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DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

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RULES:

411-050-0602, 411-050-0615, 411-050-0620, 411-050-0635, 411-050-0640, 411-050-0645, 411-050-0650, 411-050-0655, 411-050-0665, 411-050-0685

AMEND: 411-050-0602

RULE TITLE: Definitions

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 050:

(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. For the purpose of these rules, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes, including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Department regarding adult foster home license denial, revocation, suspension, non-renewal, and civil penalties.

(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 defined in OAR 411-015-0006 required by

an individual for continued well-being, which are essential for health and safety.

(4) "Adult Foster Home (AFH)" means any family home or other facility where residential care is provided in a home-like environment for compensation to five or fewer adults who are not related to the licensee, 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. For the purpose of these rules, "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. "Facility" and "Home" are synonymous with "Adult Foster Home".

(5) "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).

(6) "Applicant" means a person who completes an application for an adult foster home license or who completes an application to become a resident manager, floating resident manager, or shift caregiver. "Applicant" is synonymous with "Co-applicant".

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(8) "Back-Up Provider" means a licensee, approved resident manager, or approved floating resident manager who does not live in the home, who has agreed to oversee the operation of an adult foster home, of the same license classification or level, in the event of an emergency.

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

(10) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of the Oregon State Board of Nursing. (See ORS 678.010 to 678.445 and OAR chapter 851, division 047).

(11) "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.

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

(13) "Care Plan" means a licensee'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.

(14) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA).

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

(16) "Co-Applicant" is synonymous with "Applicant" as defined in this rule.

(17) "Code of Federal Regulations" or "CFR" 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) "Co-Licensee" is synonymous with "Licensee" as defined in this rule.

(19) "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.

(20) "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 adult foster home.

(21) "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.

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

- (23) "Criminal Records and Abuse Check Rules" refers to OAR 407-007-0200 to 407-007-0370.
- (24) "Day Care" means care, assistance, and supervision of an individual who is older, as defined in these rules, who does not stay overnight.
- (25) "Delegation" means the process where a registered nurse teaches and supervises a skilled nursing task.
- (26) "Department" means the Department of Human Services (DHS).
- (27) "Designated Representative" means:
- (a) Any adult, such as a parent, family member, guardian, advocate, or other person who is:
 - (A) Chosen by the individual, or as applicable the legal representative;
 - (B) Not a paid provider for the individual; and
 - (C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.
 - (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 his or her behalf.
 - (c) An individual, or as applicable the legal representative, is not required to appoint a designated representative.
- (28) "Director" means the Director of the Department of Human Services or that person's designee.
- (29) "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.
- (30) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made that renders the licensee unable to operate the facility or renders the facility uninhabitable on a temporary, extended, or permanent basis.
- (31) "Emergency Preparedness Plan" means a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.
- (32) "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.
- (33) "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/.
 - (b) The U.S. General Services Administration's System for Award Management Exclusion List at www.sam.gov.
- (34) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes 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. "Exempt area" county licensing rules require review and approval by the Director before implementation.
- (35) "Facility" is synonymous with "Adult Foster Home" as defined in this rule.
- (36) "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.
- (37) "Final Point of Safety" means a designated assembly area located on a public sidewalk or street not less than 50 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency.
- (38) "Floating Resident Manager" means an employee of the licensee, approved by the local licensing authority, who under the direction of the licensee, is directly responsible for the care of residents in one or more adult foster homes owned by that licensee. A "floating resident manager" is not required to live in any one adult foster home owned by his or her employer, except on a temporary basis, as directed by the licensee, when the regularly scheduled caregiver is unavailable.
- (39) "Home" means the physical structure where residents live. "Home" is synonymous with "Adult Foster Home" as

defined in this rule.

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

(41) "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.

(42) "Home-like" 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.

(43) "House Policies" or the "Home's Policies" means the written and posted statements addressing house activities in an adult foster home identified in the Residency Agreement.

(44) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

(45) "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. For Home and Community-Based Settings, "Resident" includes individuals receiving day care services.

(46) "Individually-Based Limitation" or "Limitation" means:

(a) Any limitation to the following areas, as described in OAR 411-004-0020(2)(d) to (2)(j), which includes the rights to:

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

(B) Have visitors of the resident's choosing at any time.

(C) Have a lockable door in the resident's bedroom, which may be locked by the individual.

(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.

(G) Privacy in the resident's bedroom.

(H) Freedom from restraints.

(b) A limitation must be based on a specific assessed need, and may only be implemented with the informed consent of the resident or the resident's legal representative.

(47) "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.

(48) "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 adult foster home where occupants of the home evacuate to in the event of an emergency and for the purpose of conducting evacuation drills.

(49) "Investigative Authority" means the Office of Adult Abuse Prevention and Investigation, 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.

(50) "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 his or her authority as designated by the court or other agreement.

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

(b) For an individual 18 years of age 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.

- (51) "Level" means the designation of ventilator-assisted care assigned to an adult foster home license based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.
- (52) "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).
- (53) "Licensee" means the person who was issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The "licensee" of the adult foster home does not include the owner or lessor of the building where the adult foster home is situated unless the owner or lessor of the building is also the operator.
- (54) "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.
- (55) "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.
- (56) "Local Licensing Authority" means the local Department offices and Area Agencies on Aging that contract with the Department to perform specific functions of the adult foster home licensing process.
- (57) "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 Oregon State Board of Nursing in OAR chapter 851.
- (58) "Occupant" means any person residing in or using the facilities of an adult foster home, including residents, licensees, resident manager, friends or family members, day care individuals, and room and board tenants. A floating resident manager who resides in an adult foster home on a temporary basis is considered an "occupant".
- (59) "Older" means any person at least 65 years of age.
- (60) "Ombudsman" means the Oregon Long-Term Care Ombudsman or a designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of adult foster home residents.
- (61) "Operator" is synonymous with "Licensee" as defined in this rule.
- (62) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. Persons with an ownership or control interest mean a person or corporation that:
- (a) Has an "ownership interest" totaling five percent or more in a disclosing entity;
 - (b) Has an indirect "ownership interest" equal to five percent or more in a disclosing entity;
 - (c) Has a combination of direct and indirect ownership interests equal to five percent or more in a disclosing entity;
 - (d) Owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five percent of the value of the property or assets of the disclosing entity;
 - (e) Is an officer or director of a disclosing entity that is organized as a corporation; or
 - (f) Is a partner in a disclosing entity that is organized as a partnership.
- (63) "Person-Centered Service Plan" as defined in OAR chapter 411, division 004.
- (a) FOR INDIVIDUALS RECEIVING MEDICAID. The person-centered service plan coordinator completes the person-centered service plan.
 - (b) FOR NON-MEDICAID INDIVIDUALS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.
- (64) "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.

(65) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, a resident's body that the resident may not easily remove and that restricts freedom of movement or normal access to his or her body. Physical restraints include, but are not limited to, wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

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

(67) "Primary Caregiver" means a qualified licensee or resident manager, who lives in the home, personally provides care and services, and ensures the health and safety of residents a minimum of five consecutive days per week. More than one person who meets this criterion may be considered a "primary caregiver" as specified below:

(a) Co-licensees working three and four consecutive days and nights per week;

(b) Two approved resident managers working three and four consecutive days and nights per week; or

(c) A licensee and an approved resident manager working three and four consecutive days and nights per week.

(68) "P.R.N. (pro re nata)" means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(69) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager, floating resident manager, or shift caregiver). Provider does not include substitute caregivers or the owner or lessor of the building where the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(70) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-050-0625 and OAR 411-050-0630, except for completing the training and testing requirements. (See OAR 411-050-0635).

(71) "Psychoactive Medications" mean various medications used to alter mood, anxiety, behavior, or cognitive processes. For the purpose of these rules, "psychoactive medications" include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.

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

(73) "Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210.

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

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

(76) "Reside" means for a person to live in an adult foster home 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.

(77) "Residency Agreement" or "Agreement" means the written and legally enforceable agreement between an adult foster home licensee and an individual receiving Home and Community Based Services (HCBS), or representative of the individual, in a provider 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.

(78) "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 adult foster home on a 24-hour day basis in exchange for compensation. For the purposes of this definition, Resident includes individuals receiving day care services. (See OAR 411-050-0615).

(79) "Resident Manager" means an employee of the licensee, approved by the local licensing authority, who lives in the adult foster home, and is directly responsible for the care of the residents.

(80) "Resident Rights" or "Rights" means civil, legal, or human rights, including, but not limited to, those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739 and OAR 411-050-0655).

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

(82) "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. Adult foster homes with room and board tenants are not subject to OAR chapter 411, division 068.

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

(84) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on their own body without assistance.

(85) "Self-Preservation" in relation to fire and life safety means the ability of a resident to respond to an alarm without additional cues and reach a point of safety without assistance.

(86) "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.

(87) "Shift Caregivers" mean caregivers who, by written variance of the local licensing authority, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(88) "Subject Individual" means "subject individual" as defined in OAR 407-007-0210 and means any person 16 years of age or older, including:

(a) All licensed adult foster home providers and provider applicants;

(b) All persons intending to work in, or currently working in an adult foster home, including, but not limited to, caregivers and individuals in training;

(c) Volunteers on the home's premises who provide services for, or who have unsupervised 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 adult foster home, 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 adult foster home or the resident's visitors.

(C) Persons who live or work in or on the adult foster home premises who do not:

(i) Have regular access to the home for meals;

(ii) Have regular use of the adult foster home's appliances or facilities; or

(iii) Have 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.

(89) "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.

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

(91) "Tenant" means any individual who is residing in an adult foster home who receives services, such as meal preparation, laundry, and housekeeping.

(92) "Tenancy Agreement" means a written and legally enforceable agreement between an adult foster home 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.

(93) "These Rules" mean the rules in OAR chapter 411, division 050.

(94) "Variance" means an exception from a regulation or provision of these rules in accordance with OAR 411-050-0642.

(95) "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.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 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, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0615

RULE TITLE: Provider Enrollment Agreements, Residency Agreements, and Refunds

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.

