APD 26-2015(Temp)

Secretary of State
Certificate and Order for Filing

TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

FILED
12-29-15 9:27 PM
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I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on Upon filing. by the

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities — 411
Agency and Division — Administrative Rules Chapter Number

Kimberly Colkitt-Hallman — (503) 945-6398
Rules Coordinator — Telephone

500 Summer St. NE, E48, Salem, OR 97301
Address

To become effective 01/01/2016 through 06/28/2016.

RULE CAPTION

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

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:
411-054-0038

AMEND:
411-054-0000, 411-054-0005, 411-054-0012, 411-054-0025, 411-054-0027, 411-054-0036

SUSPEND:

Statutory Authority:
ORS 409.050, 410.070, 443.450

Other Authority:
H.B. 2413 (2015), H.B. 4151 (2015)

Statutes Implemented:
ORS 409.050, 413.042, 413.085, 443.400-455, 443.991

RULE SUMMARY

The Department of Human Services (Department) is immediately amending OAR chapter 411, division 054 and adopting a new rule to add in requirements surrounding individually-based limitations for residential care and assisted living facilities to align the rules with the newly adopted rules in 411-004. The rules in 411-004 provide a foundation of standards to support the network of Medicaid-funded and private pay residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon.

The amended rules ensure individuals in residential care and assisted living and facilities receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

- Engage in community life;
- Control personal resources; and
- Receive services in the community.

The Department needs to update language in 411-054-0012 (Market Study language) to comply with H.B. 2413 (2015) and 411-054-0025 (Criminal Background language) to comply with H.B. 4151 (2015).

The Department will update the rules to match current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

Kimberly Colkitt-Hallman	kimberly.colkitt-hallman@state.or.us
Rules Coordinator Name	Email Address

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

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

FILED
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Department of Human Services, Aging and People with Disabilities and Developmental Disabilities | 411
Agency and Division | Administrative Rules Chapter Number

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.)

In the Matter of:

The temporary adoption of OAR 411-054-0038 amendment of OAR 411-054-0000; 411-054-0005; 411-054-0012; 411-054-0025; 411-054-0027; 411-054-0036 relating to residential care and assisted living facilities.

Statutory Authority:

ORS 409.050, 410.070, 443.450

Other Authority:

H.B. 2413 (2015), H.B. 4151 (2015)

Statutes Implemented:

ORS 409.050, 413.042, 413.085, 443.400-455, 443.991

Need for the Temporary Rule(s):

The Department needs to immediately amend the rules in OAR chapter 411, division 054 to align the rules with the newly adopted rules in 411-004 that implement the regulations and expectations of CMS by providing a foundation of standards to support the network of Medicaid-funded and private pay residential HCBS, HCB settings, and person-centered service planning for individuals receiving HCBS in Oregon. The Department will do this by amending current rules to match terminology used in 411-004. The Department will also adopt a new rule to set out when individually based limitations are applicable.

The Department also needs to amend the rules to update language to comply with H.B. 2413 (2015), H.B. 4151 (2015). The Department will do this by adding language to the background check portion of the rules and removing language from the market study portion of the rules. The Department will update the rules to match current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

Documents Relied Upon, and where they are available:

1915(c) HCBS Waivers, 1915(i) State Plan HCBS, 1915(k) Community First Choice (K State Plan Option), Oregon's HCBS Transition Plan Available at: http://www.oregon.gov/dhs/seniors-disabilities/HCBS/Pages?Transition-Plan.aspx

H.B. 2413 (2015), H.B. 4151 (2015), available from DHS Hearings and Rules Unit, 500 Summer Street NE E48, Salem, Oregon 97301

Justification of Temporary Rule(s):

Failure to act promptly and immediately amend and adopt a new rule OAR 411-054 will result in serious prejudice to the Department, the public, residential care and assisted living facility providers, and those residing in residential care and assisted living facilities. These rules need to be adopted promptly so that the rules in 411-054 comply with the newly adopted OAR chapter 411, division 004.

