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APD 69-2024
CHAPTER 411
DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

FILING CAPTION: APD: Amending 411-054 with LGBTQIA2S+ protections and ABST requirements; adds Licensing Complaint Unit definition

EFFECTIVE DATE: 12/24/2024

AGENCY APPROVED DATE: 12/19/2024

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RULES:
411-054-0005, 411-054-0013, 411-054-0019, 411-054-0025, 411-054-0034, 411-054-0036, 411-054-0037, 411-054-0040, 411-054-0070, 411-054-0110

AMEND: 411-054-0005

REPEAL: Temporary 411-054-0005 from APD 33-2024

RULE TITLE: Definitions

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Adds new definitions related to LGBTQIA2S+ protections, including “gender expression,” “gender identity,” “gender nonconforming,” “gender transition,” “harass” or “harassment,” “LGBTQIA2S+,” “sexual orientation,” and “transgender.” Also amends definitions related to Acuity-Based Staffing including amending “Acuity-Based Staffing Tool” and “direct care staff” and adds new definitions of “ABST care elements” and “consistently”. Finally, adds new definitions for “Licensing Complaint Unit (LCU)”, “Language Access” and “Preferred Language”.

RULE TEXT:
For the purpose of these rules, the following definitions apply:
(1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).
(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing and grooming, bathing and personal hygiene, mobility, elimination, and cognition.
(3) "Acuity-Based Staffing Tool (ABST)" means the tool described in ORS 443.432 or an acuity-based staffing tool adopted by a facility that meets requirements established by the Department in OAR 411-054-0037. An ABST is used by a facility to assess the acuity of each resident and determine the amount of staff time necessary to meet the 24-hour scheduled and unscheduled needs of each resident. Facilities may choose to use the ABST established by the Department, or use another Department-approved ABST.
(4) “ABST Care Elements” means the required individual care elements that must be addressed and documented in a

resident's ABST evaluation as outlined in 411-054-0037(3).
(5) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.
(6) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility as described in OAR 411-054-0065.
(7) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.
(8) "Aging and People with Disabilities (APD)" means the program area of Aging and People with Disabilities, within the Department of Human Services.
(9) "Applicant" means the individual, individuals, or entity, required to complete a facility application for license.
(a) Except as set forth in OAR 411-054-0013(1)(b), applicant includes a sole proprietor, each partner in a partnership, and each member with a 10 percent or more ownership interest in a limited liability company, corporation, or entity that:
(A) Owns the residential care or assisted living facility business; or
(B) Operates the residential care or assisted living facility on behalf of the facility business owner.
(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor, each partner in a partnership, and each member with a five percent or more ownership interest in a limited liability company, corporation, or entity that:
(A) Owns the residential care or assisted living facility business; or
(B) Operates the residential care or assisted living facility on behalf of the facility business owner.
(10) "Approved Dementia Training" means a dementia training curriculum approved by an entity selected by the Department to be an approving entity pursuant to a Request for Application (RFA) process.
(11) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to perform specific activities in relation to residential care and assisted living facilities including:
(a) Conducting inspections and investigations regarding protective service, abuse, and neglect.
(b) Monitoring.
(c) Making recommendations to the Department regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.
(12) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.
(13) "Building Codes" are comprised of the set of specialty codes, including the Oregon Structural Specialty Code (OSSC), Oregon Mechanical Specialty Code (OMSC), Oregon Electrical Specialty Code (OESC), Oregon Plumbing Specialty Code (OPSC), and their reference codes and standards.
(14) "Caregiver" means a facility employee who is either direct care staff or a universal worker, who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents.
(15) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.
(16) "Change of Condition - Short-Term" means a change in the resident's health or functioning, that is expected to resolve or be reversed with minimal intervention, or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.
(17) "Change of Condition - Significant" means a major deviation from the most recent evaluation, that may affect

multiple areas of functioning or health, that is not expected to be short-term, and imposes significant risk to the resident. Examples of significant change of condition include, but are not limited to:
(a) Broken bones.
(b) Stroke, heart attack, or other acute illness or condition onset.
(c) Unmanaged high blood sugar levels.
(d) Uncontrolled pain.
(e) Fast decline in activities of daily living.
(f) Significant unplanned weight loss.
(g) Pattern of refusing to eat.
(h) Level of consciousness change.
(i) Pressure ulcers (stage 2 or greater).
(18) "Choice" means a resident has viable options that enable the resident to exercise greater control over their life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.
(19) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.
(20) "Competency" means to possess specific knowledge, technical skill, and the ability to perform tasks related to the role and responsibilities of direct care staff.
(21) "Competency Assessment" means an evaluation of knowledge, technical skill and ability to carry out care pursuant to the requirements in OAR 411-054-0070. Evaluation shall include verification and documentation of direct care staff competency through observation, written testing or verbal testing.
(22) "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.
(23) “Consistently” means regularly and typically. This means occurring steadily and with regularity over a period of time.
(24) “Consumer Summary” means a summary of services provided by the facility. This statement also includes a summary of services not provided. This summary is one of the documents that must be provided to potential residents before move-in.
(25) "Conversion Facility (CF)" means a nursing facility that has followed the requirements in these rules to become a residential care facility through the conversion facility process.
(26) "Department" means the Oregon Department of Human Services (ODHS).
(27) "Designated Representative" means:
(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:
(A) Chosen by the individual or, as applicable, the legal representative;
(B) Not a paid provider for the individual; and
(C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.
(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.
(b) An individual or the legal representative of the individual is not required to appoint a designated representative.
(28) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.
(29) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents.
(a) These personal care services may include:
(A) Medication administration.
(B) Individualized resident-focused activities, as outlined in a resident’s person-centered service plan.

(C) Assistance with activities of daily living.
(D) Supervision and support of residents.
(E) Serving meals, but not meal preparation.
(b) Employees such as activity staff, activity coordinators, and activity directors whose primary or sole responsibility is to provide social activities are not considered direct care staff.
(30) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.
(31) "Director" means the Director of the Department or that individual's designee.
(32) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made, that renders the licensee unable to operate the facility or makes the facility uninhabitable.
(33) "Disclosure Statement" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.
(34) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.
(35) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.
(36) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility. For purposes of HCBS, "facility" can also mean "provider".
(37) “Gender expression” means an individual’s gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the individual was assigned at birth.
(38) “Gender identity” means an individual’s internal, deeply held knowledge or sense of the individual’s gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth or name and sex as it appears in medical records or as it is described by any other individual, including a family member, conservator or legal representative of the individual. An individual’s gender identity is the last gender identity expressed by an individual who lacks the present ability to communicate.
(39) “Gender nonconforming” means having a gender expression that does not conform to stereotypical expectations of one’s gender.
(40) “Gender transition” means a process by which an individual begins to live according to that individual’s gender identity rather than the sex the person was assigned at birth. The process may or may not include changing the individual’s clothing, appearance, name or identification documents or undergoing medical treatments.
(41) “Harass” or “harassment” means to act in a manner that is unwanted, unwelcomed or uninvited, or that demeans, threatens or offends a resident.
(a) This includes bullying, denigrating or threatening a resident based on a resident’s actual or perceived status as a member of one of the protected classes in Oregon, as provided:
(A) Race.
(B) Color.
(C) National origin.
(D) Religion.
(E) Disability.
(F) Sex (includes pregnancy).
(G) Sexual orientation.
(H) Gender identity.
(I) Age.
(J) Marital status.
(b) An example of “harassment” includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom or other area of a facility that is available to other individuals of the same gender identity as the resident.
(42) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division of the Oregon Health

