



PERMANENT ADMINISTRATIVE ORDER

APD 57-2024

CHAPTER 411

DEPARTMENT OF HUMAN SERVICES

AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

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CONTACT: Lynn Beaton

971-345-1522

lynn.d.beaton@odhs.oregon.gov

500 Summer Street NE, E-02

Salem, OR 97301

Filed By:

Kristina Krause

Rules Coordinator

RULES:

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AMEND: 411-049-0102

REPEAL: Temporary 411-049-0102 from APD 13-2024

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RULE SUMMARY: Adds new definitions related to LGBTQIA2S+ protections, including "gender expression," "gender identity," "gender nonconforming," "gender transition," "harass" or "harassment," "LGBTQIA2S+," "sexual orientation," and "transgender."

CHANGES TO RULE:

411-049-0102

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 049, 050, 051, and 052:¶

(1) "AAA" means an Area Agency on Aging, which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act that has responsibility for local administration of programs within the Department of Human Services.¶

(2) "Abuse" means "abuse" as defined in OAR 411-020-0002 (Adult Protective Services).¶

(3) "Activities of Daily Living (ADL)" mean the personal, functional activities described in OAR 411-015-0006 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.¶

(4) "Administrator" means the person who is designated by the Licensee that is responsible for the daily operation and maintenance of the AFH.¶

(5) "Adult Day services" means care, assistance, and supervision of an individual who is older, as defined in these rules, who does not stay overnight.¶

(6) "Adult Foster Home (AFH)" means any family home or other facility where residential care is provided in a homelike environment for compensation to five or fewer adults who are not related to the licensee, administrator,

resident manager, or floating resident manager, by blood, marriage, or adoption and who are 65 years of age or older or an adult with a physical disability. AFHs are home and community-based settings as defined in OAR chapter 411, division 004. For the purpose of these rules:¶¶

(a) "Adult foster home" does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no resident thereof requires any element of care.¶¶

(b) "Facility" and "Home" are synonymous with the term "Adult Foster Home".¶¶

(7) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions in the event the resident is no longer able to give directions regarding his or her wishes. The directive gives the resident the means to control his or her own health care in any circumstance. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).¶¶

(8) "Applicant" means an individual, partnership, corporation, or other entity who completes an application to own or operate an AFH. An individual applicant may also complete an application to become an administrator, resident manager, floating resident manager, or shift caregiver. "Applicant" is synonymous with "Co-applicant".¶¶

(9) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210. An approved "Background Check" means a final determination, made by an authorized agency or district that the subject individual is fit to:¶¶

(a) Hold a position, paid or not paid;¶¶

(b) Obtain or retain credentials;¶¶

(c) Have direct access to; or¶¶

(d) Otherwise provide services necessary for the health, welfare, maintenance or protection of an individual.¶¶

(10) "Background Check Rules" means the rules in OAR 407-007-0200 to 407-007-0370.¶¶

(11) "Back-Up Provider Agreement" means an agreement between the licensee and another licensee, approved administrator, resident manager, or approved floating resident manager, who does not live in the home, and has agreed to oversee the operation of an AFH of the same license classification or higher in the event of an emergency. The Department's (APD 0350) form may be used in place of the succession plan. (See "Succession Plan").¶¶

(12) "Behavioral Interventions" mean those interventions that modify a resident's behavior or a resident's environment.¶¶

(13) "Board of Nursing Rules" means the standards and practice for licensed practical nurses and registered nurses to teach and delegate to unlicensed persons according to the statutes and rules of the Oregon State Board of Nursing (OSBN) ORS 678.010 to 678.445 and OAR chapter 851, division 045 and 047.¶¶

(14) "Care" means the provision of assistance with activities of daily living to promote a resident's maximum independence and enhance the resident's quality of life. "Care" includes, but is not limited to, assistance with bathing, dressing, grooming, eating, money management, recreation, and medication management excluding assistance with self-medication.¶¶

(15) "Caregiver" means any person providing care and services to residents. (See "Qualified Caregiver").¶¶

(16) "Care Plan" means a licensee or administrator's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services are to be provided.¶¶

(17) "CFR" or "Code of Federal Regulations" or means the codification of the rules and regulations published in the Federal Register and produced by the executive departments and agencies of the federal government of the United States.¶¶

(18) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, administrator, resident manager, floating resident manager, and shift caregivers, as applicable.¶¶

(19) "CMS" means the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.¶¶

(20) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care, and services. "Compensation" does not include the voluntary sharing of expenses between or among roommates.¶¶

(21) "Complaint" means an allegation of abuse, a violation of these rules, or an expression of dissatisfaction relating to a resident or the condition of an AFH.¶¶

(22) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.¶¶

(23) "Consumer" means an individual eligible for Medicaid services for whom case management services are provided by the Department.¶¶

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

(25) "Department" means the Department of Human Services (DHS) unless otherwise specified.¶¶

(26) "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.¶
- (b) 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 the individual's behalf.¶
- (c) An individual, or as applicable the legal representative, is not required to appoint a designated representative.¶
- (27) "Director" means the Director of the Department of Human Services or that person's designee.¶
- (28) "Disability" means a physical, cognitive, or emotional impairment, which for an individual, constitutes or results in a functional limitation in one or more activities of daily living.¶
- (29) "Emergency Preparedness Plan" means a written procedure that identifies a facility's response to an emergency or disaster for minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.¶
- (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.¶
- (31) "Exclusion Lists" mean the following federal lists that exclude listed individuals from receiving federal awards, not limited to Medicaid and Medicare programs:¶
- (a) The U.S. Office of Inspector General's Exclusion List at www.exclusions.oig.hhs.gov/; and¶
- (b) The U.S. General Services Administration's System for Award Management Exclusion List at www.sam.gov.¶
- (32) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of AFHs that the Director finds are equal or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825.¶
- (33) "Family Member" means spouses in a legally recognized marriage or domestic partnership, natural parent, child, sibling, adopted child, adoptive parent, adoptive sibling, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.¶
- (34) "Final Point of Safety" means a designated assembly area located on a public sidewalk or street not less than 50 feet away from an AFH where occupants of the home evacuate to in the event of an emergency.¶
- (35) "Floating Resident Manager" means an employee of the licensee, approved by the LLA, who under the direction of the licensee, is directly responsible for the care of residents in one or more AFHs owned by that licensee. A "floating resident manager" is not required to live in any one AFH owned by his or her employer, except on a temporary basis, as directed by the licensee, when the regularly scheduled caregiver is unavailable. ¶
- (36) "Gender expression" means a person's gender-related appearance and behavior, whether or not these are stereotypically associated with the sex the person was assigned at birth.¶
- (37) "Gender identity" means a person's internal, deeply held knowledge or sense of the person's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth or name and sex as it appears in medical records or as it is described by any other person, including a family member, conservator or legal representative of the person. A person's gender identity is the last gender identity conveyed by a person who lacks the present ability to communicate.¶
- (38) "Gender nonconforming" means having a gender expression that does not conform to stereotypical expectations of one's gender.¶
- (39) "Gender transition" means a process by which a person begins to live according to that person's gender identity rather than the sex the person was assigned at birth. The process may include changing the person's clothing, appearance, name or identification documents or undergoing medical treatments.¶
- (40) "Harass" or "harassment" means to act in a manner that is unwanted, unwelcomed, or uninvited, or that demeans, threatens or offends a resident.¶
- (a) This includes bullying, denigrating, or threatening a resident based on a resident's actual or perceived status as a member of one of the protected classes in Oregon, as provided:¶
- (A) Race.¶
- (B) Color.¶
- (C) National origin.¶
- (D) Religion.¶
- (E) Disability.¶
- (F) Sex (includes pregnancy).¶
- (G) Sexual orientation.¶
- (H) Gender identity.¶

(I) Age.¶

(J) Marital status¶

(b) An example of "harassment" includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom or other area of a care facility that is available to other person of the same gender identity as the resident.¶

(41) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 004.¶

(3742) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives Home and Community-Based Services.¶

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

(3944) "House Policies" or the "Home's Policies" means the written and posted statements addressing house activities in an AFH identified in the Residency Agreement.¶

(405) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the AFH.¶

(416) "Individual" means an adult who is at least 65 years of age or is an adult with physical disabilities who is receiving Home and Community-Based Services, including those receiving adult day services.¶

(427) "Individually-Based Limitation" or "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 resident or, as applicable, the legal representative of the resident, as described in OAR 411-004-0040.¶

(438) "Informed Consent" means:¶

(a) Options, risks, and benefits have been explained to the individual and, as applicable the legal representative of the individual, in a manner that the individual, and as applicable, the representative, comprehends; and¶

(b) The individual or, 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, before implementation of the initial or updated person-centered service plan or any individually-based limitation.¶

(449) "Initial Point of Safety" means a designated area that has unobstructed direct access to a public sidewalk or street located not less than 25 feet away from an AFH where occupants of the home evacuate to in the event of an emergency and for the purpose of conducting evacuation drills.¶

(450) "Investigative Authority" means the Office of Adult Abuse Prevention and Investigation (OAAPI), local Department offices, and Area Agencies on Aging that contract with the Department to provide adult protective services to adults who are older or adults with physical, mental, or developmental disabilities.¶

(4651) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of their authority as designated by the court or other agreement.¶

(a) Legal representatives acting outside of their authority or scope must meet the definition of designated representative.¶

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

(4752) "Level" means the designation of ventilator-assisted care assigned to an AFH license based on the qualifications of the licensee, administrator, resident manager, floating resident manager, and shift caregivers, as applicable.¶

(53) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation. These terms are defined below:¶

(a) "Lesbian" means the sexual orientation of a person who is female, feminine or nonbinary and who is physically, romantically or emotionally attracted to other women. Some lesbians may prefer to identify as gay, a gay woman, queer or in other ways.¶

(b) "Gay" means the sexual orientation of a person attracted to people of the same gender. Although often used as an umbrella term, it is used more specifically to describe men attracted to men.¶

(c) "Bisexual" means a person who has the potential to be physically, romantically and/or emotionally attracted to people of more than one gender, not necessarily at the same time, in the same way or to the same degree.¶

(d) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.¶

(e) "Queer" means people who do not identify as exclusively straight or a person who has non-binary or gender-expansive identities and is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole. This term was previously used as a slur but has been reclaimed by many parts of the LGBTQIA2S+ movement. It can also include transgender people who identify as male or female. The term should only be used to refer to a specific person if that person self-identifies as queer.¶¶

(f) "Intersex" means someone born with a variety of differences in their sex traits and reproductive anatomy. Intersex traits greatly vary, including differences in, but not limited to, hormone production and reproductive anatomy.¶¶

(g) "Asexual" or "Ace" means a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little or conditional sexual attraction. Many people who are asexual still identify with a specific romantic orientation.¶¶

(h) "2S" or "Two-Spirit" means a term used within some Indigenous communities, encompassing cultural, spiritual, sexual and gender identity. The term reflects complex indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. The definition and common use of the term two-spirit may vary among Tribes and Tribal communities.¶¶

(i) The "+" means all other identities and expressions of gender, romantic and sexual orientation, including minority gender identities.¶¶

(j) "Nonbinary" means a person who does not identify exclusively as a man or a woman. Nonbinary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all nonbinary people do. Nonbinary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.¶¶

(548) "Licensed Health Care Professional" means a person who possesses a professional medical license that is valid in Oregon. Examples include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT), physician assistant (PA), or occupational therapist (OT).¶¶

(4955) "Licensee" means the applicant to whom an AFH license has been issued. "Licensee" is synonymous with "Co-Licensee" in these rules.¶¶

(506) "Limited Adult Foster Home" means a home that provides care and services for compensation to a specific individual who is unrelated to the licensee, but with whom the licensee has an established relationship of no less than one year.¶¶

(517) "Liquid Resource" means cash or those assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.¶¶

(528) "Local Licensing Authority" or "LLA" means the local Department offices and Area Agencies on Aging that contract with the Department to perform specific functions of the AFH licensing process.¶¶

(539) "Management agreement" means a written, executed agreement between the licensee and another individual or entity regarding the provision of operational services on behalf of the licensee.¶¶

(5460) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of "nursing care" that are taught or delegated under specified conditions by a registered nurse to a person other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the OSBN in OAR chapter 851.¶¶

(5561) "Occupant" means any person residing in or using the facilities of an AFH, including residents, licensees, resident manager, floating resident manager, friends or family members, adult day services individuals, and room and board tenants.¶¶

(562) "OHA" Means the Oregon Health Authority.¶¶

(5763) "Older" means any person at least 65 years of age.¶¶

(5864) "Ombudsman" means the Oregon Long-Term Care Ombudsman (LTCO) or a designee appointee that serves as an LTCO representative to investigate and resolve complaints on behalf of AFH residents.¶¶

(659) "Owner" is synonymous with "Licensee" as defined in this rule.¶¶

(606) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an AFH.¶¶

(617) "Person" has the same meaning as set forth in ORS 174.100(6).¶¶

(628) "Person-Centered Service Plan" has the meaning given in OAR chapter 411, division 004.¶¶

(a) FOR MEDICAID CONSUMERS. The person-centered service plan coordinator completes the person-centered service plan.¶¶

(b) FOR NON-MEDICAID CONSUMERS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the resident, and others as chosen by the resident. The licensee may assist non-Medicaid residents in developing person-centered service plans when no alternative resources are available. The elements of the resident's person-centered service plan may be incorporated into the resident's care plan.¶¶

(639) "Person-Centered Service Plan Coordinator" means case managers, services coordinators, personal agents, and other people designated by DHS or OHA to provide case management services or person-centered service

planning for and with individuals.¶

(6470) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, chiropractor, dentist, ophthalmologist, or other healthcare practitioner with prescribing authority.¶

(6571) "Primary Caregiver" means one or any combination of a licensee, administrator, resident manager, or shift caregivers who personally provide care and services, and safeguards the health and safety of residents a minimum of five 24-hour days per week.¶

(6672) "Primary Care Provider" means a physician, physician's assistant or nurse practitioner that provides regular and continuous health care services.¶

(673) "PRN" is a Latin term (pro re nata), means "as needed." It describes medications and treatments that have been ordered by a prescribing practitioner to be administered as needed when the resident exhibits or expresses signs or symptoms related to the reason the medication was ordered.¶

(6874) "Provisional License" means a 60-day license issued in an emergent situation when a licensee is no longer overseeing the operation of an AFH. A provisional license is issued to a qualified person who meets the standards of OAR 411-049-0125 and OAR 411-049-0105(9) except for completing the training and testing requirements. (See OAR 411-049-0105(14)(b)).¶

(6975) "Psychotropic Medication" means any drug that affects the 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 (Anxiolytic).¶