411-054 needs to be amended promptly to align rules in the division with the new standards in OAR 411-004 relating to HCB services and settings and person-centered service planning. Failing to align the rules may lead to confusion among the program as there would be differing requirements in different divisions. Also, if the Department, does not implement rules that comply with the regulations and expectations of CMS, Oregon risks losing federal funding, which covers approximately 70 percent of the cost of HCBS. Without this federal funding, Oregon could not fund the current HCB system, resulting in a significant impact to the state.

The Department also needs to implement changes to comply with H.B. 2413 (2015), H.B. 4151 (2015).

Kimberly Colkitt-Hallman | kimberly.colkitt-hallman@state.or.us
Printed Name | Email Address

Authorization Page

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TEMPORARY ADMINISTRATIVE RULES

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities	411
Agency and Division	Administrative Rules Chapter Number
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Rules Coordinator	Email Address
500 Summer St. NE, E48, Salem, OR 97301	503-945-6398
Address	Telephone
Upon filing.	
Adopted on	
01/01/2016 thru 06/28/2016	
Effective dates	

RULE CAPTION

Residential Care and Assisted Living Facilities

Not more than 15 words

RULEMAKING ACTION

ADOPT: 411-054-0038

AMEND: 411-054-0000,411-054-0005,411-054-0012,411-054-0025,411-054-0027,411-054-0036

SUSPEND:

Stat. Auth.: ORS 409.050, 410.070, 443.450

Other Auth.: H.B. 2413 (2015), H.B. 4151 (2015)

Stats. Implemented: ORS 409.050, 413.042, 413.085, 443.400-455, 443.991

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STATEMENT OF NEED AND JUSTIFICATION

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In the Matter of

1915(c) HCBS Waivers, 1915(i) State Plan HCBS, 1915(k) Community First Choice (K State Plan Option), Oregon's HCBS Transition Plan
Available at:
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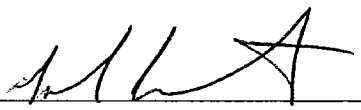
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The Department also needs to implement changes to comply with H.B. 2413 (2015), H.B. 4151 (2015).

Justification of Temporary Rules

Authorized Signer	Printed Name	Date
	Michael McCormick	12/29/15

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

CHAPTER 411, DIVISION 54
RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0000
Purpose
(1) The purpose of these rules is to establish standards for assisted living and residential care facilities that promote the availability of a wide range of individualized services for elderly and persons with disabilities, in a homelike environment. The standards are designed to enhance the dignity, independence, individuality, and decision making ability of the resident in a safe and secure environment while addressing the needs of the resident in a manner that supports and enables the individual to maximize abilities to function at the highest level possible.
(2) Residential care and assisted living facilities are also required to adhere to Home and Community-Based Services, OAR 411-004. For purposes of these rules, all residential care and assisted living facilities are considered home and community-based care settings and therefore will be referred to as "facility."
Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400-455, 443.991

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), cognition, and behavior.
(3) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.
(4) "Administrator" means the individual 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.
(5) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.
(6) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.
(7) "APD" means "Aging and People with Disabilities".
(8) "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.
(9) "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.
(10) "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.
(11) "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.
(12) "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.

(13) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.
(14) "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.
(15) "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).
(16) "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.
(17) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.
(18) "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.
(19) "Department" means the Department of Human Services (DHS).
(20) "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.
(21) "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.
(22) "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.
(e) Serving meals, but not meal preparation.
(23) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.
(24) "Director" means the Director of the Department's Licensing and Regulatory Oversight, or that individual's designee. The term "Director" is synonymous with "Assistant Director".
(25) "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.
(26) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.
(27) "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.
(28) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.
(29) "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."
(30) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division of the Oregon Health Authority (OHA).
(31) "HCB" means "Home and Community-Based".
(32) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. DHS, Office of Licensing and Regulatory Oversight and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.