Authority (OHA).
(43) "HCB" means "Home and Community-Based."
(44) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. ODHS, Safety, Oversight and Quality and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.
(45) “Health Care Facility” means a facility, as defined in ORS 442.015(12)(a), that provides acute care or a higher level of care to a resident according to OAR 411-054-0080.
(46) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.
(47) "Hospice Program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life-threatening disease with a limited medical prognosis. A hospice program is an institution for purposes of ORS 146.100.
(48) "Immediate Jeopardy" means a situation where the failure of a residential care facility to comply with a Department rule has caused, or is likely to cause, a resident:
(a) Serious injury;
(b) Serious harm;
(c) Serious impairment; or
(d) Death.
(49) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.
(50) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.
(51) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.
(52) "Individual" means a person enrolled in or utilizing HCBS.
(53) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 (1)(d) and (2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual, or as applicable, the legal representative, as described in OAR 411-004-0040.
(54) "Informed Consent" means options, risks, and benefits have been explained to an individual, and, as applicable, the legal representative of the individual, in a manner that the individual, and, as applicable, the legal representative, comprehends.
(55) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.
(56) "Intensive Intervention Community (IIC)" means an RCF endorsed to house fewer than six socially dependent individuals or individuals with physical disabilities. The purpose of the IIC is to serve individuals with cooccurring mental, emotional, or behavioral disturbances who are more appropriately served in smaller settings.
(57) “Involuntary Move-Out” means a move out of a resident to which the resident or the resident’s legal representative does not agree.
(58) “Language Access” means the facility must take reasonable steps to provide meaningful language access to a resident with limited English proficiency or a resident with a disability that makes it difficult to communicate using standard English.
(59) “LGBTQIA2S+” means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation. These terms are defined below:
(a) “Lesbian” means the sexual orientation of a person who is female, feminine or nonbinary and who is physically,

romantically or emotionally attracted to other women. Some lesbians may prefer to identify as gay, a gay woman, queer or in other ways.
(b) “Gay” means the sexual orientation of a person attracted to people of the same gender. Although often used as an umbrella term, it is used more specifically to describe men attracted to men.
(c) “Bisexual” means a person who has the potential to be physically, romantically and/or emotionally attracted to people of more than one gender, not necessarily at the same time, in the same way or to the same degree.
(d) “Transgender” means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.
(e) “Queer” means individuals who do not identify as exclusively straight or individual who have non-binary or gender-expansive identities and is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole. This term was previously used as a slur, but has been reclaimed by many parts of the LGBTQIA2S+ movement. It can also include transgender people who identify as male or female. The term should only be used to refer to a specific person if that person self-identifies as queer.
(f) “Intersex” means someone born with a variety of differences in their sex traits and reproductive anatomy. Intersex traits greatly vary, including differences in, but limited to, hormone production and reproductive anatomy.
(g) “Asexual” or “Ace” means a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little or conditional sexual attraction. Many people who are asexual still identify with a specific romantic orientation.
(h) “2S” or “Two-Spirit” means a term used within some Indigenous communities, encompassing cultural, spiritual, sexual and gender identity. The term reflects complex indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. The definition and common use of the term two-spirit may vary among Tribes and Tribal communities.
(i) The “+” means all other identities and expressions of gender, romantic and sexual orientation, including minority gender identities.
(j) “Nonbinary” means a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.
(60) "Licensed Nurse" means an Oregon licensed practical or registered nurse.
(61) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.
(62) “Licensing Complaint Unit (LCU)” means the Safety, Oversight and Quality staff who investigate allegations of licensing violations.
(63) "Legal Representative" means a person who has the legal authority to act for an individual.
(a) The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.
(b) For an individual 18 years of age and older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.
(64) "Major Alteration":
(a) Means:
(A) Any structural change to the foundation, floor, roof, exterior, or load bearing wall of a building;
(B) The addition of floor area to an existing building; or
(C) The modification of an existing building that results in a change in use where such modification affects resident

services or safety.
(b) Does not include cosmetic upgrades to the interior or exterior of an existing building (for example: changes to wall finishes, floorings, or casework).
(65) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.
(66) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes).
(a) Modified special diets include, but are not limited to:
(A) Small frequent meals;
(B) No added salt;
(C) Reduced or no added sugar; and
(D) Simple textural modifications.
(b) Medically complex diets are not included.
(67) "New Construction" means:
(a) A new building.
(b) An existing building or part of a building that is not currently licensed.
(c) A major alteration to an existing building.
(d) Additions, conversions, renovations, or remodeling of existing buildings.
(68) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851.
(69) "OHA" means the Oregon Health Authority.
(70) "Owner" means an individual with an ownership interest.
(71) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
(72) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030.
(a) FOR INDIVIDUALS RECEIVING MEDICAID. The person-centered service plan coordinator completes the person-centered service plan.
(b) FOR NON-MEDICAID INDIVIDUALS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.
(73) "Person-Centered Service Plan Coordinator" means a:
(a) Resident's AAA or APD case manager assigned to provide case management services or person-centered service planning for and with individuals; or
(b) Person of the individual's choice for individuals who pay privately.
(74) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.
(75) “Preferred Language” means the chosen language of for the resident. Preferred language must be legally recognized language.
(76) "Pre-Service Training" means training that must be completed before direct care staff provide care to residents.
(77) "Primary Care Provider" means the health care provider primarily responsible for the on-going diagnosis and treatment of the resident where they currently reside.
(78) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.
(79) "Provider" means any person or entity providing HCBS.
(80) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be

administered as needed.
(81) "Psychotropic Medications" means any drug that affects brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories:
(a) Anti-psychotic.
(b) Anti-depressant.
(c) Anti-anxiety.
(d) Hypnotic.
(82) “Qualified facility staff,” for purposes of OAR 411-054-0080, means the facility nurse, administrator, or administrator’s designee.
(83) "Quality Measurement Program" means the quality metrics program, as described in OAR 411-054-0320.
(84) "Quality Measurement Council" means a group of individuals appointed by the Governor to develop and oversee the Quality Metric Reporting Program as described in OAR 411-054-0320.
(85) "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR 333-675-0000.
(86) "Renovate" means to restore to good condition or to repair.
(87) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting. This agreement is one of the documents that must be provided to potential residents before move-in.
(88) "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.
(89) "Resident Evaluation" means an evaluation that uses the information obtained when addressing the elements required in OAR 411-054-0034(5).
(90) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.
(91) "Residential Care Facility Administrator (RCFA)" means an administrator of a residential care or assisted living facility, as defined in ORS 678.710 and licensed by the Oregon Health Licensing Office, according to OAR chapter 853. All individuals serving as administrators in residential care or assisted living facilities will be required to hold this license as of January 1, 2022.
(92) "Restraint" means:
(a) Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached to or adjacent to the individual’s body that the individual cannot remove easily, which restricts freedom of movement or normal access of the individual to the individual’s body. Any manual method includes physically restraining someone by manually holding someone in place.
(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual’s freedom of movement or behavior and is not used to treat the individual’s medical or psychiatric condition.
(93) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).
(94) "Risk Agreement" means a process where a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.
(95) "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable,

measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.
(96) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident. For IICs, the term "interdisciplinary team" is synonymous with "service planning team."
(97) "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.
(98) “Sexual orientation” means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.
(99) “Staffing Assessment” means a review conducted by the Department to determine if a facility is using an acuity-based staffing tool according to administrative rule.
(100) “Staffing Levels” means the number of staff required to provide the levels, intensity and qualifications of staff necessary to meet the scheduled and unscheduled needs of each resident 24 hours a day, seven days a week. Staffing levels are established by using an acuity-based staffing tool to determine the amount of time and expertise necessary to provide services to assist with activities of daily living and related tasks.
(101) “Staffing Plan” means a plan outlining the staffing levels required to meet the scheduled and unscheduled needs of all residents within a facility. Staffing plans should incorporate and be consistent with the facility’s acuitybased staffing tool data.
(102) "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.
(a) For the purpose of these rules, subject individual includes:
(A) All applicants, licensees, and operators of a residential care or assisted living facility.
(B) All individuals employed or receiving training in an assisted living or residential care facility.
(C) Volunteers, if allowed unsupervised access to residents.
(b) For the purpose of these rules, subject individual does not apply to:
(A) Residents and visitors of residents.
(B) Individuals that provide services to residents who are employed by a private business not regulated by the Department.
(103) "Substantial Compliance" means a level of compliance with state law and rules of the Department such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents of a facility.
(104) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.
(105) "These Rules" mean the rules in OAR chapter 411, division 054.
(106) “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.
(107) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:
(a) The general public.
(b) A specific population, for example, residents with dementia or traumatic brain injury.
(108) "Unit" means the personal and sleeping space of an individual receiving services in an RCF or ALF setting, as agreed to in the Residency Agreement.
(109) "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