(d) Hypnotic.¶

(706) "Qualified Caregiver" means an individual who has fully satisfied and maintained the requirements to be a licensee, administrator, resident manager, floating resident manager, shift caregiver or substitute caregiver. (See "Caregiver").¶

(717) "QED" means qualified entity designee as defined in OAR 407-007-0210. A QED may be a licensee who is approved by the Department's Background Check Unit to handle background checks on behalf of the LLA.¶

(728) "Relative" means those persons identified as family members as defined in this rule.¶

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

(7480) "Reside" means for a person to live in an AFH for a permanent or extended period of time. For the purpose of a background check, a person is considered to "reside" in a home if the person's visit is four weeks or greater.¶

(7581) "Residency Agreement" or "Agreement" means the written and legally enforceable agreement between an AFH licensee and an individual receiving Home and Community Based Services (HCBS), or representative of the individual, in a licensee owned, controlled, or operated setting. The Residency Agreement identifies the policies of the home, services to be provided, and the rights and responsibilities of the individual, and the licensee. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.¶

(7682) "Resident" means an adult who is at least 65 years of age, or an adult with a physical disability who is receiving room and board and care and services in an AFH on a 24-hour day basis in exchange for compensation.¶

(7783) "Resident Manager" means an employee of the licensee, approved by the LLA, who lives in the AFH, and is directly responsible for the care of the residents. Resident Manager is not synonymous with administrator.¶

(784) "Resident Rights" or "Rights" means civil, legal, or human rights, including, but not limited to, those rights listed in the Adult Foster Home Resident's Bill of Rights and HCBS freedoms. (See ORS 443.739 and OAR 411-051-0105).¶

(7985) "Residential Care" means the provision of care on a 24-hour day basis.¶

(806) "Restraint" means restraint as defined in OAR 411-004-0010(19):¶

(a) Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached to or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or normal access of the resident to the resident's body. Any manual method includes physically restraining a person by manually holding the person in place.¶

(b) Chemical restraints are any substance or drug used for discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the resident's medical or psychiatric condition.¶

(817) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, and housekeeping to adults who are older or adults with physical disabilities and who do not need assistance with activities of daily living. Room and board facilities for two or more persons are required to register with the Department under the rules in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. AFHs with room and board tenants are not subject to OAR chapter 411, division 068.¶

(828) "Safety, Oversight and Quality Unit" or "SOQ" is a program within the Department's Aging and People with

Disabilities office.¶

(839) "Screening" means the evaluation process used to identify an individual's ability to perform activities of daily living and address health and safety concerns.¶

(8490) "Self-Administration of Medication" means the resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.¶

(8591) "Self-Preservation" means the ability of a resident to respond to an alarm or emergent situation without additional cues and reach a point of safety without assistance.¶

(8692) "Services" mean activities that help the residents develop skills to increase or maintain the resident's level of functioning or assist the residents to perform personal care, activities of daily living, or individual social activities.¶

(8793) "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people.¶

(94) "Shift Caregivers" mean caregivers who are responsible for providing care for regularly scheduled periods of time, including, but not limited to, 8 or 12 hours per day or night, in homes where there is no licensee or resident manager living in the home.¶

(8895) "Subject Individual" has the meaning as given in OAR 407-007-0210, and means any person 16 years of age or older, including:¶

(a) All licensed AFH licensees and license applicants;¶

(b) All persons intending to work in, or currently working in an AFH, including, but not limited to, caregivers, including trainees, and licensed healthcare workers when employed by or contracted with the licensee or facility;¶

(c) Volunteers on the home's premises who provide services for, or who have access to, any resident, or any resident's funds, belongings, or confidential information; and¶

(d) Occupants, excluding residents, residing in or on the premises of a proposed or currently licensed AFH, including:¶

(A) Household members;¶

(B) Room and board tenants; and¶

(C) Persons staying in the home for a period of four weeks or more.¶

(e) "Subject Individual" does not apply to:¶

(A) Persons under 16 years of age.¶

(B) Residents of the AFH or the resident's visitors.¶

(C) Persons who live or work in or on the AFH premises who do not have:¶

(i) Regular access to the home for meals;¶

(ii) Regular use of the AFH's appliances or facilities; or¶

(iii) Unsupervised access to the residents or the residents' personal property.¶

(D) A person providing services to the residents who is employed by a private business not regulated by the Department.¶

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

(907) "Substitute Caregiver" means any person other than the licensee, resident manager, floating resident manager, or shift caregiver who provides care and services in an AFH under the jurisdiction of the Department.¶

(918) "Succession Plan" means the licensee or administrator's written plan addressing coverage, continuance of care and services for residents, and AFH operations should the licensee or administrator be unable to fulfill their duties due to illness, death, or other unexpected absence. The Department's Back-up Provider Agreement form (APD 0350) may be used for this purpose. (See "Back-up Provider Agreement").¶

(929) "Tenant" means any individual who is residing in an AFH who receives services, such as meal preparation, laundry, and housekeeping.¶

(93100) "Tenancy Agreement" means a written and legally enforceable agreement between an AFH licensee and an adult who is older or an adult with physical disabilities who resides in the home and does not require assistance with any activity of daily living. The agreement specifies the terms and conditions of a room and board residency in the home.¶

(94101) "These Rules" mean the rules in OAR chapter 411, division 49, 50, 51, and 52.¶

(95102) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.¶

(103) "Variance" means an exception from a regulation or provision of these rules in accordance with OAR 411-049-0160.¶

(96104) "Ventilator-Assisted Care" means the provision of mechanical assistance to replace spontaneous

breathing. Devices used include, but are not limited to, mechanical ventilators, manual ventilators, and positive airway pressure ventilators.¶

(~~97~~105) "Violation" means an area of non-compliance with these rules. "Violation" is synonymous with "Deficiency".

Statutory/Other Authority: ORS 409.050, 410.070, 413.085, 441.122, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Statutes/Other Implemented: ORS 106.010, 409.050, 410.070, 413.085, 441.111, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-049-0135

REPEAL: Temporary 411-049-0135 from APD 13-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires applicants to acknowledge nondiscrimination policy.

CHANGES TO RULE:

411-049-0135

License Applications

(1) INITIAL LICENSE APPLICATION. The initial license application (APD 0448) must include:¶

(a) Verification of attendance at a Department-approved orientation program conducted by the LLA responsible for the licensing of the proposed AFH and successful completion of the Department's Ensuring Quality Care Course and examination. (See OAR 411-049-0125).¶

(b) Three personal references for the applicant who are not family members as defined in OAR 411-049-0102. Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references.¶

(c) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Department. To request a Class 3 license, the application must include:¶

(A) Proof of at least three years of full-time experience providing direct care to adults who are older or adults with physical disabilities and who required full assistance in four or more of activities of daily living.¶

(B) Current contact information from at least two licensed health care professionals who have direct knowledge of the applicant's abilities and experience as a caregiver; or¶

(C) A copy of the applicant's current unencumbered license as a healthcare professional in Oregon, if applicable.¶

(d) Documentation of the initiation of a background check or a copy of an approved background check for each subject individual as defined in OAR 411-049-0102.¶

(e) A Health History and Physician, Physician's Assistant, or Nurse Practitioner's Statement (form ~~SDS-APD 0903~~) regarding the applicant's ability to provide care.¶

(f) FINANCIAL INFORMATION. A completed AFH Financial Information form (~~SDS-APD 0448A~~), and supplemental information listed in OAR 411-049-0125(3) documenting at least two months of liquid resources to pay the operating costs of the home.¶

(g) If an applicant uses income from another AFH to document possession of at least two months of operating expenses, the applicant must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of each home for at least two months.¶

(h) Copies of the home's Residency Agreements according to OAR 411-050-0750.¶

(i) Copies of the home's Nondiscrimination Notice that includes:¶

"(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual's association with another individual on account of the other individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Oregon Department of Human Services at (provide current contact information)."¶

(j) If the applicant is purchasing or owns the home, verification of purchase or ownership.¶

(k) If the home is leased or rented, a copy of the completed lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:¶

(A) The owner and landlord's name.¶

(B) Verification that the rent is a flat rate.¶

(C) The signatures of the landlord and applicant and the date signed.¶

(l) Complete contact information for the applicant including:¶

(A) A mailing address if different from the proposed AFH.¶

(B) A business address for electronic mail.¶

(m) The maximum resident capacity requested.¶

(n) Identify an Oregon-licensed registered nurse who has agreed to provide RN consultation, training and delegation to caregivers as needed.¶

(o) Identification of:¶

(A) Any relatives needing care.¶

(B) The maximum number of any room and board tenants.¶

- (C) The maximum number of adult day services individuals.¶
- (D) The names of any other occupants in the home.¶
- (ep) A \$20 per bed non-refundable fee for each non-relative resident.¶
- (eq) If the applicant intends to use an administrator, resident manager, floating resident manager, or shift caregivers, the Department's supplemental application (form SDS-APD 0448B) completed by the applicant, as appropriate.¶
- (er) Succession Plan or current AFH Back-up Provider Agreement form (APD 0350).¶
- (es) The current AFH Weekly Plan of Operation form (APD 0351) describing the operational plan for the AFH.¶
- (et) A current and accurate floor plan that indicates:¶
 - (A) The size of rooms.¶
 - (B) Which bedrooms are to be used by residents, the licensee, caregivers, for adult day services, and room and board tenants, as applicable.¶
 - (C) The location of all the exits on each level of the home, including emergency exits such as windows.¶
 - (D) The location of any wheelchair ramps.¶
 - (E) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms.¶
 - (F) The planned evacuation routes, initial point of safety, and final point of safety.¶
 - (G) Any designated smoking areas in or on the AFH premises.¶
- (eu) A copy of the applicant's current license as a health care professional in Oregon, if applicable.¶
- (ev) Incomplete initial applications are void after 60 calendar days from the date the LLA receives the application form and non-refundable fee, and the Department may deny the application if not withdrawn.¶
- (2) MULTIPLE HOMES. An applicant may not be licensed to operate a second AFH, or any additional home, without first demonstrating a history of substantial compliance for previous and currently licensed AFHs.¶
 - (a) A separate application is required for each location where an AFH is to be operated.¶
 - (b) A written plan describing the administrative responsibilities and staffing to cover each home is required.¶
 - (c) The applicant must complete the Department's application form for the specific type of license requested and submit the application form to the LLA with the non-refundable fee.¶
 - (d) Applications are not complete until all the required information is submitted to the LLA. Failure to provide complete and accurate information may result in the denial of the application.¶
 - (e) The applicant may withdraw their application at any time during the application process by written notification to the LLA.¶
 - (f) An applicant whose license has been revoked, non-renewed, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied, shall not be granted a new license by the LLA for a period of not less than one year from the date the action was final, or for a longer period if specified in the final order.¶
 - (g) All moneys collected under ORS 443.725 to 443.825 are paid to the Quality Care Fund.¶
- (3) LICENSE RENEWAL. At least 90 calendar days prior to the expiration of a license, the LLA must send a reminder notice and renewal application to the licensee. License renewal inspections may be conducted with an appointment when requested by a licensee or administrator. The request must be made no less than 30 days prior to the expiration of the license and the appointment must be scheduled at a mutually agreed upon time in cooperation with the LLA. If advance notice may obstruct or diminish the effectiveness of the enforcement of these rules, the appointment request may be denied.¶
 - (a) The application (form APD 0448C) must be completed and timely submitted with the required non-refundable fee to the LLA prior to the expiration date of the current license. Timely submission of the renewal application and fee shall keep the license in effect until the LLA or the Department takes action. The complete application will include:¶
 - (A) The requirements listed in (71)(i) through (ft) of this rule.¶
 - (B) A Health History and Physician or Nurse Practitioner's Statement (form APD 0903). The Health History and Physician or Nurse Practitioner's Statement must be updated every third year or sooner if there is reasonable cause for health concerns.¶
- (C) FINANCIAL INFORMATION FOR THE HOME'S FIRST LICENSE RENEWAL. A completed Financial Information Worksheet (form APD 0448A) demonstrating the financial ability to maintain sufficient liquid resources to pay the home's operating costs for at least two months.¶
- (D) Documentation of a current approved background check for each subject individual according to OAR 411-049-0120.¶
- (E) Copies of the home's Residency Agreement forms if changes to the original forms reviewed by the LLA are proposed.¶
- (F) Proof of required annual training as specified in OAR 411-049-0125(8).¶
 - (b) A renewal application remaining incomplete at the time of license expiration, or failure to provide accurate information on the renewal application may result in the denial of the application.¶

(4) LOCAL LICENSING AUTHORITY AND DEPARTMENT ACTION. After receipt of the completed application materials, including the non-refundable fee:¶¶

(a) FOR INITIAL LICENSE APPLICATIONS:¶¶

(A) The LLA must investigate the information submitted including pertinent information received from outside sources, conduct a personal interview with the applicant, and conduct an in-person inspection of the home identifying any deficiencies on the Department's APD 0516 form, and specify a time frame for correction not to exceed 30 days.¶¶

(B) The licensee must be given a copy of the Department's inspection form (APD 0516).¶¶

(C) The LLA must issue a license within 60 calendar days after the completed application materials have been received if the home and applicant are in compliance with these rules.¶¶

(D) The Department shall deny the issuance of a license if deficiencies cited are not corrected within the time frames specified by the LLA.¶¶

(b) FOR RENEWAL LICENSE APPLICATIONS:¶¶

(A) The LLA shall investigate the information submitted, review the licensing records for the applicant, conduct an in-person inspection of the home, and provide the licensee a copy of the Department's Statement of Deficiencies and Plan of Correction form identifying any violations and specifying a time frame for correction not to exceed 30 days.¶¶

(B) The Department may deny a renewal application if cited deficiencies are not corrected within the time frame specified by the LLA.¶¶

(C) EXPIRED AND UNLICENSED ADULT FOSTER HOME. If the required renewal information and fee are not timely submitted to the LLA as required in (83) of this rule and residents remain in the home after the date the license expires, the home shall be treated as an unlicensed facility, subject to civil and criminal penalties (See OAR 411-052-0025 and OAR 411-052-0045).¶¶

(c) The licensee or administrator must post the most recent inspection reports, according to OAR 411-049-0140, and must provide upon request a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian, or conservator of a resident.¶¶

(d) The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The conditions must be visibly posted with the license.

Statutory/Other Authority: ORS 409.050, 410.070, 413.085, 441.122, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Statutes/Other Implemented: ORS 409.50, 410.070, 413.085, 441.112, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-049-0160

REPEAL: Temporary 411-049-0160 from APD 13-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Amends a citation to reflect the correct rule reference.