(a) An applicant or licensee who intends to care for residents who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Department, follow Department rules, and abide by the terms of the Medicaid Provider Enrollment Agreement. The local licensing authority shall determine that the applicant, licensee, and any owner or officer of the corporation, as applicable, is not listed on either of the Exclusion Lists before approval of a Medicaid Provider Enrollment Agreement.

(b) An approved Medicaid Provider Enrollment Agreement does not guarantee the placement of individuals eligible for Medicaid services in the adult foster home.

(c) An approved Medicaid Provider Enrollment Agreement is valid for the length of the license unless earlier terminated by the licensee or the Department. A Medicaid Provider Enrollment Agreement must be completed, submitted, approved, and renewed with each licensing cycle.

(d) The rate of compensation established by the Department is considered payment in full. The licensee may not request or accept additional funds or in-kind payment from any source.

(e) An individual eligible for Medicaid services may not be admitted into an adult foster home unless and until:

(A) The Department has approved a Medicaid Provider Enrollment Agreement. The Department may not issue a Medicaid payment to a licensee without a current license and an approved Medicaid Provider Enrollment Agreement in place;

(B) The individual eligible for Medicaid services has been screened according to OAR 411-050-0655; and

(C) The Department has authorized the placement. The authorization must be clearly documented in the resident's record with other required admission materials. (See OAR 411-050-0655).

(f) The Department may not make payment for the date a resident moves from the home, or for any time period thereafter.

(g) The licensee must enter into a written agreement with a resident who receives Medicaid services if the licensee charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.

(A) The written agreement must be consistent with the licensee's policy with private-pay residents and entered into at the time of the resident's admission or at the time the resident becomes eligible for Medicaid services.

(B) The licensee must give written notice to the resident and the resident's family or other representatives 30 calendar days before any increases, additions, or other modifications to the charges for storage.

(h) A licensee who elects to provide care for individuals eligible for Medicaid services is not required to admit more than one resident eligible for Medicaid services. However, if the licensee has an approved Medicaid Provider Enrollment Agreement, private-pay residents who become eligible for Medicaid services may not be asked to leave solely on the

basis of Medicaid eligibility.

(i) The licensee or the Department may terminate a Medicaid Provider Enrollment Agreement according to the terms of the Medicaid Provider Enrollment Agreement.

(j) The Department may terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to maintain substantial compliance with all related federal, state, and local laws, ordinances, and regulations; or

(B) The license to operate the adult foster home has been voluntarily surrendered, revoked, or non-renewed.

(k) The Department must terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to permit access by the Department, the local licensing authority, or the Centers for Medicare and Medicaid Services to any adult foster home licensed to and operated by the licensee;

(B) The licensee submits false or inaccurate information;

(C) Any person with five percent or greater direct or indirect ownership interest in the adult foster home did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the criminal records and abuse check rules in OAR 407-007-0200 to 407-007-0370;

(D) Any person with five percent or greater direct or indirect ownership interest in the adult foster home has been convicted of a criminal offense related to the person's involvement with Medicare, Medicaid, or Title XXI programs in the last 10 years; or

(E) Any person with an ownership or control interest, or who is an agent or managing employee of the adult foster home, fails to submit timely and accurate information on the Medicaid Provider Enrollment Agreement form.

(l) If the licensee submits notice of termination of the Medicaid Provider Enrollment Agreement, the licensee must comply with the following requirements:

(A) Simultaneously issue the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) to each resident eligible for Medicaid services in the licensee's adult foster home. (See OAR 411-050-0645).

(B) Update Residency Agreement and submit to the local licensing authority for review.

(C) Obtain signatures of all current residents, or the resident's representative on the updated Residency Agreement following the local licensing authority's review.

(m) If either the licensee or the Department terminates a Medicaid Provider Enrollment Agreement, a new Medicaid Provider Enrollment Agreement may not be approved by the local licensing authority for a period of not less than 180 days from the date the licensee or the Department terminated the Medicaid Provider Enrollment Agreement.

(n) DEATH OF RESIDENT ELIGIBLE FOR MEDICAID SERVICES WITH NO SURVIVING SPOUSE. The licensee must forward all personal incidental funds (PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of a resident eligible for Medicaid services with no surviving spouse. (See OAR 461-135-0835).

(2) RESIDENCY AGREEMENT. A licensee must enter into a written Agreement with all residents or the residents' representatives, which details the care and services to be provided, and the rate to be charged. The written Agreement must be signed by all parties before the admission of the resident. A copy of the Agreement is subject to review for compliance with these rules by the local licensing authority before licensure and before the implementation of any changes to the Agreement.

(a) The Agreement must include, but not be limited to:

(A) Services to be provided and the rate to be charged. For individuals receiving Medicaid, the Residency Agreement may state the rate will be "as authorized by the Department". A payment range may not be used unless the Agreement plainly states when an increase in rate may be expected based on a resident's increased care or service needs.

(B) Conditions under which the rates may be changed.

(C) The home's refund policy in instances of a resident's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move. The refund policy must be in compliance with section (3) of this rule.

(D) A statement indicating that the resident is not liable for damages considered normal wear and tear on the adult foster home and the adult foster home's contents.

- (b) The Agreement must disclose the home's policies regarding:
- (A) Moves, including:
- (i) Voluntary moves and whether or not the licensee requires written notification of a non-Medicaid resident's intent to not return.
 - (ii) Involuntary moves and the resident's rights according to OAR 411-050-0645(11) and (12).
- (B) Any charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.
- (C) Any policies the adult foster home may have on the use of alcohol, tobacco, intercoms, and monitors.
- (D) The home's smoking policies in compliance with OAR 411-050-0650.
- (E) The home's policy regarding animals. Restrictions may not apply to animals that provide assistance or perform tasks for the benefit of a person with a disability. Such animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.
- (F) The home's policy regarding the presence and use of legal medical and recreational marijuana on the premises.
- (G) The home's schedule of meal times with no more than a 14-hour span between the evening meal and the following morning's meal (See OAR 411-050-0645).
- (H) Whether the home serves individuals eligible for Medicaid services.
- (I) The home's policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board is refundable.
 - (J) A clear and precise statement of any limitation to the implementation of Advance Directives on the basis of conscience. This rule does not apply to medical professional or hospice orders for administration of medications. The statement must include:
 - (i) A description of conscientious objections as they apply to all occupants of the adult foster home.
 - (ii) The legal authority permitting such objections under ORS 127.505 to 127.660.
 - (iii) Description of the range of medical conditions or procedures affected by the conscientious objection.
- (c) The Agreement must:
- (A) Not conflict with the Resident's Rights, the family atmosphere of the home, or any of these rules.
 - (B) Be reviewed and approved by the local licensing authority before the issuance of a license, and before implementing any changes.
 - (d) Providers initially licensed before January 1, 2016 have until September 1, 2018 to fully comply with this rule. The Agreement must include the freedoms authorized by 42 CFR 441.301(c)(4) & 42 CFR 441.530(a)(1), which must not be limited without the informed, written consent of the resident or the resident's representative, and approved by the person-centered service plan coordinator, which includes the rights to:
 - (A) The freedom and support to access food at any time.
 - (B) Have visitors of the resident's choosing at any time.
 - (C) Have a lockable door in the resident's bedroom, which may be locked by the resident.
 - (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.
 - (G) Privacy in the resident's bedroom.
 - (e) The licensee may not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.
 - (f) The licensee must give a copy of the signed Agreement to the resident or the resident's representative and must retain the original signed Agreement and any amendments on the premises available for review.
 - (g) The licensee may not include any illegal or unenforceable provision in an Agreement with a resident and may not ask or require a resident to waive any of the resident's rights or licensee's liability for negligence.
 - (h) The licensee must give written notice to a non-Medicaid resident and the resident's family or other representatives 30 calendar days before any general rate increases, additions, or other modifications of the rates. The licensee is not

required to give 30 day written notice if the rate change is due to the resident's increased care or service needs and the agreed upon rate schedule in the resident's Agreement has specified charges for those changes.

(3) REFUNDS FOR NON-MEDICAID RESIDENTS.

(a) If a resident dies, the licensee may not retain or require payment for more than 15 calendar days after the date of the resident's death, or the time specified in the licensee's Agreement, whichever is less.

(b) If a resident leaves an adult foster home for medical reasons and the resident or the resident's representative indicates the resident's intent to not return, the licensee may not retain or require payment for more than 15 calendar days after the date the licensee receives notification from the resident, the resident's representative, or the time specified in the licensee's Agreement, whichever is less.

(c) If a resident who has paid with private funds becomes eligible for Medicaid services, the licensee must accept payment from the Department from the date of eligibility forward as payment in full. The licensee must reimburse the resident or the resident's representative within 30 calendar days after the licensee receives payment from the Department for any private payment received after the resident became eligible for Medicaid services.

(d) The licensee must act in good faith to reduce the charge to a resident who has left the home by seeking a new resident to fill the vacancy.

(e) The licensee must refund any unused advance payment to the resident, or the resident's representative as appropriate, within 30 calendar days after the resident dies or leaves the home.

(f) If the adult foster home closes or the licensee gives written notice for the resident to leave, the licensee waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

(g) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Department investigator, or due to conditions of imminent danger of life, health, or safety, the licensee may not charge the resident beyond the resident's last day in the home.

(h) The refund policies in these rules also apply to refunds for resident moves and transfers as described in OAR 411-050-0645.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.880, 443.790

STATUTES/OTHER IMPLEMENTED: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0620

RULE TITLE: Background Check

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

(1) All subject individuals (SIs) must have an approved background check, which, for non-licensees or non-licensee caregiver applicants, may include an approved preliminary fitness determination, prior to operating, working in, training in, or living in an adult foster home. Licensees must maintain printed documentation of approved preliminary and final fitness determinations in accordance with these rules and the criminal records and abuse check rules, OAR 407-007-0200 to 407-007-0370.

(2) The background check may not to be used as a screening tool for hiring. New employees may be offered a position contingent upon passing the background check.

(3) A new background check must be completed:

(a) Every two years.