(33) "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.
(34) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.
(35) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.
(36) "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.
(37) "Individual" means a person enrolled in or utilizing HCBS.
(38) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020(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.
(39) "Informed Consent" means:
(a) 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 or designated representative, comprehends; and
(b) The individual and, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.
(40) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.
(41) "Licensed Nurse" means an Oregon licensed practical or registered nurse.
(42) "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.
(43) "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.
(44) "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, floor rings, or casework).
(45) "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.
(46) "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.
(47) "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.
(48) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851.
(49) "OHA" means the Oregon Health Authority.
(50) "Owner" means an individual with an ownership interest.
(51) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
(52) "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.
(53) "Person-Centered Service Plan Coordinator" means a:
(a) Resident's case manager;
(b) Person of the individual's choice for individuals who pay privately; or
(c) Person designated by DHS to provide case management services or person-centered service planning for and with individuals.
(54) "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.
(55) "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.
(56) "Provider" means any person or entity providing HCBS.
(57) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.
(58) "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.
(59) "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.
(60) "Renovate" means to restore to good condition or to repair.
(61) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting.
(62) "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.
(63) "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.
(64) "Restraint" means any physical device the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.
(65) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).
(66) " 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.
(67) "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.
(68) "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.
(69) "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.
(70) "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; and
(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) Individuals that provide services to residents who are employed by a private business not regulated by the Department.
(71) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.
(72) "These Rules" mean the rules in OAR chapter 411, division 054.

(73) "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.
(74) "Unit" means the personal and sleeping space of an individual receiving services in a RCF or ALF setting, as agreed to in the Residency Agreement.
(75) "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.
Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400-455, 443.991

411-054-0012
Requirements for New Construction or Initial Licensure
(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed facility, must communicate with the Department before submitting a letter of intent as described in section (3) of this rule.
(2) Before beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must provide the following information for consideration by the Department for a potential license:
(a) Demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and
(b) Provide a letter of intent as set forth in section (3) of this rule.
(3) LETTER OF INTENT. Before applying for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to the Department a letter of intent that includes the following:
(a) Identification of the potential applicant.
(b) Identification of the city and street address of the intended facility.
(c) Intended facility type (for example, RCF, ALF, or memory care), the intended number of units, and maximum resident capacity.
(d) Statement of whether the applicant is willing to provide care and services for an underserved population and a description of any underserved population the applicant is willing to serve.
(e) Indication of whether the applicant is willing to provide services through the state medical assistance program.
(f) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population.
(g) An independent market analysis completed by a third party professional that meets the requirements of section (4) of this rule.
(4) MARKET ANALYSIS. The applicant must submit a current market analysis to the Department before applying for a building permit. A market analysis is not required for change of owner applicants of existing licensed buildings. The market analysis must include:
(a) A description of the intended population to be served, including underserved populations and those eligible to receive services through the state medical assistance program, as applicable.
(b) A current demographic overview of the area to be served.
(c) A description of the area and regional economy and the effect on the market for the project.
(d) Identification of the number of individuals in the area to be served who are potential residents.
(e) A description of available amenities (for example, transportation, hospital, shopping center, or traffic conditions).
(f) A description of the extent, types, and availability of existing and proposed facilities, as described in ORS 443.400 to 443.455, located in the area to be served.
(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.
(5) The Department shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.
(a) If the applicant is dissatisfied with the decision of the Department, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.
(b) The contested case hearing shall be in accordance with ORS chapter 183.
(6) Before issuing a license, the Department shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules.
(7) BUILDING DRAWINGS. After the letter of intent has been submitted to the Department, one set of building drawings and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.
(a) Building drawings must be submitted to FPS:
(A) Before beginning construction of any new building;
(B) Before beginning construction of any addition to an existing building;
(C) Before beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or
(D) After application for an initial license of a facility not previously licensed under this rule.

