶
- (d) Opioid overdose kits must be: ¶¶
- (A) Checked daily to ensure the required components have not been removed or damaged, with documentation of daily checks maintained for three years; ¶¶
- (B) Checked monthly to ensure the short-acting, non-injectable, opioid antagonist medication has not expired, with documentation of monthly checks maintained for three years; and ¶¶
- (C) Restocked immediately after use. ¶¶
- (e) Upon recognizing a person is likely experiencing an overdose, program staff must immediately respond based

on the medical emergency procedures of the facility.¶¶

(f) A person who has reasonable cause to believe an individual is experiencing an overdose, and in good faith administers short-acting, non-injectable, opioid antagonist medication, is protected against civil liability or criminal prosecution unless the person, while rendering care, acts with gross negligence, willful misconduct, or intentional wrongdoing as described in Oregon Revised Statute (ORS) 689.681.¶¶

(g) Administration of short-acting, non-injectable, opioid antagonist medication must be documented by the caregiver who administered the medication. Documentation must be submitted to the Authority within 48 hours of the incident and must include:¶¶

(A) Name of the individual;¶¶

(B) Description of the incident including date, time, and location;¶¶

(C) Time 9-1-1 contacted;¶¶

(D) Time of administration(s) of short-acting, non-injectable, opioid antagonist medication;¶¶

(E) Individual's response;¶¶

(F) Transfer of care to EMS; and¶¶

(G) Signature of caregiver.¶¶

(H) Program staff must fully cooperate with emergency medical service (EMS) personnel. Program staff must not interfere with or impede the administration of emergency medical services.¶¶

(4) Opioid overdose medication and kits which are the personal property of a resident, do not need to be kept in a locked location or maintained as described under OAR 309-040-0390(3).¶¶

(5) A written medication administration record (MAR) for each individual shall be kept of all medications administered by the program staff to that individual, including over the counter medications. The MAR shall indicate name of medication, dosage and frequency of administration, route or method, dates and times given, and be immediately initialed by the caregiver dispensing using only blue or black indelible ink. Treatments, therapies, and special diets shall be immediately documented on the medication administration record including times given, type of treatment or therapy, and initials of the caregiver giving it using only blue or black indelible ink. The medication administration record shall have a legible signature for each set of initials using only blue or black indelible ink;¶¶

(a) The MAR shall include documentation of any known allergy or adverse reactions to a medication and documentation and an explanation of why a PRN medication was administered and the results of such administration;¶¶

(b) For any individual who is self-administering medication, the individual's record shall include the following documentation:¶¶

(A) That the individual has been trained for self-administering of prescribed medication or treatment or that the prescriber has provided documentation that training for the individual is unnecessary;¶¶

(B) That the individual is able to manage his or her own medication regimen, and the provider shall keep medications stored in an area that is inaccessible to others and locked;¶¶

(C) Of retraining when there is a change in dosage, medication, and time of delivery;¶¶

(D) Of review of self-administration of medication as part of the residential care plan process; and¶¶

(E) Of a current prescriber order for self-administration of medication.¶¶

(c) Injections may be self-administered by the individual or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or providers who have been trained and are monitored by a physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047. Documentation regarding the training or delegation shall be maintained in the individual's record;¶¶

(6) Nursing tasks may be delegated by a registered nurse to providers and other caregivers only in accordance with administrative rules of the Board of Nursing chapter 851, division 47. This includes but is not limited to the following conditions:¶¶

(a) The registered nurse has assessed the individual's condition to determine there is not a significant risk to the individual if the provider or other caregiver performs the task;¶¶

(b) The registered nurse has determined the provider or other caregiver is capable of performing the task;¶¶

(c) The registered nurse has taught the provider or caregiver how to do the task;¶¶

(d) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;¶¶

(e) The registered nurse provides written instructions for the provider or caregiver to use as a reference;¶¶

(f) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other individuals or taught to other care providers;¶¶

(g) The registered nurse has determined the frequency for monitoring the provider or caregiver's delivery of the delegated task; and¶¶

(h) The registered nurse has documented a residential care plan for the individual including delegated procedures,

frequency of registered nurse follow-up visits, and signature and license number of the registered nurse doing the delegating.¶¶

(7) The initial residential care plan shall be developed within 24 hours of admission to the AFH.¶¶

(8) This section and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).¶¶

(a) During the initial 30 calendar days following the individual's admission to the AFH, the provider shall continue to assess and document the individual's preferences and care needs. The provider shall complete and document the assessment in an RCP within 30 days after admission, unless the individual is admitted to the AFH for crisis-respite services;¶¶

(b) An RCP is an individualized plan intended to implement and document the provider's delivery of services and identifies the goals to be accomplished through those services. The RCP shall describe the individual's needs, preferences, capabilities, and what assistance the individual requires for various tasks;¶¶

(c) The provider shall develop the RCP based upon the findings of the individual assessment and the person-centered service plan with participation of the individual and through collaboration with the individual's primary mental health treatment provider. With consent of the individual, family members, representatives from involved agencies, and others with an interest in the individual's circumstances may be invited to participate in the development of the RCP. The provider shall have proper, prior authorization from the individual or the individual's representative prior to such contact;¶¶

(d) The RCP shall adequately consider and facilitate the implementation of the individual's person-centered service plan by addressing the following:¶¶

(A) Address the implementation and provision of services by the provider consistent with the obligations imposed by the person-centered service plan;¶¶

(B) Identify the individual's service needs, desired outcomes, and service strategies to advance all areas identified in the person-centered service plan, the individual's physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation, as well as any other area of concern or the other goals set by the individual;¶¶

(C) If the person-centered service plan is unavailable for use in developing the RCP, providers shall still develop an RCP based on the information available. Upon the person-centered service plan becoming available, the providers shall amend the RCP as necessary to comply with this rule; and¶¶

(D) The provider shall attach the person-centered service plan to the RCP.¶¶

(e) The RCP shall be signed by the individual, the provider, or the provider's designee, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan;¶¶

(f) The provider shall review and update each individual's RCP every six months and when an individual's condition changes. The review shall be documented in the individual's record at the time of the review and include the date of the review and the provider's signature. If an RCP contains many changes and becomes less legible, the provider shall write a new care plan.¶¶

(9) A person-centered service plan shall be completed in the following circumstances:¶¶

(a) A person-centered service plan coordinator under contract with the Division shall complete a person-centered service plan with each individual pursuant to OAR 411-004-0030. The provider shall make a good faith effort to implement and complete all elements the provider is responsible for implementing as identified in the person-centered service plan;¶¶

(b) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible;¶¶

(c) The person-centered service plan shall be developed by the individual, and as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the individual's representative;¶¶

(d) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant exceptions when it determines that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area;¶¶

(e) For private pay individuals, a person-centered service plan may be developed by the individual, or as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers shall assist private pay individuals in developing person-centered service plans when no alternative resources are available. Private pay individuals are not required to have a written person-centered service plan.¶¶

(10) A person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process includes the following:¶¶

(a) Is driven by the individual;¶¶

(b) Includes people chosen by the individual;¶¶

- (c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;¶¶
- (d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;¶¶
- (e) Reflects the cultural considerations of the individual;¶¶
- (f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the individual's representative;¶¶
- (g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:¶¶
  - (A) Discussing the concerns of the individual and determining acceptable solutions;¶¶
  - (B) Supporting the individual in arranging and conducting a person-centered service planning meeting;¶¶
  - (C) Utilizing any available greater community conflict resolution resources;¶¶
  - (D) Referring concerns to the Office of the Long-Term Care Ombudsman; or¶¶
  - (E) For Medicaid recipients, following existing, program-specific grievance processes.¶¶
- (h) Offers choices to the individual regarding the services and supports the individual receives and from whom, and records the alternative HCB settings that were considered by the individual;¶¶
- (i) Provides a method for the individual to request updates to the person-centered service plan for the individual;¶¶
- (j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;¶¶
- (k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;¶¶
- (L) Includes any services that are self-directed, if applicable;¶¶
- (m) Includes but is not limited to individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;¶¶
- (n) Includes risk factors and plans to minimize any identified risk factors; and¶¶
- (o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual, participants in the person-centered service planning process, and all individuals responsible for the implementation of the person-centered service plan, including the provider, as described in these rules. The person-centered service plan is distributed to the individual and other people involved in the person-centered service plan as described in these rules.¶¶
- (11) Required contents of the person-centered service plan:¶¶
  - (a) When the provider is required to develop the person-centered service plan, the provider shall ensure that the plan includes the following:¶¶
    - (A) HCBS and setting options based on the needs and preferences of the individual and for residential settings, the available resources of the individual for room and board;¶¶
    - (B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater community;¶¶
    - (C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;¶¶
    - (D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;¶¶
    - (E) The strengths and preferences of the individual;¶¶
    - (F) The service and support needs of the individual;¶¶
    - (G) The goals and desired outcomes of the individual;¶¶
    - (H) The providers of services and supports, including unpaid supports provided voluntarily;¶¶
    - (I) Risk factors and measures in place to minimize risk;¶¶
    - (J) Individualized backup plans and strategies, when needed;¶¶
    - (K) People who are important in supporting the individual;¶¶
    - (L) The person responsible for monitoring the person-centered service plan;¶¶
    - (M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services;¶¶
    - (N) The written informed consent of the individual;¶¶
    - (O) Signatures of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (c) of this section;¶¶
    - (P) Self-directed supports; and¶¶
    - (Q) Provisions to prevent unnecessary or inappropriate services and supports.¶¶
  - (b) When the provider is not required to develop the person-centered service plan but provides services to the

individual, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator or other persons developing the plan to fulfill the characteristics described in these rules;¶¶

(c) The individual decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers shall have access to the portion of the person-centered service plan that the provider is responsible for implementing;¶¶

(d) The person-centered service plan is distributed to the individual and other people involved in the person-centered service plan as described in these rules;¶¶

(e) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-040-0393 when an individual's rights under OAR 309-040-0410(2)(b) through (i) may not be met due to threats to the health and safety of the individual or others;¶¶

(f) The person-centered service plan shall be reviewed and revised:¶¶

(A) At the request of the individual;¶¶

(B) When the circumstances or needs of the individual change; or¶¶

(C) Upon reassessment of functional needs as required every 12 months.¶¶

(12) Because it may not be possible to assemble complete records and develop a person-centered service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan under these rules, but shall, at a minimum, develop an initial care plan as required by section (7) of these rules to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in section (11)(b) of this rule.¶¶

(13) The provider shall develop an individual record for each individual. The provider shall keep the individual record current and available on the premises for each individual admitted to the AFH. The provider shall maintain an individual record consistent with the following requirements:¶¶

(a) The record shall include:¶¶

(A) The individual's name, previous address, date of entry into AFH, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid or Medicare numbers where applicable, guardianship status, and;¶¶

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

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

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

(iii) The individual's preferred dentist;¶¶

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

(v) The individual's case manager; and¶¶

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

(C) Individual records shall be available to the Authority conducting inspections or investigations as well as to the individual or the individual's representative;¶¶

(D) Original individual records shall be kept for a period of three years after discharge when an individual no longer resides in the AFH;¶¶

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

(b) Medical Information:¶¶

(A) History of physical, emotional, and medical problems, accidents, illnesses or mental status that may be pertinent to current care;¶¶

(B) Current orders for medications, treatments, therapies, use of restraints, special diets, and any known food or medication allergies;¶¶

(C) Completed medication administration records from the license review period;¶¶

(D) Name and claim number of medical insurance and any pertinent medical information such as hospitalizations, accidents, immunization records including previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of any individual.¶¶

(c) Individual Account Record:¶¶

(A) Individual's Income Sources;¶¶

(B) Refer to the individual's residential care plan with supporting documentation from the income sources to be maintained in the individual's individual record;¶¶

(C) The individual or the individual's representative shall agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy shall be given to the individual, the individual's representative, and the original in the individual's individual record;¶¶

(D) Individual's record of discretionary funds.¶¶

(d) If an individual maintains custody and control of his or her discretionary funds, then no accounting record is

required;¶¶

(e) If a designee of the AFH maintains custody and control of an individual's discretionary fund, a signed and dated account and balance sheet shall be maintained with supporting documentation for expenditures \$10 and greater. The AFH designee shall have specific written permission to manage an individual's discretionary fund;¶¶

(f) The provider shall maintain a copy of the written house rules with documentation that the provider discussed the house rules with the individual;¶¶

(g) A written incident report of any unusual incidents relating to the AFH including but not limited to individual care. The incident report shall include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the individual. In compliance with HIPAA rules, only the individual's name may be used in the incident report. Separate reports shall be written for each individual involved in an incident. A copy of the incident report shall be submitted to the CMHP within five working days of the incident. The original shall be placed in the individual's individual record;¶¶