(b) Prior to any subject individual's change in employment position.

(c) If the Department has reason to believe a new background check is needed.

(4) An SI may be hired on a preliminary basis following completion of a preliminary fitness determination according to the criminal records and abuse check rules, OAR 407-007-0200 to 407-007-0370. An SI who is hired on a preliminary basis shall be actively supervised at all times they are on duty by a qualified caregiver who has been approved without restrictions. Active supervision means a qualified caregiver must:

(a) Be within line-of-sight and within hearing of the SI both in and on the adult foster home premises.

(b) Know where the SI is and what the SI is doing.

(5) PORTABILITY OF BACKGROUND CHECK APPROVAL.

A subject individual may be approved to work in multiple homes in Oregon only when the subject individual is working in the same employment position.

(6) On or after July 28, 2009, no licensee, licensee applicant, or employee of the licensee who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 shall be approved by the Department to provide care and services in an adult foster home. This rule does not apply to:

(a) An employee of the licensee who was hired prior to July 28, 2009, who continues employment in the same position with the same licensee; or

(b) Any subject individual who is an occupant of the home but is neither a licensee nor a caregiver.

(7) The licensee must have printed verification that the required background checks have been completed and approved for all subject individuals. The written verification shall be readily available upon request, and may include printed electronic correspondence.

(8) All subject individuals must self-report to the licensee any disqualifying condition as described in OAR 407-007-0275 and any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The licensee must notify the Department or local licensing authority within 24 hours if any subject individual has a

disqualifying or potentially disqualifying condition.

(9) The Department must provide for the expedited completion of a background check for the state of Oregon when requested by a licensed provider because of a demonstrated immediate staffing need.

STATUTORY/OTHER AUTHORITY: ORS 181.537, 410.070, 443.001, 443.004, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790, 443.725, 443.730

STATUTES/OTHER IMPLEMENTED: ORS 181.537, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0635

RULE TITLE: Issuance

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

- (1) The local licensing authority 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.
- (2) The license specifies the type of license and includes:
 - (a) The name of the licensee and the name of the resident manager or shift caregivers as applicable, who have met the requirements to operate the adult foster home.
 - (b) The address of the premises to which the license applies.
 - (c) The license classification and level if applicable.
 - (d) The maximum number of residents.
 - (e) The expiration date.
- (3) The licensee must be given a copy of the Department's inspection report form as follows:
 - (a) INITIAL LICENSE. The Department's Adult Foster Home Initial Inspection Worksheet identifying any areas of non-compliance and a time frame for correction.
 - (b) RENEWAL LICENSE. The Department's Statement of Deficiencies and Plan of Correction citing any violations. The Statement of Deficiencies must specify a time frame for correction of each violation. The time frame for correction may not exceed 30 calendar days from the date of inspection.
- (4) The licensee must post the most recent inspection reports in the entry of the home or an equally prominent place and must, upon request, provide 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.
- (5) 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.
- (6) The local licensing authority may not issue an initial license unless:
 - (a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and these rules.
 - (b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825.
 - (c) The local licensing authority has completed an inspection of the adult foster home that demonstrates the home is in compliance with these rules.
 - (d) The Department has completed a background check in accordance with OAR 411-050-0620.
 - (e) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files.
 - (f) The local licensing authority has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.
 - (g) The local licensing authority has verified the applicant is not listed on either of the Exclusion Lists.

- (h) The applicant has demonstrated to the local licensing authority the financial ability and resources necessary to operate an adult foster home.
- (7) A license is valid for one year unless revoked or suspended by the Department.
- (8) When the Department reviews a license and determines that the convenience of both the licensee and the Department will be served, a license period may be changed to match the renewal schedule of another license held by the same licensee. The request for a schedule change may be made by either the Department or the licensee. No license period may extend beyond one year.
- (9) In seeking an initial license, the burden of proof to establish compliance with ORS 443.705 to 443.825, and these rules, is upon the applicant of the adult foster home.
- (10) The local licensing authority may not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain substantial compliance with the rules and regulations while operating his or her existing home or homes.
- (11) PROVISIONAL LICENSE. Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the local licensing authority may issue a 60-day provisional license to a qualified person.
- (a) A provisional license may be issued if the local licensing authority determines it is in the best interests of the residents currently residing in the home, and any of the following exist:
- (A) An emergency situation exists after receiving notification that a licensed provider is no longer overseeing the operation of an adult foster home.
- (B) A new applicant has submitted an application and bed fee for a license to operate a currently licensed home. The applicant has demonstrated a good faith effort to submit a timely and complete application, but the application process cannot be completed before the expiration date of the current license.
- (b) A person is considered qualified for a provisional license if he or she:
- (A) Is at least 21 years of age.
- (B) Has the necessary experience working with adults who are older or adults with physical disabilities to potentially qualify for the license classification of the home.
- (C) Fully understands and has the ability to meet the residents' care needs.
- (D) Meets the requirements of a substitute caregiver as described in OAR 411-050-0625.
- (c) A provisional license may be extended one time for a period of 30 calendar days if an applicant has demonstrated a good faith effort to complete the application process and obtain the required qualifications and trainings.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 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 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0640

RULE TITLE: Renewal Application and Fees

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

- (1) At least 60 calendar days prior to the expiration of a license, the local licensing authority must send a reminder notice and renewal application to the licensed provider. The local licensing authority must investigate any information in the renewal application and conduct an unannounced inspection of the adult foster home prior to the license renewal.
- (2) A separate application is required for each location where an adult foster home is to be operated.
- (3) RENEWAL APPLICATION REQUIREMENTS. To renew an adult foster home license, the licensee must complete the Department's Renewal Application form (SDS 448C) and submit the form to the local licensing authority with the non-refundable fee prior to the expiration date of the current license. Timely submission of the renewal application and non-refundable fee shall keep the license in effect until the local licensing authority or the Department takes action.
 - (a) The renewal application is not complete until all of the required application information is submitted to the local licensing authority.
 - (b) A renewal application remaining incomplete at the time of license expiration or failure to provide accurate information on the renewal application shall result in the denial of the application.
- (4) The license renewal application must include:
 - (a) Complete contact information for the licensee, including:
 - (A) A mailing address if different from the adult foster home; and
 - (B) A business address for electronic mail, if applicable.
 - (b) The maximum resident capacity.
 - (c) Identification of:
 - (A) Any relatives needing care;
 - (B) The maximum number of any room and board tenants;
 - (C) The maximum number of day care individuals; and
 - (D) The names of any other occupants in the home.
 - (d) A Health History and Physician or Nurse Practitioners' Statement (form SDS 0903). The Health History and Physician or Nurse Practitioners' Statement must be updated every third year or sooner if there is reasonable cause for health concerns.
 - (e) FINANCIAL INFORMATION FOR THE HOME'S FIRST LICENSE RENEWAL. A completed Financial Information Worksheet (form SDS 0448A) demonstrating the financial ability to maintain sufficient liquid resources to pay the home's operating costs for at least two months.
 - (f) If the home is leased or rented, a copy of the current signed and dated 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; and

- (C) Signatures and date signed by the landlord and applicant, as applicable.
 - (g) Documentation of a current approved background check for each subject individual as described in OAR 411-050-0620.
 - (h) A \$20 per bed non-refundable fee for each non-relative resident.
 - (i) If the licensee intends to use a resident manager, floating resident manager, or shift caregivers, the Department's supplemental application (form SDS 448B) completed by the applicant or applicants, as appropriate.
 - (j) Written information describing the operational plan for the adult foster home, including:
 - (A) The use of substitute caregivers and other staff;
 - (B) A plan of coverage for the absence of the resident manager or the shift caregivers, if applicable; and
 - (C) The name of a qualified back-up licensee, approved resident manager, or floating resident manager who does not live in the home but has been oriented to the home. The licensee must submit a signed agreement with the listed back-up provider annually and maintain a copy in the facility records.
 - (k) Copies of the home's Residency Agreement forms if changes to the original forms reviewed by the Local Licensing Authority are proposed.
 - (l) Proof of required continuing education credits as specified in OAR 411-050-0625.
- (5) LATE RENEWAL REQUIREMENTS (UNLICENSED ADULT FOSTER HOME). The home shall be treated as an unlicensed facility, subject to civil penalties, if the required renewal information and fee are not submitted to the local licensing authority prior to the license expiration date and residents remain in the home. (See OAR 411-050-0685).
- (6) The local licensing authority shall investigate the information submitted, review the licensing records for the applicant, conduct an inspection of the home, and provide the licensee a copy of the Department's Statement of Deficiencies and Plan of Correction form citing any violations and specifying a time frame for correction not to exceed 30 days.
 - (7) The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The licensee must visibly post the conditions, if applicable, with the license according to OAR 411-050-0645.
 - (8) The Department may deny a renewal application if cited violations are not corrected within the time frame specified by the local licensing authority.
 - (9) The local licensing authority may not renew a license unless the following requirements are met:
 - (a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and these rules, including any applicable conditions and other final orders of the Department.
 - (b) The local licensing authority has completed an inspection of the adult foster home.
 - (c) The Department has completed a background check in accordance with OAR 411-050-0620.
 - (d) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files.
 - (e) The local licensing authority has determined the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the licensee or any nursing assistant employed by the licensee has been responsible for abuse.
 - (f) The local licensing authority has determined the licensee is not listed on either of the Exclusion Lists.
 - (10) In seeking the renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof to establish compliance with ORS 443.705 to 443.825 and these rules is upon the licensee.
 - (11) In seeking the renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof to establish noncompliance with ORS 443.705 to 443.825 and these rules is upon the Department.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 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 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0645

RULE TITLE: Operational Standards

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

(1) GENERAL PRACTICES.

(a) A licensee must own, rent, or lease the home to be licensed, however, the local licensing authority may grant a variance to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building where an adult foster home 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 adult foster home unless the owner, landlord, or lessor is named on the license.

(b) Each adult foster home 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 L.

(D) Federal regulations governing HCB Settings. Providers initially licensed before January 1, 2016 must fully comply with Home and Community-Based Services and Settings and Person-Centered Service Plans, OAR chapter 411, division 004, by no later than September 1, 2018.