(b) Drawings must comply with the building codes and the Oregon Fire Code (OFC) as required for the occupancy classification and construction type.
(c) Drawings submitted for a licensed assisted living or residential facility must be prepared by and bear the stamp of an Oregon licensed architect or engineer.
(8) 60 DAYS BEFORE LICENSURE. At least 60 days before anticipated licensure, the applicant must submit to the Department:
(a) A completed application form with the required fee.
(b) A copy of the facility's written rental agreements.
(c) Disclosure information.
(d) Facility policies and procedures to ensure the facility's administrative staff, personnel, and resident care operations are conducted in compliance with these rules.
(9) 30 DAYS BEFORE LICENSURE. 30 days before anticipated licensure the applicant must submit:
(a) To the Department, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a background check request.
(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests the scheduling of an onsite licensing inspection.
(10) TWO-DAYS BEFORE LICENSURE. At least two working days before the scheduled onsite licensing inspection of the facility, the applicant must submit, to the Department and FPS, a completed and signed Project Completion/Inspection Checklist that confirms the building project is complete and fully in compliance with these rules.
(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and the Department.
(b) The onsite licensing inspection may be rescheduled at the Department's convenience if the scheduled, onsite licensing inspection reveals the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.
(11) CERTIFICATE OF OCCUPANCY. The applicant must submit to the Department and FPS, a copy of the Certificate of Occupancy issued by the building codes agency having jurisdiction that indicates the intended occupancy classification and construction type.
(12) CONFIRMATION OF LICENSURE. The applicant, before admitting any resident into the facility, must receive a written confirmation of licensure issued by the Department.
Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400-455, 443.991

411-054-0025
Facility Administration
(1) FACILITY OPERATION.
(a) The licensee is responsible for the operation of the facility and the quality of services rendered in the facility.
(b) The licensee is responsible for the supervision, training, and overall conduct of staff when staff are acting within the scope of his or her employment duties.
(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.
(d) The licensee is responsible for obtaining background checks on all subject individuals.
(2) BACKGROUND CHECK REQUIREMENTS
(a) Background checks 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 prior to 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 form 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.
(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) 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.
(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.
(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.
(a) The facility must develop and implement a written policy that prohibits the falsification of records.
(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.
(c) Upon closure of a facility, the licensee must provide the Department with written notification of the location of all records.
(9) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.
(10) DISCLOSURE - RESIDENCY AGREEMENT. The facility must provide a Department designated Uniform Disclosure Statement (form SDS 9098A) to each individual who requests information about the facility. The residency agreement and the disclosure information described in subsection (a) of this section must be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these rules.
(a) The residency agreement and the following disclosure information must be reviewed by the Department before distribution and must include the following:
(A) Terms of occupancy, including policy on the possession of firearms and ammunition.
(B) Payment provisions including the basic rental rate and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable.
(C) The method for evaluating a resident's service needs and assessing the costs for the services provided.
(D) Policy for increases, additions, or changes to the rate structure. The disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan.
(E) Refund and proration conditions.
(F) A description of the scope of resident services available according to OAR 411-054-0030.
(G) A description of the service planning process.

(H) Additional available services.
(I) The philosophy of how health care and ADL services are provided to the resident.
(J) Resident rights and responsibilities.
(K) The facility's system for packaging medications including the option for residents to choose a pharmacy that meets the requirements of ORS 443.437.
(L) Criteria, actions, circumstances, or conditions that may result.
(M) Resident rights pertaining to notification of involuntary move-out.
(N) Notice that the Department has the authority to examine resident records as part of the evaluation of the facility.
(O) The facility's staffing plan.
(b) The facility may not include any provision in the residency agreement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.
(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to the resident's designated representative.
(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed or mailed to the Department before distribution.
Stat. Auth.: ORS 181.534, 410.070, 443.004, 443.450
Stats. Implemented: ORS 181.534, 443.004, 443.400-.455, 443.991

