11-10

Secretary of State
Certificate and Order for Filing

TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [upon filing] by the
Date prior to or same as filing date

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division | Administrative Rules Chapter Number

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Rules Coordinator | Address | Telephone

SPD 23-2011 (T)

to become effective [upon filing] through [May 7, 2012].
Date upon filing or later — A maximum of 180 days including the effective date.

RULE CAPTION

Application for Initial Licensure and License Renewal for Residential Care and Assisted Living Facilities

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

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:
411-054-0005, 411-054-0013, 411-054-0016

SUSPEND:

FILED
NOV 10 2011
ARCHIVES DIVISION
SECRETARY OF STATE

Stat. Auth.: ORS 410.070 & 443.450

Other Auth.:

Stats. Implemented: ORS 443.400 to 443.455 & 443.991

RULE SUMMARY

The Department of Human Services (Department) is temporarily amending rules in OAR chapter 411, division 054 to clarify the requirement that residential care (RCF) and assisted living facilities (ALF) disclose the name and financial interest of any person with an ownership interest of 10 percent or more and who is the license applicant or facility operator. The existing language was determined by Legislative Counsel to exceed the intent and scope of the enabling statutes.

Marie Cervantes | Nov. 10, 2011 | Marie Cervantes

Signature | Date | Printed Name

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

ARC 940-2005

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division | Administrative Rules Chapter Number

In the Matter of: The temporary amendment of 411-054-0005, 411-054-0013, and 411-054-0016 relating to residential care and assisted living facilities.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
Application for Initial Licensure and License Renewal for Residential Care and Assisted Living Facilities

Statutory Authority: ORS 410.070 & 443.450

Other Authority:

Stats. Implemented: ORS 443.400 to 443.455 & 443.991

Need for the Temporary Rule(s):
The Department needs to temporarily amend rules in OAR chapter 411, division 054 to clarify the requirement that RCF and ALFs disclose the name and financial interest of any person with an ownership interest of 10 percent or more and who is the license applicant or facility operator so that the rules are within the intent and scope of the enabling legislation.

Documents Relied Upon, and where they are available:
Legislative Counsel, Administrative Rule Review, Written Findings of Negative Determination (ARR 1638)
Available upon request. Please call 503-945-6398.

Justification of Temporary Rule(s):
Failure to act promptly will result in serious prejudice to the Department and RCF and ALF applicants. The rules need to be amended promptly so that OAR 411-054-0013 and 411-054-0016 are within the intent and scope of the enabling legislation.

Marie Cervantes | Nov. 10, 2021 | Marie Cervantes

Signature | Date | Printed Name

DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 54

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0005
Definitions

For the purpose of these rules, the following definitions apply:
(1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).
(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well being, health, and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.
(3) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.
(4) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.
(5) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Except as set forth in OAR 411-054-0013(1)(a), 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 owns the residential care or assisted living facility business. Except as set forth in OAR 411-054-0013(1)(a), Applicant also includes the 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 operates the assisted living or residential care facility on behalf of the facility business owner.
(6) "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; and
(c) Making recommendations to the Division regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.
(7) "Assistant Director" means the assistant director of the Division, or that individual's designee.
(8) "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.
(9) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker as defined in this rule.
(10) "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.
(11) "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; and
(i) Pressure ulcers (stage 2 or greater).
(12) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her 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.
(13) "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.
(14) "Department" means the Department of Human Services (DHS).
(15) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy, supports dignity as does delivering services in a manner that shows courtesy and respect.
(16) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:
(a) Medication administration;
(b) Resident-focused activities;
(c) Assistance with activities of daily living;
(d) Supervision and support of residents; and
(e) Serving meals, but not meal preparation.
(17) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.
(18) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade that renders the licensee unable to operate the facility or the facility is uninhabitable.
(19) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(20) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).
(21) "Entity" means an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies, and insurance companies, a state, or a political subdivision, or instrumentality including a municipal corporation.
(22) "Exception" means a written variance granted by the Division from a regulation or provision of these rules.
(23) "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.
(24) "FPS" means the Facilities Planning and Safety Program within the Public Health Division.
(25) "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.
(26) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.
(27) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.
(28) "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.
(29) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.
(30) "Licensed Nurse" means an Oregon licensed practical or registered nurse.
(31) "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.
(32) "Managed Risk" means a process by which 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.
(33) "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.
(34) "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 (e.g., 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.
(35) "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; or
(d) Additions, conversions, renovations, or remodeling of existing buildings.