CHANGES TO RULE:

411-049-0160

Variances

- (1) An applicant, licensee, or administrator may request a variance to the provisions of these rules. The variance request must be in writing and must include clear and convincing evidence that:¶
- (a) The requested variance does not jeopardize the care, health, welfare, or safety of the residents;¶
 - (b) All of the residents' needs shall be met; and¶
 - (c) All residents, in addition to other occupants in the home, may be evacuated in three minutes or less.¶
- (2) VARIANCES NOT ALLOWED. Except for section (1) of this rule, no variance shall be granted by the LLA from a regulation or provision of the rules pertaining to:¶
- (a) Resident capacity as described in OAR 411-049-0105.¶
 - (b) Minimum age of licensee and any caregivers as described in OAR 411-049-0125, except as stated in OAR 411-049-0150(3).¶
 - (c) The training requirements of a licensee and all other caregivers, except as allowed for: ¶
- (A) Provisional licenses as described in OAR 411-049-0105(14)(b); ¶
 - (B) When a substitute caregiver holds an Oregon health care professional license as described in OAR 411-049-0125; or¶
 - (C) A licensee designated as a corporate entity must obtain a variance to the training requirements as described in OAR 411-049-0125(2)(a) - (2)(eg).¶
- (d) Standards and practices for care and services as described in OAR Chapter 411, Division 51.¶
 - (e) In-person inspections of the facility as described in OAR 411-052-0005.¶
 - (f) Background checks as described in OAR 411-049-0120.¶
- (3) The LLA shall not grant a variance request to any rule that is inconsistent with Oregon Revised Statutes or 42 CFR 441.301(c)(2)(xiii) and 42 CFR 441.530(a)(1)(vi) (See OAR 411-049-0160(4)).¶
- (4) The LLA shall not grant a variance request related to fire and life safety without prior consultation with the Department.¶
- (5) In deciding to grant a variance, the LLA must consider the licensee's history of compliance with rules governing AFHs or other long-term care facilities for adults who are older or adults with physical disabilities in Oregon and any other jurisdiction, if appropriate. The LLA must determine that the variance is consistent with the intent and purpose of these rules before granting the variance. The LLA must respond, in writing, within 30 days of receiving a request for a variance. The written response must include the frequency of renewal.¶
- (6) A variance is not effective until granted in writing by the LLA. Variances are reviewed pursuant to these rules. If applicable, the licensee must re-apply for a variance at the time of license renewal, or more often if determined necessary by the LLA.¶
- (7) In seeking a variance, the burden of proof that the requirements of these rules have been met is upon the applicant or licensee.¶
- (8) If a variance to any provision of these rules is denied, the applicant or licensee may request a meeting with the LLA.

Statutory/Other Authority: ORS 409.050, 410.070, 413.085, 441.122, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Statutes/Other Implemented: ORS 409.050, 410.070, 413.085, 441.116, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0725

REPEAL: Temporary 411-050-0725 from APD 14-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Amends a citation to reflect the correct rule reference.

CHANGES TO RULE:

411-050-0725

Emergency Preparedness

(1) **ORIENTATION TO EMERGENCY PROCEDURES.** Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a smoke and carbon monoxide alarm, shown how to participate in an emergency evacuation drill, and receive an orientation to basic fire safety, including the location of designated smoking areas, if applicable. New caregivers must also be oriented in how to conduct an evacuation.¶¶

(2) **EVACUATION PLAN.** An emergency evacuation plan must be developed and revised as necessary to reflect the current condition of the residents in the home. The evacuation plan must be rehearsed with all occupants.¶¶

(3) **EVACUATION DRILL.** An evacuation drill must be held at least once every 90 calendar days, with at least one evacuation drill per year conducted during sleeping hours.¶¶

(a) The evacuation drill must be clearly documented, signed by the caregiver conducting the drill, and maintained according to OAR 411-050-0745(1)(gh).¶¶

(b) The licensee and all other caregivers must be able to demonstrate the ability to evacuate all occupants from the facility to the initial point of safety within three minutes or less, and to the final point of safety within an additional two minutes or less. The initial and the final points of safety must both have direct access to a public sidewalk or street and may not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.¶¶

(A) The initial point of safety must be exterior to and a minimum of 25 feet away from the structure.¶¶

(B) The final point of safety must be a minimum of 50 feet away from the structure.¶¶

(c) **SPRINKLERS.** When an AFH has a sprinkler system throughout the home that is maintained according to the adopted codes and standards, all occupants may have up to five minutes to evacuate to the initial point of safety, and two minutes to further evacuate occupants to the final point of safety as indicated in (b)(A) of this section.¶¶

(4) **RESIDENT PLACEMENT.**¶¶

(a) A resident, who is non-ambulatory, has impaired mobility, is cognitively impaired, or is not capable of self-preservation, may not be placed in a bedroom on a floor without a second ground level exit.¶¶

(b) A resident with a bedroom above or below the ground floor must be able to demonstrate their capability for self-preservation.¶¶

(c) **STAIRS.** Stairs must have a riser height of between 6 to 8 inches and tread width of between 8 to 10.5 inches. Lifts or elevators are not an acceptable substitute for a resident's capability to ambulate stairs. (See also section 411-050-0720(6)).¶¶

(5) **EXIT WAYS.** All exit ways must be barrier free and the corridors and hallways must be a minimum of 36 inches wide or as approved by the State Fire Marshal or the State Fire Marshal's designee.¶¶

(a) Interior doorways used by the residents must be wide enough to accommodate residents' wheelchairs and walkers, and beds that are used by residents for evacuation purposes.¶¶

(b) Any bedroom window or door identified as an exit must remain free of obstacles that would interfere with evacuation or rescue.¶¶

(c) There must be a second safe means of exit from all sleeping rooms. A caregiver whose sleeping room is above the first floor may be required to demonstrate at the time of licensure, renewal, or inspection, how the premises will be evacuated from the caregiver's sleeping room using the secondary exit.¶¶

(d) There must be at least one wheelchair ramp from a minimum of one exterior door if an occupant of the home is non-ambulatory. Wheelchair ramps must comply with the U.S. Department of Justice's 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design (<https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#c4>, Chapter 4, Accessible Routes, Section 405, Ramps).¶¶

(6) **FLASHLIGHT.** There must be at least one plug-in, rechargeable flashlight in good functional condition available on each floor of the home for emergency lighting.¶¶

(7) **EMERGENCY PREPAREDNESS PLAN.** A licensee or administrator must develop and maintain a written emergency preparedness plan for the protection of all occupants in the home in the event of an emergency or disaster.¶¶

(a) The written emergency plan must:¶¶

(A) Include an evaluation of potential emergency hazards including, but not limited to:¶¶

- (i) Prolonged power failure or water or sewer loss.¶¶
 - (ii) Fire, smoke, or explosion.¶¶
 - (iii) Structural damage.¶¶
 - (iv) Hurricane, tornado, tsunami, volcanic eruption, flood, or earthquake.¶¶
 - (v) Chemical spill or leak.¶¶
 - (vi) Pandemic.¶¶
 - (B) Include an outline of the caregiver's duties during an evacuation.¶¶
 - (C) Consider the needs of all occupants of the home including, but not limited to:¶¶
 - (i) Access to medical records necessary to provide services and treatment.¶¶
 - (ii) Access to pharmaceuticals, medical supplies, and equipment during and after an evacuation.¶¶
 - (iii) Behavioral support needs.¶¶
 - (D) Include provisions and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff.¶¶
 - (E) Planned relocation sites.¶¶
 - (b) The licensee or administrator must notify the Department or the LLA of the home's status in the event of an emergency that requires evacuation and during any emergent situation when requested.¶¶
 - (c) The licensee or administrator must re-evaluate the emergency preparedness plan at least annually and whenever there is a significant change in the home.
- Statutory/Other Authority: ORS 409.050, 410.070, 413.085, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790
- Statutes/Other Implemented: ORS 409.050, 410.070, 413.085, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0730

REPEAL: Temporary 411-050-0730 from APD 14-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires protection of resident records related to the LGBTQIA2S+ population and a resident's human immunodeficiency virus status.

CHANGES TO RULE:

411-050-0730

Operational Standards

(1) A licensee must own, rent, or lease the home to be licensed, however, the LLA may grant a variance to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the AFH is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. The licensee of a building where an AFH is located may not allow the owner, landlord, or lessor to interfere with the admission, transfer, or voluntary or involuntary move of any resident in the AFH unless the owner, landlord, or lessor is named on the license.¶¶

(2) Each AFH licensee must comply with:¶¶

(a) All applicable local business license, zoning, building, and housing codes.¶¶

(b) The Fair Housing Act.¶¶

(c) State and local fire and safety regulations for a single-family residence, and Oregon Fire Code, Appendix R.¶¶

(d) Federal regulations governing HCB Settings (OAR chapter 411, division 004).¶¶

(3) ZONING. AFHs are subject to applicable sections of ORS 197.660 to 197.670.¶¶

(4) COOPERATION AND ACCESS. The licensee or administrator must cooperate with the Department, Centers for Medicare and Medicaid Services (CMS), Oregon Health Authority (OHA) and local licensing and investigative personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.¶¶

(a) Department, CMS, OHA, local licensing, and investigative personnel must be provided access to all resident and facility records and may conduct private interviews with residents.¶¶

(b) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records, and with written permission from the resident or the resident's legal representative, may have access to resident records. (See OAR 114-005-0030).¶¶

(5) CONFIDENTIALITY. Licensees and AFH staff must keep personal and healthcare information related to residents confidential and private as required by all applicable confidentiality and privacy laws, except as may be necessary in the planning or provision of care or medical treatment, or related to an inspection, investigation, or sanction action under these rules. Applicable confidentiality and privacy laws include, but are not limited to:¶¶

(a) For medical information:¶¶

(A) Health Insurance Portability and Accountability Act (HIPAA).¶¶

(B) ORS 192.553 to 192.581, confidentiality of protected health information.¶¶

(b) Unless required by state or federal law, a care facility shall not disclose any personally identifiable information. This applies to all resident records including records regarding: ¶¶

(A) A resident's sexual orientation;¶¶

(B) Whether a resident is LGBTQIA2S+;¶¶

(C) A resident's gender transition status; or¶¶

(D) A resident's human immunodeficiency virus status.¶¶

(c) The AFH shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (b) of this section to other residents, visitors or AFH caregivers, except to the minimum extent necessary for AFH caregivers to perform their duties. The AFH must notify the resident or resident's representative if the AFH inadvertently or accidentally discloses such information to unauthorized persons. ¶¶

(d) For resident records generally:¶¶

(A) ORS 410.150, Use of files, confidentiality, and privileged communications.¶¶

(B) OAR chapter 411, division 005, Privacy of protected information.¶¶

(6) TRANSPORTATION. A licensee or administrator must arrange for or provide appropriate transportation for residents when needed.¶¶

(7) COMMUNICATION.¶¶

(a) Applicants for an initial license must obtain and provide to the LLA a current, active business address for

electronic mail before obtaining a license.¶

(b) A licensee or administrator must notify the LLA within 24 hours upon a change in the home's business address for electronic mail.¶

(c) A licensee or administrator must notify the LLA, the residents and the resident's family members, representatives, and case managers, as applicable, of any change in the telephone number for the licensee or the AFH within 24 hours of the change.¶

(d) A licensee must notify the LLA in writing before any change of the licensee's residence or mailing address.¶
(8) MEALS.¶

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA's) My Plate and include fresh fruit and vegetables when in season.¶

(b) Meals must reflect consideration of a resident's preferences and cultural and ethnic background. This does not mean the licensee or administrator must prepare multiple, unique meals for the residents at the same time.¶

(c) A schedule of mealtimes and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families.¶

(A) Meal substitutions for scheduled menu items in compliance with (8)(a) of this rule are acceptable and must be documented on, or attached to, the weekly menu.¶

(B) The licensee or administrator must maintain the weekly menus for a minimum of the most recent six months during which the home has conducted business.¶

(C) The licensee or administrator must support the resident's right to access food at any time. Limitations may only be used when there is a health or safety risk, as stated in OAR 411-051-0105, and when a written informed consent is obtained. Licensees have until June 30, 2020 to fully comply with this HCB Settings requirement, OAR 411-051-0105(3).¶

(D) If a resident misses a meal at a scheduled time, an alternative meal must be made available.¶

(d) There must be no more than a 14-hour span between the evening and morning meals. Snacks do not substitute for a meal in determining the 14-hour span. Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.¶

(e) Food may not be used as an inducement to control the behavior of a resident.¶

(f) Home-canned foods must be processed according to the guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.¶

(g) Special consideration must be given to a resident with chewing difficulties or other eating limitations. Special diets must be followed, as prescribed in writing, by the resident's physician, nurse practitioner, or physician assistant.¶

(h) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Storage and food preparation areas must be free from food that is spoiled or expired.¶

(i) The household utensils, dishes, glassware, and household food may not be stored in bedrooms, bathrooms, or living areas.¶

(j) Meals must be prepared and served in the home where the residents live. Payment for meals eaten away from the home for the convenience of the licensee or administrator (e.g., restaurants, senior meal sites) is the responsibility of the licensee.¶

(A) Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.¶

(B) Payment for food beyond the required three meals and snacks are the responsibility of the resident.¶

(k) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.¶

(l) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors, and in good repair.¶

(9) TELEPHONE.¶

(a) The home must have a working landline and corded telephone with a listed number that is separate from any other number the home has, such as, but not limited to, internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If a licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line if the phone line complies with the requirements of these rules. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.¶

(b) The licensee must make a telephone that is in good working order available and accessible for the residents use with reasonable accommodation for privacy during telephone conversations. A resident with a hearing impairment, to the extent the resident may not hear a normal telephone conversation, must be provided with a telephone that is amplified with a volume control or a telephone that is hearing aid compatible.¶

(c) Restrictions on the use of the telephone by the residents must be specified in the written Residency Agreement

and may not violate the residents' rights. Individual restrictions must be well documented in the resident's care plan.

Statutory/Other Authority: ORS 409.050, 410.070, 413.085, 441.122, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790, 443.880

Statutes/Other Implemented: ORS 197.660 - 197.670, 409.050, 410.070, 413.085, 441.114, 441.373, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0750

REPEAL: Temporary 411-050-0750 from APD 14-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities adopt a nondiscrimination policy and provide the policy to residents at time of move-in.

