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PERMANENT ADMINISTRATIVE ORDER

FILED
08/19/2019 11:21 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

APD 30-2019
CHAPTER 411
DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

FILING CAPTION: Changes to residential care and assisted living facility rules to implement HB 3262 (2017)

EFFECTIVE DATE: 09/01/2019

AGENCY APPROVED DATE: 08/15/2019

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RULES:
411-054-0005, 411-054-0034, 411-054-0055

AMEND: 411-054-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 02/22/2019

RULE SUMMARY: OAR 411-054-0005 is being amended to add definitions related to the bill and remove outdated language that no longer applies to the rules. Minor grammar, punctuation, formatting, and other changes were made to improve readability and better align the rules with current Department practice.

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) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.
(4) "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.
(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 (APD)" means the program area of Aging and People with Disabilities, within the Department of Human Services.
(7) "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.
(8) "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.
(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 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.
(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.
(i) Pressure ulcers (stage 2 or greater).
(16) "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.
(17) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.
(18) "Competency" means to possess specific knowledge, technical skill, and the ability to perform tasks related to the role and responsibilities of direct care staff.
(19) "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.
(20) "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.
(21) "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.
(22) "Department" means the Department of Human Services (DHS).
(23) "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.
(24) "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.
(25) "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.
(26) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.
(27) "Director" means the Director of the Department or that individual's designee.
(28) "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.
(29) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.
(30) "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.
(31) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.
(32) "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".
(33) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division of the Oregon Health Authority (OHA).
(34) "HCB" means "Home and Community-Based".
(35) "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.
(36) "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.
(37) "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.
(38) "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.
(39) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.
(40) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.
(41) "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.
(42) "Individual" means a person enrolled in or utilizing HCBS.
(43) "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.
(44) "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.
(45) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.
(46) "Intensive Intervention Community (IIC)" means an RCF endorsed to house fewer than six socially dependent individuals or individuals with physical disabilities. The purpose of the IIC is to serve individuals with co-occurring mental, emotional, or behavioral disturbances who are more appropriately served in smaller settings.
(47) "Licensed Nurse" means an Oregon licensed practical or registered nurse.
(48) "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.
(49) "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.
(50) "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).
(51) "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.
(52) "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.
(53) "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.
(54) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851.
(55) "OHA" means the Oregon Health Authority.
(56) "Owner" means an individual with an ownership interest.
(57) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
(58) "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.
(59) "Person-Centered Service Plan Coordinator" means a:
Resident's AAA or APD case manager assigned to provide case management services or person-centered service planning for and with individuals; or
Person of the individual's choice for individuals who pay privately.
(60) "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.
(61) "Pre-Service Training" means training that must be completed before direct care staff provide care to residents.
(62) "Primary Care Provider" means the health care provider primarily responsible for the on-going diagnosis and treatment of the resident where they currently reside.
(63) "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.
(64) "Provider" means any person or entity providing HCBS.
(65) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be

administered as needed.
(66) "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.
(67) "Quality Measurement Program" means the quality metrics program, as described in OAR 411-054-0320.
(68) "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.
(69) "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.
(70) "Renovate" means to restore to good condition or to repair.
(71) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting.
(72) "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.
(73) "Resident Evaluation" means an evaluation that uses the information obtained when addressing the elements required in OAR 411-054-0034(5).
(74) "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.
(75) "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.
(76) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).
(77) "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.
(78) "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.
(79) "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."
(80) "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.
(81) "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.
(82) "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.
(83) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.
(84) "These Rules" mean the rules in OAR chapter 411, division 054.
(85) "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.
(86) "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.
(87) "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.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450, 443.738

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

AMEND: 411-054-0034

RULE TITLE: Resident Move-In and Evaluation

NOTICE FILED DATE: 02/22/2019

RULE SUMMARY: OAR 411-054-0034 is being amended to incorporate new requirements surrounding resident evaluations and to include more person-centered elements. Minor grammar, punctuation, formatting, and other changes were made to improve readability and better align the rules with current Department practice.

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, 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) Prior living arrangements;

(B) Emergency contacts;

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

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

(i) Advance directives;

(ii) Guardianship;

(iii) Conservatorship; and

(iv) Power of attorney.