(c) ZONING. Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.

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

(A) Department, CMS, local licensing, Oregon Health Authority (OHA), 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).

(e) CONFIDENTIALITY. Information related to residents must be kept confidential, 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.

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

(g) STAFFING STANDARDS. The licensee must have qualified caregivers, including awake caregivers as necessary, sufficient in number to meet the 24-hour needs of each resident in addition to caring for any children or relatives beyond the license capacity of the adult foster home. In addition, the licensee must comply with the following standards:

(A) A licensee may not employ a resident manager, floating resident manager, or shift caregiver who does not meet or

exceed the qualifications, training, and classification standards for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(B) A licensee may not employ or allow any caregiver to train or work in the home who is on either of the Exclusion Lists.

(h) ABSENCE OF A PRIMARY CAREGIVER. If a primary caregiver or a shift caregiver is absent from the home for 10 days or more, the licensee must notify the local licensing authority, in writing, at least seven days before the primary caregiver's absence or immediately upon knowing of the absence. Notification must state the reason for and anticipated length of the absence. The licensee must submit a staffing plan to the local licensing authority that demonstrates coverage to meet the needs of the residents during the primary caregiver's absence and is signed by the back-up provider.

(i) CHANGE OF PRIMARY CAREGIVER. If a primary caregiver or a shift caregiver changes during the period the license covers, the licensee must notify the local licensing authority within 24 hours and identify who is providing care.

(A) If a licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in primary caregiver, the licensee must submit an updated plan of 24-hour coverage to the local licensing authority within seven days.

(B) If a resident manager, floating resident manager, or shift caregiver changes, the licensee must submit a request for a change of resident manager, floating resident manager, or shift caregiver, as applicable, to the local licensing authority along with:

(i) The Department's supplemental application form (SDS 448B) completed by the resident manager applicant, floating resident manager applicant, or shift caregiver applicant;

(ii) A completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903) for the new applicant;

(iii) Documentation of the initiation of or a copy of an approved background check; and

(iv) A \$10 non-refundable fee.

(C) When there is a change in primary caregiver, an approved floating resident manager may assume the responsibilities of the live-in, primary caregiver until a new primary caregiver is employed. If a new primary caregiver is not employed within 60 calendar days, the floating resident manager must be designated as the home's resident manager and the licensee must notify the local licensing authority of the change in status.

(D) The local licensing authority shall issue a revised license when there is a change in a primary caregiver who is identified on the license.

(j) UNEXPECTED AND URGENT STAFFING NEED. If the local licensing authority determines an unexpected and urgent staffing need exists, the local licensing authority may authorize a person who has not completed the Department's current Ensuring Quality Care Course and passed the current examination to act as a resident manager or shift caregiver until training and testing are completed, or for 60 calendar days, whichever period is shorter. The licensee must notify the local licensing authority of the unexpected and urgent staffing need in writing and satisfactorily demonstrate:

(A) The licensee's inability to live in the home and act as the primary caregiver;

(B) The licensee's inability to find a qualified resident manager or shift caregiver, as applicable; and

(C) The proposed staff person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(k) RESPONSIBILITY. A licensee is responsible for the supervision, training, and overall conduct of all caregivers, family members, and friends when acting within the scope of their employment, duties, or when present in the home.

(l) SEXUAL ABUSE. Sexual abuse, as defined in OAR 411-020-0002 (Adult Protective Services), is prohibited.

(m) COMMUNICATION.

(A) Applicants for an initial license must obtain and provide to the local licensing authority a current, active business address for electronic mail before obtaining a license.

(B) A licensee must notify the local licensing authority within 24 hours upon a change in the home's business address for electronic mail.

(C) A licensee must notify the local licensing authority, 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 adult foster home within 24 hours of the change.

(D) A licensee must notify the local licensing authority in writing before any change of the licensee's residence or mailing address.

(2) SALE OR LEASE OF EXISTING ADULT FOSTER HOMES AND TRANSFER OF LICENSES.

(a) A license is not transferable and does not apply to any location or person other than the location and person indicated on the license obtained from the local licensing authority.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication, including advertising and disclosure statements, that the license to operate the adult foster home is not transferable and the licensee must refer them to the local licensing authority for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the local licensing authority before the transfer of operation of the home.

(d) The licensee must promptly notify the local licensing authority in writing about the licensee's intent to close or convey the adult foster home to another person. The licensee must provide written notice to the residents and the residents' representatives and case managers, as applicable, according to section (13) of this rule.

(e) The licensee must inform a person intending to assume operation of an existing adult foster home that the residents currently residing in the home must be given at least 30 calendar days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the local licensing authority at a level appropriate to the care needs of the residents in the home.

(3) FORECLOSURE.

(a) A licensee must provide written notification to the local licensing authority within 10 calendar days after receipt of any notice of default, or any notice of potential default, with respect to a real estate contract, trust deed, mortgage, or other security interest affecting any property occupied or used by the licensee.

(b) The licensee must provide a copy of the notice of default or warning of potential default to the local licensing authority.

(c) The licensee must provide written updates to the local licensing authority at least every 30 days until the default or warning of potential default has been resolved and no additional defaults or potential defaults have been declared and no additional warnings have been issued. Written updates must include:

(A) The current status on what action has been or is about to be taken by the licensee with respect to the notice received.

(B) The action demanded or threatened by the holder of the security interest.

(C) Any other information reasonably requested by the local licensing authority.

(d) The licensee must provide written notification within 24 hours to the local licensing authority upon final resolution of the matters leading up to or encompassed by the notice of default or the notice warning of potential default.

(e) If the subject default property is licensed as an adult foster home, the licensee must provide written notification of the following within 24 hours to the local licensing authority, and all the residents and the residents' representatives, if applicable, regarding:

(A) The filing of any litigation regarding such security interest, including the filing of a bankruptcy petition by or against the licensee or an entity owning any property occupied or used by the licensee.

(B) The entry of any judgment with respect to such litigation.

(C) The passing of the date 40 days before any sale scheduled pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee.

(D) The sale, pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee.

(4) 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 must prepare multiple, unique meals for the residents at the same time.

(c) A schedule of meal times 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 section (4)(a) of this rule are acceptable and must be documented on, or attached to, the weekly menu.

(B) The licensee must maintain the weekly menus for a minimum of the 12 most recent months during which the home has conducted business.

(C) The licensee 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 411-050-0655, and when a written informed consent is obtained. Providers initially licensed before January 1, 2016 have until September 1, 2018 to fully comply with this HCB Settings requirement, OAR 411-050-0645(4)(c)(C).

(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 (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.

(5) 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 as long as 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.

(6) FACILITY RECORDS.

(a) Facility records must be kept current, maintained in the adult foster home, and made available for review upon request. Facility records include, but are not limited to:

(A) Printed verification the licensee and all subject individuals have an approved background check, which may include an approved preliminary background check for non-licensee caregivers, as required by OAR 411-050-0620.

(B) Proof the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0625, including:

(i) Proof of required continuing education. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of Department-approved classroom hours.

(ii) Completed certificates to document the substitute caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook and to document the resident manager, floating resident manager, and shift caregivers, as applicable, completion and passing of the Department's Ensuring Quality Care Course and examination.

(iii) Documentation of orientation to the adult foster home for the resident manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable.

(iv) Employment applications and the names, addresses, and telephone numbers of all caregivers employed or used by the licensee.

(v) Verification that all caregivers are not listed on either of the Exclusion Lists.

(C) Copies of notices sent to the local licensing authority pertaining to changes in the resident manager, floating resident manager, shift caregiver, or other primary caregiver.

(D) Proof of required vaccinations for animals on the premises.

(E) Well water tests, if required, according to OAR 411-050-0650. Test records must be retained for a minimum of three years.

(F) Residency Agreements with all residents and, if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.

(G) Records of evacuation drills according to OAR 411-050-0650, including the date, time of day, evacuation route, length of time for evacuation of all occupants, names of all residents and occupants, and names of residents and occupants that required assistance. The records must be kept at least three years.

(H) The Department's current Adult Foster Home Back-Up Agreement form (SDS 350) completed by the current back-up provider and the licensee, as stated in OAR 411-050-0610 and 411-050-0640.

(b) REQUIRED POSTED ITEMS. The following items must be posted in one location in the entryway or other equally prominent place in the home where residents, visitors, and others may easily read them:

(A) The adult foster home license.

(B) Conditions attached to the license, if any.

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0650.

(D) The Residents' Bill of Rights.

(E) The home's policies as stated in the current Residency Agreement that has been reviewed for compliance with these rules by the local licensing authority.

(F) The Department's procedure for making complaints.

(G) The Long-Term Care Ombudsman poster.

(H) The Department's Statement of Deficiencies and Plan of Correction inspection form, including how corrections

were made since the last annual inspection.

(I) The Department's notice pertaining to the use of any intercoms and monitoring devices that may be used in the adult foster home.

(J) A weekly menu according to section (4) of this rule.

(c) POST BY PHONE. Emergency telephone numbers, including the contact number for at least one back-up provider who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee must be readily visible and posted by a central telephone in the adult foster home.

(7) RESIDENT RECORDS.

(a) An individual resident record must be developed, kept current, and readily accessible on the premises of the home for each individual admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) A complete initial screening assessment and general information form (SDS 902) as described in OAR 411-050-0655.

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

(C) Documentation that the licensee has informed all residents of the right to formulate an Advance Directive.

(D) FINANCIAL INFORMATION:

(i) 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.

(ii) 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 local licensing authority.

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

(i) Medical history, if available.

(ii) Current prescribing practitioner orders.

(iii) Nursing instructions, delegations, and assessments, as applicable.

(iv) 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).

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

(F) A complete, accurate, and current care plan.

(G) Effective January 1, 2017 and no later than February 28, 2018, documentation that supports or eliminates any individually-based limitation, as described in OAR 411-050-0655(4).

(H) A copy of the current house policies, as identified in the current Residency Agreement, and the current Resident's Bill of Rights, signed and dated by the resident or the resident's representative.