(h) Any other information or correspondence pertaining to the individual;¶¶

(i) Progress notes shall be maintained within each individual's record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes as identified in the individual's personal care plan. A progress note shall be entered in the individual's record at least once each month.¶¶

(14) Residents' Bill of Rights:¶¶

(a) The provider shall guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider shall post a copy of the Residents' Bill of Rights in a location that is accessible to individuals, individuals' representatives, parents, guardians, and advocates. The provider shall give a copy of the Residents' Bill of Rights to each individual, individuals' representative, parent, guardian, and advocate along with a description of how to exercise these rights;¶¶

(b) The provider shall explain and document in the individual's file that a copy of the Residents' Bill of Rights was given to each individual at admission and is posted in a conspicuous place including the name and phone number of the office to call to report complaints.¶¶

(15) Providers, resident managers, or substitute caregivers may not use physical restraints for individuals receiving personal care services authorized or funded through the Division.¶¶

(16) The provider shall:¶¶

(a) Conspicuously post the State license and Abuse and Complaint poster where it can be seen by individuals;¶¶

(b) Cooperate with Division personnel or designee in complaint investigation procedures, abuse investigations, and protective services, planning for individual care, application procedures, and other necessary activities, and allow access of Division personnel to the AFH, its individuals, and all records;¶¶

(c) Give care and services, as appropriate to the age and condition of the individual and as identified on the RCP. The provider shall ensure that physicians' orders and those of other medical professionals are followed and that the individual's physicians and other medical professionals are informed of changes in health status or if the individual refuses care;¶¶

(d) House Rules:¶¶

(A) The provider shall develop reasonable written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on refunds in case of departure, hospitalization, or death;¶¶

(B) The provider shall discuss house rules with the individual and families at the time of arrival and be posted in a conspicuous place in the facility. The provider shall maintain written documentation in the individual record that the provider discussed the house rules with the individual along with a copy of the house rules;¶¶

(C) House rules are subject to review and approval by the Division and may not violate individual's rights as stated in ORS 430.210;¶¶

(D) House rules may not restrict or limit the individual rights under OAR 309-040-0410(2). This subsection is effective July 1, 2016, and enforceable according to 309-040-0315(7).¶¶

(e) In the provider's absence, the provider shall have a resident manager or substitute caregiver on the premises to provide care and services to individuals. For absences greater than 72 consecutive hours, the CMHP shall be notified of the name of the substitute caregiver for the provider or resident manager;¶¶

(f) A provider, resident manager, or substitute caregiver shall be present in the home at all times;¶¶

(g) Allow and encourage individuals to exercise all civil and human rights accorded to other citizens;¶¶

(h) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of individuals;¶¶

(i) Provide care and services as agreed to in the RCP;¶¶

(j) Keep information related to individuals confidential as required under ORS 179.050;¶¶

(k) Ensure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the Division or CMHP;¶¶

(L) Not admit individuals who are clients of Aging and People with Disabilities without the express permission of the Division;

(m) Notify the Division prior to a closure and give individuals, the individuals' representative, families, and CMHP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH, an individual may not be shifted from one AFH to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and CMHP;

(n) Exercise reasonable precautions against any conditions that threatens the health, safety, or welfare of individuals;

(o) Immediately notify the appropriate RCP Team members (in particular the CMHP representative and family or guardian) if: The individual has a significant change in medical status; the individual has an unexplained or unanticipated absence from the AFH; the provider becomes aware of alleged or actual abuse of the individual; the individual has a major behavioral incident, accident, illness, hospitalization; the individual contacts or is contacted by the police; or the individual dies, and follow-up with an incident report.

(17) The provider shall write an incident report for any unusual incident and forward a copy of the incident report to the CMHP within five working days of the incident. Any incident that is the result of or suspected of being abuse shall be reported to the Office of Investigations and Training within 24 hours of occurrence provider, resident manager and substitute caregivers must understand administration of each resident's medications, including the reason the medication was ordered, route, frequency, parameters (such as when to hold or call the prescriber), required monitoring, how the medication is intended to work, common side effects, and adverse reactions.

(2) Medication resource material must be readily available in the AFH. Acceptable resource materials include prescription drug information sheets, drug fact labels for over-the-counter medications, supplement fact labels, nutritional fact labels, current drug manuals and drug references websites. Caregivers must be able to readily access the internet when drug reference websites are the chosen material.

(3) Medications and Prescriber's Orders:

(a) There must be a signed copy of all medications, dietary supplements, over-the-counter medications, treatments, or therapies ordered by a prescribing practitioner or requested by the resident in the resident's file, except as otherwise permitted under OAR 309-040-0390(4)-(5) Visit summary documents that list current medications are not consider medical orders even if the prescribing practitioner signs the document. Written orders must include:

(A) Dated order;

(B) Name of the medication;

(C) Strength of the medication;

(D) Dose;

(E) Frequency;

(F) Administration route;

(G) Reason medication is being taken; and

(H) Prescriber's signature or typed name.

(b) A provider, resident manager, or substitute caregiver must dispense medications, dietary supplements, over-the-counter medications, treatments, and therapies as prescribed unless the resident or the resident's legal representative refuses to consent.

(c) The prescribing practitioner must be notified of refusal to consent to an order.

(d) Changes to orders may not be made without a prescribing practitioner order. Changes made over the phone must be followed-up with a, written or electronic copy of the order within 72 hours of the change notice.

(A) The provider, resident manager, or substitute caregiver must promptly notify the resident's case manager of any request for a change in the resident's orders for medications, treatments, or therapies;

(B) Changes in the dosage or frequency of an existing medication require a new properly labeled and dispensed medication container. If a new properly labeled and dispensed medication container is not obtained, the change must be written on an auxiliary label attached to the medication container, not to deface the existing original pharmacy label, and the information must match the new medication order.

(C) Changes for a medication packaged in a blister pack, must be made by the Pharmacist that filled the order.

(e) All medications, including over-the-counter medications must be in the original container and be clearly labeled with the pharmacist's label or the manufacturer's original label. Over-the-counter medications must be marked with the resident's name.

(f) All medications, including over-the-counter medications, must be stored as directed by the manufacturer, and kept in a locked location except as otherwise permitted under OAR 309-040-0390(4)-(5), that is cool, clean, dry and not subject to direct sunlight or fluctuations in temperature.

(A) The provider or provider's family medication must be stored in a separate locked location.

- (B) All medication for pets or other animals must be stored in a separate locked location. ¶
- (C) Medication requiring refrigeration must also be locked and stored separately from medications of others. ¶
- (4) The program must ensure at least one unexpired opioid overdose kit for emergency response to suspected overdose is available in the facility at all times. Opioid overdose kits do not require a prescription and are not specific to an individual (see ORS 689.800). ¶
- (a) All opioid overdose kits must include an ultraviolet light-protected hard case and must contain, but not be limited to: ¶
  - (A) Two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication; ¶
  - (B) One pair non-latex gloves; ¶
  - (C) One face mask; ¶
  - (D) One face shield for rescue breathing that is maintained according to manufacturer's recommendations; and ¶
  - (E) One short-acting, non-injectable, opioid antagonist medication administration instruction card. ¶
- (b) Opioid overdose kits must be: ¶
  - (A) Installed in an easily accessible, highly visible, and unlocked location; ¶
  - (B) At a height of no more than 48 inches from the floor; ¶
  - (C) In a location without direct sunlight; ¶
  - (D) In an area where temperatures are maintained between 59 degrees Fahrenheit and 77 degrees Fahrenheit; and ¶
  - (E) Have a sign clearly indicating the location and content of the kit. ¶
- (c) Short-acting, non-injectable, opioid antagonist medication not within installed opioid overdose kits must be stored in a locked cabinet with other resident medications. ¶
- (d) Opioid overdose kits must be: ¶
  - (A) Checked daily to ensure the required components have not been removed or damaged, with documentation of daily checks maintained for three years; ¶
  - (B) Checked monthly to ensure the short-acting, non-injectable, opioid antagonist medication has not expired, with documentation of monthly checks maintained for three years; and ¶
  - (C) Restocked immediately after use. ¶
- (e) Upon recognizing a person appears to be experiencing an overdose, program staff must immediately respond based on the medical emergency procedures of the facility. ¶
- (f) A person who has reasonable cause to believe and in good faith administers short-acting, non-injectable, opioid antagonist medication to a person experiencing an overdose, is protected against civil liability or criminal prosecution unless the person, while rendering care, acts with gross negligence, willful misconduct, or intentional wrongdoing as described in Oregon Revised Statute (ORS) 689.800. ¶
- (g) Administration of short-acting, non-injectable, opioid antagonist medication must be documented by the caregiver who administered the medication. Documentation must be submitted to the Authority within 48 hours of the incident and must include: ¶
  - (A) Name of the individual; ¶
  - (B) Description of the incident including date, time, and location; ¶
  - (C) Time 9-1-1 contacted; ¶
  - (D) Time of administration(s) of short-acting, non-injectable, opioid antagonist medication; ¶
  - (E) Individual's response; ¶
  - (F) Transfer of care to EMS; and ¶
  - (G) Signature of caregiver. ¶
- (h) Program staff must fully cooperate with emergency medical service (EMS) personnel. Program staff must not interfere with or impede the administration of emergency medical services. ¶
- (5) Opioid overdose medication and kits which are the personal property of a resident, do not need to be kept in a locked location or maintained as described under OAR 309-040-0390(4). ¶
- (6) Discontinued, outdated, or recalled medications may not be kept in the AFH and must be disposed in a manner advised by Department of Environmental Quality. ¶
- (a) The provider must document disposal of all discontinued, outdated, and recalled medication on resident's drug disposal forms. ¶
- (b) Disposal must occur within 10 calendar days of expiration, discontinuation, or provider's knowledge of recall. ¶
- (c) Prescription medications for resident's who have died, must be disposed of within 24 hours. Prescription medications are not transferable to anyone other than the resident identified on the prescription label. ¶
- (7) Medications may only not be mixed together in another container prior to administration as directed by a physician order, or as packaged by the pharmacy. ¶
- (8) A written medication administration record (MAR) or electronic MAR must be maintained for each resident. ¶
  - (a) The MAR must include: ¶
    - (A) The name of all medications, treatments and therapies administered by the program staff to that resident,



including over-the-counter medications and prescribed or dietary supplements.¶

(B) The name of all medications, treatments and therapies self-administered by the resident and indicate that they are self-administered. Resident do not have to document self-administrations on the MAR. ¶

(C) The name of medication, dosage and frequency of administration, route or method, dates and times given, and any parameters for each prescribed medication, over-the-counter medication, and supplements. ¶

(D) Scheduled medications must have a specific time assigned on the MAR when the medication will be administered. Medications administered "as needed" (also known as PRN medications) must be listed as "PRN" and not have a specific time.¶

(E) PRN medications must include what dosages not to exceed in a 24-hour period and may not include any dosage ranges.¶

(F) Documentation of any known allergy or adverse reactions to a food or medication.¶

(b) The MAR must be immediately initialed by the caregiver dispensing using only blue or black indelible ink.¶

(c) Treatments, therapies, and special diets must be immediately documented on the medication administration record including the specific time given, type of treatment or therapy, and initials of the caregiver giving it using only blue or black indelible ink. ¶

(d) The medication administration record must have a legible signature for each set of initials using only blue or black indelible ink;¶

(e) The MAR must indicate when medications are provided to non-staff, alternate caregivers (e.g. family members) to administer when residents will be away from the home.¶

(f) The MAR must include , documentation and an explanation of why a PRN medication was administered and the results of such administration; ¶

(g) Medication may not be used for the convenience of the caregiver and must never be used to discipline a resident.¶

(h) Changed or discontinued orders must be immediately documented on the MAR showing the date of the change or discontinued order. A changed order must be written on a new line.¶

(i) Missed or refused medication, treatment or therapy must be documented by circling the caregivers initials and completing a brief explanation in the results section of the MAR.¶

(j) The prescribing practitioner must be notified when there are observed side effects or concerns regarding the resident's response to medication.¶

(9) Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident if the resident is fully independent in the task, administered by a relative of the resident, or administered by a current Oregon licensed registered nurse. A current Oregon licensed practical nurse may administer subcutaneous and intramuscular injections. Providers and caregivers who have been delegated and trained by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047 may administer subcutaneous injections. Intramuscular and intravenous injections may not be delegated except as allowed by (3)(S) of this rule. Documentation regarding the training or delegation must be maintained in the resident's record;¶

(a) Intramuscular injections used to administer medications for lifesaving emergencies as outlined in ORS 433.800 to 433.830 and Chapter 333 Division 55 must be taught by a registered nurse, a pharmacist, or the prescriber, and the AFH provider must be given written detailed step-by-step instructions; and¶

(b) Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. All sharps, including, but not limited to, needles and lancets, must be disposed of in approved sharps containers that:¶