411-054-0027
Resident Rights and Protections
(1) The facility must implement a residents' Bill of Rights. Each resident and the resident's designated representative, if appropriate, must be given a copy of the resident's rights and responsibilities prior to moving into the facility. The Bill of Rights must state that residents have the right:
(a) To be treated with dignity and respect.
(b) To be given informed choice and opportunity to select or refuse service and to accept responsibility for the consequences.
(c) To participate in the development of their initial service plan and any revisions or updates at the time those changes are made.
(d) To receive information about the method for evaluating their service needs and assessing costs for the services provided.
(e) To exercise individual rights that do not infringe upon the rights or safety of others.
(f) To be free from neglect, financial exploitation, verbal, mental, physical, or sexual abuse.
(g) To receive services in a manner that protects privacy and dignity.
(h) To have prompt access to review all of their records and to purchase photocopies. Photocopied records must be promptly provided, but in no case require more than two business days (excluding Saturday, Sunday, and holidays).
(i) To have medical and other records kept confidential except as otherwise provided by law.
(j) To associate and communicate privately with any individual of choice, to send and receive personal mail unopened, and to have reasonable access to the private use of a telephone.
(k) To be free from physical restraints and inappropriate use of psychoactive medications.
(l) To manage personal financial affairs unless legally restricted.
(m) To have access to, and participate in, social activities.
(n) To be encouraged and assisted to exercise rights as a citizen.
(o) To be free of any written contract or agreement language with the facility that purports to waive their rights or the facility's liability for negligence.
(p) To voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of retaliation.
(q) To be free of retaliation after they have exercised their rights provided by law or rule.
(r) To have a safe and homelike environment.
(s) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.
(t) To receive proper notification if requested to move out of the facility, and to be required to move out only for reasons stated in OAR 411-054-0080 (Involuntary Move-out Criteria) and have the opportunity for an administrative hearing, if applicable.
(2) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than September 1, 2018 for providers initially licensed before January 1, 2016 the Agreement must include the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), which must not be limited without the informed, written consent of the resident or the resident's representative, and approved by the person centered service plan coordinator, which includes the right to:
(a) Live under a legally enforceable residency agreement;
(b) The freedom and support to access food at any time;
(c) To have visitors of the resident's choosing at any time;
(d) Choose a roommate when sharing a bedroom;
(e) Furnish and decorate the resident's bedroom according to the Residency Agreement;
(f) The freedom and support to control the resident's schedule and activities;

(3) Licensees and facility personnel may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident, as follows, parent, child, brother, sister, grandparent, grandchild, aunt or uncle, or niece or nephew. An owner, administrator, or employee may act as a representative payee for the resident or serve in other roles as provided by law.
(4) Licensees and facility personnel may not spend resident funds without the resident's consent.
(a) If the resident is not capable of consenting, the resident's representative must give consent.
(b) If the resident has no representative and is not capable of consenting, licensees and facility personnel must follow the requirements described in OAR 411-054-0085 and may not spend resident funds for items or services that are not for the exclusive benefit of the resident.
Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400-455, 443.991

411-054-0036
Service Plan — General
(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) Prior to 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 will provide the services and what, when, how and how often the services will 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.
(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, initialed, changes must be dated, 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 will 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 will be, 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 will 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 prior to when the resident signs the agreement.
(c) The facility will involve the resident, the resident's designated representative, and others as indicated, to develop, implement, and review the risk agreement. The resident's preferences will take precedence over those of a family member.
(d) A risk agreement will 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.
Stat. Auth.: ORS 410.070, 443.450
Stats. Implemented: ORS 443.400-455, 443.991

411-054-0038
Individually-Based Limitations
This rule becomes effective on July 1, 2016.
(1) When threats to the health and safety of an individual or others arise, limitations may be applied in the following areas:
(a) To have unit entrance doors lockable by the individual, with only appropriate staff having a key to access the unit.
(b) For individuals sharing units, to have a choice of roommates.
(c) To have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.
(d) To have visitors of his or her choosing at any time.
(e) To have the freedom and support to control his or her own schedule and activities.
(f) To have the freedom and support to have access to food at any time.
(2) An individually-based limitation must be supported by a specific assessed need and documented in the person-centered service plan by completing and signing a program approved form documenting the consent to the appropriate limitation. The form identifies and documents:
(a) The specific and individualized assessed need justifying the individually-based limitation;
(b) The positive interventions and supports used prior to any individually-based limitation;
(c) Less intrusive methods that have been tried but did not work;
(d) A clear description of the limitation that is directly proportionate to the specific assessed need;
(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;
(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;
(g) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and
(h) An assurance that the interventions and support do not cause harm to the individual.
(3) Providers are responsible for:
(a) Maintaining a copy of the completed and signed form documenting the consent to the appropriate limitation. The form must be signed by the individual, or, if applicable, the legal representative of the individual;
(b) Regular collection and review of data to measure the ongoing effectiveness of and the continued need for the individually-based limitation; and
(c) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.
Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085