(I) SIGNIFICANT EVENTS. 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.

(J) 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.

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

(b) ACCESS TO RESIDENT RECORDS.

(A) Resident records must be readily available at the adult foster home to residents, the residents' representatives or other legally authorized persons, all caregivers working in the home, and the Department, Oregon Health Authority

(OHA), the local licensing authority, the investigative authority, case managers, and the Centers for Medicare and Medicaid Services (CMS) for the purpose of conducting inspections or investigations.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. A Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's representative. (See OAR 114-005-0030).

(c) RECORD RETENTION. Records, including any financial records for residents, must be kept for a period of three years from the date the resident left the home.

(d) CONFIDENTIALITY. In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 411, division 005 (Privacy of Protected Information).

(8) RESIDENCY AGREEMENT. The current Residency Agreement must be given to the resident and the resident's representative, as applicable, at the time the screening and assessment is conducted. Before the resident's admission, a signed and dated copy of the Residency Agreement must be obtained and placed in the resident's record. The policies within the Residency Agreement must be consistent with the practices of the licensee, staff, occupants, and visitors of the home. (See OAR 411-050-0615).

(9) RESIDENT MOVES AND TRANSFERS. The licensee must support a resident's choice to remain in his or her living environment, while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves, or intends to move, out of an adult foster home for any reason, the licensee must cooperate with the potential provider's screening and assessment activities as directed by the resident or the resident's representative, and submit copies of pertinent information from the resident's record to the resident's new place of residence at the time of move. Pertinent information must include, at a minimum:

(A) Copies of current prescribing medical practitioner's orders for medications, current medication sheets, an updated care plan, including the elements of any person-centered service plan, and any documentation of limitations.

(B) Documentation of actions taken by the adult foster home staff, resident, or the resident's representative pertaining to the move or transfer.

(b) A licensee must immediately document voluntary and involuntary moves or transfers from the adult foster home in the resident's record as events take place. (See sections (10) - (13) of this rule).

(10) VOLUNTARY MOVES AND TRANSFERS.

(a) If a resident eligible for Medicaid services or the resident's representative gives notice of the resident's intent to leave the adult foster home, or the resident leaves the home abruptly, the licensee must promptly notify the resident's case manager and the local licensing authority.

(b) A licensee must obtain prior authorization from the resident, the resident's representative, and case manager, as applicable, before the resident's:

(A) Voluntary move from one bedroom to another in the adult foster home;

(B) Voluntary transfer from one adult foster home to another home that has a license issued to the same person; or

(C) Voluntary move to any other location.

(c) Notifications and authorizations of voluntary moves and transfers must be documented and available in the resident's record.

(d) The licensee remains responsible for the provision of care and services until the resident has moved from the home.

(11) INVOLUNTARY MOVES AND TRANSFERS.

(a) A resident may only be moved involuntarily to another room within the adult foster home, transferred to another adult foster home operated by the same licensee for a temporary or permanent stay, or moved from the adult foster home for the following reasons:

(A) Medical reasons. The resident has a medical or nursing condition that is complex, unstable, or unpredictable that exceeds the level of care and services the facility provides.

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0650.

(C) Welfare of the resident or other residents, including:

(i) The resident exhibits behavior that poses an imminent danger to self or others, including acts that result in the resident's arrest or detention;

(ii) The resident engages in behavior or action that repeatedly and substantially interfere with the rights, health, or safety of the residents or others; or

(iii) The resident engages in illegal drug use or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care or failure to make payment for room and board.

(E) The adult foster home has had its license revoked, not renewed, or the license was voluntarily surrendered by the licensee.

(F) The home was not notified before the resident's admission, or learns following the resident's admission, that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(G) The licensee's Medicaid Provider Enrollment Agreement or specialized contract is terminated (pertains only to residents eligible for Medicaid).

(H) The resident engages in the use of legal medical marijuana, recreational marijuana, or both, in violation of the home's written policies or contrary to Oregon Law under ORS chapter 475B, Cannabis Regulation.

(b) MANDATORY WRITTEN NOTICE. A resident may not be moved involuntarily from the adult foster home, to another room within the adult foster home, or transferred to another adult foster home for a temporary or permanent stay without a minimum of 30 calendar days' written notice. The notice must be delivered in person to the resident and must be delivered in person or sent by registered or certified mail to the resident's representative, guardian, or conservator, and a copy must be immediately submitted to the local licensing authority, and to the resident's case manager, as applicable. Where a resident lacks capacity and there is no representative, a copy of the notice must be immediately submitted to the State Long Term Care Ombudsman. The written notice must:

(A) Be on the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901).

(B) Be completed by the licensee.

(C) Include the following information:

(i) The resident's name.

(ii) The reason for the proposed move or transfer, including the specific reasons the facility is unable to meet the resident's needs.

(iii) The date of the proposed change.

(iv) The resident's new location, if known.

(v) A notice of the right to hold an informal conference and hearing.

(vi) The name, address, and telephone number of the person giving the notice.

(vii) The date the notice is issued.

(c) LESS THAN 30 DAYS' WRITTEN NOTICE. A licensee may give less than 30 calendar days' written notice in specific circumstances as identified in paragraphs (A) to (C) below, but must do so as soon as possible using the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901). The notice must be given in person to the resident, the resident's representative, guardian, conservator, and a copy must be immediately submitted to the local licensing authority, and to the resident's case manager, as applicable. The reasons for the notice must be fully documented in the resident's record. The licensee remains responsible for the provision of care and services until the resident has moved from the home. A licensee may give less than 30 calendar days' notice only if:

(A) Undue delay in moving the resident would jeopardize the health, safety, or well-being of the resident, including:

(i) The resident has a medical emergency that requires the immediate care of a level or type the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home and the licensee determines he or she is no longer able to meet the needs of the resident; or

(C) The home was not notified before the resident's admission, or learns following the resident's admission, the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(i) In the event a resident is given notice of an involuntary move due to (11)(c)(C) of this rule, the notice may be given without reasonable advance notice.

(ii) The resident shall be given the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) as stated in (11) of this rule.

(12) RESIDENT HEARING RIGHTS. A resident, who has been given formal notice of an involuntary move or refused the right of return or re-admission, is entitled to an informal conference and hearing before the involuntary move or transfer as follows:

(a) INFORMAL CONFERENCE. The local licensing authority must hold an informal conference as promptly as possible after the request is received. The local licensing authority must send written notice of the time and place of the conference to the licensee and all persons entitled to the notice. Participants may include the resident and at the resident's request, a family member, case manager, Ombudsman, legal representative of the resident, the licensee, and a representative from an adult foster home association or SEIU if requested by the licensee. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the local licensing authority must document the outcome in writing and no administrative hearing is needed.

(b) ADMINISTRATIVE HEARING. If a resolution is not reached as a result of the informal conference, the resident or the resident's representative may request an administrative hearing. If the resident is being moved or transferred with less than 30 calendar days' notice according to section (11)(c) of this rule, the hearing must be held within seven business days of the move or transfer. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

(13) CLOSURE OF ADULT FOSTER HOMES.

(a) A licensee must notify the local licensing authority before the voluntary closure, proposed sale, or transfer of ownership of the home, and give the residents and the residents' families, representatives, and case managers, as appropriate, a minimum of 30 calendar days' written notice on the Department's form (SDS 901) according to section (11) of this rule.

(b) In circumstances where undue delay might jeopardize the health, safety, or well-being of residents, licensees, or staff, written notice must be given as soon as possible, according to section (11)(c).

(c) A licensee must surrender the physical license to operate an adult foster home to the local licensing authority at the time of the adult foster home's closure.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.001, 443.004, 443.705 - 443.795, 443.880

STATUTES/OTHER IMPLEMENTED: ORS 197.660 - 197.670, 441.373, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0650

RULE TITLE: Facility and Safety Standards

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

In order to qualify for or maintain a license, an adult foster home must comply with the following provisions:

(1) GENERAL CONDITIONS.

(a) INTERIOR AND EXTERIOR PREMISES. The building and furnishings, patios, decks, and walkways, as applicable, must be clean and in good repair. The interior and exterior premises must be well maintained and accessible according to the individual needs of the residents. There must be no accumulation of garbage, debris, rubbish, or offensive odors. Walls, ceilings, and floors must be of such character to permit washing, cleaning, or painting, as appropriate.

(b) ADDRESS. The address numbers of the adult foster home must be placed on the home in a position that is legible and clearly visible from the street or road fronting the property. If the home is so situated that the address number is not legible and clearly visible from the road fronting the property, such as when the home is accessed via a lengthy driveway or private access road, then the address numbers must also be posted where the driveway or private access road joins the fronting road. The address numbers must be at least four inches in height, made of reflective material, and contrast with the background.

(c) LIGHTING. Adequate lighting, based on the needs of the occupants, must be provided in each room, stairway, and exit way. Incandescent light bulbs and fluorescent tubes must be protected with appropriate covers.

(d) TEMPERATURE. The heating system must be in working order. Areas of the home used by the residents must be maintained at a comfortable temperature. Minimum temperatures during the day must be not less than 68 degrees, no greater than 85 degrees, and not less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in each resident's care plan.

(A) During times of extreme summer heat, the licensee must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.

(B) If the facility is air-conditioned, the system must be functional and the filters must be cleaned or changed as needed to ensure proper maintenance.

(C) If the licensee is unable to maintain a comfortable temperature for the residents during times of extreme summer heat, air conditioning or another cooling system may be required.

(e) COMMON USE AREAS. Common use areas for the residents must be accessible to all residents. There must be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space may not be located in an unfinished basement or garage unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space is required for each day care individual, room and board tenant, or relative receiving care for remuneration that exceeds the limit of five.

(2) SANITATION AND PRECAUTIONS.

(a) NON-MUNICIPAL WATER SOURCE. A public water supply must be utilized if available. If a non-municipal water source is used, the licenser, a sanitarian, or a technician from a certified water-testing laboratory must collect a sample annually or as required by the Department. The water sample must be tested for coliform bacteria. Water testing and any necessary corrective action to ensure water is suitable for drinking must be completed at the licensee's expense. Water testing records must be retained for three years.