(A) Are puncture-resistant;¶

(B) Are leak-proof;¶

(C) Are labeled or color-coded red to warn the contents are hazardous;¶

(D) Have a lid, flap, door, or other means of closing the container and inhibits the ability to remove sharps from the container;¶

(E) Are not overfilled;¶

(F) Are stored in an upright position in a secure location as close as practical to the use area. The container must be accessible to residents and not close to any food preparation or food storage area; and¶

(G) Must be closed immediately once full and properly disposed of within 10 days, according to the home's waste management company's or pharmacy's instructions.¶

(10) Nursing tasks may be delegated by a registered nurse to providers and other caregivers only in accordance with administrative rules of the Board of Nursing chapter 851, division 47. This includes but is not limited to the following conditions:¶

(a) The registered nurse has assessed the resident's condition to determine there is not a significant risk to the resident if the provider or other caregiver performs the task;¶

(b) The registered nurse has determined the provider or other caregiver is capable of performing the task;¶

- (c) The registered nurse has taught the provider or caregiver how to do the task;¶
- (d) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;¶
- (e) The registered nurse provides written instructions for the provider or caregiver to use as a reference;¶
- (f) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other residents or taught to other care providers;¶
- (g) The registered nurse has determined the frequency for monitoring the provider or caregiver's delivery of the delegated task; and¶
- (h) The registered nurse has documented a residential care plan for the resident including delegated procedures, frequency of registered nurse follow-up visits, and signature and license number of the registered nurse doing the delegating.¶
- (11) The initial residential care plan must be developed within 24 hours of admission to the AFH.¶
- (a) During the initial 30 calendar days following the resident's admission to the AFH, the provider must continue to assess and document the resident's preferences and care needs. The provider must complete and document the assessment in an RCP within 30 days after admission, unless the resident is admitted to the AFH for crisis-respite services;¶
- (b) An RCP is an individualized plan intended to implement and document the provider's delivery of services and identifies the goals to be accomplished through those services. The RCP must describe the resident's needs, preferences, and capabilities relating to their activities of daily living and instrumental activities of daily living needs identified in their person centered service plan, and what assistance the individual requires for various tasks;¶
- (c) The provider must develop the RCP based upon the findings of the resident assessment and the person-centered service plan with participation of the resident and through collaboration with the resident's primary mental health treatment provider. With consent of the resident, family members, representatives from involved agencies, and others with an interest in the resident's circumstances may be invited to participate in the development of the RCP. The provider must have proper, prior authorization from the resident or the resident's representative prior to such contact;¶
- (d) The RCP must adequately consider and facilitate the implementation of the resident's person-centered service plan by addressing the following:¶
  - (A) The resident's care needs including night care.¶
  - (B) The resident's continued ability to evacuate the AFH in less than 3 minutes, and describe any supports that are needed to do so if applicable¶
  - (C) Any current self-administration for medications, treatments or therapies and describe the providers responsibilities to support the self-administration.¶
  - (D) Any approved individually based limitation and describe how the provider monitors resident progress in the area of the limitation. ¶
  - (E) Address the implementation and provision of services by the provider consistent with the obligations imposed by the person-centered service plan;¶
  - (F) Identify the resident's service needs, desired outcomes, and service strategies to advance all areas identified in the person-centered service plan to include, the resident's physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation, as well as any other area of concern or the other goals set by the resident;¶
  - (G) Document all behavior intervention program approvals;¶
  - (H) How the provider supports each identified services and support need identified in the Individual Services Plan including a description of what service/support is provide, and the duration and frequency of the support. Support services must include how the provider supports the resident in accessing community resources and engaging in community activities; and ¶
  - (I) If the person-centered service plan is unavailable for use in developing the RCP, providers must still develop an RCP based on the information available. Upon receipt of the person-centered service plan , the providers must amend the RCP as necessary to comply with this rule¶
- (e) The provider must attach the person-centered service plan to the RCP.¶
- (f) The RCP must be signed by the resident, the provider, or the provider's designee, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan;¶
- (g) The provider must review and update each resident's RCP every six months and when a resident's condition changes. The review must be documented in the resident's record at the time of the review and include the date of the review and the provider's signature. If a RCP changes the provider must write a new care plan.¶
- (12) A person-centered service plan must be completed in the following circumstances:¶
  - (a) A person-centered service plan coordinator under contract with the Division must complete a person-centered service plan with each resident pursuant to OAR 411-004-0030. The provider must make a good faith effort to

implement and complete all elements the provider is responsible for implementing as identified in the person-centered service plan;¶

(b) The person-centered service plan coordinator documents the person-centered service plan on behalf of the resident and provides the necessary information and supports to ensure the resident directs the person-centered service planning process to the maximum extent possible;¶

(c) The person-centered service plan must be developed by the resident, and as applicable, the legal or designated representative of the resident, and the person-centered service plan coordinator. Others may be included only at the invitation of the resident and, as applicable, the resident's representative;¶

(d) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for residents receiving Medicaid. The Division may grant exceptions when it determines that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area;¶

(e) For private pay residents, a person-centered service plan may be developed by the resident, or as applicable, the legal or designated representative of the resident, and others chosen by the resident. Providers must assist private pay residents in developing person-centered service plans when no alternative resources are available. Private pay residents are not required to have a written person-centered service plan.¶

(13) A person-centered service plan must be developed through a person-centered service planning process. The person-centered service planning process includes the following:¶

(a) Is driven by the resident;¶

(b) Includes people chosen by the resident;¶

(c) Provides necessary information and supports to ensure the resident directs the process to the maximum extent possible and is enabled to make informed choices and decisions;¶

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the resident, and is reviewed at least annually;¶

(e) Reflects the cultural considerations of the resident;¶

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the resident and, as applicable, the resident's representative;¶

(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:¶

(A) Discussing the concerns of the resident and determining acceptable solutions;¶

(B) Supporting the resident in arranging and conducting a person-centered service planning meeting;¶

(C) Utilizing any available greater community conflict resolution resources;¶

(D) Referring concerns to the Office of the Long-Term Care Ombudsman; or¶

(E) For Medicaid recipients, following existing, program-specific grievance processes.¶

(h) Offers choices to the resident regarding the services and supports the resident receives and from whom, and records the alternative HCB settings that were considered by the resident;¶

(i) Provides a method for the resident to request updates to the person-centered service plan for the resident;¶

(j) Is conducted to reflect what is important to the resident to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;¶

(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the resident;¶

(l) Includes any services that are self-directed, if applicable;¶

(m) Includes but is not limited to individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;¶

(n) Includes risk factors and plans to minimize any identified risk factors; and¶

(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the resident, participants in the person-centered service planning process, and all individuals responsible for the implementation of the person-centered service plan, including the provider, as described in these rules. The person-centered service plan is distributed to the resident and other people involved in the person-centered service plan as described in these rules.¶

(14) Required contents of the person-centered service plan:¶

(a) When the provider is required to develop the person-centered service plan, the provider must ensure that the plan includes the following:¶

(A) HCBS and setting options based on the needs and preferences of the resident and for residential settings, the available resources of the resident for room and board;¶

(B) The HCBS and settings are chosen by the resident, or resident's legal representative, and are integrated in and support full access to the greater community;¶

(C) Opportunities to seek employment and work in competitive integrated employment settings for those residents who desire to work. If the resident wishes to pursue employment, a non-disability specific setting option

must be presented and documented in the person-centered service plan;¶

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;¶

(E) The strengths and preferences of the resident;¶

(F) The service and support needs of the resident;¶

(G) The goals and desired outcomes of the individual;¶

(H) The providers of services and supports, including unpaid supports provided voluntarily;¶

(I) Risk factors and measures in place to minimize risk;¶

(J) Individualized backup plans and strategies, when needed;¶

(K) People who are important in supporting the resident;¶

(L) The person responsible for monitoring the person-centered service plan;¶

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the resident receiving services;¶

(N) The written informed consent of the resident;¶

(O) Signatures of the resident, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (c) of this section;¶

(P) Self-directed supports; and¶

(Q) Provisions to prevent unnecessary or inappropriate services and supports.¶

(b) When the provider is not required to develop the person-centered service plan but provides services to the resident, the provider must provide relevant information and provide necessary support for the person-centered service plan coordinator or other persons developing the plan to fulfill the characteristics described in these rules;¶

(c) The resident decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers must have access to the portion of the person-centered service plan that the provider is responsible for implementing;¶

(d) The person-centered service plan is distributed to the resident and other people involved in the person-centered service plan as described in these rules;¶

(e) The person-centered service plan must justify and document any individually-based limitation to be applied as outlined in OAR 309-040-0393 when a resident's rights under OAR 309-040-0410(2)(b) through (i) may not be met due to threats to the health and safety of the resident or others;¶

(f) The person-centered service plan must be reviewed and revised:¶

(A) At the request of the resident;¶

(B) When the circumstances or needs of the resident change; or¶

(C) Upon reassessment of functional needs as required by 410-173-0025.¶

(15) For crisis respite service providers, the provider is not required to develop a person-centered service plan under these rules during the short period of residency, but the provider must, at a minimum, develop an initial care plan as required by section (7) of these rules to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the resident's other needs that caused the need for crisis-respite services. In addition, the provider must provide relevant information and provide necessary support for the person-centered service plan coordinator as described in section (11)(b) of this rule.¶

(16) The provider must develop a written resident record for each resident. The provider must keep the resident record current and available on the premises for each resident admitted to the AFH. The provider must maintain an resident record consistent with the following requirements:¶

(a) General Information, Retention, and Release:¶

(A) An easily accessible summary sheet that includes, but is not limited to, the resident's name and pronouns, previous address, date of admission to the program, gender identity, biological sex, date of birth, marital status, legal status, religious preference, health provider information, mental health diagnoses, medical health diagnosis, medication allergies, food allergies, information specifying whether advance mental health and health directives and burial plan have been executed, the name of residents to contact in case of emergency. ¶

(B) The names, addresses, and telephone numbers of the resident's representative, legal guardian or conservator, parents, next of kin, or other significant persons including, but not limited to; physicians or other medical practitioners; dentist; case manager or therapist; day program, school, or employer; and any governmental or other agency representatives providing services to the resident;¶

(C) Copies of legal documents such as guardianships, power of attorney, advance mental health and medical health directives, PSRB requirements, burial plans, if applicable;¶

(D) Resident records must be immediately available to the Authority upon request as well as available to the resident or the resident's representative;¶

(E) Original resident records must be kept for a period of three years after discharge or from when an resident no

longer resides in the AFH;¶

(F) Resident records must include copies of release authorizations signed by the resident for the CMHP serving the resident, medication prescribers and any other release approved by the resident. Release authorizations must be dated, signed by the resident, and include initials authorizing the disclosure of protected information and indicate how long the authorization is to be in effect.¶

(G) All resident records must be kept confidential in compliance with applicable law and must be stored in a secure location which prohibits access by residents, guests, or other visitors in the home. In all other matters pertaining to confidential records and release of information, providers must comply with ORS 179.505, ORS 192.566, and ORS 441.114.¶

(b) Medical Information:¶

(A) History of physical, emotional, and medical problems, accidents, illnesses or mental status that may be pertinent to current care;¶

(B) Current orders for medications, treatments, therapies, use of restraints, special diets, dietary supplements, and any known food or medication allergies;¶

(C) Completed medication administration records for the last 12 months or from the date of admission, whichever is less;¶

(D) Name and claim number of medical insurance and any pertinent medical information such as hospitalizations, accidents, immunization records including previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of any resident.¶

(E) Documentation of current prescriber order for self-administration of medication, if applicable.¶

(F) Documentation the resident has been trained for self-administering of prescribed medication or treatment, who provided the training and when it was provided or documentation that the prescriber has determined that the training for the resident is unnecessary, if applicable;¶

(G) A description of how the resident manages his or her own medication regimen, or how the provider supports the resident's medication management, and how the medications will be stored in an area that is inaccessible to others and locked when not on the resident's person;¶

(H) Documentation of self-administration retraining when there is a change in dosage, medication, and time of delivery or documentation that the prescriber has determined that the training continues to be unnecessary; and¶

(I) The Residential Care plan must include a list of medications that can be self-administered by the resident and what services and supports the provider is required to provide to support the self-administration.¶

(c) Individual account record:¶

(A) Resident's income sources;¶

(B) The resident or the resident's representative must agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy must be given to the individual, the individual's representative, and the original in the resident's resident record;¶

(C) Resident's record of discretionary funds including detailed receipts of all deposits and expenditures.¶

(d) If an individual maintains custody and control of his or her discretionary funds, then no accounting record is required;¶

(e) If a designee of the AFH maintains custody and control of an resident's discretionary fund, the provider and resident must have a written agreement describing where funds will be maintained and how funds will be distributed. The agreement will include the resident's right nullify the agreement at any time. The provider will maintain a signed and dated account and balance sheet that will accurately document the current balance and distribution of funds with initials indicating what staff distributed the funds and a signature of the resident receiving the funds.¶

(f) The provider must maintain a copy of the written house rules with documentation the provider discussed the house rules with the resident;¶

(g) Written incident reports of any unusual incidents relating to the resident including but not limited to resident care needs, safety concerns, conflicts with staff, or significant changes in the AFH environment. The incident report must include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the resident. In compliance with HIPAA rules, only the resident's name may be used in the incident report. Separate reports must be written for each resident involved in an incident. A copy of the incident report must be submitted to the CMHP within five working days of the incident. The original must be placed in the resident's record;¶

(h) Any other information or correspondence pertaining to the resident;¶

(i) The provider or staff must document all services performed for the resident in the resident's record, including all services for which Medicaid payment is being requested. Documentation must be compliant with OAR 410-120-1360, 410-172-0620 and 410-173-0045, and must include the service performed, the frequency the service was provided, the length of time each service is performed, and be initialed by the caregiver providing the

service.