(36) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851, division 047.
(37) "Owner" means a person with an ownership interest.
(38) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
(39) "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.
(40) "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.
(41) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.
(42) "Psychoactive Medications" mean medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.
(43) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.
(44) "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.
(45) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.
(46) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.).
(47) "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.
(48) "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.
(49) "Services" means 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.
(50) "Subject Individual" means any person 16 years of age or older on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records 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 persons employed or that are 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; or
(B) Persons employed by a private business that provides services to residents and is not regulated by the Department.
(51) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.
(52) "These Rules" mean the rules in OAR chapter 411, division 054.
(53) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:
(a) The general public; or
(b) A specific population, for example, residents with dementia or traumatic brain injury.
(54) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.
(55) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) 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.
Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 to 443.455 & 443.991

411-054-0013
Application for Initial Licensure and License Renewal
(1) APPLICATION. Applicants for initial licensure and license renewal must complete an application on a form provided by the Division. The form must be signed by the applicant's legally authorized representative, dated, contain all information requested by the Division, and be accompanied by the required licensing fee.
(a) Applicants must provide all information and documentation as required by the Division including but not limited to identification of financial interest of any person, including stockholders who have an incident of ownership in the applicant representing an interest of 10 percent or more. For purposes of rule, a person with a 10 percent or more ownership interest is presumed to have an effect on the operation of the facility with respect to factors affecting the care or training provided, unless the person can establish the person has no involvement in the operation of the facility.
(b) If the owner of the assisted living or residential care 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.
(c) 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.
(d) 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 facility, 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.
(e) The Division may deny, revoke, or refuse to renew the license if the applicant fails to provide complete and accurate information on the application and the Division concludes that the missing or corrected information is needed to determine if a license should be granted.
(f) Each application for a new license must include a completed and signed credit history and criminal records request form for the applicant and for each person with 10 percent or more incident of ownership in the applicant.
(g) The Division may require financial information as stated in OAR 411-054-0016(3) (New Applicant Qualifications), when considering an applicant's request for renewal of a license.
(h) Applicants must provide other information and documentation as the Division may reasonably require for the proper administration of these rules, including but not limited to information about ownership interest and involvement in the operation of the facility in other business enterprises, as relevant.
(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 payment of the required non-refundable fee before the date of expiration extends the effective date of expiration until the Division takes action upon such application.
(a) The Division 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 Division with a completed criminal records request form for the applicant and for each person with incident of ownership of 10 percent or more in the applicant when required by the Division.
(c) A building inspection may be requested at the Division's discretion. The Division 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 Division that the applicant is capable of providing care in a manner consistent with the requirements of these rules.
(b) The Division may consider the background and qualifications of any person with a 10 percent or more incident of ownership in the facility when determining whether an applicant may be licensed.
(c) The Division may consider the applicant's history of compliance with Division rules and orders including the history of compliance of any person with a 10 percent or more incident of ownership in the facility.
Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 to 443.455 & 443.991

411-054-0016
New Applicant Qualifications
For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds 10 percent or more incident of ownership in the facility as described in OAR 411-054-0013(1)(a). Applicants for licensure (excluding license renewal but including all changes of ownership, management, or operator) must meet the following criteria:

(1) CRIMINAL RECORDS. Each applicant may not have convictions of any of the crimes listed in OAR 407-007-0275 and must complete a criminal records check conducted by the Department in accordance with OAR 407-007-0200 to 407-007-0370.
(2) PERFORMANCE HISTORY. The Division shall consider an applicant's performance history, including repeat sanctions or rule violations, before issuing a license.
(a) Each applicant must be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill, or individuals with disabilities that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.
(b) Applicants must be free of incident of ownership history in any facility in any state that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.
(c) Failure to provide accurate information or demonstrate required performance history could result in the Division's denial of a license.
(3) FINANCIAL HISTORY. Each applicant must:
(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years.
(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, utilities, or other costs necessary for facility operation during the past five years.
(c) Submit proof of fiscal responsibility, including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:
(A) An unencumbered line of credit;
(B) A performance bond; or
(C) Any other method satisfactory to the Division.
(d) Provide a pro forma (revenues, expenditures, and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.
(4) EXPERIENCE. If an applicant does not have experience in the management of nursing facilities, assisted living, or residential care, the applicant must employ the services of a consultant or management company with experience in the provision of assisted living or residential care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of the Division.
Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 to 443.455 & 443.991