(E) Primary language;

(F) Community connections; and

(G) 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) 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).
(b) 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.
(c) Mental health issues including:
(A) Presence of depression, thought disorders, or behavioral or mood problems;
(B) History of treatment; and
(C) Effective nondrug interventions.
(d) Cognition, including:
(A) Memory;
(B) Orientation;
(C) Confusion; and
(D) Decision-making abilities.
(e) Personality, including how the person copes with change or challenging situations.
(f) Communication and sensory abilities including:
(A) Hearing;
(B) Vision;
(C) Speech;
(D) Use of assistive devices; and
(E) Ability to understand and be understood.
(g) 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.
(h) Independent activities of daily living including:
(A) Ability to manage medications;
(B) Ability to use call system;
(C) Housework and laundry; and
(D) Transportation.

(i) Pain pharmaceutical and non-pharmaceutical interventions, including how a person expresses pain or discomfort.
(j) Skin condition.
(k) Nutrition habits, fluid preferences, and weight if indicated.
(l) List of treatments type, frequency, and level of assistance needed.
(m) Indicators of nursing needs, including potential for delegated nursing tasks.
(n) 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.
(o) 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, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.991

AMEND: 411-054-0055

RULE TITLE: Medications and Treatments

NOTICE FILED DATE: 02/22/2019

RULE SUMMARY: OAR 411-054-0055 is being amended to remove outdated language regarding psychoactive medications. The new language replaces "psychoactive" with "psychotropic" medication and provides additional details around what must occur when psychotropic medications are being requested or prescribed. New notification requirements are also outlined in the rule. Minor grammar, punctuation, formatting, and other changes were made to improve readability and better align the rules with current Department practice.

RULE TEXT:

(1) MEDICATION AND TREATMENT ADMINISTRATION SYSTEMS. The facility must have safe medication and treatment administration systems in place that are approved by a pharmacist consultant, registered nurse, or physician.

(a) The administrator is responsible for ensuring adequate professional oversight of the medication and treatment administration system.

(b) Medications administered by the facility must be set-up or poured and documented by the same person who administers the medications.

(c) The staff person who administers the medication must visually observe the resident take (e.g., ingest, inhale, apply) the medication unless the prescriber's order for that specific medication states otherwise.

(d) Medications must be kept secure between set-up and administration of medications.

(e) The facility must have a system approved by a pharmacist consultant or registered nurse for tracking controlled substances and for disposal of all unused, outdated or discontinued medications administered by the facility.

(f) Medication and treatment orders must be carried out as prescribed.

(g) Written, signed physician or other legally recognized practitioner orders must be documented in the resident's facility record for all medications and treatments that the facility is responsible to administer.

(h) Only a physician or other legally recognized prescribing practitioner is authorized to make changes in a medication or treatment order.

(i) A registered pharmacist or registered nurse must review all medications and treatments administered by the facility to a resident at least every 90 days. The facility must provide documentation related to the recommendations made by the reviewer.

(j) The resident or the person legally authorized to make health care decisions for the resident has the right to consent to, or refuse, medications and treatments.

(k) The physician or other practitioner must be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order will be reported as requested by the prescriber.

(2) MEDICATION ADMINISTRATION. An accurate Medication Administration Record (MAR) must be kept of all medications, including over-the-counter medications that are ordered by a legally recognized prescriber and are administered by the facility.

(a) Documentation of the MAR must be completed using one of the following processes. An alternative process may be used only with a written exception from the Department.

(A) The MAR may be signed as the medications are set-up or poured. Medications must not be set-up in advance for more than one administration time. If a medicine cup or other individual container is used to set-up the medications, it must be placed in a closed compartment labeled with the resident's name. Changes to the MAR that occur after the medication is delivered, must be documented by the same staff person who administered the medication.

(B) The facility may choose to sign the MAR after the medication is administered to a specific resident and prior to the next resident-specific medication or treatment.

(b) MEDICATION RECORD. At minimum, the medication record for each resident that the facility administers medications to, must include:

(A) Current month, day and year.