(j) General progress notes must be documented at least weekly and must be documented immediately as significant events or changes in behavior are identified. All entries must be signed and dated by the author.

(k) The provider must explain and document in the resident's file that a copy of the Residents' Bill of Rights was given to each resident at admission.

(17) The licensee must ensure qualified staff are available to provide direct services to residents to assure resident safety and resident's attain or maintain the highest practical physical, mental and psychosocial well-being of each resident as determined by the resident assessments and person-centered service plans and considering the number, acuity and diagnoses of the resident population.

(18) The provider, resident manager and all substitute caregivers must provide care, services, and supports necessary to ensure the health, safety, and quality of life for each resident including activities of daily living, instrumental activities of daily living, services, and skills training.

(19) The provider must:

(a) Prominently post the State license and Abuse and Complaint poster where it can be seen by residents;

(b) Cooperate with Division personnel, Oregon Department of Human Services (ODHS), or their designee in complaint investigation procedures, abuse investigations, and protective services, planning for resident care, application procedures, and other necessary activities, and allow access of Division and ODHS personnel, or their designee to the AFH, its residents, and all records;

(c) Document all resident complaints, written or verbal and maintain a record of the complaint in both facility records and the resident's personal records. The provider must document the date and time of the complaint, how they responded, how the complaint was resolved and whether the complaint was filed with another agency. The Provider may not retaliate in any manner when a complaint is filed.

(d) Provide care and services, as appropriate to the age and condition of the resident and as identified on the RCP. The provider must ensure that physicians' orders and those of other medical professionals are followed and that the resident's physicians and other medical professionals are informed of changes in health status or if the resident refuses care. Additional staff may be required to safely evacuate the residents and all occupants from the AFH;

(e) Make available at least six hours of activities each week which are of interest to the residents, not including television or movies.

(f) Be directly involved with residents on a daily basis.

(g) Document their efforts to assist each resident to engage in activities of social, religious and community groups.

(h) Develop House Rules:

(A) The provider must develop reasonable written house rules that will be included in or attached to the residency agreement. House rules will address guidelines for visitors, the use of cannabis and tobacco, and, mealtimes; guidelines for sharing the community telephones and kitchen appliances. No house rules shall restrict resident consumption of alcohol;

(B) The provider must discuss house rules with the resident and families at the time of arrival, and be posted in a conspicuous place in the facility.

(C) The provider must maintain written documentation in the resident record that the provider discussed the house rules with the resident along with a copy of the house rules;

(D) House rules are subject to review and approval by the Division and must not violate resident's rights as stated in ORS 430.210 and ORS 443.739; and

(E) House rules must not restrict or limit the resident rights under OAR 309-040-0410(2).

(i) Ensure a qualified caregiver (the provider, a resident manager or a substitute caregiver) is present in the home at all times residents are present;

(j) Notify the CMHP of the name of the substitute caregiver for the provider or resident manager for absences greater than 72 consecutive hours;

(k) Allow and encourage residents to exercise all civil and human rights accorded to other citizens;

(l) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of residents;

(m) Provide care and services as agreed to in the RCP;

(n) Keep information related to residents confidential as required under ORS 179.050;

(o) Ensure that the number of residents requiring nursing care does not exceed the provider's capability as determined by the Division or CMHP;

(p) Not admit residents who are clients of Aging and People with Disabilities without the express permission of the Division or its designee;

(q) Exercise reasonable precautions against any conditions that threatens the health, safety, or welfare of residents;

(r) Immediately notify the appropriate RCP Team members (in particular the CMHP representative and family or guardian) if:

(A) The resident has a significant change in medical status;

(B) The resident has an unexplained or unanticipated absence from the AFH;

(C) The provider becomes aware of alleged or actual abuse of the resident;

(D) The resident has a major behavioral incident, accident, illness, hospitalization;

(E) The resident contacts or is contacted by the police; or

(F) The resident dies, and follow-up with an incident report.

(20) The provider must write an incident report for any unusual incident and forward a copy of the incident report to the CMHP within five working days of the incident. Any incident that is the result of, or suspected of being abuse, must be reported to the Office of Training, Investigations, and Safety within 24 hours of occurrence.

(21) The provider must send critical incident reports to the Division within 48 hours of the incident occurring.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0393

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifications to IBL requirements and process.

CHANGES TO RULE:

309-040-0393

### Individually-Based Limitations ¶

~~This rule becomes effective on July 1, 2016, and enforceable according to OAR 309-040-0315(7).¶~~

~~(1) When the home-like~~ (1) When the provider cannot meet the HCBS qualities described below ~~created~~ due to a threat to the health and safety of an individual resident or others, ~~at~~ the provider may seek to apply an individually-based limitation through the process described in this rule. A provider ~~may~~ must not otherwise limit the following ~~home-like qualities without a valid individually-based limitation~~ HCBS qualities: ¶

- (a) The freedom and support to access food at any time; ¶
- (b) Have visitors of the individual resident's choosing at any time; ¶
- (c) Have a unit entrance door that is lockable by the individual resident with only appropriate program staff having access; ¶
- (d) Choose a roommate when sharing a unit; ¶
- (e) Furnish and decorate the individual resident's unit as agreed to in the Residency Agreement; ¶
- (f) The freedom and support to control the individual resident's schedule and activities; and ¶
- (g) Privacy in the individual's unit. ¶

~~(2) Minimum Requirements for Applying Individually-Based Limitation: A provider may only apply an individually-based limitation if:~~ ¶

- (a) ~~The quality threatens the health or safety of the individual or others;~~ ¶
- (b) ~~The individually-based limitation is supported by a specific assessed need;~~ ¶
- (d) ~~The individual consents;~~ resident's unit. ¶
- (e) 2 The limitation is directly proportionate to the specific assessed need; and ¶
- (f) ~~The individually-based limitation will not cause harm to the individual.~~ ¶

~~(3) The provider shall~~ provider must demonstrate and document ~~that~~ the individually-based limitation meets the requirements of section (2) of this rule and that the conditions described below exist in the person-centered service plan and the Division-approved consent form. The provider ~~shall~~ must submit and sign a ~~provider-created form that includes~~ the consent form with the following: ¶

- (a) The specific and individualized assessed need justifying the individually-based limitation; ¶
- (b) The positive interventions and supports used prior to consideration or imposition of any individually-based limitation; ¶
- (c) Documentation ~~that~~ the provider or other entities have ~~tried~~ considered or evaluated the effectiveness of other less intrusive methods; ~~but did not work;~~ ¶
- (d) A clear description of the limitation that is directly proportionate to the specific assessed need; ¶
- (e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation; ¶
- (f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary; ¶
- (g) ~~The informed consent of the individual. The limitation must be reviewed at least annually;~~ ¶
- (g) The informed consent of the resident or the resident's legal representative, including any discrepancy between the wishes of the individual resident and the consent of the legal representative, and that the resident has been notified they may request a review of the limitation or withdraw consent at any time; and ¶
- (h) An assurance ~~that~~ the interventions and support do not cause harm to the individual resident. ¶

~~(43) The provider shall~~ must: ¶

- (a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in section (3) of this rule. The form ~~shall~~ must be signed by the individual. ¶
- (b) ~~Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation~~ resident or the resident's legal representative if applicable. The form must be available to the resident or the resident's legal representative to access at any time; and ¶
- (e) b Request review of the individually-based limitation by the person-centered service plan coordinator when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed, ~~but no less than annually.~~ ¶

~~(54) The qualities and obligations described in sections (1)(b)-(g) do not apply to an individual resident receiving~~



crisis-respite services, and a provider is not required to seek an individually-based limitation for such an ~~individual~~ resident to comply with these rules.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

RULE SUMMARY: Adds numerous resident protections including prohibition on asking for application fees or non-refundable deposits, limitations for periods where residents are responsible for payment, and requirements to include policy and procedures for resident requests for specific foods for meal planning and snacks purchased under the room and board agreement for the resident.

CHANGES TO RULE:

309-040-0394

Residency Agreement ¶

~~This rule become effective July 1, 2016, and is enforceable as described in OAR 309-040-0315(7).¶~~

(1) The provider ~~shall~~must enter into a written residency agreement with each ~~individual or the individual's representative residing at the AFH~~resident or the resident's representative consistent with the following:¶

(a) The written residency agreement ~~shall~~must be signed by the provider and the ~~individual or the individual resident or the resident's representative~~ prior to or at the time of admission and anytime the agreement is updated;¶

(b) The provider ~~shall~~must provide a copy of the signed agreement to the ~~individual or the individual resident or the resident's representative~~ and shallmust retain the original signed agreement within the ~~individual's individual resident's~~ record;¶

(c) The provider ~~shall~~must give written notice to an ~~individual and the individual resident and the resident's representative~~ at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and¶

(d) The provider ~~shall~~must update residency agreements at least annually and ~~also when~~anytime social security rates change or an ~~individual resident's~~ finances change such that the amount paid for room and board changes; and¶

(e) The provider must not charge or ask for application fees or nonrefundable deposits and must not solicit, accept or receive money or property from a resident other than the amount agreed to for services, including for OHP clients as described in OAR 410-120-1280(1).¶

(2) The residency agreement ~~shall~~must include, but is not limited to, the following:¶

(a) The room and board rate describing the estimated public and private pay portions of the rate:¶

(A) Where an ~~individual resident's~~ social security or other funding is not active at the time of admission to the program, the program shallmust prepare the room and board agreement based upon the estimated benefit to be received by the ~~individual resident;~~ and¶

(B) If, when funding is later activated, actual income of the ~~individual resident~~ varies from the estimated income noted on the residency agreement, the agreement shallmust be updated and re-signed by all the applicable parties.¶

(b) Services and supports to be provided ~~in exchange for payment of the room and board rate and the rate to be changed. For residents receiving Medicaid, the Residency Agreement may state the rate will be "as authorized by the Division";~~¶

(c) Conditions under which the provider may change the rates;¶

(d) The provider's refund policy in instances of an ~~individual resident's~~ hospitalization, temporary absence, death, transfer to a nursing facility, other care setting or other care facility, and voluntary or involuntary move from the home;¶

(e) A statement indicating that the individualIf a resident dies or leaves an adult foster home for medical reasons and indicates in writing the intent to not return, the provider must not charge the resident for more than 15 days or the time specified in the provider contract, whichever is less, after the resident has left the adult foster home. ¶

(f) The provider has an affirmative duty to take reasonable actions to reduce the charges by accepting a new resident. ¶

(g) However, if a resident dies or leaves an adult foster home due to substantiated allegations of neglect or abuse by the provider or due to observable conditions of imminent danger to life, health or safety, the provider may not charge the resident beyond the resident's last day in the home. ¶

(h) If a resident eligible for Medicaid services dies and has no surviving spouse, the provider must forward all personal incidental funds (PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of an individual. (See Limits on Estate Claims, OAR 461-135-0835)¶

(i) The provider must refund any advance payments within 30 days after the resident dies or leaves the adult

foster home.¶

~~(j) A statement indicating that the resident is not liable for damages considered normal wear and tear;¶~~

~~(fk) The provider's policies on voluntary moves and whether or not the provider requires written notification of a non-Medicaid individual resident's intent to not return;¶~~

~~(gl) The potential reason provider's policies for involuntary termination transfer or discharge of residency in compliance with this rule and individual OAR 309-040-0395(5) and resident's rights regarding the eviction and appeal process as outlined in OAR 309-040-0410;¶~~

~~(hm) Any policies the provider may have on the use of alcohol, cannabis, and illegal drugs of abuse. No policy shall prohibit resident consumption of alcohol;¶~~

~~(in) Smoking policies in compliance with the Tobacco Freedom Policy established by the Division;¶~~

~~(jo) Policy addressing pet and service animals. The provider may not restrict animals that provide assistance or perform tasks for the benefit of an individual resident with a disability. Such animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.¶~~