(b) Septic tanks or other non-municipal sewage disposal systems must be in good working order.

(c) COMMODES AND INCONTINENCE GARMENTS. Commodes used by residents must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(d) WATER TEMPERATURE. A resident who is unable to safely regulate the water temperature must be supervised.

(e) LAUNDRY. Before laundering, soiled linens and clothing must be stored in closed containers in an area that is separate from food storage, kitchen, and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(f) Garbage and refuse must be suitably stored in readily cleanable, rodent-proof, covered containers, pending weekly removal.

(g) VENTILATION. All doors and windows that are used for ventilation must have screens in good condition.

(h) INFECTION CONTROL. Standard precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(i) DISPOSAL OF SHARPS. Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. The puncture-resistant container must be located as close as practical to the use area. Disposal must be made according to local regulations as stated in section (5) of this rule. (See 459.386 to 459.405).

(j) FIRST AID. Current, basic first-aid supplies and a first-aid manual must be readily available in the home.

(k) PESTS. Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects, and rodents).

(l) PETS OR OTHER ANIMALS. Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and not present a danger to the residents or guests.

(m) SAFETY BARRIERS. Patios, decks, walkways, swimming pools, hot tubs, spas, saunas, water features, and stairways, as appropriate, must be equipped with safety barriers designed to prevent injury. Resident access to or use of swimming or other pools, hot tubs, spas, or saunas on the premises must be supervised.

(3) BATHROOMS. Bathrooms must:

(a) Provide individual privacy and have a finished interior with a door that opens to a hall or common-use room. If a resident's bedroom includes a private bathroom, the door for the private bathroom must open to the bedroom. No person must have to walk through another person's bedroom to access a bathroom.

(b) Be large enough to accommodate the individual needs of the residents and any equipment that may be necessary.

(c) Have a mirror, a window that opens or other means of ventilation, and a window covering for privacy.

(d) Be clean and free of objectionable odors.

(e) Have bathtubs, showers, toilets, and sinks in good repair. A sink must be located near each toilet and a toilet and sink must be available for the resident's use on each floor with resident rooms. There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants (including residents, day care individuals, room and board tenants, the licensee, and the licensee's family).

(f) Have hot and cold water at each bathtub, shower, and sink in sufficient supply to meet the needs of the residents.

(g) Have nonporous surfaces for shower enclosures. Glass shower doors, if applicable, must be tempered safety glass, otherwise, shower curtains must be clean and in good condition.

(h) Have non-slip floor surfaces in bathtubs and showers.

(i) Have grab bars for each toilet, bathtub, and shower to be used by the residents for safety.

(j) Have barrier-free access to toilet and bathing facilities.

(k) Have adequate supplies of toilet paper and soap supplied by the licensee. Residents must be provided with individual towels and washcloths that are laundered in hot water at least weekly or more often if necessary. Residents must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in a dispenser must be provided for the residents' use.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must have:

(A) Been constructed as a bedroom when the home was built, or remodeled under permit.

(B) A finished interior with walls or partitions of standard construction that go from floor to ceiling.

(C) A door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom. The bedroom door must be large enough to accommodate the occupant of the room and any mobility equipment that may be needed by the resident.

(D) Adequately ventilation, heating, and lighting with at least one window that opens and meets the requirements in section (5)(e) of this rule.

(E) At least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright.

(F) No more than two occupants per room. (See also OAR 411-050-0632 pertaining to a child's bedroom). This rule is not intended to prohibit a child five years of age or younger from occupying his or her parent's bedroom.

(b) The licensee, any other caregivers, and family members may not sleep in areas designated as living areas or share a bedroom with a resident. This rule is not intended to prohibit a caregiver or other person of the resident's choosing from temporarily staying in the resident's room when required by the resident's condition.

(c) There must be a bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Waterproof mattress covers must be used for incontinent residents. Day care individuals may use a cot or rollaway bed if bedroom space is available that meets the requirements of section (4)(a) of this rule. A resident's bed may not be used by a day care individual.

(d) Each resident's bedroom must have a separate, private dresser and closet space sufficient for the resident's clothing and personal effects, including hygiene and grooming supplies. A resident must be provided a private, secure storage space to keep and use reasonable amounts of personal belongings. A licensee may not use a resident's bedroom for storage of items, supplies, devices, or appliances that do not belong to the resident.

(e) All resident bedroom doors must have a locking device on the inside of the door, released by a single action. (See OAR 411-050-0650(5)). Providers licensed before January 1, 2016 have until September 1, 2018 to fully implement this requirement.

(f) Drapes or shades for bedroom windows must be in good condition and allow privacy for the residents.

(g) A resident who is non-ambulatory, has impaired mobility, or is cognitively impaired must have a bedroom with a safe, second exit at ground level. A resident with a bedroom above or below the ground floor must demonstrate his or her capability for self-preservation.

(h) Resident bedrooms must be in close enough proximity to the licensee or caregiver in charge to alert the licensee or caregiver in charge to resident nighttime needs or emergencies, or the bedrooms must be equipped with a functional call bell or intercom within the residents' abilities to operate. Intercoms may not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request.

(i) Bedrooms used by the licensee, resident manager, shift caregiver, and substitute caregiver, as applicable, must be located in the adult foster home and must have direct access to the residents through an interior hallway or common use room.

(5) SAFETY.

(a) FIRE AND LIFE SAFETY. Buildings must meet all applicable state and local building, mechanical, and housing codes

for fire and life safety. The home may be inspected for fire safety by the State Fire Marshal's Office, or the State Fire Marshal's designee, at the request of the local licensing authority or the Department using the standards in these rules, as appropriate.

(b) HEAT SOURCES. All heating equipment including, but not limited to, wood stoves, pellet stoves, and fireplaces must be installed in accordance with all applicable state and local building and mechanical codes. Heating equipment must be in good repair, used properly, and maintained according to the manufacturer's or a qualified inspector's recommendations.

(A) A licensee who does not have a permit verifying proper installation of an existing woodstove, pellet stove, or gas fireplace must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth, Patio, and Barbeque Association member and follow the inspector's recommended maintenance schedule.

(B) Fireplaces must have approved and listed protective glass screens or metal mesh screens anchored to the top and bottom of the fireplace opening.

(C) The local licensing authority may require the installation of a non-combustible, heat-resistant, safety barrier 36 inches around a woodstove to prevent residents with ambulation or confusion problems from coming in contact with the stove.

(D) Unvented, portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over, shut-off capability may be used when approved by the State Fire Marshal or the State Fire Marshal's designee. A heater must be directly connected to an electrical outlet and may not be connected to an extension cord.

(c) EXTENSION CORDS AND ADAPTORS. Extension cord wiring and multi-plug adaptors may not be used in place of permanent wiring. UL-approved, re-locatable power taps (RPTs) with circuit breaker protection and no more than six electrical sockets are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPT must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(d) LOCKS AND ALARMS. Hardware for all exit doors and interior doors must be readily visible, have simple hardware that may not be locked against exit, and have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted.

(A) All resident bedroom doors must have a locking device on the inside of the door, released by a single action.

(B) Each resident shall be provided a key that locks and unlocks only his or her bedroom door.

(C) A master key to all of the residents' bedroom door locks must be immediately available to the licensee and all other caregivers in the home.

(D) Providers licensed prior to January 1, 2016 must be in full compliance with (A) through (C) of this rule by September 1, 2018.

(E) If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(e) WINDOWS. Bedrooms must have at least one window or exterior door that leads directly outside, readily opens from the inside without special tools, and provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 24 inches in height or 20 inches in width. If the interior sill height of the window is more than 44 inches from the floor level, approved steps or other aids to the window exit that the occupants are capable of using must be provided. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with interior sill heights of no more than 48 inches above the floor may be accepted when approved by the State Fire Marshal or the State Fire Marshal's designee.

(f) CONSTRUCTION. Interior and exterior doorways must be wide enough to accommodate the mobility equipment used by the residents such as wheelchairs and walkers. All interior and exterior stairways must be unobstructed, equipped with handrails on both sides, and appropriate to the condition of the residents. (See also section (5)(q) of this rule).

(A) Buildings must be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread index of finished materials may not exceed 200 and the smoke developed index may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(i) MANUFACTURED HOMES. A manufactured home (formerly mobile homes) must have been built in 1976 or later and designed for use as a home rather than a travel trailer. The manufactured home must have a manufacturer's label permanently affixed on the unit itself that states the manufactured home meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(ii) If such a label is not evident and the licensee believes the manufactured home meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the home's manufacturer.

(iii) Manufactured homes built in 1976 or later meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(B) STRUCTURAL CHANGES. The licensee must notify the local licensing authority, in writing, at least 15 calendar days before any remodeling, renovations, or structural changes in the home that require a building permit. Such activity must comply with local building, sanitation, utility, and fire code requirements applicable to a single-family dwelling (see ORS 443.760(1)). The licensee must forward all required permits and inspections, an evacuation plan as described in section (5)(l) of this rule, and a revised floor plan as described in section (5)(o) of this rule, to the local licensing authority within 30 calendar days of completion.

(g) FIRE EXTINGUISHERS. At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted in a location visible and readily accessible to any occupant of the home on each floor, including basements. Fire extinguishers must be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(h) CARBON MONOXIDE AND SMOKE ALARMS.

(A) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the manufacturer's instructions. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(i) If bedrooms are located in multi-level homes, carbon monoxide alarms must be installed on each level, including the basement.

(ii) Carbon monoxide alarms may be hard-wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with a battery back-up. Battery operated carbon monoxide alarms must be equipped with a device that warns of a low battery.

(iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(B) SMOKE ALARMS. Smoke alarms must be installed in accordance with the manufacturer's instructions in each bedroom, in hallways or access areas that adjoin bedrooms, the family room or main living area where occupants congregate, any interior designated smoking area, and in basements. In addition, smoke alarms must be installed at the top of all stairways in multi-level homes.