(110) “Voluntary Move-Out” means the facility and the resident, or resident’s legal representative, have mutually agreed the facility can no longer meet the resident’s health, behavior or care needs.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 441.122, 443.450, 443.738

STATUTES/OTHER IMPLEMENTED: ORS 441.111, 443.400 - 443.455, 443.738, 443.991, 678.710

AMEND: 411-054-0013

REPEAL: Temporary 411-054-0013 from APD 29-2024

RULE TITLE: Application for Initial Licensure and License Renewal

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends requirements for applicants to identify the Acuity-Based Staffing Tool (ABST) they will implement.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The Department may require financial information as stated in OAR 411-054-0016 (New Applicant Qualifications), when considering an applicant's request for renewal of a license.
(j) Applicants must identify the Department-approved acuity-based staffing tool the facility will implement and use as outlined in OAR 411-054-0037.
(k) Applicants must provide other information and documentation as the Department may reasonably require for the proper administration of these rules, including but not limited to information about incident of ownership and involvement in the operation of the facility or other business enterprises, as relevant.
(l) For facilities that serve the Medicaid population and are managed by a Board of Directors, the Centers for Medicare and Medicaid Services (CMS) require a social security number and date of birth for each board member.
(2) LICENSE RENEWAL. Application for a license renewal must be made at least 45 days prior to the expiration date of the existing license. Filing of an application for renewal and submission of the required non-refundable fee before the date of expiration extends the effective date of expiration until the Department acts upon such application.
(a) The Department shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules or if the State Fire Marshal or authorized representative has given notice of noncompliance.
(b) An applicant for license renewal must provide the Department with a completed background check request form for the applicant and for each individual with incident of ownership of 10 percent or more in the applicant when required by the Department. For those who serve the Medicaid population, a background check request form is required for the applicant and each individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility.
(c) A building inspection may be requested at the Department's discretion. The Department may require physical improvements if the health or safety of residents is negatively impacted.
(3) DEMONSTRATED CAPABILITY.
(a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of the Department that the applicant can provide services in a manner consistent with the requirements of these rules.
(b) The Department may consider the background and qualifications of any individual with a 10 percent or more incident of ownership in the applicant when determining whether an applicant may be licensed. For those who serve the Medicaid population, the background and qualifications of any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.
(c) The Department may consider the applicant's history of compliance with Department rules and orders including the history of compliance of any individual with a 10 percent or more incident of ownership in the applicant. For those who serve the Medicaid population, the history of compliance of the applicant and any individual with a 5 percent or more incident of ownership, regardless of the individual's effect on the operation of the facility, may be considered.
(4) KITCHEN INSPECTION. The Department shall annually conduct an in-person inspection of each facility's kitchen and other places where food is prepared.
(a) During a year in which the facility is surveyed, the kitchen inspection shall be completed as part of the standard survey.
(b) During a year in which a facility is not surveyed, the kitchen inspection shall require a separate visit and inspection by the Department. The fee for this separate kitchen inspection is $200.
(c) This section (4) will not go into effect until July 1, 2022.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.991

AMEND: 411-054-0019

REPEAL: Temporary 411-054-0019 from APD 29-2024

RULE TITLE: Change of Ownership or Management

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends requirements for applicants to identify the ABST when changing to a new owner or manager.

RULE TEXT:

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

(a) The prospective licensee or management entity must submit at least 60 days in advance of the proposed date change:

(A) A completed application form;

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.991

AMEND: 411-054-0025

REPEAL: Temporary 411-054-0025 from APD 33-2024

RULE TITLE: Facility Administration

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Adds language to clarify that when there is a change in administrator, the facility needs to submit the Administrator Reference Summary (SDS 05660) form. Requires facility to develop policies for ABST that explains how the facility will evaluate and account for both scheduled and unscheduled needs of residents. Also requires posting of LGBTQIA2S+ non-discrimination policy and requires protection of resident records related to the LGBTQIA2S+ population and a resident's human immunodeficiency virus status. Adds requirement to develop an ABST policy for accurate and consistent implementation of ABST.

RULE TEXT:

(1) FACILITY OPERATION.

(a) The licensee is responsible for the operation of the facility and the quality of services rendered in the facility.

(b) The licensee is responsible for the supervision, training, and overall conduct of staff when staff are acting within the scope of his or her employment duties.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(d) The licensee is responsible for obtaining background checks on all subject individuals.

(2) BACKGROUND CHECK REQUIREMENTS.

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

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

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

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

(b) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual may be approved to work in multiple facilities under the same operational entity. The Department's Background Check Request must be completed by the subject individual to show intent to work at various facilities.

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

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

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

(a) Facility license.

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

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

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

(e) The Ombudsman Notification Poster.
(f) Resident Rights and Protections, as described in OAR 411-054-0027, including the LGBTQIA2S+ Rights and Protections.
(g) The LGBTQIA2S+ Nondiscrimination Notice, as described in paragraph (7)(i) of this section, must be posted in all places and on all materials where that notice or those written materials are posted.
(h) Other notices relevant to residents or visitors required by state or federal law.
(6) NOTIFICATION. The facility must notify the Department's Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:
(a) Any change of the administrator of record through the submission of the Administrator Reference Summary (SDS 0566).
(b) Severe interruption of physical plant services where the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food.
(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable.
(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility.
(e) Unusual resident death or suicide.
(f) A resident who has eloped from the facility and has not been found within 24 hours.
(7) POLICIES AND PROCEDURES. The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment. The facility must develop and implement:
(a) A policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in his or her daily living.
(b) A written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.
(c) Effective methods of responding to and resolving resident complaints.
(d) All additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition and Monitoring), OAR 411-054-0045 (Resident Health Services), and OAR 411-054-0085 (Refunds and Financial Management).
(e) A policy on smoking.
(A) The smoking policy must be in accordance with:
(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;
(ii) The rules in OAR chapter 333, division 015; and
(iii) Any other applicable state and local laws.
(B) The facility may designate itself as non-smoking.
(f) A policy for the referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident.
(g) A policy on facility employees not receiving gifts or money from residents.
(h) Protocols for preventing and controlling infection, as described in OAR 411-054-0050.
(i) LGBTQIA2S+ Nondiscrimination Notice:

“(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual’s actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual’s association with another individual on account of the other individual’s actual or perceived sexual orientation, gender identity, gender expression or human

immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Oregon Department of Human Services at (provide current contact information)."

(j) ABST Policy for accurate and consistent implementation of the ABST. The policy must explain how a facility evaluates and accounts for both scheduled and unscheduled resident needs.
(8) RECORDS. The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.
(a) The facility must develop and implement a written policy that prohibits the falsification of records.
(b) Unless required or allowed by state or federal law, a facility shall not disclose any personally identifiable information regarding:
(A) A resident's sexual orientation;
(B) Whether a resident is LGBTQIA2S+;
(C) A resident's gender transition status; or
(D) A resident's human immunodeficiency virus status.
(c) The facility shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (b) of this section to other residents, visitors or facility staff, except to the minimum extent necessary for facility staff to perform their duties. Facilities must notify residents or resident representatives if the facility inadvertently or accidentally discloses such information to unauthorized persons.
(d) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.
(e) Upon closure of a facility, the licensee must provide the Department with written notification of the location of all records.
(9) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

STATUTORY/OTHER AUTHORITY: ORS 181.534, 410.070, 441.122, 443.004, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 181.534, 441.112, 441.114, 443.004, 443.400 - 443.455, 443.991

AMEND: 411-054-0034

RULE TITLE: Resident Move-In and Evaluation

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends rule to require facilities to include the evaluation of staff time to meet the estimated acuity needs of the resident.

RULE TEXT:

(1) INITIAL SCREENING AND MOVE-IN.

(a) The facility must determine whether a potential resident meets the facility's admission requirements.

(b) Before the resident moving in, the facility must conduct an initial screening to determine the prospective resident's service needs and preferences. The screening must determine the ability of the facility to meet the potential resident's needs and preferences, including evaluating staff time required to meet estimated acuity needs for the resident, while considering the needs of the other residents and the facility's overall service capability.