~~(kp) Policy regarding the presence and use of legal medical and recreational marijuana at the home; and procedures for resident requests for specific foods for meal planning and snacks purchased under the room and board agreement for the resident. ¶~~

~~(lg) Schedule of meal-times. The provider may not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal consistent with OAR 411-050-0645);¶~~

~~(mr) Policy regarding refunds for individual residents eligible for Medicaid services, including prorating partial months, and if the room and board is refundable;¶~~

~~(ns) Any house rules or social covenants required by the provider that may be included in the agreement or as an addendum.; The provider must not include any illegal or unenforceable provision in a contract with a resident and may not ask or require a resident to waive any of the Resident's Rights;¶~~

~~(ot) Statement informing the individual resident of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), and OAR 309-040-0410(2), which may not be limited without the informed, written consent of the individual resident and include the right to:¶~~

~~(A) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws; residency agreement. ¶~~

~~(B) The freedom and support to access food at any time;¶~~

~~(C) To have visitors of the individual resident's choosing at any time;¶~~

~~(D) Have a lockable door in the individual resident's unit that may be locked by the individual resident;¶~~

~~(E) Choose a roommate when sharing a unit;¶~~

~~(F) Furnish and decorate the individual resident's unit according to the Residency Agreement;¶~~

~~(G) The freedom and support to control the individual resident's schedule and activities; and¶~~

~~(H) Have privacy in the individual's unit. resident's unit.¶~~

~~(u) Include a clear and precise statement of any limitation to the implementation of advance directives on the basis of conscience. This rule does not apply to medical professional or hospice orders for administration of medications. The statement must include: ¶~~

~~(i) Description of conscientious objections as they apply to all occupants of the adult foster home; ¶~~

~~(ii) The legal authority permitting such objections under Oregon Revised Statute 127.505 through 127.660; and ¶~~

~~(iii) Description of the range of medical conditions or procedures affected by the conscientious objection. ¶~~

~~(3) The provider may not propose or enter into a residency agreement that:¶~~

~~(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits, including for OHP clients as described in OAR 410-120-1280(1);¶~~

~~(b) Includes any illegal or unenforceable provision or asks or requires the individual resident to waive any of the individual resident's rights or the licensee provider's liability for negligence; or¶~~

~~(c) Conflicts with individual resident rights or these rules.~~

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0395

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Substantial resident protections and process clarifications added. Requirement added for programs to seek approval of HSD prior to transferring/discharging residents.

CHANGES TO RULE:

309-040-0395

Standards for Admission, Transfers, Respite, Discharges, and Closures ¶¶

(1) Each ~~individual adult~~ referred for placement in an AFH may select and choose from available service settings.¶¶

(2) A provider may only admit an ~~individual resident~~ with a referral from, or the prior written approval of the CMHP or the Division. At the time of the referral, a provider ~~shall be given~~ must obtain complete information about the case history of the ~~individual resident~~ as it relates to behavior, skill level, medical ~~status~~ needs, or other relevant information. The provider may deny admission of any ~~individual person~~ if the provider believes the ~~individual person~~ cannot be managed effectively in the AFH, or for any other reason not specifically prohibited by this rule. AFHs may not be used as a site for foster care for children, adults from other agencies, or any type of shelter or day care without the written approval of the CMHP or the Division.¶¶

(3) ~~Transfers:¶¶~~

~~(a) An individual may not be transferred by a provider to~~ the provider must screen a prospective resident before admitting the resident.¶¶

~~(a) The screening must include but is not limited to diagnoses, medications, personal care needs, individually based limitations, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences.¶¶~~

~~(b) The screening process must include interviews with the resident and the AFH or moved out of the AFH without 30 days advance written notice to the individual, the individual's representative, guardian, or co resident's representative, as applicable.¶¶~~

~~(c) Verify the individual's resources including potential benefit eligibility and coverage as described in OAR 410-120-1280(2).¶¶~~

~~(d) A copy of the screening must be given to the resident and the resident's legal representative, as applicable.¶¶~~

~~(4) The provider must provide a copy of the house policies and the provider's residency agreement to the resident and the resident's representative, as applicable, at the time of the screening.¶¶~~

~~(5) Each provider's discharge and transfer policy and procedure must be described in each resident's Residential Agreement and include the right to at least a written 30 day-notice of discharge or transfer, and the CMHP;¶¶~~

~~(b) The written notice shall state unless discharged under the circumstances described in 309-040-0395(14), right to remedy, and right to appeal. The provider is required to give the resident a written notice of discharge or transfer, that clearly documents the provider reviewed the reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070 and the individual's right to a hearing as provided in ORS 443.738(11)(b); discharge or transfer with the resident and the resident's rights to request an informal conference and administrative hearing. If the resident's location is unknown, the notice may be given to a legal representative of the resident. The provider must make efforts to prevent unnecessary discharges and transfers by making reasonable accommodations within the program setting.¶¶~~

~~(c) Except wThe resident or the re-undue delay might jeopardize the health, safety, or well-being of the individual or other individuals, a provider shall only transfer an individual's legal representative, as applicable, may end the residency in a facility upon providing at least 30-days' written notice. Upon mutual agreement between the provider and the resident or legal representative, less than 30 days' notice may be provided.¶¶~~

~~(a) The provider must promptly notify the CMHP or Division if a resident gives notice or plans to leave the AFH or if a resident abruptly leaves:¶¶~~

~~(b) The provider must immediately document plans to move and voluntary moves in the resident's record; and¶¶~~

~~(c) The provider remains responsible for the provision of personal care, services, and supports until the resident has moved from the home including the provision of one-to-one supervision if necessary to ensure the safety of all residents.¶¶~~

~~(7) Residents may only be involuntarily moved from the AFH for the following reasons:¶¶~~

~~(Aa) BehaviThe resident is assessed by a Licensed Medical Professional (LMP) or othat poses a significant danger to the individual or others;¶¶~~

~~(B) Failure to make payment for career qualified health professional to require services such as continuous nursing care or extended hospitalization that are not available in the local community or cannot be provided in the current placement as determined by the LMP;¶¶~~

~~(Cb) The AFH has had its license revoked, not renewed, or voluntarily surrendered; or¶¶~~

- ~~(D) Resident has engaged in a pattern of behaviors or activities that:~~
- ~~(A) Repeatedly and substantially interfere with the rights, health, or safety of the resident or other individual's care needs exceed the ability of the provider.~~
  - ~~(d) Individuals who object to the transfer shall be given the opportunity for a hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, residing in the AFH; and~~
  - ~~(B) Presents an imminent threat to the health or safety of the resident or other individuals; and~~
  - ~~(C) The pattern of behaviors have been documented in individual and facility records and demonstrate the interventions and supports that have been attempted or considered to address the behaviors, including treatment goals, safety plans and progress notes.~~
  - ~~(c) The resident cannot safely evacuate the setting in accordance with the program's evacuation plan after efforts described in OAR 309-040-00370(5)(b) have been taken;~~
  - ~~(d) For private paying individuals, failure of the resident or resident's representative to make payment for care or failure to make payment for room and board as described in the resident's residential agreement. For Medicaid recipients, failure to make payment for room and board as described in the resident's residential agreement;~~
  - ~~(e) The home was not notified before the individual's admission or learns following the individual's admission that the individual is on probation, parole or post-prison supervision after being convicted of a sex crime defined in ORS 163A.005;~~
  - ~~(f) The provider's Medicaid Provider Enrollment Agreement is terminated; or~~
  - ~~(g) The family member, and a CMHP staff member's license was revoked, not renewed, suspended, or voluntarily surrendered, or the home was voluntarily closed.~~
- ~~(48) The providers may not exceed the licensed capacity of the AFH. However, respite care of no longer than two weeks duration may be provided an individual if the addition of the respite individual does not cause the total number of residents to exceed five. Thus, a provider may exceed the licensed number must make reasonable and good faith efforts to prevent unnecessary transfers or discharges by making reasonable accommodation with the AFH.~~
- ~~(9) Prior to initiating an involuntary transfer process, the AFH must consider the following:~~
- ~~(a) The availability of alternatives to transfer;~~
  - ~~(b) The resident's ties to family and community;~~
  - ~~(c) The relationships the resident has developed with other residents and facility staff;~~
  - ~~(d) The duration of the resident's stay at the facility;~~
  - ~~(e) The mental health needs of the resident and the availability of mental health services;~~
  - ~~(f) The availability of a receiving facility that would accept the resident and provide service consistent with the resident's needs;~~
  - ~~(g) The consistency of the receiving facility's services with the activities and routine with which the resident is familiar, and the receiving facility's ability to provide the resident with similar access to personal items significant to the resident and enjoyed by the resident at the transferring facility;~~
  - ~~(h) The probability that the transfer would result in improved or worsened mental, physical, or social functioning, or in reduced dependency of the resident;~~
  - ~~(i) The type and amount of preparation for the move, including but not limited to;~~
  - ~~(j) Solicitation of the resident's friends and/or family in preparing the resident for the move; and~~
  - ~~(k) Visitation by the resident to (prior to actual transfer) of residents by one respite individual for two weeks familiarity of the resident with the place to which the resident is to be transferred; and On-site consultation or new mental health assessment by an individual with specific expertise in mental health services if the basis for less if approved by the CMHP or considering transfer is behavioral.~~
- ~~(10) An individual must not be involuntarily transferred to another room in the AFH or moved out of the AFH without the approval of the Division; and if the total number of residents a minimum of 30 days advance written notice to the individual, the individual's representative, as applicable, and the CMHP, unless discharged under the circumstances does not exceed five.~~
- ~~(5) Discharge:~~
- ~~(a) A provider may only discharge an individual for the reasons stated in section (3) of this rule. The provider shall give at least 30 days written notice to an individual and the Division described in 309-040-0395(14).~~
- ~~(11) The provider must submit a completed notice of involuntary transfer or discharge request form to the Division in writing using the Division approved form prior to issuing a notice of involuntary transfer or discharge to a resident or representative.~~
- ~~(a) The provider must offer the resident the right to remedy when the reason for involuntary transfer or discharge is not due to the closure of the facility, long-term incarceration, or need to transfer as identified by the LMP. The right to remedy must:~~
  - ~~(A) Be developed in cooperation with the resident, their representative if applicable, the CMHP, and the~~

Division:¶

(B) Identify reasonable behavioral goals that measurable and consistent with standard behavioral treatment practices, and must ensure protection of the individual's rights:¶

(C) Establish a specific period fore termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or others;¶

(b) The provider shall promptly notify the CMHP or Division if an individual gives notice or plans to leave the AFH or if an individual abruptly leaves.¶

(6) Providers shall notify the Division prior to a voluntary closure of an AFH and give individuals, families, and the CMHP 30 days' written notice, except in circumstances where undue delay might the resident to demonstrate compliance with the agreed upon remedy and cannot be used to support future notices of involuntary transfer or discharge; and¶

(D) Document the provider's reasonable efforts to prevent unnecessary transfer or discharge including, but not limited to, clinical consultations, amending the individual's residential care plan, requesting updated assessments for changes in behaviors, and developing safety plans.¶

(b) The provider must make reasonable efforts to establish a reasonable end of residency date in consideration of both the program's needs, and the resident's needs to find alternative living arrangements.¶

(c) The Division must review the cause for notice, interventions and supports attempted to address the cause for notice, and provide a written response of approval or denial to the provider within two business days of receiving the completed form.¶

(d) Upon receipt of written approval from the Division, the provider must consult with the resident or their representative and present a '30-day' or less than 30-day' notice of involuntary transfer or discharge and the ODH/OHA form MSC 0443, Administrative Hearing Request¶

(12) The provider must provide at least 30 days' written notice to the resident and their representative, if applicable, specifying the cause(s) and include steps the individual can take to remedy the cause.¶

(13) The provider may issue a less than 30-day' notice of involuntary transfer or discharge to the resident and their representative, if applicable, once approved by the Division, if a resident has intentionally injured another resident or staff, has caused intentional significant destruction of property, or is engaged in behaviors that immediately jeopardize the health, and safety, or well-being of an individual, provider, or caregiver. If a provider has more than one AFH, an individual cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CMHP.¶

(7) Upon transfer or discharge from the facility, program staff must offer two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication to the individual. If the individual accepts, program staff must:¶

(a) Provide the individual with an instruction card on the use of short-acting, non-injectable, opioid antagonist medication; and¶

(b) Document distribution of the short-acting, non-injectable, opioid antagonist medication in the individual's record if others that cannot be mitigated with a safety plan. The provider will not give a less then 30-day' notice of involuntary transfer or discharge to a resident receiving treatment or services for the purpose of stabilization, in a hospital, at a respite location, or temporarily placed in police custody.¶

(14) Notifications of involuntary transfer or discharge must:¶

(a) Be delivered to the resident in person;¶

(b) Be given to the resident's legal representative (guardian) as applicable; and¶

(c) Specify the individual's right to an administrative hearing in accordance with ORS 443.738(11)(c).¶