(i) Ceiling placement of smoke alarms is recommended.

(ii) Battery operated smoke alarms or hard-wired smoke alarms with a battery backup must be equipped with a device that warns of a low battery.

- (iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.
- (C) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when activated an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed. Intercoms and room monitors may not be used to amplify alarms.
- (D) The licensee must test all carbon monoxide alarms and smoke alarms in accordance with the manufacturer's instructions at least monthly (per NFPA 72). Testing must be documented in the facility records. The licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.
- (i) **COMBUSTIBLES AND FIREARMS.** Flammables, combustible liquids, and other combustible materials must be safely and properly stored in the original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals.
- (A) Oxygen and other gas cylinders in service or in storage, must be adequately secured to prevent the cylinders from falling or being knocked over.
- (B) No smoking signs must be visibly posted where oxygen cylinders are present.
- (C) Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not accessible to the residents.
- (D) Ammunition must be secured in a locked area separate from the firearms.
- (j) **HAZARDOUS MATERIALS.** Cleaning supplies, poisons, insecticides, and other hazardous materials must be properly stored in the original container, or in a container manufactured for the type of product. The containers must be properly labeled and kept in a safe area that is not accessible to residents, or near food preparation areas, food storage areas, dining areas, or medications.
- (k) **MEDICAL SHARPS.** All sharps, including, but not limited to needles and lancets, must be disposed of in approved sharps containers. Sharps containers must:
- (A) Be puncture-resistant.
- (B) Be leak-proof.
- (C) Be labeled or color-coded red to warn that the contents are hazardous.
- (D) Have a lid, flap, door, or other means of closing the container and inhibits the ability to remove sharps from the container.
- (E) Not be overfilled.
- (F) Be stored in an upright position in a secure location that is not accessible to residents and not close to any food preparation or food storage area.
- (G) Must be closed immediately once full and properly disposed of within 10 days, according to the home's waste management company's or pharmacy's instructions.
- (l) **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.
- (m) **ORIENTATION TO EMERGENCY PROCEDURES.** Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a smoke alarm, shown how to participate in an emergency evacuation drill, and receive an orientation to basic fire safety. New caregivers must also be oriented in how to conduct an evacuation.
- (n) **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. The evacuation drill must be clearly documented, signed by the caregiver conducting the drill, and maintained according to OAR 411-050-0645.
- (A) The licensee and all other caregivers must:
- (i) Be able to demonstrate the ability to evacuate all occupants from the facility to the initial point of safety within three minutes or less. The initial point of safety must:
- (l) Be exterior to and a minimum of 25 feet away from the structure.

(II) Have direct access to a public sidewalk or street.

(III) Not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.

(ii) Be able to demonstrate the ability to further evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less. The final point of safety must be a minimum of 50 feet away from the structure, and:

(I) Have direct access to a public sidewalk or street; or

(II) Not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.

(B) Conditions may be applied to a license if the licensee or caregivers demonstrate the inability to meet the evacuation times described in this section. Conditions may include, but are not limited to, reduced capacity of residents, additional staffing, or increased fire protection. Continued problems are grounds for revocation or non-renewal of the license.

(o) FLOOR PLAN. The licensee must develop 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, and for day care 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 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 adult foster home's premises.

(p) RESIDENT PLACEMENT. A resident, who is unable to walk without assistance or not capable of self-preservation, may not be placed in a bedroom on a floor without a second ground level exit. (See also section (4)(g) of this rule).

(q) 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 (5)(f) of this rule).

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

(s) RAMPS. 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 (http://www.ada.gov/2010ADASTandards_index.htm, Chapter 4, Accessible Routes, Section 405, Ramps).

(t) EMERGENCY EXITS. There must be a second safe means of exit from all sleeping rooms. A provider 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 provider's sleeping room using the secondary exit.

(u) 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.

(v) SMOKING. The licensee must identify the home's smoking policies in the home's Residency Agreement. If smoking is allowed in or on the premises of the home:

(A) The Residency Agreement must restrict smoking to designated areas, and prohibit smoking in:

(i) Any bedroom, including that of the residents, licensee, resident manager, any other caregiver, occupant, or visitor.

(ii) Any room where oxygen is used.

(iii) Anywhere flammable materials are stored.

(B) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(w) EMERGENCY PREPAREDNESS PLAN. A licensee 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. Emergency supplies,

consistent with the community standards (as indicated at: www.redcross.org/prepare/location/home-family) must be kept current and readily available in the home.

(A) The written emergency plan must:

(i) 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.

(ii) Include an outline of the caregiver's duties during an evacuation.

(iii) 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.

(iv) Include provisions and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff.

(v) Planned relocation sites.

(B) The licensee must notify the Department or the local licensing authority of the home's status in the event of an emergency that requires evacuation and during any emergent situation when requested.

(C) The licensee must re-evaluate the emergency preparedness plan at least annually and whenever there is a significant change in the home.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 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 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0655

RULE TITLE: Standards and Practices for Care and Services

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

(1) PRE-ADMISSION SCREENING AND ASSESSMENT.

(a) Before admission, the licensee 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 are able to 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 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 the prospective resident's 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 181.805 is applying for admission to an adult foster home, the Department or AAA shall notify the home of the person's status as a sex offender.

(d) The licensee 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 181.805.

(e) REQUIRED DISCLOSURES.

(A) The licensee 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 and approved Residency Agreement identifying the home's policies shall be provided to the prospective resident and his or her representative. (See OAR 411-050-0615).

(B) LONG-TERM CARE ASSESSMENT. The licensee 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 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 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 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 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.

(c) The licensee 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 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.

(3) SCREENING BEFORE RE-ADMISSION. When a resident temporarily leaves the home including, but not limited to, a resident's hospitalization, the licensee 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 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 OAR 411-050-0645(11).

(4) CARE PLAN.

(a) During the initial 14 calendar days following the resident's admission to the home, the licensee must continue to assess and document the resident's preferences and care needs. The assessment and care plan must be completed by the licensee 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, 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 psychoactive medications.
 - (N) Dietary needs and preferences.
- (b) Effective January 1, 2017 and no later than February 28, 2018, the licensee must identify any individually-based limitations to the following freedoms on the Department's Individual Consent to HCBS Limitations form:
- (A) Support to access to food at any time.
 - (B) Visitors of the resident's choosing at any time.
 - (C) A lock on the resident's bedroom, lockable by the resident.
 - (D) Choice of a roommate, if sharing a bedroom.
 - (E) Support to furnish and decorate the resident's bedroom as the resident chooses.
 - (F) Freedom and support to control the resident's schedule and activities.
 - (G) Privacy in the resident's bedroom.
- (c) Effective January 1, 2017 and no later than February 28, 2018, a limitation to any freedom in (b) of this rule must be supported by a specific assessed need due to threats to the health and safety of the resident or others. For Medicaid-eligible residents, the person-centered service plan coordinator must authorize the limitation and the individual must consent to the limitation. The licensee 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 any 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 the new care setting must comply with the requirements as stated in OAR 411-050-0655.
- (e) The licensee must review and update each resident's care plan every six months and when a resident's condition changes. The review must be documented in the resident's record at the time of the review and include the date of the review and the licensee's signature. If a care plan contains many changes and becomes less legible, a new care plan must be written.
- (5) PERSON-CENTERED SERVICE PLAN. A Medicaid-eligible resident's case manager will complete a person-centered service plan, pursuant to OAR 411-004-0030. The licensee must incorporate all applicable elements identified in the person-centered service plan that the provider is responsible for implementing.
- (a) The licensee must notify the resident's case manager in the event a review and change or removal of an existing limitation is warranted, and when a new limitation is supported by a specific assessed need.
- (A) All attempts to notify the resident's case manager about a review to change, remove, or add a limitation must be documented, and available in the resident's record.
 - (B) The licensee will not be held responsible for any failure on the case manager's part to conduct a review of current limitations or to complete the person-centered service plan.
- (b) Providers may assist non-Medicaid residents in developing a person-centered service plan when no alternative resources are available.
- (6) REGISTERED NURSE CONSULTATION.
- (a) RN CONSULTATION AND ASSESSMENT. A licensee must obtain a medical professional consultation and

assessment to meet the care needs of a resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task, as defined by the Oregon State Board of Nursing, has been ordered by a physician or other licensed health care professional.

(b) A licensee must also request a registered nurse consultation under the following conditions:

(A) When a resident has a health concern or behavioral symptoms that may benefit from a nursing assessment and provider education.

(B) When written parameters are needed to clarify a prescribing practitioner p.r.n. order for medication and treatment (See section (7)(g) of this rule).

(C) Before the use of physical restraints when not assessed, taught, and reassessed, according to section (7)(o) of this rule, by a physician, nurse practitioner, physician assistant, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist.

(D) Before requesting psychoactive medications to treat behavioral symptoms or the use of new psychoactive medications when not assessed, taught, and reassessed according to section (7)(h) of this rule, by a physician, nurse practitioner, physician assistant, or mental health practitioner.

(E) When care procedures are ordered that are new for a resident, the licensee, or other caregivers.

(c) RN DELEGATIONS. A registered nurse may determine a nursing care task be taught utilizing the delegation process. RN delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 851, division 047).

(d) Documentation of nurse consultations, delegations, assessments, and reassessments must be maintained in the resident's record and made available to the Department upon request.

(7) STANDARDS FOR MEDICATIONS, TREATMENTS, AND THERAPIES.

(a) MEDICATIONS. The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen. Medication resource material must be readily available at the home and include the reason a medication is used, any specific instructions, the medication's actions, and common side effects.

(b) WRITTEN ORDERS. The licensee must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies that have been ordered by a prescribing practitioner. The written orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. The prescribing practitioner must be notified if the resident refuses to consent to an order.

(A) CHANGED ORDERS. Changes to a written order may not be made without a prescribing practitioner order. The prescribing practitioner must be notified if the resident refuses to consent to the change order. Changes to medical orders obtained by telephone must be followed-up with signed orders within seven calendar days. Changes in the dosage or frequency of an existing medication require a new properly labeled and dispensed medication container. If a new properly labeled and dispensed medication container is not obtained, the change must be written on an auxiliary label attached to the medication container, not to deface the existing original pharmacy label, and must match the new medication order. Attachment of the auxiliary label must be documented in the residents' record. (See section (7)(f)(D) of this rule).