(B) Name of medications, reason for use, dosage, route and date and time given.
(C) Any medication specific instructions, if applicable (e.g., significant side effects, time sensitive dosage, when to call the prescriber or nurse).
(D) Resident allergies and sensitivities, if any.
(E) Resident specific parameters and instructions for p.r.n. medications.
(F) Initials of the person administering the medication.
(3) TREATMENT ADMINISTRATION.
(a) An accurate treatment record for each resident must be kept of all treatments ordered by a legally recognized practitioner and administered by the facility to that resident.
(b) The treatment record must include:
(A) Current month, day and year.
(B) Type of treatment (e.g., dressing change, ointment application), treatment instructions and if applicable, significant side effects or when to call the prescriber or nurse.
(C) Date and time administered.
(D) Resident allergies and sensitivities, applicable to treatments.
(E) Instructions for p.r.n. treatments, including resident specific parameters.
(F) Initials of person administering the treatments.
(G) Any deviation from instructions or refusal of treatment must be documented.
(4) MEDICATION AND TREATMENT – GENERAL. The facility must maintain legible signatures of staff that administer medications and treatments, either on the MAR or on a separate signature page, filed with the MAR.
(a) If the facility administers or assists a resident with medication, all medication obtained through a pharmacy must be clearly labeled with the pharmacist's label, in the original container, in accordance with the facility's established medication delivery system.
(b) The facility shall ensure that prescription drugs dispensed to residents are packaged in a manner that reduces errors in the tracking and administration of the drugs, including, but not limited to, the use of unit dose systems or blister packs.
(A) The facility shall have as its primary goal dispensing prescription drugs in unit dose systems, blister packs or similar packaging.
(B) When unit dose packaging cannot be reasonably achieved, the facility shall have a written policy describing how prescription drugs that are not prepared as unit dose or blister packs shall be dispensed. Written policies shall be in effect not later than October 1, 2018.
(C) Subsection (b) of this rule does not apply to residents receiving pharmacy benefits through the United States Department of Veterans Affairs, if the pharmacy benefits do not reimburse cost of such packaging.
(c) Over-the-counter medication or samples of medications must have the original manufacturer's labels if the facility administers or assists a resident with medication.
(d) All medications administered by the facility must be stored in locked containers in a secured environment such as a medication room or medication cart.
(e) Medications that have to be refrigerated must be stored at the appropriate temperature in a locked, secure location.
(f) Order changes obtained by telephone must be documented in the resident's record and the MAR must be updated prior to administering the new medication stated on the order. Telephone orders must be followed-up with written, signed orders.
(g) The facility must not require residents to purchase prescriptions from a pharmacy that contracts with the facility.
(5) SELF ADMINISTRATION OF MEDICATION.
(a) Residents who choose to self-administer their medications must be evaluated upon move-in and at least quarterly thereafter, to assure ability to safely self-administer medications.
(b) Residents must have a physician's or other legally recognized practitioner's written order of approval for self-administration of prescription medications.

(c) Residents able to administer their own medication regimen may keep prescription medications in their unit.
(d) If more than one resident resides in the unit, an evaluation must be made of each person and the resident's ability to safely have medications in the unit. If safety is a factor, the medications must be kept in a locked container in the unit.
(e) Unless contraindicated by a physician or resident evaluation, residents may keep and use over-the-counter medications in their unit without a written order.
(6) PSYCHOTROPIC MEDICATION. Psychotropic medications may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.
(a) Facility administered psychotropic medications may be used only when required to treat a resident's medical symptoms or to maximize a resident's functioning.
(b) The facility must not request psychotropic medication to treat a resident's behavioral symptoms without a consultation from a physician, nurse practitioner, registered nurse, or mental health professional. This does not apply when a resident is enrolled in a hospice program as defined in OAR 333-035-0050.
(c) Prior to requesting a psychotropic medication, the facility must demonstrate through the evaluation and service planning process that non-pharmacological interventions have been attempted.
(d) Prior to administering any psychotropic medications to treat a resident's behavior, all direct care staff administering medications for the resident must know:
(A) The specific reasons for the use of the psychotropic medication for that resident.
(B) The common side effects of the medications.
(C) When to contact a health professional regarding side effects.
(e) When a psychotropic medication is ordered by a health care practitioner other than the resident's primary care provider, the facility is responsible for notifying the resident's primary care provider of that medication order within 72 hours of when the facility was notified of the order. This includes weekends and holidays. Notification may be either by telephone or electronic submission and should be documented by the facility.
(f) Medications that are administered p.r.n. that are given to treat a resident's behavior must have written, resident-specific parameters.
(A) These p.r.n. medications may be used only after documented; non-pharmacological interventions have been tried with ineffective results.
(B) All direct care staff must have knowledge of non-pharmacological interventions.
(g) Psychotropic medications must not be given to discipline a resident, or for the convenience of the facility.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.991