(c) Each resident record must, before move-in and when updated, include the following information:

(A) Legal name for billing purposes.

(B) To promote person-centered care, any variance from legal records, as indicated by the resident, regarding:

(i) Name.

(ii) Pronouns.

(iii) Gender identity.

(C) Prior living arrangements;

(D) Emergency contacts;

(E) Service plan involvement - resident, family, and social supports;

(F) Financial and other legal relationships, if applicable, including, but not limited to:

(i) Advance directives;

(ii) Guardianship;

(iii) Conservatorship; and

(iv) Power of attorney.

(G) Primary language;

(H) Community connections; and

(I) Health and social service providers.

(2) RESIDENT EVALUATION - GENERAL. The resident evaluation identifies the resident's preferences, strengths, and relationships, as well as activities that are meaningful to the individual. The evaluation describes the resident's physical health status, mental status, and the environmental factors that help the individual function at their optimal level. The evaluation is the foundation that a facility uses to develop the resident's service plan. The evaluation information may be collected using tools and protocols established by the facility, but must contain the elements stated in this rule.

(a) Resident evaluations must be:

(A) Performed before the resident moves into the facility, with updates and changes as appropriate within the first 30 days; and

(B) Performed at least quarterly, to correspond with the quarterly service plan updates.

(C) Reviewed and any updates must be documented each time a resident has a significant change in condition.

(D) Done in person and the facility must gather data that is relevant to the needs and current condition of the resident.

(E) Documented, dated, and indicate who was involved in the evaluation process.

(b) 24 months of past evaluations must be kept in the resident's files in an accessible, on-site location.

(c) The facility administrator is responsible for assuring only trained and experienced staff perform resident evaluations.

(3) EVALUATION REQUIREMENTS AT MOVE-IN.

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

(b) If there is an urgent need and the evaluation is not completed before move-in, the facility must document the reasons and complete the evaluation within eight hours of move-in.
(c) The initial evaluation must contain the elements specified in section (5) of this rule and address sufficient information to develop an initial service plan to meet the resident's needs.
(d) The initial evaluation must be updated and modified as needed during the 30 days following the resident's move into the facility.
(e) After the initial 30 day move-in period, the initial evaluation must be retained in the resident's file for 24 months. Future evaluations must be separate and distinct from the initial evaluation.
(4) QUARTERLY EVALUATION REQUIREMENTS.
(a) Resident evaluations must be performed quarterly after the resident moves into the facility.
(b) The quarterly evaluation is the basis of the resident's quarterly service plan.
(c) The most recent quarterly evaluation, with documented change of condition updates, must be in the resident's current record and available to staff.
(d) If the evaluation is revised and updated at the quarterly review, changes must be dated and initialed and prior historical information must be maintained.
(5) The resident evaluation must address the following elements:
(a) For service planning purposes, if indicated by the resident,
(A) Name.
(B) Pronouns.
(C) Gender identity.
(b) Resident routines and preferences including:
(A) Customary routines, such as those related to sleeping, eating, and bathing;
(B) Interests, hobbies, and social and leisure activities;
(C) Spiritual and cultural preferences and traditions; and
(D) Additional elements as listed in 411-054-0027(2).
(c) Physical health status including:
(A) List of current diagnoses;
(B) List of medications and PRN use;
(C) Visits to health practitioners, emergency room, hospital, or nursing facility in the past year; and
(D) Vital signs if indicated by diagnoses, health problems, or medications.
(d) Mental health issues including:
(A) Presence of depression, thought disorders, or behavioral or mood problems;
(B) History of treatment; and
(C) Effective nondrug interventions.
(e) Cognition, including:
(A) Memory;
(B) Orientation;
(C) Confusion; and
(D) Decision-making abilities.
(f) Personality, including how the person copes with change or challenging situations.
(g) Communication and sensory abilities including:
(A) Hearing;
(B) Vision;
(C) Speech;
(D) Use of assistive devices; and
(E) Ability to understand and be understood.
(h) Activities of daily living including:

(A) Toileting, bowel, and bladder management;
(B) Dressing, grooming, bathing, and personal hygiene;
(C) Mobility ambulation, transfers, and assistive devices; and
(D) Eating, dental status, and assistive devices.
(i) Independent activities of daily living including:
(A) Ability to manage medications;
(B) Ability to use call system;
(C) Housework and laundry; and
(D) Transportation.
(j) Pain pharmaceutical and non-pharmaceutical interventions, including how a person expresses pain or discomfort.
(k) Skin condition.
(l) Nutrition habits, fluid preferences, and weight if indicated.
(m) List of treatments type, frequency, and level of assistance needed.
(n) Indicators of nursing needs, including potential for delegated nursing tasks.
(o) Review of risk indicators including:
(A) Fall risk or history;
(B) Emergency evacuation ability;
(C) Complex medication regimen;
(D) History of dehydration or unexplained weight loss or gain;
(E) Recent losses;
(F) Unsuccessful prior placements;
(G) Elopement risk or history;
(H) Smoking. The resident's ability to smoke without causing burns or injury to themselves or others or damage to property must be evaluated and addressed in the resident's service plan; and
(I) Alcohol and drug use. The resident's use of alcohol or the use of drugs not prescribed by a physician must be evaluated and addressed in the resident's service plan.
(p) Environmental factors that impact the resident's behavior including, but not limited to:
(A) Noise.
(B) Lighting.
(C) Room temperature.
(6) If the information has not changed from the previous evaluation period, the information does not need to be repeated. A dated and initialed notation of no changes is sufficient. The prior evaluation must then be kept in the current resident record for reference.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 441.122, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 441.111, 441.114, 443.400 - 443.455, 443.991

AMEND: 411-054-0036

REPEAL: Temporary 411-054-0036 from APD 29-2024

RULE TITLE: Service Plan — General

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends rule to require facilities review ABST care elements no less than quarterly and corresponding with changes to resident service plans.

RULE TEXT:

(1) If the resident has a Person-Centered Service Plan pursuant to 411-004-0030, the facility must incorporate all elements identified in the person-centered service plan into the resident's service plan.

(2) SERVICE PLAN. The service plan must reflect the resident's needs as identified in the evaluation and include resident preferences that support the principles of dignity, privacy, choice, individuality, and independence.

(a) The service plan must be completed:

(A) Before resident move-in, with updates and changes as appropriate within the first 30-days; and

(B) Following quarterly evaluations.

(b) The service plan must be readily available to staff and provide clear direction regarding the delivery of services.

(c) The service plan must include a written description of who shall provide the services and what, when, how, and how often the services shall be provided.

(d) Changes and entries made to the service plan must be dated and initialed.

(e) When the resident experiences a significant change of condition the service plan must be reviewed and updated as needed.

(f) A copy of the service plan, including each update, must be offered to the resident or to the resident's legal representative.

(g) The facility administrator is responsible for ensuring the implementation of services.

(h) Review and update the resident’s ABST evaluation based on changes to the resident’s service plan, quarterly updates or a significant change of condition.

(3) SERVICE PLAN REQUIREMENTS BEFORE MOVE-IN.

(a) Based on the resident evaluation performed before move-in, an initial service plan must be developed before move-in that reflects the identified needs and preferences of the resident.

(b) The initial service plan must be reviewed within 30-days of move- in to ensure that any changes made to the plan during the initial 30- days, accurately reflect the resident's needs and preferences.

(c) Staff must document and date adjustments or changes as applicable.

(4) QUARTERLY SERVICE PLAN REQUIREMENTS.

(a) Service plans must be completed quarterly after the resident moves into the facility.

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

(c) If the resident's service plan is revised and updated at the quarterly review, changes must be dated and initialed, and prior historical information must be maintained.

(5) SERVICE PLANNING TEAM. The service plan must be developed by a Service Planning Team that consists of the resident, the resident's legal representative, if applicable, any person of the resident's choice, the facility administrator or designee and at least one other staff person who is familiar with, or who is going to provide services to the resident. Involved family members and case managers must be notified in advance of the service-planning meeting.

(a) As applicable, the Service Planning Team must also include:

(A) Local APD or AAA case managers and family invited by the resident, as available.