CHANGES TO RULE:

411-050-0750

Records - Resident

(1) An individual resident record must be developed, kept current, and readily accessible on the premises of the home for each individual admitted to the AFH. The record must be legible and kept in an organized manner so as to be utilized by staff.¶

(2) The record must contain the following information:¶

(a) A complete initial screening assessment and general information form (SDS 902) as described in OAR 411-051-0110.¶

(b) Documentation on form (SDS 913) that the licensee or administrator has informed private-pay residents of the availability of a long-term care assessment.¶

(c) Documentation on form (SDS 0342A) that the licensee or administrator has oriented the resident to emergency evacuation procedures as described in OAR 411-050-0725(1).¶

(d) Documentation that the licensee or administrator has informed all residents of the right to formulate an Advance Directive.¶

(e) FINANCIAL INFORMATION:¶

(A) Detailed records and receipts, if the licensee manages or handles a resident's money. The Resident Account Record (form SDS 713) or other expenditure forms may be used if the licensee manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. Receipts must document all deposits and purchases of \$5 or more made on behalf of a resident.¶

(B) Residency Agreement signed and dated by the resident or the resident's representative may be kept in a separate file, but must be made available for inspection by the LLA.¶

(f) Medical and legal information, including, but not limited to:¶

(A) Medical history, if available.¶

(B) Current prescribing practitioner orders.¶

(C) Nursing instructions, delegations, and assessments, as applicable.¶

(D) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less. (Older records may be stored separately).¶

(E) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.¶

(g) A complete, accurate, and current care plan.¶

(h) Documentation that supports or eliminates any individually-based limitation, as described in OAR 411-051-0115.¶

(i) A copy of the current house policies, as identified in the current Residency Agreement, ~~and the current Resident's Bill of Rights, LGBTQIA2S+ Protections, and a copy of the home's nondiscrimination policy,~~ signed and dated by the resident or the resident's representative.¶

(j) SIGNIFICANT EVENTS AND INCIDENTS. A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident, including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident. A copy of the report must be sent to the resident's representative, and case manager, if applicable.¶

(k) NARRATIVE OF RESIDENT'S PROGRESS. Narrative entries describing each resident's progress must be documented at least weekly and maintained in each resident's individual record. All entries must be signed and dated by the person writing them.¶

(l) Non-confidential information or correspondence pertaining to the care needs of the resident.¶

(m) Falsifying records or causing another to do so shall result in issuance of a mandatory civil penalty as described in OAR 411-052-0025(2).

Statutory/Other Authority: ORS 409.050, 410.070, 413.085, 441.122, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790, 443.880

Statutes/Other Implemented: ORS 197.660 - 197.670, 409.050, 410.070, 413.085, 441.112, 441.114, 441.373,

443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-051-0105

REPEAL: Temporary 411-051-0105 from APD 15-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to establish protections against discrimination of LGBTQIA2S+ residents. Updates rule title from, "Resident's Rights," to "Resident's Rights and Protections."

CHANGES TO RULE:

411-051-0105

Residents Rights and Protections

- (1) **RESIDENT'S BILL OF RIGHTS AND FREEDOMS.** The licensee, AFH occupants, and employees of the home must not violate these rights and must help the residents exercise them. The Resident's Bill of Rights and Freedoms provided by the Department must be explained and a copy given to each resident at the time of admission. The Resident's Bill of Rights and Freedoms states each resident has the right to:¶
- (a) Be treated as an adult with respect and dignity.¶
 - (b) Be informed of all resident rights and all house policies as written in the Residency Agreement.¶
 - (c) Be encouraged and assisted to exercise constitutional and legal rights, including the right to vote.¶
 - (d) Be informed of his or her medical condition and the right to consent to or refuse treatment.¶
 - (e) Receive appropriate care, services, and prompt medical care as needed.¶
 - (f) To be given informed consent before any nontherapeutic examination, observation or treatment is provided.¶
 - (g) Be free from abuse.¶
 - (gh) Complete privacy when receiving treatment or personal care.¶
 - (hi) Associate and communicate privately with any person of choice and send and receive personal mail unopened.¶
 - (ij) Have access to, and participate in, activities of social, religious, and community groups.¶
 - (jk) Have medical and personal information kept confidential.¶
 - (kl) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.¶
 - (lm) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner and consented to by the resident or their legal guardian.¶
- (A) Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried and may not be used for discipline or convenience.¶
- (B) When the right to freedom from restraints must be limited due to a threat to the health and safety of an individual or others, an individually-based limitation is required according to (3) of this rule and OAR 411-004-0040.¶
- (mn) Manage his or her own financial affairs unless legally restricted.¶
 - (no) Be free from financial exploitation. The licensee may not charge or ask for application fees or non-refundable deposits or solicit, accept, or receive money or property from a resident other than the amount agreed to for services.¶
 - (op) A written agreement regarding services to be provided and the rates to be charged. The licensee must give 30 days' written notice before any change in the rates or the ownership of the home.¶
 - (pg) Not be transferred or moved out of the AFH without 30 calendar days' written notice and an opportunity for a hearing. A licensee or administrator may transfer a resident only for medical reasons, for the welfare of the resident or other residents, or for nonpayment.¶
 - (qr) A safe and secure environment.¶
 - (rs) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.¶
 - (st) Make suggestions or complaints without fear of retaliation.¶
 - (tu) Be free of discrimination regarding the execution of an Advance Directive, Physician's Order for Life-Sustaining Treatment (POLST), or Do Not Resuscitate (DNR) orders.¶
- (2) LGBTQIA2S+ PROTECTIONS. A licensee, administrator, resident manager, floating resident manager, shift caregiver or substitute caregiver of the AFH may not take any of the following actions based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status: ¶
- (a) Deny admission to an AFH, transfer or refuse to transfer a resident within an AFH or to another home or discharge or evict a resident from an AFH; ¶
 - (b) Deny a request by a resident to choose the resident's roommate, when a resident is sharing a room; ¶
 - (c) Refuse to assign a room to a transgender or other LGBTQIA2S+ resident other than in accordance with the

resident's gender identity, unless at the request of the resident or if required by federal law; ¶

(d) Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery or presents as gender nonconforming; Harassment includes, but is not limited to, requiring a resident to show documentation of gender identity in order to gain entrance to a restroom or other area of an AFH that is available to other individuals of the same gender identity as the resident; ¶

(e) Repeatedly and willfully refuse to use a resident's name or pronouns after being reasonably informed of the resident's name or pronouns; ¶

(f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics, or to engage in grooming practices, that are permitted to any other resident; ¶

(g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner; ¶

(h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort; ¶

(i) Fail to accept a resident's verbal or written attestation of the resident's gender identity or require a resident to provide proof of the resident's gender identity using any form of identification; ¶

(j) Fail to take reasonable actions, within the AFH's control, to prevent discrimination or harassment when the facility knows or should have known about the discrimination or harassment; ¶

(k) Refuse or willfully fail to provide any service, care or reasonable accommodation to a resident; or ¶

(l) Refuse or willfully fail to provide any service, care or reasonable accommodation to a potential resident applying for services or care. ¶

(3) HCBS FREEDOMS. Residents have the following rights and freedoms authorized by 42 CFR 441.301(c)(4) and 42 CFR 441.530(a)(1): ¶

(a) To live under a legally enforceable Residency Agreement with protections substantially equivalent to landlord-tenant laws. ¶

(b) The freedom and support to access food at any time. ¶

(c) To have visitors of the resident's choosing at any time. ¶

(d) To privacy in the resident's bedroom, and to have a lockable door in the resident's bedroom, which may be locked by the resident. ¶

(e) To choose a roommate when sharing a bedroom. ¶

(f) To furnish and decorate the resident's bedroom according to the Residency Agreement. ¶

(g) The freedom and support to control the resident's schedule and activities. ¶

(34) INDIVIDUALLY-BASED LIMITATIONS. Effective July 1, 2019 and no later than June 30, 2020, a limitation to (1)(4m) of this rule and any freedom in section (23)(b) through (g) of this rule must be supported by a specific assessed need due to a threat to the health and safety of the resident or others. All individually-based limitations (IBL) considered must be documented on the Department-approved consent form. ¶

(a) For Medicaid-eligible residents, the person-centered service plan must be developed as outlined in OAR 411-051-0120. ¶

(b) For Medicaid-eligible residents, the person-centered service plan coordinator must authorize the IBL and the individual, or their representative, must consent to the limitation. ¶

(c) The licensee or administrator must incorporate and document all applicable elements identified in OAR 411-004-0040, including: ¶

(A) The specific and individualized assessed need justifying the limitation. ¶

(B) The positive interventions and supports used before imposing a limitation. ¶

(C) Less intrusive methods that have been tried; but did not work. ¶

(D) A clear description of the condition that is directly proportionate to the specific assessed need. ¶

(E) Regular reassessment and review to measure the ongoing effectiveness of the limitation. ¶

(F) Established time limits for periodic review of the limitation to determine if the limitation should be terminated or remains necessary. The limitation must be reviewed at least annually. ¶

(G) The informed consent of the resident or, as applicable, the legal representative of the resident, including any discrepancy between the wishes of the resident and the consent of the legal representative. ¶

(H) An assurance that the interventions and support do not cause harm to the individual. ¶

(d) Limitations are not transferable between care settings. Continued need for any limitation at a new care setting must comply with the requirements in these rules. ¶

(45) RESIDENT CARE. ¶

(a) Care and supervision of residents must be in a homelike atmosphere. The training of the licensee and

caregivers and care and supervision of residents must be appropriate to the age, care needs, and conditions of the residents in the home. Additional staff may be required if, for example, day care individuals are in the home or if necessary to safely evacuate the residents and all occupants from the home as required by OAR 411-050-0725.¶

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the licensee or administrator must cooperate with the plan and ensure the plan is implemented as instructed.¶

(c) NOTIFICATION. The licensee or administrator must notify emergency personnel, the resident's physician, nurse practitioner, physician assistant, registered nurse, family representative, and case manager, as applicable, under the following circumstances:¶

(A) EMERGENCIES (MEDICAL, FIRE, POLICE). In the event of an emergency, the licensee or caregiver with the resident at the time of the emergency must first call 911 or the appropriate emergency number for the home's community. This does not apply to a resident with a medical emergency who practices Christian Science.¶

(i) If a resident is receiving hospice services, the caregivers must follow the written instructions for medical emergencies from the hospice nurse.¶

(ii) If a resident has a completed Physician's Orders for Life-Sustaining Treatment (POLST) or other legal documents, such as an Advance Directive or Do Not Resuscitate (DNR) order, copies of the documents must be made available to the emergency personnel when they arrive.¶

(B) HOSPITALIZATION. In the event the resident is hospitalized.¶

(C) HEALTH STATUS CHANGE. When the resident's health status or physical condition changes.¶

(D) DEATH. Upon the death of the resident.¶

(d) The licensee shall not inflict, or tolerate to be inflicted, abuse of any resident, as defined in OAR 411-020-0002.¶

(e) REASONABLE PRECAUTIONS. The licensee must exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of the residents.¶

(f) A qualified caregiver must always be present and available at the home when a resident is in the home. A resident may not be left in charge in lieu of a caregiver.¶

(g) DIRECT INVOLVEMENT OF CAREGIVERS. The licensee or caregivers must be directly involved with the residents daily. If the physical characteristics of the AFH do not encourage contact between the caregivers and residents and among residents, the licensee must demonstrate how regular positive contact occurs.¶

(56) ACTIVITIES. The licensee or administrator must make available at least six hours of activities per week, not including television and movies, that are of interest to the residents. Information regarding activity resources is available from the LLA. Activities must be oriented to individual preferences as indicated in the resident's care plan. (See OAR 411-051-0115). Documentation of the activities offered to each resident and the resident's participation in those activities must be recorded in the resident's records.¶

(67) RESIDENT MONEY. If the licensee or administrator manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee or administrator may not under any circumstances commingle, borrow from, or pledge any of a resident's funds. The licensee or administrator 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, uncle, niece, or nephew. Nothing in this rule may be construed to prevent the licensee or the licensee's employee from acting as a representative payee for the resident. (See also OAR 411-020-0002).¶

(a) Personal incidental funds (PIF) for individuals eligible for Medicaid services must be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet).¶

(b) The licensee and other caregivers may not accept gifts from the residents through undue influence or accept gifts of substantial value. Caregivers and family members of the caregivers may not accept gifts of substantial value or loans from the resident or the resident's family. The licensee or other caregivers may not influence, solicit from or suggest to any residents or resident's representatives that the residents or the resident's representatives give the caregiver or the caregiver's family money or property for any purpose.¶

(c) The licensee may not subject the resident or the resident's representative to unreasonable rate increases.¶

(d) The licensee and other caregivers may not loan money to the residents.

Statutory/Other Authority: ORS 127.520, 409.050, 410.070, 413.085, 441.122, 441.373, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Statutes/Other Implemented: ORS 409.050, 410.070, 413.085, ~~443.001 - 443.001.112~~, 441.114, ~~443.1.373~~, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-051-0110

REPEAL: Temporary 411-051-0110 from APD 15-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to obtain and document information concerning resident's name, pronouns, and gender identity.