(15) The provider must hold a pre transfer or discharge meeting with the individual and their representative, if applicable, and with the individual's permission other individuals with an interest in the individual's circumstances. The purpose of the meeting is to:¶

(a) Provide copies of the notice;¶

(b) Explain the cause for the notice and the right to remedy;¶

(c) Explain the resident's right to request an administrative hearing regarding the notice; and¶

(d) Plan any arrangements necessary to facilitate the transfer or move.¶

(16) The provider must ensure the resident has supports, including interpreter or translation services, to understand the involuntary transfer or discharge notice and the resident's rights to an administrative hearing regarding the notice. ¶

(17) Residents who object to the involuntary transfer or discharge must be given the opportunity for a hearing as provided in ORS 443.738(11)(b) and 441.605(4). Participants may include the resident, and at the resident's request, the provider, a family member, and a CMHP staff member. ¶

(18) Residents must not be involuntarily transferred or discharged while in the process of an appeal or after the program has knowledge of any indication of a resident's desire to appeal the notice of involuntary transfer or

discharge. ¶

(19) The Division determines if the cause for involuntary transfer or discharge is sufficient according to the licensing rules and may take action on a license if the resident is wrongfully discharged. ¶

(20) Upon transfer or discharge from the facility, program staff must offer two doses of an FDA-approved short-acting, non-injectable, opioid antagonist medication to the individual. If the individual accepts, program staff must:¶

(a) Provide the individual with an instruction card on the use of short-acting, non-injectable, opioid antagonist medication; and¶

(b) Document distribution of the short-acting, non-injectable, opioid antagonist medication in the individual's record.¶

(21) At the time of involuntary transfer or discharge, the resident must be given a statement of account, any balance of funds held by the provider, and all property held in trust or custody by the provider.¶

(a) The provider may withhold funds to cover pending charges. Within 30 days after the resident is transferred or discharged, or as soon as pending charges are confirmed, the provider must provide the resident with a final financial statement along with any funds due:¶

(b) If a resident's property has been left at the AFH for longer than seven days after transfer or discharge of the resident, the provider must make a reasonable attempt to contact the resident or their representative, if applicable. The provider must allow the resident or their representative, if applicable, a minimum of 15 days to make arrangements concerning the property; and ¶

(c) If the provider determines the resident has abandoned the property, the provider may then dispose of the property. If the property is sold, proceeds of the sale, minus the amount of any expenses incurred and any amounts owed the provider by or on behalf of the resident, must be forwarded to the resident or their representative, as applicable.¶

(22) Providers must provide written notification to the Division within 10 calendar days after receipt of any notice of default, or any notice of potential default (commonly referred to as foreclosure), with respect to a real estate contract, trust deed, mortgage, or other security interest affecting any property occupied or used by the provider.¶

(23) The provider must provide a copy of the notice of default or warning of potential default to the Division.¶

(24) The provider must provide written updates to the Division at least every 30 days until the default or warning of potential default has been resolved and no additional defaults or potential defaults have been declared and no additional warnings have been issued. Written updates must include:¶

(a) The current status on what action has been or is about to be taken by the provider with respect to the notice received:¶

(b) The action demanded or threatened by the holder of the security interest; and¶

(c) Any other information reasonably requested by the Division.¶

(25) The provider must provide written notification within 24 hours to the Division upon final resolution of the matters leading up to or encompassed by the notice of default or the notice warning of potential default.¶

(26) If the subject default property is licensed as an AFH, the provider must provide written notification of the following within 24 hours to the Division, and all the residents and the residents' representatives, if applicable, regarding:¶

(a) The filing of any litigation regarding such security interest, including the filing of a bankruptcy petition by or against the provider or an entity owning any property occupied or used by the provider:¶

(b) The entry of any judgment with respect to such litigation:¶

(c) The passing of the date 40 days before any sale scheduled pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the provider's property or property occupied or used by the provider; and¶

(d) The sale, pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the provider's property or property occupied or used by the provider.¶

(27) Providers must notify the Division prior to the voluntary closure, proposed sale, or transfer of ownership of an AFH and give residents, families, and the CMHP 30 days' written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of a resident, provider, or caregiver. If a provider has more than one AFH, a resident cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from residents or their guardians, and the CMHP.¶

(28) Provider's must surrender the physical license to operate their adult foster home to the Division at the time of closure.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0400

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifications around agency access to AFHs.

CHANGES TO RULE:

309-040-0400

Inspections ¶

- (1) The Division ~~shall~~must conduct an inspection of an AFH:¶
  - (a) Prior to issuance of a license;¶
  - (b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of ~~individual residents~~; or¶
  - (c) Anytime the Division has probable cause to believe that an AFH has violated a regulation or provision of these rules or is operating without a license.¶
- (2) The Division or CMHP may conduct inspections of an AFH:¶
  - (a) Anytime such inspections are authorized by these rules and any other time the Division or CMHP considers it necessary to determine if an AFH is in compliance with these rules or with conditions placed upon the license;¶
  - (b) To determine if cited deficiencies have been corrected; and¶
  - (c) For the purpose of monitoring of the ~~individual residents~~' care.¶
- (3) State or local fire inspectors ~~shall~~must be permitted access to enter and inspect the AFH regarding fire safety upon request of the Division or CMHP.¶
- (4) The Division ~~and CMHP shall~~, the CMHP, the Oregon Department of Human Services (ODHS), and the Centers for Medicare and Medicaid Services (CMS) have authority and must have full access to examine and copy AFH records and accounts, including ~~individual resident~~ records and accounts, and to inspect the physical premises, including the buildings, grounds, equipment, and any vehicles.¶
- (5) The Division ~~or~~, CMHP, ODHS, and CMS staff ~~shall~~must be permitted to interview the provider, resident manager, caregiver, and ~~individual residents~~. Interviews are confidential conducted in private and are confidential except as considered public record under ORS 430.763.¶
- (6) Providers ~~shall~~must authorize resident managers and substitute caregivers to permit entrance by the Division ~~or~~, CMHP, ODHS, and CMS staff for the purpose of inspection and investigation.¶
- (7) The Division ~~or~~, CMHP, ODHS, and CMS staff ~~shall~~may conduct inspections with or without advance notice to the provider, staff, or an ~~individual resident~~ of the AFH. ~~The Division or CMHP may not give a~~ Advanced notice of any inspection ~~if will not be provided if such~~ notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.¶
- (8) If the Division, CMHP, ODHS, or CMHPS staff is not permitted access or inspection, a search warrant may be obtained.¶
- (9) The inspector ~~shall~~must respect the private possessions and living area of ~~individual residents~~, providers, and caregivers while conducting an inspection.¶
- (10) Completed reports on inspections, except for confidential information, ~~shall~~must be available to the public upon written request to the Division or CMHP during business hours.¶
- (11) For ~~individual residents~~ receiving services authorized or funded by the Division, the Division ~~shall~~, ODHS or their designee must investigate allegations of abuse as defined in ORS 430.735 to 430.765.¶
- (12) When abuse is alleged or death of an ~~individual resident~~ has occurred and a law enforcement agency or the Division ~~or its~~, OTIS, ODHS or their designee has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Division. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator, or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:¶
  - (a) If there is reasonable cause to believe that abuse has occurred; or¶
  - (b) If the alleged victim is in danger or in need of immediate protective services; or¶
  - (c) If there is reason to believe that a crime has been committed; or¶
  - (d) What, if any, immediate personnel actions must be taken.¶
- (13) The Division ~~or its~~, ODHS or their designee ~~shall~~or must complete an abuse investigation and protective services report in accordance with OAR 943-045-0250 through 037000.¶
- (14) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without Division approval to determine if any other personnel actions are necessary.¶



(15) Upon completion of the investigation report according to ~~OAR 943-045-0320~~, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate ~~as described in (13) of this rule~~, notification is provided to the designated provider. ¶

(a) ~~The provider must implement the reports recommended actions within the deadlines listed to prevent further abuse as stated in the report and notify the Division of completion.¶~~

(b) ~~In accordance with ORS 443.87, upon being notified of substantiated abuse of a resident by staff, the AFH licensee or designated provider. The must provider shall implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report written notice of the findings to:¶~~

(A) ~~The staff found to have committed abuse; ¶~~

(B) ~~Residents of the AFH; ¶~~

(C) ~~The residents' case managers; and ¶~~

(D) ~~The residents' legal representative.¶~~

(16) A provider may not retaliate against any person who reports in good faith suspected abuse or against the individual resident with respect to the report.¶

(17) In accordance with ORS 430.755 any provider who retaliates against any person because of a report of suspected abuse or neglect may be liable according to ~~430.755~~, in a private action to that person for actual damages and, in addition, a penalty in accordance with 443.775(10) notwithstanding any other remedy provided by law. The authority of the director to impose civil penalties and the factors to be considered shall must be in accordance with 443.790.¶

(18) In accordance with ~~OAR 943-045-0340 Adverse Action~~ RS 430.755, any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by a ~~community~~ facility, community program, or person involved in a report against the person making the report or against the adult with respect to whom the report was made because of the report and includes but is not limited to the following:¶

(a) Discharge or transfer from the AFH except for clinical reasons;¶

(b) Discharge from or termination of employment;¶

(c) Demotion or reduction in remuneration for services; or¶

(d) Restriction or prohibition of access to the ~~community~~ facility or its residents.¶

(19) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0405

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Verbiage changes.

CHANGES TO RULE:

309-040-0405

Procedures for Correction of Violations ¶¶

(1) At any time after receipt of a notice of violations or an inspection report, the ~~licensee~~provider or the Division may request a conference in writing. The conference ~~shall~~must be scheduled within ten days of a request by either party. The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the ~~licensee~~provider to assist the ~~licensee~~provider in complying with the requirements of the rules. The written request by a ~~licensee~~provider or the Division for a conference may not extend any previously established time limit for correction. ¶¶

(2) The ~~licensee shall~~provider must notify the Division of correction of violations in writing no later than the date specified in the notice of violation. ¶¶

(3) If, after inspection of the AFH, ~~if the Division determines that~~ the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more of the following actions: ¶¶

(a) Imposition of an administrative sanction that may include revocation, suspension, or refusal to renew a license as deemed appropriate by the Division; ¶¶

(b) Placement of conditions on the license as deemed appropriate by the Division; or ¶¶

(c) Filing of a criminal complaint. ¶¶

(4) If an ~~individual~~resident is in serious and immediate danger, the Division may institute one or more of the following actions: ¶¶

(a) If there is reliable evidence of abuse, neglect or exploitation, the license may be immediately suspended or revoked and arrangements made to move the ~~individual~~resident pursuant to OAR 309-040-0425. ¶¶

(b) The Division may order the removal of the ~~individual~~resident pursuant to OAR 309-040-0425; or ¶¶

(c) Placement of conditions on the license as deemed appropriate by the Division.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0410

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifications in resident rights. Added language addressing potentially unsafe visitors.

CHANGES TO RULE:

309-040-0410

Residents Bill of Rights, Complaints, and Grievances ¶

(1) Residents' Bill of Rights:¶

(a) The provider ~~shall~~must guarantee Residents' Bill of Rights as described in ORS 443.739 and help residents exercise them;¶

(b) The provider ~~shall~~must post the Residents' Bill of Rights in a location that is prominent and accessible to ~~individuals, individual~~individual residents, residents' representatives, parents, guardians, and advocates. The posted rights ~~shall~~must include the telephone numbers of the ~~office~~CMHP, Health Systems Division, and Disability Rights Oregon to call to report complaints;¶

(c) The provider ~~shall~~must give a copy of the Residents' Bill of Rights to each ~~individual, individual~~resident, residents' representatives, parents, guardians, and advocates along with a description of how to exercise these rights;¶

(d) Upon admission to the AFH:¶

(A) The provider ~~shall~~must explain the Residents' Bill of Rights to each ~~individual and to individual~~resident and to residents' representatives, parents, guardians, and advocates; and¶

(B) The provider ~~shall~~must document in the ~~individual~~resident's file that a copy of the Residents' Bill of Rights is given to each ~~individual~~resident and to the ~~individual~~residents' representatives, parents, guardians, and advocates.¶

(e) The Residents' Bill of Rights state that each resident has the right to:¶

(A) Be treated as an adult with respect and dignity;¶

(B) Be informed of all Resident Rights and all house policies;¶

(C) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote and be informed of all house rules;¶

(~~C~~D) Receive appropriate care and services and prompt medical care as needed. Be informed of the ~~individual~~resident's medical condition and the right to consent to or refuse treatment;¶

(~~D~~E) Adequate personal privacy and privacy to associate and communicate privately with any individual of choice, such as family members, friends, advocates, and legal, social service, and medical professionals; send and receive personal mail unopened; engage in telephone conversations; ~~and~~¶