(B) A licensed nurse if the resident shall need, or is receiving nursing services or experiences a significant change of condition as required in 411-054-0045(1)(f)(D) (Resident Health Services).

(C) The resident's physician or other health practitioner.

(b) Each resident must actively participate in the development of the service plan to the extent of the resident's ability

and willingness to do so. If resident participation is not possible, documentation must reflect the facility's attempts to determine the resident's preferences.

(6) RISK AGREEMENT. When a resident's actions or choices pose a potential risk to that resident's health or well-being, the facility may utilize a risk agreement to explore alternatives and potential consequences with the resident.

(a) The facility must identify the need for and develop a written risk agreement following the facility's established guidelines and procedures. A risk agreement must include:

(A) An explanation of the cause of concern;

(B) The possible negative consequences to the resident or others;

(C) A description of the resident's preference;

(D) Possible alternatives or interventions to minimize the potential risks associated with the resident's current preferences and actions;

(E) A description of the services the facility shall provide to accommodate the residents' choice or minimize the potential risk; and

(F) The final agreement, if any, reached by all involved parties, must be included in the service plan.

(b) The licensing policy analyst must be consulted, and alternatives reviewed before the resident signs the agreement.

(c) The facility must involve the resident, the resident's designated representative, and others as indicated, to develop, implement, and review the risk agreement. The resident's preferences shall take precedence over those of a family member.

(d) A risk agreement shall not be entered into or continued with, or on behalf of, a resident who is unable to recognize the consequences of their behavior or choices.

(e) The risk agreement must be reviewed at least quarterly.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.991

AMEND: 411-054-0037

REPEAL: Temporary 411-054-0037 from APD 29-2024

RULE TITLE: Acuity-Based Staffing Tool

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends requirements related to selecting and maintaining a department-approved ABST. Amends the requirements for the proprietary ABST department's review process. Clarifies requirements for developing and maintaining a posted staffing plan. Clarifies that facility must consistently meet resident needs. Aligns regulatory action to Senate Bill 1521 (2024 Regular Session).

RULE TEXT:

(1) DEVELOP AND MAINTAIN ACUITY-BASED STAFFING. Facilities must select and implement a Department-approved Acuity-Based Staffing Tool (ABST) for determining appropriate staffing levels. Individual resident needs and care elements must be the primary consideration when developing and maintaining an ABST. Regardless of the ABST adopted, all requirements set forth in this rule and OAR 411-054-0034 (Resident Movein Evaluation) must be met. Facilities shall:

(a) Select and implement the Department's developed ABST or submit a proprietary ABST to the Department for approval as outlined in paragraph (2) of this rule.

(b) Accurately capture care time and care elements that staff are providing to each resident as outlined in each individual service plan. Established care time for each care element must be resident specific, rather than a predetermined average.

(c) Develop a staffing plan for each shift, that meets the scheduled and unscheduled needs of all residents.

(d) Develop ABST reports and posted staffing plans that reflect distinct and segregated areas as outlined in OAR 411-054-0070(1).

(e) If applicable, determine ABST time for residents on a Specific Needs Settings Contract and residents not on a Specific Needs Setting Contract to build posted staffing plan as outlined in this rule.

(f) Develop written policies and procedures to accurately and consistently implement the ABST. The policy must explain how a facility evaluates and accounts for both scheduled and unscheduled resident needs.

(g) Provide the relevant ABST information for a specific resident if requested by the Department, that specific resident, that specific resident's legal representative, or the Long-Term Care Ombudsman.

(2) PROPRIETARY ABST. A facility that chooses to use a proprietary ABST must implement a Department-approved ABST that meets this rule.

(a) REQUIRED ELEMENTS. The proprietary ABST the facility adopts must meet the following requirements:

(A) Facilities can group or combine ABST care elements in their ABST reports, however each resident's ABST evaluation must individually address and document all ABST care elements outlined in paragraph (3) of this rule.

(B) When calculating total time, the ABST must include the care elements for each resident and staff time needed to complete each individual care element.

(C) Ensure the ABST can produce a report that identifies all residents currently residing in the facility, the care elements for each of the residents, and the staff time required to complete the care elements for each resident.

(D) ABST total time must present in minutes per shift, per day. If the proprietary ABST does not have this functionality, at a minimum the ABST total time must present in daily minutes. If a Proprietary ABST presents total time in daily minutes the facility's ABST policy must describe how staffing per shift is determined.

(E) Identify the date the resident's ABST evaluation was last completed.

(F) If applicable, determine ABST time for both residents on a Specific Needs Contract and residents not on a Specific Needs Contract to build posted staffing plans as outlined in this rule.

(b) PROPRIETARY ABST REVIEW REQUEST. If a facility proposes to use a proprietary ABST, the facility must submit the Proprietary ABST ODHS Review Request form (se528132), including but not limited to the following:

(A) Facilities who want to implement or switch to a proprietary ABST must submit Proprietary ABST ODHS Review

Request form (se528132) prior to implementation.
(B) Sample ABST report displaying the ABST care elements, and the staff time needed to complete the displayed care elements, with a total time in minutes shown per shift, per day. If the proprietary ABST only provides total time in daily minutes, the facility's ABST policy must describe how staffing per shift is determined.
(C) The facility's ABST policy required under OAR 411-054-0025(7)(i).
(c) ABST SUMMARY STATEMENT. If the proprietary review request is approved, a facility must develop and maintain an ABST Summary Statement that meets the requirements, as outlined in the Proprietary ABST ODHS Review Request form (se528132). This includes providing a general guide explaining how the ABST functions. The summary statement must be available upon request by the Department.
(d) DEPARTMENT REVIEW OF PROPOSED PROPRIETARY ABST REQUEST. The Department will review and either approve or deny the facility's proprietary ABST. The Department may request additional documentation, potentially including a virtual demonstration, to make the determination. If the ABST is deemed to not meet this rule, the Department may deny or rescind approval at any time. The Department shall provide the facility with a written explanation of the reasons for the denial or decision to rescind approval. If a facility appeals a decision to rescind, the facility may continue to use the facility's existing proprietary ABST until a final order has been issued.
(e) APPEALS PROCESS. The Department will determine whether to approve or deny the request. If the proprietary ABST is denied or rescinded, the facility is entitled to a contested case hearing pursuant to ORS chapter 183. Prior to a contested case hearing, the facility may request an informal conference.
(f) ANNUAL STATEMENT. Once approved, the facility must provide the Department an annual statement attesting no substantive changes have occurred to the design of the facility's proprietary ABST that impacts its functionality. The facility must submit statements to the Department every year, between January 1 and March 31.
(g) If the facility makes substantive changes to the proprietary ABST design, and if those changes impact ABST functionality making the prior submitted information inaccurate or invalid, then the facility must re-submit to the Department the Proprietary ABST ODHS Review Request Form (se528132) as described in this rule for review prior to implementing the new or revised ABST.
(3) ABST CARE ELEMENTS. The required ABST care elements include activities of daily living and other tasks related to resident care and services, as outlined in OAR 411-054-0030, 411-054-0034, and 411-057-0160. If any individual care element requires more than one staff, additional time must be accounted for as described in 411-054-0070(1). The ABST must individually address and document the care time required to complete each of the following individual ABST care elements:
(a) Personal hygiene.
(b) Grooming.
(c) Dressing and undressing.
(d) Toileting, bowel, and bladder management.
(e) Bathing.
(f) Transfers.
(g) Repositioning.
(h) Ambulation.
(i) Supervising, cueing, or supporting while eating.
(j) Medication administration.
(k) Providing non-drug interventions for pain management.
(l) Providing treatments.
(m) Cueing or redirecting due to cognitive impairment or dementia.
(n) Ensuring non-drug interventions for behaviors.
(o) Assisting with leisure activities, assist with social and recreational activities.
(p) Monitoring physical conditions or symptoms.
(q) Monitoring behavioral conditions or symptoms.