CHANGES TO RULE:

411-051-0110

Pre-Admission

(1) PRE-ADMISSION SCREENING AND ASSESSMENT.¶

(a) Before admission, the licensee or administrator must conduct and document a screening using the Department's current Adult Foster Home Screening and Assessment and General Information form (SDS 0902) to determine if a prospective resident's care needs exceed the license classification of the home. The screening must:¶

(A) Evaluate the ability of the prospective resident to evacuate the home within three minutes along with all the occupants of the home.¶

(B) Determine if the licensee and caregivers can meet the prospective resident's needs in addition to meeting the needs of the other residents of the home.¶

(C) Include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information, as needed, to assure the prospective resident's care needs shall be met.¶

(b) The screening process must include interviews with the prospective resident and the prospective resident's family, prior care providers, and case manager, as appropriate. The licensee or administrator must also interview, as necessary, any physician, nurse practitioner, physician assistant, registered nurse, pharmacist, therapist, or mental health or other licensed health care professional involved in the care of the prospective resident. A copy of the screening document must be:¶

(A) Given to the prospective resident or their representative.¶

(B) Placed in the resident's record if admitted to the home; or¶

(C) Maintained for a minimum of three years if the prospective resident is not admitted to the home.¶

(c) If the Department or AAA knows a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 163A.005 is applying for admission to an AFH, the Department or AAA shall notify the home of the person's status as a sex offender.¶

(d) The licensee or administrator may refuse to admit a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 163A.005.¶

(e) REQUIRED DISCLOSURES.¶

(A) The licensee or administrator must disclose the home's policies to a prospective resident or the prospective resident's representative, as applicable. A copy of the home's current Residency Agreement identifying the home's policies shall be provided to the prospective resident and their representative. (See OAR 411-050-0705).¶

(B) The licensee or administrator must inform a prospective resident or the prospective resident's representative, if appropriate, of the home's nondiscrimination policy. A copy of the home's current nondiscrimination policy shall be provided to the prospective resident and their representative. (See OAR 411-050-0745(2)(e)).¶

(C) LONG-TERM CARE ASSESSMENT. The licensee or administrator must inform a prospective private-pay resident or the prospective resident's representative, if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee or administrator must document on the Department's form (SDS 913) that the prospective private-pay resident has been advised of the right to receive a long-term care assessment. The licensee or administrator must maintain a copy of the form in the resident's record upon admission and make a copy available to the Department upon request.¶

(2) BEFORE ADMISSION.¶

(a) The licensee or administrator must obtain and document general information regarding a resident before the resident's admission. The information must include the names, addresses, and telephone numbers of the resident's relatives, significant persons, case managers, and medical or mental health providers. The information must also include the date of admission and, if available, the resident's medical insurance information, birth date, prior living facility, and mortuary.¶

(b) Before admission, the licensee or administrator must obtain and place in the resident's record:¶

(A) Prescribing practitioner's written or verbal orders for medications, treatments, therapies, and special diets, as

applicable. Any verbal orders must be followed by written orders within seven calendar days of the resident's admission. Attempts to obtain written orders must be documented in the resident's record.¶

(B) Prescribing practitioner or pharmacist review of the resident's preferences for over-the-counter medications and home remedies.¶

(C) Any medical information available, including the resident's history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care.¶

(D) Legal name for billing purposes¶

(E) For service planning purposes, any variance from legal records, as indicated by the resident regarding:¶

(i) Name.¶

(ii) Pronouns.¶

(iii) Gender identity.¶

(c) The licensee or administrator must ask for copies of the resident's Advance Directive, Physician's Order for Life Sustaining Treatment (POLST), and proof of court-appointed guardianship or conservatorship, if applicable.

Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care.¶

(d) The licensee or administrator must review the home's current Residency Agreement with the resident and the resident's representative, as appropriate. These reviews must be documented by having the resident, or the resident's representative, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the resident's record.¶

(e) Upon admission of a resident, the licensee or administrator shall provide the resident or the resident's representative with information developed by the Long-Term Care Ombudsman describing the availability and services of the ombudsman. The facility shall document that the facility provided this information as required.¶

(3) SCREENING BEFORE RE-ADMISSION. When a resident temporarily leaves the home including, but not limited to, a resident's hospitalization, the licensee or administrator shall conduct the necessary elements of the pre-admission and screening assessment requirements, and document those findings to:¶

(a) Determine whether readmission to the home is appropriate for the classification of the home.¶

(b) Determine whether the licensee or administrator can continue to meet the resident's care and safety needs in addition to those of the other residents.¶

(c) Demonstrate compliance with these rules.¶

(d) If applicable, demonstrate the basis for refusing the resident's re-admission to the home according to reasons identified in OAR 411-050-0760(3).

Statutory/Other Authority: ORS 127.520, 409.050, 410.070, 413.085, 441.122, 441.373, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Statutes/Other Implemented: ORS 409.050, 410.070, 413.085, 441.112, 441.114, 441.373, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-051-0115

REPEAL: Temporary 411-051-0115 from APD 15-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to obtain and document information concerning resident's name, pronouns, and gender identity.

CHANGES TO RULE:

411-051-0115

Care Plan

(1) During the initial 14 calendar days following the resident's admission to the home, the licensee or administrator must continue to assess and document the resident's preferences and care needs. The assessment and care plan must be completed by the licensee or administrator and documented within the initial 14-day period. The care plan must describe the resident's needs, preferences, capabilities, what assistance the resident requires for various tasks, and must include:¶¶

(a) By whom, when, and how often care and services shall be provided.¶¶

(b) The resident's ability to perform activities of daily living (ADLs).¶¶

(c) Special equipment needs.¶¶

(d) Communication needs (examples may include, but are not limited to, hearing or vision needs, such as eraser boards or flash cards, or language barriers, such as sign language or non-English speaking).¶¶

(e) Night needs.¶¶

(f) Medical or physical health problems, including physical disabilities, relevant to care and services.¶¶

(g) Cognitive, emotional, or other impairments relevant to care and services.¶¶

(h) Treatments, procedures, or therapies.¶¶

(i) Registered nurse consultation, teaching, delegation, or assessment.¶¶

(j) Behavioral interventions.¶¶

(k) Social, spiritual, and emotional needs, including lifestyle preferences, name, pronouns, legal name, gender identity, activities, and significant others involved.¶¶

(l) The ability to exit in an emergency, including assistance and equipment needed.¶¶

(m) Any use of physical restraints or psychotropic medications.¶¶

(n) Dietary needs and preferences.¶¶

(o) Any individually-based limitations according to OAR 411-051-0105(3).¶¶

(A) Effective July 1, 2019, and no later than June 30, 2020, the licensee or administrator must identify any individually-based limitations to the use of restraints or the HCBS rights as listed in OAR 411-051-0105(2).¶¶

(B) For Medicaid-eligible residents, the person-centered service plan coordinator must authorize the limitation and the individual must consent to the limitation. The licensee or administrator must incorporate and document all applicable elements identified in OAR 411-051-0105(3).¶¶

(C) Limitations are not transferable between care settings. Continued need for any limitation at the new care setting must comply with the requirements as stated in OAR 411-051-0105.¶¶

(2) The licensee or administrator must:¶¶

(a) Review and update each resident's care plan every six months.¶¶

(b) Review and update a resident's care plan when a resident's condition changes.¶¶

(c) Document in the resident's record at the time of each review and include the date of the review and the licensee or administrator's signature. If a care plan contains many changes and becomes less legible, a new care plan must be written.¶¶

(3) The licensee or administrator is responsible for ensuring implementation of the resident's care plan and, if applicable, the behavioral support plan with suggested interventions.

Statutory/Other Authority: ORS 127.520, 409.050, 410.070, 413.085, 441.122, 441.373, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Statutes/Other Implemented: ORS 409.050, 410.070, 413.085, ~~443.001 - 443.001.111~~, 441.114, ~~443.1.373~~, ~~443.001 - 443.004~~, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-054-0026

REPEAL: Temporary 411-054-0026 from APD 28-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities adopt a nondiscrimination policy and provide the policy to residents at time of move-in.

CHANGES TO RULE:

411-054-0026

Disclosure and Notification to Potential Residents

The facility must provide the following documents to potential residents before move-in:¶¶

(1) UNIFORM DISCLOSURE STATEMENT. This is a Department-designated form (form APD 9098A) to provide to each individual who requests information about the facility.¶¶

(2) RESIDENCY AGREEMENT. This is an agreement prepared by the facility. The residency agreement 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 in a move-out notification or intra-facility move consistent with OAR 411-054-0080.¶¶

(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.¶¶

(p) Additional elements as listed in 411-054-0027(2).¶¶

(3) CONSUMER SUMMARY STATEMENT. The facility must develop a Consumer Summary Statement specific to the facility. This form is separate from the residency agreement. For a model consumer summary that may be used as an example, please see the Department form (form APD 9098CS).¶¶

(a) Similar to the residency agreement, this summary statement must be provided to a potential resident before move-in. The consumer summary must include the following:¶¶

(A) A summary of the services provided by the facility.¶¶

(B) A summary of the services and types of care the facility does not provide.¶¶

(C) A statement that, if the facility is not capable of meeting the resident's needs for care and services, the facility may require the resident to move to another facility or care setting, in accordance with OAR 411-054-0080.¶¶

(D) A statement explaining that, if a resident leaves the facility to receive acute medical, psychiatric, nursing or other specialized care, the facility will evaluate the facility's ability to meet the resident's care needs before the resident is permitted to return to the facility, in accordance with OAR 411-054-0080(6).¶¶

(E) An explanation of the resident's right to appeal should the facility either require the resident to leave the facility, or not permit the resident to return following treatment as described in paragraph (D). Appeal rights are explained in OAR 411-054-0080(7).¶¶

(F) A statement as to whether the facility will arrange or coordinate hospice care for a resident upon request.¶¶

(b) The information in the summary statement outlined in subsection (a) above must:¶¶

(A) Be in writing.¶¶

(B) Be written in plain English.¶¶

- (C) Be explained to the individual or the person acting on behalf of the individual in a manner the individual or representative understands.¶¶
- (D) Be provided separately from all other disclosure documents, such as the Uniform Disclosure Statement (APD form 9098A), and the facility's Residency Agreement.¶¶
- (E) Be signed by the individual or the person acting on behalf of the individual, acknowledging that the individual or representative understands the content and implications of the information.¶¶
- (c) The facility must submit an updated Consumer Summary Statement to the Department any time the facility has a management or ownership change. The Consumer Summary Statement must be submitted to the Department 60 days prior to the change of ownership or management. All Consumer Summary Statements will be posted on the Department's licensing webpage.¶¶
- (4) LGBTQIA2S+ PROTECTIONS. A facility shall provide a copy of the LGBTQIA2S+ Protections as described in OAR 411-054-0027(2), and the facility's LGBTQIA2S+ Nondiscrimination Notice, as described in OAR 411-054-0025(7)(i).¶¶
- (5) All disclosure information and residency agreements must be written in compliance with these rules.¶¶
- (a) The facility may not include any provision in the residency agreement, summary statement 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.¶¶
- (b) 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.¶¶
- (c) 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, emailed, or mailed to the Department before distribution.

Statutory/Other Authority: ORS 410.070, 441.122

Statutes/Other Implemented: ORS 441.112, 441.114, 443.443

AMEND: 411-054-0027

REPEAL: Temporary 411-054-0027 from APD 28-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to establish protections against discrimination of LGBTQIA2S+ residents.

CHANGES TO RULE:

411-054-0027

Resident Rights and Protections ¶

(1) GENERAL RIGHTS. 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 before 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 be given informed consent before any nontherapeutic examination, observation or treatment is provided.¶

(d) To participate in the development of their initial service plan and any revisions or updates at the time those changes are made.¶

(de) To receive information about the method for evaluating their service needs and assessing costs for the services provided.¶

(ef) To exercise individual rights that do not infringe upon the rights or safety of others.¶

(fg) To be free from neglect, financial exploitation, verbal, mental, physical, or sexual abuse.¶

(gh) To receive services in a manner that protects privacy and dignity.¶

(hi) 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).¶

(ij) To have medical and other records kept confidential except as otherwise provided by law.¶

(jk) 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.¶

(kl) To be free from physical restraints and inappropriate use of psychoactive medications.¶

(lm) To manage personal financial affairs unless legally restricted.¶

(mn) To have access to, and participate in, social activities.¶

(no) To be encouraged and assisted to exercise rights as a citizen.¶

(op) 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.¶

(pq) To voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of retaliation.¶

(qr) To be free of retaliation after they have exercised their rights provided by law or rule.¶

(rs) To have a safe and homelike environment.¶

(st) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.¶

(tu) 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) LGBTQIA2S+ PROTECTIONS. A facility and the staff of the facility may not take any of the following actions based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status:¶

(a) Deny admission to a facility, transfer or refuse to transfer a resident within a facility or to another facility or discharge or evict a resident from a facility.¶

(b) Deny a request by a resident to choose the resident's roommate, when a resident is sharing a room.¶

(c) Refuse to assign a room to a transgender or other LGBTQIA2S+ resident other than in accordance with the resident's gender identity, unless at the request of the resident or if required by federal law.¶

(d) Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery or presents as gender nonconforming. Harassment includes, but is not limited to, requiring a resident to show documentation of gender identity in order to gain entrance to a restroom or other area of a care facility that is available to other individuals of the same gender identity as the resident.¶

- (e) Repeatedly and willfully refuse to use a resident's name or pronouns after being reasonably informed of the resident's name or pronouns; ¶
- (f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics, or to engage in grooming practices, that are permitted to any other resident; ¶
- (g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner; ¶
- (h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort; ¶
- (i) Fail to accept a resident's verbal or written attestation of the resident's gender identity or require a resident to provide proof of the resident's gender identity using any form of identification; ¶
- (j) Fail to take reasonable actions, within the care facility's control, to prevent discrimination or harassment when the facility knows or should have known about the discrimination or harassment; ¶
- (k) Refuse or willfully fail to provide any service, care or reasonable accommodation to a resident; or ¶
- (l) Refuse or willfully fail to provide any service, care or reasonable accommodation to a potential resident applying for services or care. ¶

(3) HCBS RIGHTS.¶

(a) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than June 30, 2019 for providers initially licensed before January 1, 2016 the following rights must include the freedoms authorized by 42 CFR 441.301(c)(4) & 42 CFR 441.530(a)(1):¶

- (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.¶

(b) The rights described in (B) through (F) of this section must meet the requirements set forth in OAR 411-054-0038 and shall 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.¶

~~(34)~~ 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.¶

~~(45)~~ 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.

Statutory/Other Authority: ORS 410.070, 441.122, 443.450

Statutes/Other Implemented: ORS 441.112, 441.114, 443.400 - 443.455, 443.991

AMEND: 411-054-0034

REPEAL: Temporary 411-054-0034 from APD 28-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to obtain information concerning resident's name, pronoun, and gender identity.