(F) Have medical and personal information kept confidential;¶

(G) Complete privacy when receiving treatment or personal care;¶

(~~E~~H) Have access to and participate in activities of social, religious, and community groups;¶

(F) Be able to keep and use a reasonable amount of personal clothing and belongings and to have a reasonable amount of private, secure storage space;¶

(~~G~~J) Be free of discrimination in regard to race, color, national origin, ~~sex~~gender, religion, sexual orientation, or disability;¶

(K) Have religious freedom;¶

(~~H~~L) Manage financial affairs unless legally restricted ~~and~~ b¶

(M) Be free from financial exploitation. The provider may not charge or ask for application fees or nonrefundable deposits and may not solicit, accept, or receive money or property from an individual resident other than the amount agreed to for services;¶

(~~I~~N) A safe and secure environment;¶

(J) ~~Written notices prior to rate increases and evictions;~~¶

(~~K~~Q) A written agreement regarding services to be provided and agreed upon rates; and receive 30 days' written notice before any change in the rates;¶

(~~L~~P) Voice suggestions, complaints, or grievances without fear of retaliation;¶

(~~M~~Q) Freedom from training, treatment, chemical or physical restraints except as agreed to in writing in an ~~individual~~resident's RCP and be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;¶

(~~N~~R) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to residents in an age appropriate manner;¶

(~~O~~S) An opportunity to exercise choices including food selection, personal spending, friends, personal schedule,

leisure activities, and place of residence;¶

~~(PT) Freedom from punishment. Behavior intervention programs shall be approved in writing on the individual's RCP;¶~~

~~(QU) Freedom from abuse and neglect;¶~~

~~(RV) The opportunity to contribute to the maintenance and normal activities of the household;¶~~

~~(SW) Access and opportunity to interact with persons with or without disabilities;¶~~

~~(TX) The right not to be transferred or moved out of the AFH without 30 days' advance written notice and an opportunity for a hearing as described in ORS 443.738 and OAR 411-088-0080. A provider may transfer or discharge an individual only for medical reasons including a medical emergency described in ORS 443.738, or for the welfare of the individual or other residents, or for nonpayment; and ¶~~

~~(U) Utilize advance directives unless discharged under the circumstances described in 309-040-0395(14), and an opportunity for a hearing as described in ORS 443.738 and 441.605(4);¶~~

~~(Y) Be free of discrimination in regard to the executives. on an Advance dDirectives shall be explained to each individual upon admission. If the individual does not already have any advance directive or directives, he or she shall be given an opportunity to complete them. If any advance directives are completed by the individual, the provider shall document these direc, Physician Order for Life-Sustaining Treatment (POLST) or Do Not Resuscitate (DNR) orders and ;¶~~

~~(Z) Not be required to perform labor, except personal housekeeping duties in the individual's record. If the individual declines to file any advance directives, this declination shall be documented in the individual's record; without reasonable and lawful compensation as outlined in ORS 430.210.¶~~

~~(V2) As used in this section, the term "advance directive" has the meaning given under ORS 127.505 and includes the "Declaration for Mental Health Treatment" under ORS 127.700 through 127.737.¶~~

~~(2) Additional Rights for Individual The following HCBS Rights and Freedoms are also afforded to Residents:¶~~

~~(a) LTo live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule; ;¶~~

~~(b) HTo have visitors of the individual resident's choosing at any time and the freedom to visit with guests within the common areas of the program and the individual's sleeping room; resident's sleeping room, unless the visitor is deemed a threat to the health and safety of the other occupants in the AFH. If a visitor is deemed a threat to the health and safety of the other occupants in the home, an alternative visitation plan (e.g. visitation away from the AFH premises) must be crafted and must be supported by incident report(s);¶~~

~~(c) The freedom and support to control one's own schedule and activities including but not limited to accessing the community without restriction;¶~~

~~(d) Access to community resources including recreation, religious services, agency services, employment, and day programs, unless such access is legally restricted;¶~~

~~(e) Have a lockable door in the individual resident's bedroom that may be locked by the individual; resident;¶~~

~~(f) Choose a roommate when sharing a bedroom;¶~~

~~(g) Furnish and decorate the individual resident's bedroom according to the residency agreement;¶~~

~~(h) The freedom and support to control the individual's schedule and activities;¶~~

~~(i) Privacy in the individual's bedroom;¶~~

~~(j) Section (2) of these rules and its subsections are effective July 1, 2016, and enforceable as described in OAR 309-040-0315(7).¶~~

~~(3) The qualities and obligations described in section 3(b)(c)(d)(e)(h) of this rule do not apply to an individual receiving crisis respite services, and a provider need not seek an individually-based limitation for such an individual to comply with these rules. Privacy in the resident's bedroom;¶~~

~~(43) The provider shall must actively work to support and ensure each individual resident's rights described in this rule are not limited or infringed upon by the provider or an AFH caregiver, except where expressly allowed under these rules.¶~~

~~(54) Any person who believes these rules have been violated may file a complaint with the Division or CMHP. The Division or CMHP may investigate any complaint or grievance regarding the AFH.¶~~

~~(65) The Division or CMHP shall must furnish each AFH with a Complaint and Grievance Notice that the provider shall must post in a conspicuous prominent place stating the telephone number of the Division and the CMHP and the procedure for making complaints or grievances.¶~~

~~(76) A copy of all AFH complaints or grievances shall must be maintained by the Division. All complaints or grievances and any actions taken on the complaint or grievance, as a result, must :¶~~

~~(a) Be indexed by the name of the provider, shall; ;¶~~

~~(ab) Be placed into the public file at the Division. Information regarding the investigation of the complaint or grievance may not be filed in the public file until the investigation has been completed;¶~~

~~(bc) Protect the privacy of the complainant or grievant and the individual resident; and¶~~

~~(ed) Treat the names of the witnesses as confidential information.¶~~

~~(87)~~ The Division may suspend, revoke, and refuse to renew or impose conditions against the license of a provider who acquires substantiated complaints or grievances pertaining to the health, safety, or welfare of individual residents. ¶

~~(98)~~ The AFH provider, resident manager, or caregiver may not retaliate in any way against any individual resident after a complaint or grievance has been filed with the Division. Retaliation may include but is not limited to the following: ¶

~~(a)~~ Increasing ~~charges~~ or threatening to increase charges; ¶

~~(b)~~ Decreasing or threatening to decrease services, ~~rights, or privileges~~; ¶

~~(c)~~ ~~Threatening to increase charges or decrease services~~; ¶

~~(c)~~ Withholding or threatening to withhold, rights, or privileges; ¶

~~(d)~~ Taking or threatening to take any action to coerce or compel the individual resident to leave the AFH; or ¶

~~(e)~~ Abusing, harassing, or threatening to abuse or harass an individual resident in any manner. ¶

~~(109)~~ A complainant, grievant, witness, or caregiver of an AFH may not be subject to retaliation by a provider or ~~resident manager or substitute caregiver~~ any employee of an AFH for making a report or being interviewed about a complaint or being a witness. Retaliation may include but is not limited to caregiver dismissal or harassment or restriction of access to either the AFH or an individual resident. ¶

~~(110)~~ The complainant has immunity from any civil or criminal liability with respect to the making or content of a complaint or grievance made in good faith. ¶

~~(121)~~ Any individual may inspect and receive a photocopy of the public complaint files, including protective services files as applicable, maintained by the Division upon written request subject to the Division's procedures, ORS 192.4310 through 192.505431, and photocopy charges for public record requests. Requests for complaint and protective services files may be made using the form and process online at <https://www.oregon.gov/oha/ERD/Pages/Records.aspx>.

Statutory/Other Authority: ORS 443.735

Statutes/Other Implemented: ORS 127.700 - 127.737, ORS 443.705 - 443.825

AMEND: 309-040-0415

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Clarifies conditions are administrative sanctions.

CHANGES TO RULE:

309-040-0415

Administrative Sanctions

~~(1) The Division may attach conditions to a license in addition to or instead of imposing an administrative sanction. Conditions are described in OAR 309-040-0430. An administrative sanction may be imposed for non-compliance with these rules.~~ ¶

(2) An administrative sanction includes one or more of the following actions: ¶

(a) Civil penalties; ¶

~~(b) Refusal to renew,~~ Attachment of conditions to a license; and ¶

~~(c) Denial, suspension, non-renewal, or revocation of a license as set forth in OAR 309-040-0420.~~ ¶

(3) If the Division imposes an administrative sanction, ~~it shall~~ the Division must serve a Notice of Intent of the administrative sanction upon the licensee/provider personally or by certified mail. ¶

(4) The notice of administrative sanction shall ~~shall~~ must state the following: ¶

(a) Each sanction imposed; ¶

(b) A short and plain statement of each circumstance, act, or omission that constitutes ~~substantial non-~~ compliance with the applicable rules; ¶

(c) Each statute or rule allegedly violated; ¶

(d) A statement of the licensee/provider's right to a contested case hearing; ¶

(e) A statement of the authority and jurisdiction under which the hearing is to be held; ¶

(f) A statement that the Division files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and ¶

(g) A statement that the notice becomes a final order upon default if the licensee/provider fails to request a hearing within the specified time. ¶

~~(5) If an administrative sanction is imposed for reason other than abuse, neglect, or exploitation, a contested case hearing shall precede imposition if the licensee requests the hearing in writing within 60 days of service of the notice of intent to impose the administrative sanction pursuant to ORS Chapter~~ All hearings are conducted in accordance with ORS 183. ¶

~~(6) If a licensee fails to request in writing a hearing within 60 days of service of the notice, the Notice of Administrative Sanction shall become a Final Order of the Division by default.~~ ¶

~~(7) The Division may immediately suspend, revoke, or refuse to renew a license for a substantiated finding of abuse, neglect, or exploitation of an individual. The licensee may submit a written request for a contested case hearing within 60 days of the notice of immediate suspension, revocation, or refusal to renew.~~ ¶

~~(8) When a license is denied, suspended, revoked, or refused to renew, the Division and the CMHP shall work together to arrange for individuals to move for their protection, as permitted by Residents' Rights.~~ ¶

~~(9) Hearing rights are in accordance with ORS 183.411 to 183.550~~ The provider must comply with any final order of the Division.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0420

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Expands and clarifies process and reasoning behind denials, revocations, and non-renewals.

CHANGES TO RULE:

309-040-0420

Denial, Suspension, Revocation, or Refusal to Renew ¶

(1) The Division may ~~just~~ deny, ~~suspend~~, revoke, or refuse to renew a license where it finds any of the following: ¶

(a) There has been substantial ~~failure of~~ non-compliance with these rules; ¶

(b) There is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of ~~individual~~ residents in an AFH; or ¶

(c) ~~The applicant or provider has been convicted of one or more crimes described in the Criminal Record Check; A background check conducted by ODHS determined the applicant or provider is not approved;~~ ¶

(d) The provider allows a caregiver or any other person, excluding residents, who has been convicted of potentially disqualifying crimes and has been denied, or refused to cooperate with the Division, to reside or work in the AFH; ¶

(e) The applicant or provider falsely represents they have not been convicted of a crime; or ¶

(f) The Division has received notice from the Department of Revenue in accordance with ORS 305.385; ¶

(Ag) The applicant or provider has had a certificate or license to operate a foster home, assisted living facility, or residential care facility denied, suspended, revoked, or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation, or refusal to renew was due in any part to abuse of an adult; ¶

(A) Abuse, creating a threat to the individuals, or failure health, safety, or well-being of residents; or ¶

(B) Failure of the applicant or provider to possess the physical health, mental health, or good personal character; ¶

~~(B) If the judgement or character deemed necessary by the division;~~ ¶

(h) The applicant or provider, including a board member or officer, has had a certificate or license to operate a foster home, assisted living facility or residential care facility denied, suspended, revoked, or refusal to be renew occurred in this or any other state more than three years from the present action, the applicant or provider is required to establish demonstrate to the Division by clear and convincing evidence the ability and fitness to operate an AFH. If, the applicant or provider d; ¶

(A) Does not meet this burden, then the Division may deny, suspend, revoke, or refuse to renew the license; pose a threat to resident; and ¶

(B) Posses the ability and fitness to operate an AFH in substantial compliance. ¶

(Ci) The applicant or provider is associated with a person whose license for a foster home, assisted living facility, or residential care facility was denied, suspended, revoked, or refused to be renewed due to abuse of an adult or f; ¶

(A) Abuse or neglect, creating a threat to the health, safety, or well-being of residents; or ¶

(B) Failure to possess physical health, mental health, or good personal judgement or character within three years preceding the present action, unless the applicant or provider can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the individual residents; ¶

(Dj) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:- ¶

(iA) Resides with the person; ¶

(iiB) Employs the person in the AFH; ¶

(iiiC) Receives financial backing from the person for the benefit of the AFH; ¶

(ivD) Receives managerial assistance from the person for the benefit of the AFH; or ¶