(r) Assisting with communication, assistive devices for hearing, vision, and speech.
(s) Responding to call lights.
(t) Safety checks, fall prevention
(u) Completing resident specific housekeeping or laundry services performed by care staff.
(v) Providing additional care services. If additional services are not provided, this element can be omitted.
(4) FREQUENCY OF UPDATES. Facilities must complete, update, review, and document the ABST evaluation for each resident according to the following schedule.
(a) Before a resident moves in.
(b) Whenever there is a significant change of condition as defined in OAR 411-054-0040(1)(b).
(c) No less than quarterly and corresponding with resident service plan updates, updating as required by OAR 411-054-0034.
(5) DEVELOP AND MAINTAIN UPDATED POSTED STAFFING PLAN. Each facility should use the results of an ABST to develop and update the facility's posted staffing plan. The staffing plan must outline the staffing numbers required to meet the scheduled and unscheduled needs of all residents in the facility, for each shift. The ABST and staffing plan must be reviewed at the frequency required in paragraph (4) of this rule.
(a) The posted staffing plan must incorporate:
(A) The total ABST care time in minutes per shift, per day. If a proprietary ABST does not have this functionality, at a minimum the ABST total time must be shown in daily minutes as referenced in paragraph (2) of this rule.
(B) The unscheduled care needs of residents.
(C) The staffing requirements outlined in OAR 411-054-0070(1).
(D) Any other applicable factors to be considered. (e.g., disruptions to normal facility operations.)
(E) The time for paid or unpaid staff meal breaks must be accounted for and should not be included in the total scheduled staff time per shift.
(F) The facility's distinct and segregated areas as outlined in OAR 411-054-0070(1) to meet the scheduled and unscheduled needs of residents who reside in each segregated area. Each distinct and segregated area must have a posted staffing plan.
(G) The staffing needs required under the Specific Needs Contracts, if applicable.
(b) The facility must maintain staffing documentation to show consistent staffing to meet or exceed the posted staffing plan 24 hours a day, seven days a week.
(c) The facility must maintain historical posted staffing plans. The posted staffing plan must contain the date(s) it was effective. Records must be kept for a minimum of three years.
(6) CONSISTENTLY MEETING NEEDS. The facility must consistently meet the scheduled and unscheduled needs of all residents, 24 hours a day, seven days a week.
(7) ABST REPORTING OF SPECIFIC NEEDS CONTRACTS AND EXCEPTIONAL PAYMENTS. Staffing required by a Specific Needs Contract (Contract), as described in OAR chapter 411, division 027, must be included in a facility's ABST.
(a) If all residents within the facility are receiving service through a Contract:
(A) The facility's staffing plan must include the number of staff required by the Contract and additional staff time, if required to meet the scheduled and unscheduled needs of the residents.
(B) If the ABST staffing analysis indicates numbers higher than the Contract, the facility must staff to the numbers indicated by the ABST.
(b) If certain residents within the facility are served under a Contract, and other residents are not served by a Contract:
(A) The facility must maintain a posted staffing plan that includes the staffing required for residents served by the Contract as well as the staffing required for residents not served by the Contract.
(B) The facility must prepare two distinct ABST reports: one for residents served by the Contract and the other for residents not served by the Contract.
(C) If the ABST indicates higher staffing numbers than the Contract for residents who are served by the Contract, the facility must staff to numbers indicated by the ABST.

(c) If the facility has any residents funded by an exceptional payment, as provided in OAR 411-027-0050, that must be included in the ABST and the facility must staff to the greater of the numbers as indicated in the exception or the ABST.
(8) ABST DOCUMENTATION: Each facility must be able to provide the Department with the following documentation, including but not limited to:
(a) Current ABST report.
(b) ABST total staff time in minutes necessary to meet the scheduled needs of residents daily, per shift, per day. If a proprietary ABST does not have this functionality, at a minimum the ABST total time must be shown in daily minutes as referenced in paragraph (2) of this rule.
(c) The date the last ABST evaluation for each individual resident was completed.
(d) The facility's proprietary ABST Summary Statement, if applicable.
(e) The Department's ABST Proprietary Review Request form documenting the Department's approval, upon request of the Department.
(f) The staffing needs required under the Specific Needs Contracts or Exceptional Payments, if applicable.
(9) REVIEW BY DEPARTMENT.
(a) The Department is required to assess facility staffing levels each time the Department conducts a survey or an investigation into a complaint regarding:
(A) Resident abuse;
(B) Resident injury;
(C) Resident safety; or
(D) Staffing levels.
(b) The Department must confirm the facility is using a Departmentapproved ABST that meets the requirements established in this rule. This includes verifying whether the facility is:
(A) Consistently meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.
(B) Consistently updating staffing levels at the frequency required by paragraph (4) of this rule.
(C) Consistently staffing to the posted staffing plan as required by paragraph (5) of this rule.
(10) REQUIRED REGULATORY ACTION.
(a) The Department is required to take the following actions if it determines the facility:
(A) Has not selected and implemented an ABST, the Department will require the facility to adopt and implement the ODHS ABST until the facility selects and implements either the Department's ABST or a Department-approved proprietary ABST.
(B) Is not meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week, the Department shall place a license condition in accordance with OAR 411-054-0110(3)(a), (b), (c) or (f). The facility will be monitored for continued compliance or until the licensed condition is withdrawn.
(b) The Department may issue corrective action in accordance with OAR 411-054-0106 to compel compliance if the facility is not:
(A) Consistently staffing to the levels, intensity and qualifications indicated by the ABST.
(B) Updating the posted staffing plan to meet the scheduled and unscheduled needs of all residents.
(C) Updating the ABST for all residents at required frequencies, as outlined in paragraph (4) of this rule.
(D) Accurately capturing the care element time in the ABST based on the typical time taken to complete the task for each individual resident.
(E) Accurately capturing the care being provided by staff or outlined in the resident's personal service plan.
(F) Using a Department-approved ABST.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450, 443.738

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.738, 443.991, 678.710

AMEND: 411-054-0040

RULE TITLE: Change of Condition and Monitoring

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends rule to clarify that when a resident experiences a significant change of condition the ABST must be reviewed.

RULE TEXT:

(1) CHANGE OF CONDITION. These rules define a resident's change of condition as either short term or significant with the following meanings:

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

(b) Significant change of condition means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident.

(c) If a resident experiences a significant change of condition that is a major deviation in the resident's health or functional abilities, the facility must evaluate the resident, refer to the facility nurse, document the change, and update the service plan and the ABST. The staffing plan should also be updated, as needed.

(d) If a resident experiences a short-term change of condition that is expected to resolve or reverse with minimal intervention, the facility must determine and document what action or intervention is needed for the resident.

(A) The determined action or intervention must be communicated to staff on each shift.

(B) The documentation of staff instructions or interventions must be resident specific and made part of the resident record with weekly progress noted until the condition resolves.

(2) MONITORING. The facility must have written policies to ensure a resident monitoring and reporting system is implemented 24-hours a day. The policies must specify staff responsibilities and identify criteria for notifying the administrator, registered nurse, or healthcare provider. The facility must:

(a) Monitor each resident consistent with his or her evaluated needs and service plan;

(b) Train staff to identify changes in the resident's physical, emotional and mental functioning and document and report on the resident's changes of condition;

(c) Have a reporting protocol with access to a designated staff person, 24-hours a day, seven days a week, who can determine if a change in the resident's condition requires further action; and

(d) Provide written communication of a resident's change of condition, and any required interventions, for direct care staff on each shift.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.991

AMEND: 411-054-0070

RULE TITLE: Staffing Requirements and Training

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends rule to add the requirement that facility must consistently staff to meet the scheduled and unscheduled needs of residents.