CHANGES TO RULE:

411-054-0034

Resident Move-In and Evaluation ¶¶

(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) Legal name for billing purposes.¶¶

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

(i) Name.¶¶

(ii) Pronouns.¶¶

(iii) Gender identity.¶¶

(C) Prior living arrangements;¶¶

(B) D) Emergency contacts;¶¶

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

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

(i) Advance directives;¶¶

(ii) Guardianship;¶¶

(iii) Conservatorship; and¶¶

(iv) Power of attorney.¶¶

(E) G) Primary language;¶¶

(F) H) Community connections; and¶¶

(G) I) Health and social service providers.¶¶

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

(a) Resident evaluations must be:¶¶

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

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

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

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

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

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

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

(3) EVALUATION REQUIREMENTS AT MOVE-IN.¶¶

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

(b) If there is an urgent need and the evaluation is not completed before move-in, the facility must document the reasons and complete the evaluation within eight hours of move-in.¶¶

(c) The initial evaluation must contain the elements specified in section (5) of this rule and address sufficient information to develop an initial service plan to meet the resident's needs.¶¶

(d) The initial evaluation must be updated and modified as needed during the 30 days following the resident's

move into the facility.¶

(e) After the initial 30 day move-in period, the initial evaluation must be retained in the resident's file for 24 months. Future evaluations must be separate and distinct from the initial evaluation.¶

(4) QUARTERLY EVALUATION REQUIREMENTS.¶

(a) Resident evaluations must be performed quarterly after the resident moves into the facility.¶

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

(c) The most recent quarterly evaluation, with documented change of condition updates, must be in the resident's current record and available to staff.¶

(d) If the evaluation is revised and updated at the quarterly review, changes must be dated and initialed and prior historical information must be maintained.¶

(5) The resident evaluation must address the following elements:¶

(a) For service planning purposes, if indicated by the resident, ¶

(A) Name.¶

(B) Pronouns.¶

(C) Gender identity.¶

(b) Resident routines and preferences including:¶

(A) Customary routines, such as those related to sleeping, eating, and bathing;¶

(B) Interests, hobbies, and social and leisure activities;¶

(C) Spiritual and cultural preferences and traditions; and¶

(D) Additional elements as listed in 411-054-0027(2).¶

(~~b~~c) Physical health status including:¶

(A) List of current diagnoses;¶

(B) List of medications and PRN use;¶

(C) Visits to health practitioners, emergency room, hospital, or nursing facility in the past year; and¶

(D) Vital signs if indicated by diagnoses, health problems, or medications.¶

(~~e~~d) Mental health issues including:¶

(A) Presence of depression, thought disorders, or behavioral or mood problems;¶

(B) History of treatment; and¶

(C) Effective non-drug interventions.¶

(~~e~~d) Cognition, including:¶

(A) Memory;¶

(B) Orientation;¶

(C) Confusion; and¶

(D) Decision-making abilities.¶

(~~e~~f) Personality, including how the person copes with change or challenging situations.¶

(~~f~~g) Communication and sensory abilities including:¶

(A) Hearing;¶

(B) Vision;¶

(C) Speech;¶

(D) Use of assistive devices; and¶

(E) Ability to understand and be understood.¶

(~~g~~h) Activities of daily living including:¶

(A) Toileting, bowel, and bladder management;¶

(B) Dressing, grooming, bathing, and personal hygiene;¶

(C) Mobility - ambulation, transfers, and assistive devices; and¶

(D) Eating, dental status, and assistive devices.¶

(~~h~~i) Independent activities of daily living including:¶

(A) Ability to manage medications;¶

(B) Ability to use call system;¶

(C) Housework and laundry; and¶

(D) Transportation.¶

(~~i~~j) Pain - pharmaceutical and non-pharmaceutical interventions, including how a person expresses pain or discomfort.¶

(~~j~~k) Skin condition.¶

(~~k~~l) Nutrition habits, fluid preferences, and weight if indicated.¶

(~~l~~m) List of treatments - type, frequency, and level of assistance needed.¶

(~~m~~n) Indicators of nursing needs, including potential for delegated nursing tasks.¶

(~~n~~o) Review of risk indicators including:¶

(A) Fall risk or history;¶

- (B) Emergency evacuation ability;¶
 - (C) Complex medication regimen;¶
 - (D) History of dehydration or unexplained weight loss or gain;¶
 - (E) Recent losses;¶
 - (F) Unsuccessful prior placements;¶
 - (G) Elopement risk or history;¶
 - (H) Smoking. The resident's ability to smoke without causing burns or injury to themselves or others or damage to property must be evaluated and addressed in the resident's service plan; and¶
 - (I) Alcohol and drug use. The resident's use of alcohol or the use of drugs not prescribed by a physician must be evaluated and addressed in the resident's service plan.¶
 - (ep) Environmental factors that impact the resident's behavior including, but not limited to:¶
 - (A) Noise.¶
 - (B) Lighting.¶
 - (C) Room temperature.¶
 - (6) If the information has not changed from the previous evaluation period, the information does not need to be repeated. A dated and initialed notation of no changes is sufficient. The prior evaluation must then be kept in the current resident record for reference.
- Statutory/Other Authority: ORS 410.070, 441.122, 443.450
- Statutes/Other Implemented: ORS 441.111, 441.114, 443.400 - 443.455, 443.991

AMEND: 411-085-0005

REPEAL: Temporary 411-085-0005 from APD 16-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Adds new definitions related to LGBTQIA2S+ protections, including "gender expression," "gender identity," "gender nonconforming," "gender transition," "harass" or "harassment," "LGBTQIA2S+," "sexual orientation," "staff" or "staff person," and "transgender."

CHANGES TO RULE:

411-085-0005

Definitions ¶¶

Unless the context requires otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 70, 85, 86, and 89:¶¶

(1) "AAA" means "Area Agency on Aging" as defined in this rule.¶¶

(2) "Abuse" means:¶¶

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries a reasonable and prudent individual is able to prevent, such as hitting, pinching or striking, or injury resulting from rough handling.¶¶

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity.¶¶

(c) Sexual contact with a resident, including fondling, caused by an employee, agent, or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.¶¶

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another individual, borrowing resident funds, spending resident funds without the resident's consent, or if the resident is not capable of consenting, spending resident funds for items or services from which the resident is unable to benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.¶¶

(e) Verbal abuse as prohibited by federal law, including the use of oral, written, or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.¶¶

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment, or deprivation, directed toward the resident.¶¶

(g) Corporal punishment.¶¶

(h) Involuntary seclusion for convenience or discipline.¶¶

(3) "Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.¶¶

(4) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercises that are designed to maintain or improve physical and mental well-being and social skills.¶¶

(5) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.¶¶

(6) "Applicant" means the individual required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes a sole proprietor, each partner in a partnership, or a corporation that operates a nursing facility on behalf of the nursing facility business owner.¶¶

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.¶¶

(8) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.¶¶

(9) "APD" means "Aging and People with Disabilities."¶¶

(10) "Assessment" means a written evaluation of a resident's abilities, condition, and needs based upon resident interview, observation, clinical and social records, and other available sources of information.¶¶

(11) "Bariatric rate" means a rate paid for a Medicaid resident of a nursing facility if the resident meets the criteria described in OAR 411-070-0087.¶¶

(12) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, and psychosocial functioning, as well as to provide reasonable safety, all consistent with the preferences

of the resident.¶

(13) "Certified Medication Aide" means "certified medication assistant" as defined in this rule.¶

(14) "Certified Medication Assistant" means a certified nursing assistant who has been certified as a medication assistant or medication aide pursuant to ORS chapter 678 and the rules adopted thereunder.¶

(15) "Certified Nursing Assistant" means an individual who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.¶

(16) "Change of Operator" means "change of ownership" as defined in this rule.¶

(17) "Change of Ownership" means a change in the individual or entity that owns the facility business, a change in the individual or entity responsible for the provision of services at the facility, or both. Events that change ownership include, but are not limited to:¶

(a) A change in the form of legal organization of the licensee;¶

(b) Transfer of the title to the nursing facility enterprise by the owner to another party;¶

(c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;¶

(d) If the licensee is a partnership, any event that dissolves the partnership;¶

(e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or¶

(f) Any other event that results in a change of the operating entity.¶

(18) "Control Interest" means "management" as defined in this rule.¶

(19) "Day Care Resident" means an individual who is not bedfast who receives services and care in a nursing facility for not more than 16 hours per day.¶

(20) "Department" means the Department of Human Services (DHS).¶

(21) "Drug" has the same meaning set forth in ORS chapter 689.005.¶

(22) "Entity" means "Individual" as defined in this rule.¶

(23) "Establish a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.¶

(24) "Facility" means an establishment that is licensed and certified by the Department as a nursing facility.¶

(25) "Facility Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee under ORS 441.277 to 441.323 or the appointment of a temporary manager under ORS 441.333 for a nursing facility or a residential care facility.¶

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

(27) "Gender identity" means an individual's internal, deeply held knowledge or sense of the individual's gender, regardless of physical appearance, surgical history, genitalia, legal sex, sex assigned at birth or name and sex as it appears in medical records or as it is described by any other individual, including a family member, conservator or legal representative of the individual. An individual's gender identity is the last gender identity conveyed by an individual who lacks the present ability to communicate. ¶

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

(29) "Gender transition" means a process by which an individual begins to live according to that individual's gender identity rather than the sex the person was assigned at birth. The process may or may not include changing the individual's clothing, appearance, name or identification documents or undergoing medical treatments. ¶

(30) "Harass" or "harassment" means to act in a manner that is unwanted, unwelcomed or uninvited, or that demeans, threatens or offends a resident. ¶

(a) This includes bullying, denigrating or threatening a resident based on a resident's actual or perceived status as a member of one of the protected classes in Oregon, as provided: ¶

(A) Race. ¶

(B) Color. ¶

(C) National origin. ¶

(D) Religion. ¶

(E) Disability. ¶

(F) Sex (includes pregnancy). ¶

(G) Sexual orientation. ¶

(H) Gender identity. ¶

(I) Age. ¶

(J) Marital status ¶

(b) An example of "harassment" includes, but is not limited to, requiring a resident to show identity documents in order to gain entrance to a restroom or other area of a facility that is available to other individuals of the same gender identity as the resident. ¶

(31) "Health Care Facility" means a health care facility as defined in ORS 442.015, a residential care facility as defined in ORS 443.400, and an adult foster home as defined in ORS 443.705.¶

(327) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.¶

(2833) "Incident of Ownership" means:¶

(a) An ownership interest;¶

(b) An indirect ownership interest; or¶

(c) A combination of direct and indirect ownership interest.¶

(2934) "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.¶

(305) "Individual" means an entity including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit as defined in ORS 442.015 including associations, joint stock companies, insurance companies, the state, or a political subdivision or instrumentality, including a municipal corporation.¶

(316) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.¶

(327) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department, or a "Type B" Area Agency on Aging and includes, but is not limited to, a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring, or complaint investigation.¶

(338) "Legal Representative" means an attorney at law, the individual holding a general power of attorney or special power of attorney for health care, a guardian, a conservator, any individual appointed by a court to manage the personal or financial affairs of a resident, or an individual or agency legally responsible for the welfare or support of a resident other than the facility.¶

(349) "LGBTQIA2S+" means lesbian, gay, bisexual, transgender, queer, intersex, asexual, Two Spirit, nonbinary or other minority gender identity or sexual orientation. These terms are defined below:¶

(a) "Lesbian" means the sexual orientation of a person who is female, feminine or nonbinary and who is physically, romantically or emotionally attracted to other women. Some lesbians may prefer to identify as gay, a gay woman, queer or in other ways.¶

(b) "Gay" means the sexual orientation of a person attracted to people of the same gender. Although often used as an umbrella term, it is used more specifically to describe men attracted to men.¶

(c) "Bisexual" means a person who has the potential to be physically, romantically and/or emotionally attracted to people of more than one gender, not necessarily at the same time, in the same way or to the same degree.¶

(d) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc. ¶

(e) "Queer" means individuals who do not identify as exclusively straight or individuals who have non-binary or gender-expansive identities and is often used as a catch-all to refer to the LGBTQIA2S+ population as a whole. This term was previously used as a slur, but has been reclaimed by many parts of the LGBTQIA2S+ movement. It can also include transgender people who identify as male or female. The term should only be used to refer to a specific person if that person self-identifies as queer.¶

(f) "Intersex" means someone born with a variety of differences in their sex traits and reproductive anatomy. Intersex traits greatly vary, including differences in, but limited to, hormone production and reproductive anatomy. ¶

(g) "Asexual" or "Ace" means a complete or partial lack of sexual attraction or lack of interest in sexual activity with others. Asexuality exists on a spectrum, and asexual people may experience no, little or conditional sexual attraction. Many people who are asexual still identify with a specific romantic orientation. ¶

(h) "2S" or "Two-Spirit" means a term used within some Indigenous communities, encompassing cultural, spiritual, sexual and gender identity. The term reflects complex indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. The definition and common use of the term two-spirit may vary among Tribes and Tribal communities. ¶

(i) The "+" means all other identities and expressions of gender, romantic and sexual orientation, including minority gender identities.¶

(j) "Nonbinary" means a person who does not identify exclusively as a man or a woman. Nonbinary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all nonbinary people do. Nonbinary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid. ¶

(40) "Licensed Nurse" means a registered nurse or a licensed practical nurse.¶

(3541) "Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.¶

(3642) "Licensee" means the applicant to whom a nursing facility license has been issued.¶

(437) "Local Designee of the Department" means the local unit of the Department or the Area Agency on Aging.¶

(3844) "Long Term Care Facility" means "nursing facility" as defined in this rule.¶

(3945) "LPN" means "licensed practical nurse" as defined in this rule.¶

(406) "Maintain a Nursing Facility" means "establish a nursing facility" as defined in this rule.¶

(417) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.¶

(428) "Management" means:¶

- (a) Possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of, an institution, organization, or agency; or¶
- (b) An interest as an officer or director of an institution, organization, or agency organized as a corporation.¶

(439) "New Construction" means:¶

- (a) A new building;¶
- (b) An existing building or part of a building that is not currently licensed as a nursing facility;¶
- (c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed, such as, rooms that are proposed to be licensed as nursing facility resident rooms, but are not currently licensed as nursing facility resident rooms;¶
- (d) A major alteration to an existing building;¶
- (e) An addition to an existing building;¶
- (f) A conversion in use; or¶
- (g) Renovation or remodeling of an existing building.¶

(4450) "NFPA" means "National Fire Protection Association".¶

(451) "Nurse Aide" means "nursing assistant" as defined in this rule.¶

(4652) "Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.¶

(4753) "Nursing Assessment" means evaluation of fluids, nutrition, bowel or bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, analysis or evaluation of that data, and utilization of available resource information.¶

(548) "Nursing Assistant" means an individual who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes, but is not limited to, a certified nursing assistant, a certified medication assistant, and individuals who have successfully completed a state approved nurse assistant training course.¶

(4955) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.¶

(506) "Nursing Facility" means an establishment with permanent facilities, including inpatient beds, that provides medical services, including nursing services, but excluding surgical procedures, and that provides care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that may not be delegated to an unlicensed individual. "Nursing Facility" only includes facilities licensed and operated pursuant to ORS 441.020(2).¶

(517) "Nursing Facility Administrator" means an individual licensed under ORS chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing, and controlling the operation of a nursing facility.¶

(528) "Nursing Facility Law" means ORS chapter 441 and the rules for nursing facilities adopted thereunder.¶

(539) "Nursing Home" means "nursing facility" as defined in this rule.¶

(5460) "Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in a facility.¶

(5561) "The Office of Licensing and Regulatory Oversight (OLRO)," through its Nursing Facility Licensing and Survey Units, is the DHS office responsible for the licensing, inspections, surveys, sanctions, and enforcement for non-compliance of nursing facilities, and with APD, is jointly responsible for policy development.¶