(vE) Allows the person to have access to the AFH; or ¶

(F) Rents or leases the AFH from the person. ¶

(Ek) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew. ¶

(2) The Division may deny, suspend, revoke, or refuse to renew an AFH license if the applicant or provider: ¶

(a) Submits fraudulent or untrue information to the Division; ¶

(b) Has a history of or demonstrates financial insolvency, such as ~~filing for~~ bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bills; ¶

~~(c) Has a prior denial, suspension, revocation, or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state or county;~~ ¶

~~(d) Has threatened the health, safety, or welfare-being of any individual; resident;~~ ¶

- (ed) Has a substantiated finding of abuse of an adult abused a resident; ¶
- (fe) Has a medical or psychiatric problem, which interferes with the ability to provide care; ¶
- (gf) Refuses to allow access and inspection; ¶
- (hg) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed; or ¶
- (ih) Fails to comply with a final order of the Division imposing an administrative sanction; ¶
- (ji) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider, resident manager, substitute caregiver, or volunteer of the AFH. ¶
- (j) Interferes with a person who has made a good faith disclosure of information concerning the abuse or neglect of a resident receiving care and services in a licensed or certified facility; ¶
- (k) Has previously been cited for the operation of an unlicensed AFH ¶
- (l) Has previously surrendered a license or certificate while under investigation or administrative sanction during the last three years; or ¶
- (m) Fails to operate the AFH or any other facility in substantial compliance.3) The provider may request a hearing in writing within 21 calendar days after the date the notice was personally served or mailed. If the provider fails to request a hearing in writing, or the request is not timely, the notice will become a final order of the Division by default. ¶
- (4) In addition to, or in-lieu of, a contested case hearing, a provider may request an informal conference with the Division to discuss the administrative action. The informal conference does not diminish the provider's right to a hearing. A request for informal conference does not delay, extend, or otherwise affect the 21 days allowed to request a hearing. ¶
- (5) A license subject to revocation or non-renewal remains valid during the administrative hearing process even if the hearing and final order are not issued after the expiration date of the license when a complete renewal application and fee has been submitted to the Division prior to the expiration of the current license.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825



REPEAL: 309-040-0425

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Remove section. This section gave an alternate procedure with less due process for similar situations already addressed as conditions/suspensions.

Brief Summary of rule changes: Remove section.

CHANGES TO RULE:

~~309-040-0425~~

~~Removal of Residents ¶¶~~

~~(1) The Division may order the removal of individuals from an AFH to an alternative placement on the following grounds: ¶¶~~

~~(a) When a violation of these rules is not corrected after time limit specified in notice; ¶¶~~

~~(b) There is a violation of an individual's rights; ¶¶~~

~~(c) The number of individuals currently in the AFH exceeds the maximum licensed capacity of the AFH; ¶¶~~

~~(d) The AFH is operating without a license; or ¶¶~~

~~(e) There is evidence of abuse of an adult that presents a serious and immediate danger to individuals. ¶¶~~

~~(2) The CMHP shall provide the individual assistance in locating and visiting alternative placements, if needed, and explain the individual's right to contest the move as provided in ORS 443.738(11)(b) and OAR 411-088-0080.~~

~~Statutory/Other Authority: ORS 413.042~~

~~Statutes/Other Implemented: ORS 443.705 - 443.825~~

AMEND: 309-040-0430

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Process clarifications around conditions.

CHANGES TO RULE:

309-040-0430

Conditions ¶

(1) Conditions may be attached to a license upon a finding that: ¶

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals; ¶

(b) There exists a threat to the health, safety, and welfare of an individual; ¶

(c) There is reliable evidence of abuse or neglect of an individual; ¶

(d) The AFH is substantially non-compliant with these rules; or ¶

(e) The provider is licensed to care for a specific individual only and further placements may not be made to the AFH. ¶

(2) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a contested case hearing under ORS chapter 183. ¶

(3) Conditions may be attached to a license upon a finding that: ¶

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals, pending further action by the Division; ¶

(b) There exists a threat to the health, safety, and welfare of an individual, pending further action by the Division or Division designee; ¶

(c) There is reliable evidence of abuse or neglect of an adult, pending further action by the Division; ¶

(d) The AFH is substantially non-compliant with these rules, pending further action by the Division. ¶

(4) Conditions that may be imposed on a licensee include but are not limited to the following: ¶

(a) Restricting the maximum capacity of the AFH; ¶

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

(c) Requiring an additional caregiver or caregiver qualifications; ¶

(d) Requiring additional training of caregivers; ¶

(e) Requiring additional documentation as deemed necessary by the Division; ¶

(f) Restricting a provider from opening an additional AFH; or ¶

(g) Suspending admissions to the AFH. ¶

(5) The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a contested case hearing under ORS chapter 183. ¶

(6) In addition to or in lieu of a contested case hearing, a provider may request in writing a review by the Division administrator or designee of conditions imposed by the Division or CMHP. The review does not diminish the provider's right to a hearing or extend the time period to request a hearing. ¶

(7) Conditions may be imposed for the extent of the license period (one year), extended to the next license period, or limited to some other shorter period of time as deemed necessary by the Division. If the conditions correspond to the licensing period, the reasons for the conditions may be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license. ¶

(8) Conditions attached to a license shall be effective upon order of the director of the licensing agency. ¶

(9) Hearing rights are in accordance with ORS 183.411 to 183.550.

Statutory/Other Authority: ORS 413.042, ORS 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0435

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Verbiage change.

CHANGES TO RULE:

309-040-0435

Criminal Penalties ¶

(1) Operating an AFH without a license is punishable as a Class C misdemeanor.¶

(2) Refusing to allow any of the following is punishable as a Class B misdemeanor:¶

(a) Division access to the AFH for inspection or investigation;¶

(b) Division access to individual residents in order to interview individual residents privately or to review records;  
or¶

(c) State and local fire inspector access to the AFH regarding fire safety.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

AMEND: 309-040-0440

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Significant process updates and clarifications made around issuance of civil penalties and amounts.

CHANGES TO RULE:

309-040-0440

Civil Penalties ¶

~~(1) Civil penalties for other than substantiated allegations of abuse shall not exceed \$100 per violation with a maximum of \$250 and~~ Except as otherwise provided in this rule, civil penalties of not less than \$100 per violation, and not more than \$250 per violation may be assessed ~~imposed for a general violation of these rules with the exception of substantiated abuse findings.¶~~

~~(2) Civil penalties of a maximum of,¶~~

(2) Civil penalties of not less than \$100 and not more than \$1,000 per occurrence may be assessed ~~imposed for each substantiated abuse finding.¶~~

~~(3) In addition to any other liability or penalty, the Division may impose a penalty for any of the following: The Division must impose a mandatory civil penalty:¶~~

(a) Up to \$500, unless otherwise required by law, for falsifying resident or facility records or causing another to do so;¶

(ab) Operating an AFH without a license \$250 for failure to have the provider or qualified substitute caregiver on duty 24 hours per day in the AFH;¶

~~(bc) Exceeding the number of residents identified on the license;¶~~

(c) The provider fails to achieve satisfactory compliance with Of \$500, unless otherwise required by law, for admitting a resident knowing the resident's needs exceed the ability of the AFH and the admission places the requirements of these rules within the time specified or fails to maintain such compliance other residents in the AFH at risk of harm;¶

(d) Of \$250 for operating an unlicensed AFH;¶

~~(de) The AFH is unable to provide an adequate level of~~ Of \$250 for dismantling or removing the battery from, or failing to install, any required smoke detector or care to individuals on monoxide alarm;¶

~~(ef) There is retaliation or discrimin~~ Of \$500 for interfering with or retaliating against an individual, the making a good faith disclosure of information concerning abuse of an individual's representative, family, employee, or any other person for making a complaint against the AFH;ceiving care and services in an AFH;¶

(4) Violations requiring a mandatory civil penalty that occurred while the provider was operating the AFH will be imposed by the Division even if the provider subsequently closes the AFH or voluntarily surrenders the license.¶

~~(f5) The provider fails to cooperate with the Division, physician, regist~~ may request a hearing in writing within 21 calendar days after the date the notice was personally served nurse, or other health care professional in carry or mailed. If the provider fails to request a hearing in writing, out an individual's care plan; or¶

~~(g) Other violations are found on two consecutive inspections of an AFH after a reasonable amount of time has been allowed for the elimination of the violationsr~~ the request is not timely, the notice will become a final order of the Division by default.¶

(6) In addition to, or in-lieu of, a contested case hearing, a provider may request an informal conference with the Division to discuss the administrative sanction. The informal conference does not diminish the provider's right to a hearing. A request for informal conference does not delay, extend, or otherwise affect the 21 days allowed to request a hearing.¶

~~(47) Any c~~ Civil penalties imposed under this section shall become due and payable when the provider incurs 10 calendar days after the notice imposing the civil penalty r ~~receives a notice in writing from the Division. The notice shall b~~ omes final by operation of law or on appeal. Unless the spent by registered or certified mail and includes the following:¶

(a) A reference to the particulaalty is paid within 10 calendar days after the order s ~~ections of the omes final, the order constai~~ tute, rule, standard, or order involved;¶

(b) A short and plain statement of the matter asserted or charged;¶

(c) A statement of the amount of the penalty or penalties imposed; and¶

(d) A statement of the right to request a hearing;s a judgment and may be recorded by the county clerk, which becomes a lien upon the title to any interest in real property owned by that person. The Division may also initiate a notice of revocation for failure to comply with a final order. ¶

(58) The provider to whom the notice i ~~Civil penalties addressed shall have 60 days from the date of the notice of intent in which to make written application for a hearingre~~ subject to judicial review under ORS 183.480, except

that the court may, at its discretion, reduce the amount of the penalty.¶

(69) All hearings shall be conducted according to the applicable provisions of ORS Chapter 183. Penalties recovered under ORS 443.790 to 443.815 are paid to the Long-Term Care Ombudsman Account established in ORS 441.419

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

REPEAL: 309-040-0445

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Moved section here initially) Remove section as there is already a specific process for public records requests. – repeal (Initially moved here for better organization) Removed.

CHANGES TO RULE:

~~309-040-0445~~

~~Public Information~~

~~(1) The Division shall maintain current information on all licensed AFHs and make that information available to prospective individuals, individuals' representatives, their families, and other interested members of the public.¶¶~~

~~(2) The information shall include the following:¶¶~~

~~(a) The location of the AFH;¶¶~~

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

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

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

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

~~(f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the Division;¶¶~~

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

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

~~Statutory/Other Authority: ORS 413.042~~

~~Statutes/Other Implemented: ORS 443.705 – 443.825~~

AMEND: 309-040-0455

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Verbiage change.

CHANGES TO RULE:

309-040-0455

Enjoinment of AFH Operation ¶

The Division may commence an action to enjoin the operation of an AFH pursuant to ORS 443.775(5):¶

(1) When an AFH is operated without a valid license; or¶

(2) After notice of revocation, non-renewal, or suspension has been given, a reasonable time for placement of individual residents in other facilities has been allowed, and such placement has not been accomplished.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 443.705 - 443.825

ADOPT: 309-040-0470

NOTICE FILED DATE: 12/31/2024

RULE SUMMARY: Section moved.

CHANGES TO RULE:

309-040-0470

Suspension of License

(1) The Division must immediately suspend a license if: ¶

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

(b) There is reliable evidence of abuse of any resident; or ¶

(c) The licensee fails to operate the AFH in substantial compliance with ORS 443.705 to 443.825 or these rules. ¶

(2) The Division must suspend a license upon written notice from the Oregon Department of Revenue in accordance with ORS 305.385, and after notice to the provider and an administrative hearing if requested. ¶

(3) If a license is suspended, the Division may arrange for a resident to move for their protection. ¶

(4) The provider may request an administrative review of the decision to immediately suspend a license by submitting a request in writing, within 10 calendar days from the date the notice and order of suspension was mailed or served upon the provider. ¶

(a) Within 10 calendar days after receipt of the provider's request for a review, the Division must review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, including any written documentation submitted by the provider within that time frame; and ¶

(b) The Division must determine, based on a review of the material, whether to sustain the decision. If the Division does not sustain the decision, the suspension must be rescinded immediately. The decision of the Department is subject to a contested case hearing under ORS 183 if requested within 90 calendar days. ¶

(4) The provider may request a contested case hearing in writing within 90 calendar days after the date the notice was personally served or mailed. If the provider fails to request a hearing in writing, or the request is not timely, the notice will become a final order of the Division by default. ¶

(5) In addition to, or in-lieu of, a contested case hearing, a licensee may request an informal conference with the Division to discuss the administrative action. The informal conference does not diminish the licensee's right to a hearing. A request for informal conference does not delay, extend, or otherwise affect the 90 days allowed to request a hearing.

Statutory/Other Authority: ORS 413.042, 443.745

Statutes/Other Implemented: ORS 443.705 - 443.825