RULE TEXT:

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

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

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

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

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

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

(C) Administrators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Effective December 31, 2024, all staff must have completed the required training. All new staff, hired on and after

January 1, 2025, must complete the required training prior to beginning job responsibilities.
(B) The Department-approved LGBTQIA2S+ trainings shall address the elements described in paragraph (6)(b) of this rule.
(c) Abuse and reporting requirements.
(d) Fire safety and emergency procedures.
(e) INFECTIOUS DISEASE PREVENTION. Prior to beginning their job responsibilities, unless the employee received the training described below within the 24-month period prior to the time of hiring, all employees must complete training addressing the prevention, recognition, control and reporting of the spread of infectious disease.
(A) The Department, in consultation with the Oregon Health Authority, has determined this training must address the following curricula:
(i) Transmission of communicable disease and infections, including development of a policy with criteria directing staff to stay home when ill with a communicable disease, so as not to transmit disease.
(ii) Policy addressing respiratory hygiene and coughing etiquette.
(iii) Standard precautions.
(iv) Hand hygiene.
(v) Use of personal protective equipment.
(vi) Cleaning of physical environment, including, but not limited to disinfecting high-touch surfaces and equipment, and handling, storing, processing and transporting linens to prevent the spread of infection.
(vii) Isolating and cohorting of residents during a disease outbreak.
(viii) Employees must also receive training on the rights and responsibilities of employees to report disease outbreaks under ORS 433.004 and safeguards for employees who report disease outbreaks.
(B) INFECTIOUS DISEASE TRAINING CURRICULUM. Pre-service infectious disease training curriculum must be approved by the Department before facilities may offer training to staff.
(i) The pre-service training may be provided in person, in writing, by webinar or by other electronic means.
(ii) Facilities or other entities that want to provide training curriculum to facilities must first present that curriculum to the Department for review and approval.
(f) HOME AND COMMUNITY-BASED SERVICES (HCBS) TRAINING. All staff are required to complete the Department-approved HCBS training, as provided below:
(A) Effective March 31, 2024, all staff must have completed the required training.
(B) All new staff, hired on or after April 1, 2024, must complete the required training prior to beginning job responsibilities.
(g) FOOD HANDLING. If the staff member's duties include preparing food, they must have a food handler's certificate.
(4) PRE-SERVICE TRAINING FOR ALL DIRECT CARE STAFF.
(a) DEMENTIA. Prior to providing care to residents, all direct care staff must complete an approved pre-service dementia training.
(A) Documentation of dementia training:
(i) A certificate of completion shall be issued to direct care staff who satisfactorily complete approved dementia training. Facilities shall also maintain records of all direct care staff who have successfully completed pre-service dementia training.
(ii) Each facility shall maintain written documentation of continuing education completed, including required pre-service dementia training, for all direct care staff.
(B) Portability of pre-service dementia training: After completing the pre-service training, if a direct care staff person is hired within 24 months by a different facility, the hiring facility may choose to accept the previous training or require the direct care staff to complete the hiring facility’s pre-service dementia training.
(C) A certificate of completion must be made available to the Department upon request.
(D) Pre-service dementia care training must include the following subject areas:
(i) Education on the dementia disease process, including the progression of the disease, memory loss, and psychiatric

and behavioral symptoms.
(ii) Techniques for understanding, communicating, and responding to distressful behavioral symptoms, including, but not limited to, reducing the use of antipsychotic medications for non-standard uses.
(iii) Strategies for addressing social needs of persons with dementia and engaging them with meaningful activities.
(iv) Information concerning specific aspects of dementia care and ensuring the safety of residents with dementia, including, but not limited to, how to:
(I) Identify and address pain.
(II) Provide food and fluids.
(III) Prevent wandering and elopement.
(IV) Use a person-centered approach.
(b) ORIENTATION TO RESIDENT. Pre-service orientation to resident:
(A) Prior to providing personal care services for a resident, direct care staff must receive an orientation to the resident, including the resident's service plan.
(B) Direct care staff members must be directly supervised by a qualified person until they have successfully demonstrated satisfactory performance in any task assigned and the provision of individualized resident services, as applicable.
(5) TRAINING WITHIN 30 DAYS OF HIRE FOR DIRECT CARE STAFF.
(a) The facility is responsible to verify that direct care staff have demonstrated satisfactory performance in any duty they are assigned.
(b) Knowledge and performance must be demonstrated in all areas within the first 30 days of hire, including, but not limited to:
(A) The role of service plans in providing individualized resident care.
(B) Providing assistance with the activities of daily living.
(C) Changes associated with normal aging.
(D) Identification of changes in the resident's physical, emotional and mental functioning and documentation and reporting on the resident's changes of condition.
(E) Conditions that require assessment, treatment, observation and reporting.
(F) General food safety, serving and sanitation.
(G) If the direct care staff person’s duties include the administration of medication or treatments, appropriate facility staff, in accordance with OAR 411-054-0055 (Medications and Treatments) must document that they have observed and evaluated the individual's ability to perform safe medication and treatment administration unsupervised.
(6) ANNUAL AND BIENNIAL INSERVICE FOR ALL STAFF.
(a) Annual infectious disease training requires the following:
(A) Administrators and employees will be required to complete annual training on infectious disease outbreak and infection control. Such training will be included within the current number of required annual training hours and will not necessitate additional hours of training.
(B) Annual in-service training must be documented in the employee record.
(b) Biennial LGBTQIA2S+ training requires the following:
(A) Administrators and employees shall be required to complete biennial training addressing LGBTQIA2S+ protections, as described in this section. The facility is responsible for the cost of providing this training to all facility staff.
(i) Each facility shall designate two employees, one who represents management and one who represents direct care staff by July 1, 2024. It is acceptable for the designated employee representing management to generally be housed offsite, but the direct care representative must be onsite.
(ii) The designated employees shall serve as points of contact for the facility regarding compliance with the preservice and biennial training requirements. These individuals shall develop a general training plan for the facility.
(B) Facilities must select the LGBTQIA2S+ training to be used by the facility by either:
(i) Choosing to use the standard Department-approved biennial LGBTQIA2S+ training, or

(ii) Applying to the Department to request approval of a biennial LGBTQIA2S+ training to be provided by the facility.
(C) ORS 441.116 requires all LGBTQIA2S+ trainings address:
(i) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency virus.
(ii) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression or human immunodeficiency virus status.
(iii) The defined terms commonly associated with LGBTQIA2S+ individuals and human immunodeficiency virus status.
(iv) Best practices for communicating with or about LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including the use of an individual's chosen name and pronouns.
(v) A description of the health and social challenges historically experienced by LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including discrimination when seeking or receiving care at care facilities and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination.
(vi) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including suggested changes to care facility policies and procedures, forms, signage, communication between residents and their families, activities, in-house services and staff training.
(vii) The facility, individual or entity providing the training must demonstrate a commitment to advancing quality care for LGBTQIA2S+ residents and residents living with human immunodeficiency virus in this state.
(D) The proposal for training submitted by a facility, entity, or individual shall include:
(i) The regulatory criteria described in paragraph (C) of this section as part of the proposal.
(ii) The following elements must be included in the proposal:
(I) A statement of the qualifications and training experience of the facility, individual or entity providing the training;
(II) The proposed methodology for providing the training either online or in person.
(III) An outline of the training.
(IV) Copies of the materials to be used in the training.
(iii) The Department will review the materials and determine whether to approve or deny the training. No later than 90 days after the request is received, the Department will inform the facility in writing of the Department's decision.
(c) Annual Home and Community-Based Services (HCBS) training requires the following:
(A) All staff will be required to complete annual training concerning the Home and Community-Based Services regulations.
(B) Annual in-service training must be documented in the employee record.
(C) These annual trainings will be required as of April 1, 2025.
(7) ANNUAL IN-SERVICE TRAINING FOR DIRECT CARE STAFF.
(a) All direct care staff must complete and document a minimum of 12 hours of in-service training annually on topics related to the provision of care for persons in a community-based care setting, including training on chronic diseases in the facility population, LGBTQIA2S+ and dementia training. Annual in-service training hours are based on the anniversary date of hire.
(b) Requirements for annual in-service dementia training:
(A) Except as provided in paragraph (B) of this section, each direct care staff must complete 6 hours of annual in-service training on dementia care.
(B) Exception: Staff hired prior to January 1, 2019 must complete 6 hours of dementia care in-service training by the anniversary of their hire date in 2020 and annually thereafter.
(C) Dementia care training may be included in the required minimum 12 hours of annual in-service training described in subsection (a) above.
(D) Dementia care training must reflect current standards for dementia care and be informed by the best evidence in the care and treatment of dementia.
(E) The facility shall determine the competency of direct care staff in dementia care in the following ways:
(i) Utilize approved dementia care training for its direct care staff, coupled with methods to perform a competency