(562) "Owner" means an individual with an ownership interest.¶

(5763) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an entity.¶

(5864) "Pharmacist" has the same meaning as set forth in ORS 689.005.¶

(659) "Pharmacy" has the same meaning as set forth in ORS 689.005.¶

(606) "Physician" means an individual licensed under ORS chapter 677 as a physician.¶

(617) "Physician's Assistant" means an individual registered under ORS chapter 677 as a physician's assistant.¶

(628) "Podiatrist" means an individual licensed under ORS chapter 677 to practice podiatry.¶

(639) "Prescription" has the same meaning as set forth in ORS 689.005.¶

(6470) "Public or Private Official" means:¶

- (a) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;¶
- (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;¶
- (c) Employee of the Department, Oregon Health Authority, Area Agency on Aging, county health department, community mental health program, community developmental disability program, or nursing facility;¶
- (d) Individual who contracts to provide services to a nursing facility;¶
- (e) Peace officer;¶
- (f) Clergy;¶
- (g) Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist;¶
- (h) Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist;¶
- (i) Senior center employee;¶
- (j) Information and referral or outreach worker;¶
- (k) Any public official who comes in contact with elderly individuals in the performance of the official's official duties;¶
- (l) Firefighter or emergency medical technician;¶
- (m) Legal counsel for a resident; or¶
- (n) Guardian for, or family member of, a resident.¶

(6571) "Registered Nurse (RN)" means an individual licensed under ORS chapter 678.¶

(6672) "Rehabilitative Services" means specialized services provided by a therapist or a therapist's assistant to a resident to attain optimal functioning, including, but not limited to, physical therapy, occupational therapy, speech and language therapy, and audiology.¶

(673) "Relevant Evidence" means factual information that tends to either prove or disprove the following:¶

- (a) Whether abuse or other rule violation occurred;¶
- (b) How abuse or other rule violation occurred; or¶
- (c) Who was involved in the abuse or other rule violation.¶

(6874) "Resident" means an individual who has been admitted, but not discharged from a facility.¶

(6975) "Restorative Aide" means a certified nursing assistant primarily assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities according to the resident's restorative plan of care and pursuant to OAR 411-086-0150.¶

(706) "Restorative Nursing" means "restorative services" as defined in this rule.¶

(717) "Restorative Services" mean the measures provided by nursing staff and directed toward re-establishing and maintaining a residents' fullest potential.¶

(728) "RN" means "registered nurse" as defined in this rule.¶

(739) "Safety" means the condition of being protected from environmental hazards without compromise to a resident's or legal guardian's choice, or undue sacrifice of a resident's independence.¶

(7480) "Sexual orientation" means romantic or sexual attraction, or a lack of romantic or sexual attraction, to other people. ¶

(81) "Significant Other" means an individual designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation and there is no court-appointed individual, then a significant other means a family member or friend who has demonstrated consistent concern for the resident. No rule using this term is intended to allow release of, or access to, confidential information to individuals who are not otherwise entitled to such information, or to allow such individuals to make decisions they are not entitled to make on behalf of a resident.¶

~~(75) "Suspected Abuse" means reasonable cause to believe abuse may have occurred~~ (82) "Staff or "staff person" means one or more individuals who are employed by the facility to provide services or supports to residents or contract with or are employed by an entity that contracts with the facility to provide services or supports to residents.¶

~~(83) "Suspected Abuse" means reasonable cause to believe abuse may have occurred.~~¶

~~(84) "Transgender" means having a gender identity or gender expression that differs from the sex one was assigned at birth, regardless of whether one has undergone or is in the process of undergoing gender-affirming care. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.~~

Statutory/Other Authority: ORS 410.070, 441.055, 441.122, 441.615, 441.637

Statutes/Other Implemented: ORS 410.070, 441.055, 441.111, 441.615, 441.630, 441.637, 441.650

AMEND: 411-085-0030

REPEAL: Temporary 411-085-0030 from APD 16-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires posting of LGBTQIA2S+ non-discrimination policy.

CHANGES TO RULE:

411-085-0030

Required Postings ¶

(1) PUBLIC NOTICES:¶

(a) Content. Public notices required to be posted include:¶

(A) The most recent licensing and, if applicable, certification survey reports;¶

(B) The placard provided by the Department that includes information on reporting of abuse and summarizes the nursing facility rules. In addition to the location specified in subsection (1)(b) of this rule, this placard must also be prominently and conspicuously posted in close proximity to each nursing station and in any area where residents are admitted;¶

(C) The current week's menu and activities schedule;¶

(D) The facility license and the administrator's license. (It is recommended the titles and names of the administrator, the DNS, the Social Services Director, the Activities Director, the Dietary Services Supervisor and the RN Care Manager(s) are also posted);¶

(E) Waivers received from the Department pursuant to OAR 411-085-0040 and 411-087-0030, and waivers of any federal regulations; and¶

(F) The LGBTQIA2S+ Protections, as described in OAR 411-085-0310(21);¶

(G) The facility's non-discrimination policy notice, as described in OAR 411-085-0210(1)(w); and ¶

(FH) Any other notice relevant to residents or visitors required by state or federal law.¶

(b) Location. The facility shall designate a specific area where notices listed in subsection (1)(a) of this rule must be posted. The location shall be in an area that:¶

(A) Is routinely accessible and conspicuous to residents and visitors, including those in wheelchairs; and¶

(B) Provides sufficient space for prominent, conspicuous display of each notice.¶

(2) NOTICES FOR STAFF. The facility must post the names of registered nurses as required by OAR 411-086-0020 and any physician available for emergencies as required by OAR 411-086-0200 at each nursing station.

Statutory/Other Authority: ORS 410.070, 441.055, 441.122

Statutes/Other Implemented: ORS 441.055, 441.067, 441.112, 441.615

AMEND: 411-085-0210

REPEAL: Temporary 411-085-0210 from APD 16-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to develop protocols and policies addressing LGBTQIA2S+ protections.

CHANGES TO RULE:

411-085-0210

Facility Policies ¶

(1) A Quality Assessment and Assurance Committee must develop and adopt facility policies. The policies must be followed by the facility staff and evaluated annually by the Quality Assessment and Assurance Committee and rewritten as needed. Policies must be adopted regarding: ¶

(a) Admission, fees, and services; ¶

(b) Transfer and discharge, including discharge planning; ¶

(c) Physician services; ¶

(d) Nursing services; ¶

(e) Dietary services; ¶

(f) Rehabilitative services and restorative services; ¶

(g) Pharmaceutical services, including self administration; ¶

(h) Care of residents in an emergency; ¶

(i) 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; ¶

(j) Activities; ¶

(k) Social services; ¶

(l) Clinical records; ¶

(m) Infection control; ¶

(n) Diagnostic services; ¶

(o) Oral care and dental services; ¶

(p) Accident prevention and reporting of incidents; ¶

(q) Housekeeping services and preventive maintenance; ¶

(r) Employee orientation and in-service; ¶

(s) Laundry services; ¶

(t) Possession of firearms and ammunition; ¶

(u) Consultant services; ¶

(v) Resident grievances; and ¶

(w) LGBTQIA2S+ Protections policy that includes adding the following statement in its written materials, and in all places and on all materials where that policy or other written materials are posted: ¶

"(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual's association with another individual on account of the other individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Oregon Department of Human Services at (provide current contact information)."; and ¶

(x) Facility closure. The policy must identify an administrator's responsibility to assure compliance with OAR 411-085-0025, OAR 411-088-0020(1)(f), and OAR 411-088-0070(1)(g), (3)(d), and (4). ¶

(2) Each policy must be in writing and must specify the date the policy was last reviewed by the Quality Assessment and Assurance Committee.

Statutory/Other Authority: ORS 410.070, 441.055, 441.122, 441.615

Statutes/Other Implemented: ORS 441.055, 441.112, 441.615

AMEND: 411-085-0310

REPEAL: Temporary 411-085-0310 from APD 16-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to establish protections against discrimination of LGBTQIA2S+ residents.

CHANGES TO RULE:

411-085-0310

Residents Rights: Generally ¶¶

The facility must protect, encourage, and assist the resident in exercising the rights identified in OAR 411-085-0300 - OAR 411-085-0350. Each resident and the resident's legal representative, as appropriate, have the right to:¶¶

- (1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.¶¶
- (2) Be fully informed, orally and in writing, in a language the resident understands of these rights, and of all facility guidelines for resident conduct and responsibilities. This must be documented by the resident's written acknowledgment, before or at the time of admission.¶¶
- (3) Be fully informed, before or at the time of admission and during the resident's stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.¶¶
- (4) Be fully informed of his or her total health status, including, but not limited to medical status. The resident must be informed of the right to choose his or her own physician and to be fully informed in advance of any changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his or her own decisions and fully participate in care and care planning unless the resident has been found legally incapable of doing so.¶¶
- (5) Refuse any medication, treatment, care, or any participation in experimental research unless the resident has been found legally incapable of doing so.¶¶
- (6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.¶¶
- (7) Be free from verbal, sexual, mental and physical abuse, corporal punishment, and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.¶¶
- (8) Be transferred or discharged only in accordance with the Aging and People with Disabilities transfer and discharge rules in OAR chapter 411, division 088.¶¶
- (9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects.¶¶
 - (a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days.¶¶
 - (b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment may have a significant adverse impact on the resident's medical or psychological status.¶¶
 - (c) Moving residents on the basis of source of payment is not just cause for intra-facility transfers.¶¶
 - (d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.¶¶
- (10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act promptly upon grievances and recommendations received from residents and family groups.¶¶
- (11) Be treated with consideration, respect, and dignity and assured complete privacy during treatment and when receiving personal care.¶¶
- (12) To be given informed consent before any nontherapeutic examination, observation or treatment is provided.¶¶
- (13) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened, and to have regular access to the private use of a telephone.¶¶
- (134) Be provided privacy for visits when requested, including meetings with other residents and family groups.¶¶
- (145) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside

the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, Aging and People with Disabilities, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.¶¶

(156) Promptly inspect all records pertaining to the resident.¶¶

(167) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no case require more than two business days (days excluding Saturdays, Sundays and state holidays).¶¶

(178) Participate in social, religious, and community activities at the discretion of the resident.¶¶

(189) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.¶¶

(1920) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, the facility, or any person subject to the supervision, direction, or control of the facility, shall not retaliate by:¶¶

(a) Increasing charges or decreasing services, rights, or privileges;¶¶

(b) Threatening to increase charges or decrease services, rights, or privileges;¶¶

(c) Taking or threatening any action to coerce or compel the resident to leave the facility; or¶¶

(d) Abusing, harassing, or threatening to abuse or harass a resident.¶¶

(201) LGBTQIA2S+ PROTECTIONS. A facility and the staff of the facility may not take any of the following actions based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status:¶¶

(a) Deny admission to a facility, transfer or refuse to transfer a resident within a facility or to another facility or discharge or evict a resident from a facility;¶¶

(b) Deny a request by a resident to choose the resident's roommate, when a resident is sharing a room; ¶¶

(c) Refuse to assign a room to a transgender or other LGBTQIA2S+ resident other than in accordance with the resident's gender identity, unless at the request of the resident or if required by federal law;¶¶

(d) Prohibit a resident from using, or harass a resident who seeks to use or does use, a restroom that is available to other individuals of the same gender identity as the resident, regardless of whether the resident is making a gender transition, has taken or is taking hormones, has undergone gender affirmation surgery or presents as gender nonconforming. Harassment includes, but is not limited to, requiring a resident to show documentation of gender identity in order to gain entrance to a restroom or other area of a care facility that is available to other individuals of the same gender identity as the resident;¶¶

(e) Repeatedly and willfully refuse to use a resident's name or pronouns after being reasonably informed of the resident's name or pronouns; ¶¶

(f) Deny a resident the right to wear or be dressed in clothing, accessories or cosmetics, or to engage in grooming practices, that are permitted to any other resident; ¶¶

(g) Restrict a resident's right to associate with other residents or with visitors, including the resident's right to consensual sexual relations or to display physical affection, unless the restriction is uniformly applied to all residents in a nondiscriminatory manner; ¶¶

(h) Deny or restrict medical or nonmedical care that is appropriate to a resident's organs and bodily needs, or provide medical or nonmedical care that, to a similarly situated, reasonable person, unduly demeans the resident's dignity or causes avoidable discomfort; ¶¶

(i) Fail to accept a resident's verbal or written attestation of the resident's gender identity or require a resident to provide proof of the resident's gender identity using any form of identification; ¶¶

(j) Fail to take reasonable actions, within the care facility's control, to prevent discrimination or harassment when the facility knows or should have known about the discrimination or harassment; ¶¶

(k) Refuse or willfully fail to provide any service, care or reasonable accommodation to a resident; or¶¶

(l) Refuse or willfully fail to provide any service, care or reasonable accommodation to a potential resident applying for services or care.¶¶

(22) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.¶¶

(243) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.¶¶

(224) Receive care from facility staff trained to provide care that is specific to the resident's disease or medical condition.¶¶

(235) Receive a modified or special diet that meets the specific requirements of the resident's disease or medical condition.

Statutory/Other Authority: ORS 410.070, 441.055, 441.122

Statutes/Other Implemented: ORS 441.055, 441.112, 441.114, 441.600, 441.610, 441.615, 441.700

AMEND: 411-086-0040

REPEAL: Temporary 411-086-0040 from APD 17-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires specific posting of LGBTQIA2S+ non-discrimination information and ensures facilities use person centered language when working with LGBTQIA2S+ residents.

CHANGES TO RULE:

411-086-0040

Admission of Residents ¶¶

(1) Admission Conditions:¶¶

(a) The facility shall not accept or retain residents whose care needs cannot be met by the facility;¶¶

(b) No person shall be admitted to the facility except on the order of a physician;¶¶

(c) Admission medical information shall include a statement concerning the diagnosis and general condition of the resident, a medical history and physical, or a medical summary. Other pertinent medical information, orders for medication, diet, and treatments shall also be provided;¶¶

(d) Each resident record must, before admission and when updated, include the following information:¶¶

(A) Legal name for billing purposes.¶¶

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

(i) Name.¶¶

(ii) Pronouns.¶¶

(iii) Gender identity.¶¶

(e) No resident shall be admitted to a bed in any location other than those locations shown in the most recent floor plan filed with the Division and under which the license was issued;¶¶

(ef) No facility shall admit an individual who is mentally ill or mentally retarded unless the Division or local representative thereof has determined that such placement is appropriate.¶¶

(fg) Upon admission of a resident, the facility shall provide the resident or the resident's representative with information developed by the Long-Term Care Ombudsman describing the availability and services of the ombudsman. The facility shall document that the facility provided this information as required.¶¶

(h) Upon admission, the facility shall provide to the resident a copy of the LGBTQIA2S+ Protections policy that includes the following statement:¶¶

"(Name of care facility) does not discriminate and does not permit discrimination, including but not limited to bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual's association with another individual on account of the other individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Oregon Department of Human Services at (provide current contact information)."¶¶

(i) Upon admission, the facility shall provide to the resident a copy of the nondiscrimination policy as described in OAR 411-085-0210(1)(w). ¶¶

(2) Admission Status, Preliminary Care Plan, Preliminary Nursing Assessment:¶¶

(a) A licensed nurse shall document the admission status of the resident within eight hours, including but not limited to skin condition, nutritional status, hydration status, mental status, vital signs, mobility, and ability to perform ADLs. This review of resident status shall be sufficient to ensure that the immediate needs of the resident are met;¶¶

(b) A licensed nurse shall develop a preliminary resident care plan within 24 hours of admission. Staff providing care for the resident shall have access to, be familiar with, and follow this plan;¶¶

(c) Social services shall be provided to the resident in accordance with the preliminary resident care plan not later than three days after admission;¶¶

(d) A registered nurse shall complete and document a comprehensive nursing assessment within 14 days of admission; (e) A resident care plan shall be completed pursuant to OAR 411-086-0060.¶¶

(3) Directives for Medical Treatment. Each resident shall be provided the following information and materials in written form within five days of admission, but in any event before discharge:¶¶

(a) A copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1991, by the Oregon State Bar Health Law Section, which summarizes the rights of individuals to make health care decisions, including the right to accept or refuse any treatment or medication and the right to execute directives and powers of attorney for

health care;¶¶

(b) Information on the facility's policies with respect to implementation of those rights;¶¶

(c) A copy of the Advance Directive form set forth in ORS 127.531 and a copy of the Power of Attorney for Health Care form set forth in ORS 127.610, along with a disclaimer attached to each form in at ~~Page 8~~ least 16-point bold type stating "You do not have to fill out and sign this form"; and¶¶

(d) The name and location of a person who can provide additional information concerning the forms for directives and powers of attorney for health care.¶¶

(4) Contracts, Agreements. Contracts, agreements and all other documents provided to, or required to be signed by, the resident shall not misrepresent or be inconsistent with the requirements of Oregon law. See OAR 411-085-0300 - 411-085-0350.

Statutory/Other Authority: ORS 410.070, 410.090, 441.055, ~~ORS 410.070~~ 441.122

Statutes/Other Implemented: ORS 441.055, 441.112, 441.114, 441.615

AMEND: 411-086-0060

REPEAL: Temporary 411-086-0060 from APD 17-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires facilities to obtain information concerning a resident's name, pronouns, and gender identity. It also requires protection of resident records related to the LGBTQIA2S+ population and a resident's human immunodeficiency virus status.

CHANGES TO RULE:

411-086-0060

Comprehensive Assessment and Care Plan ¶¶

(1) Comprehensive Assessment: ¶¶

(a) An RN shall ensure completion and documentation of a comprehensive assessment of the resident's capabilities and needs for nursing services within 14 days of admission. Comprehensive assessments shall be updated promptly after any significant change of condition and reviewed no less often than quarterly. This assessment shall be on a form specified by the Division. The assessment shall include the following: ¶¶

(A) Medically defined conditions and medical history; ¶¶

(B) Medical status measurement; ¶¶

(C) Functional status; ¶¶

(D) Sensory and physical impairments; ¶¶

(E) Nutritional status and requirements; ¶¶

(F) Treatments and procedures; ¶¶

(G) Psychosocial status (see OAR 411-086-0240); ¶¶

(H) Discharge potential (see OAR 411-086-0160); ¶¶

(I) Dental condition; ¶¶

(J) Activities potential (see OAR 411-086-0230); ¶¶

(K) Rehabilitation and restorative potential (see OAR 411-086-0150 and 411-086-0220); ¶¶

(L) Cognitive status; and ¶¶

(M) Drug therapy. ¶¶

(b) Social services, activities and dietary personnel shall complete an assessment within 14 days of admission. ¶¶

(2) Care Plan Preparation and Implementation. The facility, through the nursing services department and the interdisciplinary staff, shall provide services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a written, dated, care plan: ¶¶

(a) The plan shall be completed within seven days after completion of the comprehensive assessment. The care plan shall be reviewed and updated whenever the resident's needs change, but no less often than quarterly; ¶¶

(b) The care plan shall describe the medical, nursing, and psychosocial needs of the resident and how the facility will actively meet those needs. This description of needs shall include measurable objectives and time frames in which the objectives will be met; ¶¶

(c) The plan shall provide for and promote personal choice and independence of the resident; ¶¶

(d) The resident care plan must address the following, if indicated by the resident. ¶¶

(A) Name. ¶¶

(B) Pronouns. ¶¶

(C) Gender identity. ¶¶

(e) The plan shall be reviewed and completed at an interdisciplinary care planning conference with participation from the resident's RN care manager and personnel from dietary, activities and social services. The resident's attending physician will participate in the development and any revision of the care plan. Physician participation may be in person, through communication with the DNS or RN Care Manager, or via telephone conference; ¶¶

(ef) The resident, the resident's legal representative, and anyone designated by the resident shall be requested to participate. The request shall be documented in the resident's clinical record; ¶¶

(fg) The plan shall be prepared and implemented with participation of the resident and in accordance with the resident's wishes; ¶¶

(gh) Unless required or allowed by state or federal law, a facility shall not disclose any personally identifiable information regarding: ¶¶

(A) A resident's sexual orientation; ¶¶

(B) Whether a resident is LGBTQIA2S+; ¶¶

(C) A resident's gender transition status; or ¶¶

(D) A resident's human immunodeficiency virus status.¶

(i) The facility shall take appropriate steps to minimize the likelihood of inadvertent or accidental disclosure of information described in subsection (h) of this section to other residents, visitors or facility staff, except to the minimum extent necessary for facility staff to perform their duties. ¶

(j) Facilities must notify the resident or resident's representative if the facility inadvertently or accidentally discloses such information to unauthorized persons. ¶

(k) The plan shall include an assessment of the resident's potential for discharge and the facility's efforts to work toward discharge; ¶

(h) The plan shall be available to and followed by all staff involved with care of the resident. ¶

(3) Documentation: ¶

(a) The care plan shall be written in ink and made a part of the resident's clinical record; ¶

(b) Participation in development of the care plan by interdisciplinary staff will be clearly documented.

Statutory/Other Authority: ORS 410.070, 410.090, 441.055, 441.122

Statutes/Other Implemented: ORS 441.055, 441.111, 441.114, 441.615

AMEND: 411-086-0310

REPEAL: Temporary 411-086-0310 from APD 17-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Requires LGBTQIA2S+ training for all facility staff by December 31, 2024. Requires pre-service and annual training of all facility staff. Allows facilities to propose training curricula for approval that meets specified training criteria.

CHANGES TO RULE:

411-086-0310

Employee Orientation and In-Service Training ¶

(1) Orientation. The nursing facility shall ensure that each employee, temporary employee, and volunteer completes an orientation program sufficient to ensure that the safety and comfort of all residents is assured in accordance with facility policies (OAR 411-085-0210). Orientation to each task must be completed prior to the employee or volunteer performing such task independently. Orientation for nursing staff and nursing assistants in training shall be supervised by a registered nurse. The orientation shall include: ¶

(a) Explanation of facility organizational structure; ¶

(b) Philosophy of care of the facility, including purpose of nursing facility requirements as defined in these administrative rules; ¶

(c) Description of resident population; ¶

(d) Employee rules; and ¶

(e) Facility policy and procedures; and ¶

(f) RESIDENTS' RIGHTS. Residents' rights and the values of nursing facility care, including the Department-approved LGBTQIA2S+ trainings. ¶

(A) Effective December 31, 2024, all facility staff must have completed the required training. All new facility staff hired on or after January 1, 2025, must complete the required training prior to beginning job responsibilities. ¶

(B) The Department-approved LGBTQIA2S+ trainings shall address the elements described in paragraph (3)(d) of this rule ¶

(2) Inservice. The Administrator or his/her designee shall coordinate all inservice training. Inservice training shall be designed to meet the needs of all facility staff in accordance with facility policy (OAR 411-085-0210). Each certified nursing assistant shall receive a minimum of three hours of in-service training each calendar quarter. Each calendar year the inservice training agenda shall include at least the following: ¶

(a) Resident rights, including, but not limited to, those rights included in ORS 441.600-441.625; ¶

(b) Rules and statutes pertaining to abuse, including, but not limited to, ORS 441.630-441.675; ¶

(c) The transfer/discharge rules, including, but not limited to, the obligations of facility personnel to forward requests for conferences and hearings to the appropriate authorities; ¶

(d) Measures to prevent cross-contamination, including universal precautions; ¶

(e) Oral care, including oral screenings (required for nursing staff only); ¶

(f) Emergency procedures, including, but not limited to, the disaster plan; ¶

(g) Procedures for life-threatening situations, including, but not limited to, cardiopulmonary resuscitation and the life-saving techniques for choking victims (including abdominal thrust and chest thrust); ¶

(h) Application and use of physical restraints (required for nursing staff only); ¶

(i) Procedures to prevent residents from wandering away from the facility and how to deal with the wandering resident; ¶

(j) Restorative services, including benefits thereof (required for nursing staff only); ¶

(k) Activity program, including benefits thereof; ¶

(l) The social services program, including benefits thereof; ¶

(m) Accident prevention; ¶

(n) Alzheimer's disease and other dementias, including recognition of symptoms, treatments, and behavioral management; and ¶

(o) Other special needs of the facility population. ¶

(3) Documentation. Inservice Biennial LGBTQIA2S+ training requires the following: ¶

(a) Administrators and employees shall be required to complete biennial training addressing LGBTQIA2S+ protections, as described in this section. The facility is responsible for the cost of providing this training to all facility staff. ¶

(A) Each facility shall designate two employees, one who represents management and one who represents direct

care staff by July 1, 2024. It is acceptable for the designated employee representing management to generally be housed offsite, but the direct care representative must be onsite.

(B) The designated employees shall serve as points of contact for the facility regarding compliance with the biennial training requirements. These individuals shall develop a general training plan for the facility.

(b) Facilities must select the LGBTQIA2S+ training to be used by the facility by either:

(A) Choosing to use the standard Department-approved biennial LGBTQIA2S+ training, or

(B) Applying to the Department to request approval of a biennial LGBTQIA2S+ training to be developed and provided by the facility.

(c) ORS 441.116 requires all LGBTQIA2S+ trainings address:

(A) Caring for LGBTQIA2S+ residents and residents living with human immunodeficiency virus.

(B) Preventing discrimination based on a resident's sexual orientation, gender identity, gender expression or human immunodeficiency virus status.

(C) The defined terms commonly associated with LGBTQIA2S+ individuals and human immunodeficiency virus status.

(D) Best practices for communicating with or about LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including the use of an individual's chosen name and pronouns.

(E) A description of the health and social challenges historically experienced by LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including discrimination when seeking or receiving care at care facilities and the demonstrated physical and mental health effects within the LGBTQIA2S+ community associated with such discrimination.

(F) Strategies to create a safe and affirming environment for LGBTQIA2S+ residents and residents living with human immunodeficiency virus, including suggested changes to care facility policies and procedures, forms, signage, communication between residents and their families, activities, in-house services and staff training.

(G) The facility, individual or entity providing the training must demonstrate a commitment to advancing quality care for LGBTQIA2S+ residents and residents living with human immunodeficiency virus in this state.

(d) The proposal for training submitted by a facility, individual or entity shall include:

(A) The regulatory criteria described in paragraph (c) of this section as part of the proposal.

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

(i) A statement of the qualifications and training experience of the facility, individual or entity providing the training.

(ii) The proposed methodology for providing the training either online or in person.

(iii) An outline of the training.

(iv) Copies of the materials to be used in the training.

(C) The Department will review the materials and determine whether to approve or deny the training. No later than 90 days after the request is received, the Department will inform the facility in writing of the Department's decision.

(4) Contractors who provide services or supports directly to residents must complete the required LGBTQIA2S+ trainings outlined in paragraph (3)(c) of this rule.

(a) Contractors who must be trained include, but are not limited to, RN and administrative consultants, housekeeping services, dietary services, beauticians, barbers, or other contractors who provide services or supports directly to residents.

(b) Exempt from this training requirement are contractors who contract directly with the resident or the resident's representative, and contractors who do not generally provide services or supports directly to residents, including but not limited to contractors for landscaping, pest control, deliveries and building repairs.

(c) By December 31, 2024, facilities shall ensure that all contracts entered into with entities described in paragraph (a) of this section shall include language requiring contractors provide Department-approved LGBTQIA2S+ training to their employees within 12 months of entering into the contract with the facility and every two years thereafter.

(d) For existing contracts in effect January 1, 2025, facilities shall require contractors to provide Department-approved LGBTQIA2S+ training to employees by December 31, 2025, and every two years thereafter.

(e) For new contracts created after January 1, 2025, facilities shall require contractors to provide the Department-approved LGBTQIA2S+ training to employees within 12 months of entering into the contract with the facility, and every two years thereafter.

(f) Facilities must inform contractors the cost of all LGBTQIA2S+ trainings for contracted employees shall be paid by the contractor.

(5) Documentation. Inservice training, Biennial LGBTQIA2S+ training and orientation shall be documented and shall include the date, content, and names of attendees.

Statutory/Other Authority: ORS 410.070, 410.090, 441.055, 441.122

Statutes/Other Implemented: ORS 441.055, 441.116, 441.118, 441.615

AMEND: 411-088-0040

REPEAL: Temporary 411-088-0040 from APD 18-2024

NOTICE FILED DATE: 07/12/2024

RULE SUMMARY: Instructs Nursing Facilities that they shall not transfer a resident to another facility, discharge or evict a resident from the facility based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status.

CHANGES TO RULE:

411-088-0040

Involuntary Transfer Prohibited ¶

(1) The facility shall not involuntarily transfer a resident for medical or welfare reasons under OAR 411-088-0020(1)(a) through (f) if the risk of physical or emotional trauma significantly outweighs the risk to the resident and/or to other residents if no transfer were to occur.¶

(2) The facility shall not involuntarily transfer a resident for any other reasons under OAR 411-088-0020 if the transfer presents a substantial risk of morbidity or mortality to the resident.¶

(3) The facility shall not transfer, discharge or evict a resident from a facility based in whole or in part on a resident's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status as defined in OAR 411-085-0005.

Statutory/Other Authority: ORS 410.070, 441.122, 441.373, 441.615

Statutes/Other Implemented: ORS 441.055, 441.112, 441.600, 441.615