assessment as defined in OAR 411-054-0005(19).
(ii) Ensure direct care staff have demonstrated competency in any duty they are assigned. Facility staff in a supervisory role shall perform assessment of each direct care staff.
(iii) Maintain written documentation of all dementia care training completed by each direct care staff and shall maintain documentation regarding each employee's assessed competency.
(8) APPROVAL OF DEMENTIA TRAINING CURRICULUM. All dementia care training provided to direct care staff must be approved by a private or non-profit organization that is approved by the Department through a "Request for Application" (RFA) process.
(9) ADDITIONAL REQUIREMENTS. Staff:
(a) Under 18 years of age may not perform medication administration or delegated nursing tasks. Staff under the age of 18 must be directly supervised when providing bathing, toileting, incontinence care or transferring services.
(b) Must be trained in the use of the abdominal thrust and First Aid. Cardiopulmonary resuscitation (CPR) training is recommended, but not required.
(c) Must have sufficient communication and language skills to enable them to perform their duties and communicate with residents, other staff, family members, and health care professionals, as needed.
(10) Contractors who provide services or supports directly to residents must complete the required LGBTQIA2S+ trainings outlined in paragraph (6)(b)(C) of this rule.
(a) Contractors who must be trained include, but are not limited to, RN and administrative consultants, housekeeping services, dietary services, beauticians, barbers, or other contractors who provide services or supports directly to residents.
(b) Exempt from this training requirement are contractors who contract directly with the resident or the resident's representative, and contractors who do not generally provide services or supports directly to residents, including, but not limited to, contractors for landscaping, pest control, deliveries and building repairs.
(c) By December 31, 2024, facilities shall ensure that all contracts entered into with entities described in paragraph (a) of this section shall include language requiring contractors provide Department-approved LGBTQIA2S+ training to their employees within 12 months of entering into the contract with the facility and every two years thereafter.
(d) For existing contracts in effect January 1, 2025, facilities shall require the contractor provide Department-approved LGBTQIA2s+ training to employees by December 31, 2025, and every two years thereafter.
(e) For new contracts created after January 1, 2025, facilities shall require contractors provide the Department-approved LGBTQIA2S+ training to employees within 12 months of entering into the contract with the facility, and every two years thereafter.
(f) Facilities must inform contractors that the cost of all LGBTQIA2S+ trainings for contracted employees shall be paid by the contractor.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 441.112, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 441.116, 443.400 - 443.455, 443.991

AMEND: 411-054-0110

REPEAL: Temporary 411-054-0110 from APD 29-2024

RULE TITLE: Conditions

NOTICE FILED DATE: 10/23/2024

RULE SUMMARY: Amends rule to allow department discretion in determining when to impose a condition for a violation of ABST requirements.

RULE TEXT:

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

(2) The Department shall immediately remove the license condition if the finding of immediate jeopardy is not substantiated within 30 calendar days after the imposition of the license condition.

(3) Conditions that may be imposed on a licensee include, but are not limited to:

(a) Restricting the total number of residents;

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

(c) Requiring additional staff or staff qualifications;

(d) Requiring additional training for staff;

(e) Requiring additional documentation; or

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

(4) IMPENDING IMPOSITION OF LICENSE CONDITION.

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

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

(i) Substantiated finding of abuse.

(ii) Finding of immediate jeopardy.

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

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

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

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

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

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

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

(b) If the threat to residents of a facility is so imminent the Department determines it is not safe or practical to give the facility advance notice of a license condition, the Department must provide the notice required under section (5)(a)

within 48 hours after issuing an order imposing the license condition.
(5) INFORMAL CONFERENCE. If an informal conference is requested, the conference will be held at a location designated by the Department. If determined to be appropriate by the Department, the conference may be held by telephone.
(a) With Notice. If a Notice of Impending License Condition is issued, the licensee must be provided with an opportunity for an informal conference to object to the Department's proposed action before the license condition is scheduled to take effect. The Order Imposing License Condition may be issued at any time after the informal conference.
(b) Without Notice. If an Order Imposing License Condition is issued without a prior Notice of Impending License Condition, the licensee may request an immediate informal conference to object to the Department's action.
(6) ORDER IMPOSING LICENSE CONDITION.
(a) When an Order Imposing License Condition (Order) is issued, the Department must serve the Order to the licensee either personally or by registered or certified mail.
(b) The Order must include the following statements:
(A) The authority under which the condition is being issued.
(B) A reference to the specific sections of the statute and administrative rules involved.
(C) The effective date of the condition.
(D) A short and plain statement of the matters asserted or charged.
(E) The specific terms of the license condition.
(F) A specific description of how the scope and manner of the license condition is designed to remediate the findings that lead to the license condition.
(G) A specific description of the requirements for withdrawal of the license condition.
(H) Statement of the licensee's right to request a hearing.
(I) That the licensee may elect to be represented by counsel and to respond and present evidence and argument on all issues involved. If the licensee is to be represented by counsel, the licensee must notify the Department.
(J) That, if a request for hearing is not received by the Department within 21 calendar days from the date of the Order, the licensee has waived the right to a hearing under ORS chapter 183.
(K) Findings of specific acts or omissions of the licensee that are grounds for the license condition, and the reasons the acts or omissions create a situation for which the imposition of a license condition is warranted.
(L) That the Department may combine the hearing on the Order with any other Department proceeding affecting the licensee. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.
(7) A licensee who has been ordered to restrict admissions to a facility must immediately post a "Restriction of Admissions Notice" that is provided by the Department, on both the inside and outside faces of each door of the facility through which any person enters or exits a facility. The notices must not be removed, altered or obscured until the Department has lifted the restriction or the restriction is automatically removed pursuant to subsection (10)(d) of this rule.
(8) HEARING.
(a) Right to Hearing. If the Department imposes an Order, the licensee is entitled to a contested case hearing pursuant to ORS chapter 183.
(b) Hearing Request. The Department must receive the licensee's request for a hearing within 21 calendar days of the date of Order. If a request for hearing is not received by the Department within 21 calendar days of the date of the Order, the licensee will have waived the right to a hearing under ORS chapter 183.
(c) A licensee’s request for a hearing does not delay enforcement.
(d) Date of Hearing. When a timely request for hearing is received, the hearing shall be held as soon as practical.
(e) Consolidation. If a request for hearing is received on an Order, and a subsequent Order is issued, the Department may consolidate the Orders into a single contested case hearing.
(9) REQUEST FOR REINSPECTION OR REEVALUATION.

(a) Assertion of substantial compliance. Following the Order on a facility, the Department shall:
(A) Within 15 business days of receiving the facility's written assertion of substantial compliance and request for reinspection, the Department shall reinspect or reevaluate the facility to determine if the facility has achieved substantial compliance.
(B) Notify the facility by telephone or electronic means of the findings of the reinspection or reevaluation within five business days after completion of the reinspection or reevaluation.
(C) Issue a written report to the facility within 30 business days after the reinspection or reevaluation notifying the facility of the Department's determinations.
(b) If the Department finds the facility has achieved substantial compliance and that systems are in place to ensure similar deficiencies do not reoccur, the Department shall withdraw the Order.
(c) If after reinspection or reevaluation, the Department determines the violation continues to exist, the Department may not withdraw the Order and is not obligated to reinspect or reevaluate the facility again for at least 45 business days after the first reinspection or reevaluation.
(A) The Department shall provide the facility notice of the decision not to withdraw the Order in writing.
(B) The notice shall inform the facility of the right to a contested case hearing pursuant to ORS chapter 183.
(d) If the Department does not meet the requirements of this section, a license condition is automatically removed on the date the Department failed to meet the requirements of this section, unless the Director extends the applicable period for no more than 15 business days. The Director may not delegate the power to make a determination regarding an extension under this paragraph.
(e) Nothing in this section limits the Department's authority to visit or inspect the facility at any time.
(10) EXCEPTIONS TO ORDER IMPOSING LICENSE CONDITION. When a restriction of admissions is in effect pursuant to an Order, the Department, in its sole discretion, may authorize the facility to admit new residents for whom the Department determines that alternate placement is not feasible.
(11) Conditions may be imposed for the duration of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on the attachment to the license.

STATUTORY/OTHER AUTHORITY: ORS 183, 410.070, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 183, 443.400 - 443.455, 443.991