(B) DOCUMENTATION OF CHANGED ORDERS. Attempts to obtain the signed written changes must be documented and readily available for review in the resident's record. The resident's medications, including medications that are prescribed, over-the-counter medications, and home remedies, must be reviewed by the resident's prescribing practitioner or pharmacist at least annually. The review must be in writing, include the date of the review, and contain the signature of the prescribing practitioner or a pharmacist.

(c) MEDICATION SUPPLIES. The licensee must have all currently prescribed medications, including p.r.n. medications, and all prescribed over-the-counter medications available in the home for administration. Refills must be obtained before depletion of current medication supplies. Attempts to order refills must be documented in the resident's record.

(d) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee who implements a hospice, home health, or other licensed medical professional-generated order must:

(A) Have a copy of the hospice, home health, or licensed medical professional document that communicates the written order.

- (B) Transcribe the order onto the medication administration record (MAR).
- (C) Implement the order as written.
- (D) Include the order on subsequent medical visit reports for the prescribing practitioner to review.
- (e) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). A licensee must allow a resident to receive hospice services. The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:
 - (A) Have a copy of the hospice or home health document that communicates the written order; and
 - (B) Include the order on subsequent medical visit reports for the prescribing practitioner to review.
- (f) MEDICATION ADMINISTRATION RECORD (MAR). A current, written medication administration record (MAR) must be kept for each resident and must:
 - (A) List the name of all medications administered by a caregiver, including over-the-counter medications and prescribed dietary supplements. The MAR must identify the dosage, route, date, and time each medication and supplement is to be given.
 - (B) Identify any treatments and therapies administered by a caregiver. The MAR must indicate the type of treatment or therapy and the time the procedure must be performed.
 - (C) Be immediately initialed by the caregiver administering the medication, treatment, or therapy as it is completed. A resident's MAR must contain a legible signature that identifies each set of initials.
 - (D) Document changed and discontinued orders immediately showing the date of the change or discontinued order. A changed order must be written on a new line with a line drawn to the start date and time.
 - (E) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the caregiver administering the medication, treatment, or therapy must be circled, and a brief, but complete, explanation must be recorded on the back of the MAR.
- (g) P.R.N. MEDICATIONS. Prescription medications ordered to be given "as needed" or "p.r.n." must have specific parameters indicating what the medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.
 - (A) P.R.N. DOCUMENTATION. As needed (p.r.n) medications must be documented on the resident's MAR with the time, dose, the reason the medication was given, and the outcome.
 - (B) P.R.N. ADVANCE SET-UP. As needed (p.r.n.) medications may not be included in any advance set-up of medication.
- (h) PSYCHOACTIVE MEDICATIONS.
 - (A) A licensee is not required to request an evaluation of a resident's use of a psychoactive medication if the resident is admitted to the home and the resident has been prescribed the psychoactive medication for a condition that is currently monitored by a physician, nurse practitioner, physician assistant, or mental health professional and the written order for the psychoactive medication is in the resident's record.
 - (B) If a resident is admitted to a home with no documented history as to the reason for taking a psychoactive medication, or if the licensee requests medical professional intervention to address behavioral symptoms, the licensee must request a physician, nurse practitioner, physician assistant, or mental health professional evaluate the resident's need for the psychoactive medication and the intended effect of the medication, common side effects, and circumstances for reporting. The evaluation request must be documented in the resident's record and include:
 - (i) A probable cause of the resident's behavior.
 - (ii) Behavioral and environmental interventions to be used instead of or in addition to psychoactive medication, if applicable. Alternative interventions must be tried as instructed by a licensed medical professional and the resident's response to the alternative interventions must be documented in the resident's record before administering a psychoactive medication.
 - (iii) A plan for reassessment by the resident's prescribing physician, nurse practitioner, physician assistant, or mental health professional.
 - (C) The prescription and order for a psychoactive medication must specify the dose, frequency of administration, and

the circumstance for use (i.e., specific symptoms). The licensee and all caregivers must be aware of and comply with these parameters.

(D) The licensee and all caregivers must know the intended effect of a psychoactive medication for a particular resident and the common side effects, as well as the circumstances for reporting to the resident's physician, nurse practitioner, physician assistant, or mental health professional.

(E) The resident's care plan must identify and describe the behavioral symptoms psychoactive medications are prescribed for and a list of all interventions, including behavioral, environmental, and medication.

(F) Psychoactive medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) MEDICATION CONTAINERS AND STORAGE.

(A) MEDICATION CONTAINERS. Each of the resident's prescribed medication containers, including bubble packs, must be clearly labeled by the pharmacy. All medications, including over-the-counter medications, must be in the original container. Medications stored in advanced set up containers are required to be labeled as described in these rules.

(B) OVER-THE-COUNTER PRODUCTS. Over-the-counter products such as medications, vitamins, and supplements purchased for a specific resident's use must be marked with the resident's name. Over-the-counter items in stock bottles (with original labels) may be used for multiple residents in the home and must be clearly marked as the house supply.

(C) STORAGE OF RESIDENT MEDICATION. All resident medications, including over-the-counter medications, must be kept in a locked, central location that is cool, clean, dry, not subject to direct sunlight, and separate from medications belonging to the licensee, caregivers, and all other non-residents. Medications requiring refrigeration must also be locked and stored separately from non-resident medications.

(D) STORAGE OF NON-RESIDENT MEDICATION. All non-resident medications must be kept locked and separate from resident medications. Residents may not have access to medications belonging to the licensee, caregivers, other household members, or pets.

(j) DISPOSAL OF MEDICATION. Outdated, discontinued, recalled, or contaminated medications, including over-the-counter medications, may not be kept in the home and must be disposed of within 10 calendar days of expiration, discontinuation, or the licensee's knowledge of a recall or contamination. A licensee must contact the local DEQ waste management company in the home's area for instructions on proper disposal of unused or expired medications.

(k) DOCUMENTATION OF DISPOSAL. The disposal of a resident's medication must be documented in the resident's record and the documentation must be readily available in the resident's record.

(A) The disposal of a controlled substance must be documented in the resident's record and the disposal must be witnessed by a caregiver who is 18 years of age or older.

(B) Documentation regarding the disposal of medications and controlled substances must include:

(i) The date of disposal.

(ii) Description of the medication, (i.e., name, dosage, and amount being disposed).

(iii) Name of the resident for whom the medication was prescribed.

(iv) Reason for disposal.

(v) Method of disposal.

(vi) Signature of the person disposing of the medication.

(vii) For controlled substances, the signature of the caregiver who witnessed the disposal according to this rule.

(l) ADVANCED SET-UP. The licensee may set-up each resident's medications for up to seven calendar days in advance (excluding p.r.n. medications) by using a closed container manufactured for the advanced set-up of medications. If used, each resident must have his or her own container with divisions for the days of the week and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route, and description of each medication. The container must be stored in the locked area with the residents' medications.

(m) SELF-ADMINISTRATION OF MEDICATION. A licensee must have a prescribing practitioner written order of approval for a resident to self-medicate. A resident able to handle his or her own medical regimen may keep his or her

medications in his or her own room in a lockable storage area or device. Medications must be kept locked except those medications on the residents' own person. The licensee must notify the prescriber of the medication if the resident shows signs of no longer being able to self-medicate safely.

(n) INJECTIONS. Subcutaneous, intramuscular, and intravenous injections may be self-administered by a resident if the resident is fully independent in the task or may be administered by a relative of the resident or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (OAR 851-047-0000 to 851-047-0040) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated. (See OAR 411-050-0650(5) for storage and disposal requirements of sharps, including, but not limited to used needles and lancets).

(o) PHYSICAL RESTRAINTS. Physical restraints may only be used when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Physical restraints may only be used after a written assessment is completed as described below and all alternatives have been exhausted. Licensees and caregivers may use physical restraints in adult foster homes only in compliance with these rules, including the Resident's Rights listed in section (9) of this rule. Before the use of any type of physical restraint, the following must be completed:

(A) ASSESSMENT. A written assessment must be obtained from the resident's physician, nurse practitioner, physician assistant, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist that includes consideration of all other alternatives.

(B) ORDERS. If it is determined that a physical restraint is necessary following the assessment and trial of other measures, the least restrictive restraint must be used as infrequently as possible. The licensee must obtain a written order from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner before the use of a physical restraint. The written order must include specific parameters, including the type of physical restraint, circumstances for use, and duration of use, including:

(i) Procedural guidance for the use of the physical restraint.

(ii) The frequency for reassessment.

(iii) The frequency and procedures for nighttime use.

(iv) Dangers and precautions for using the physical restraint.

(C) Physical restraints may not be used on an as needed (p.r.n.) basis in an adult foster home.

(D) CONSENT. Physical restraints must not be used without first obtaining the written consent of the resident or the resident's legal representative.

(E) DOCUMENTATION. If it is determined a physical restraint is necessary following the assessment and trial of other measures, the written order for the use of a physical restraint must be documented in the resident's care plan explaining why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment, and cautions for maintaining the resident's safety while restrained, must also be recorded in the resident's care plan. The resident's record must include:

(i) The completed assessment as described in this rule.

(ii) The written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner.

(iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint.

(iv) The reassessments completed by a medical professional as described above in subsection (B) of this rule.

(F) DAYTIME USE. A resident physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, and provided exercise or range-of-motion exercises during this period. The use of restraints, restraint release, and activities that occurred during the release period must be documented in the resident's record.

(G) NIGHTTIME USE. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint must be of a design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any

kind must not be used to keep a resident in bed.

(H) If any physical restraints are used in an adult foster home, the restraints must allow for quick release at all times. Use of restraints may not impede the three-minute evacuation of all occupants of the home.

(I) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

(8) RESIDENT CARE.

(a) Care and supervision of residents must be in a home-like 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 411-050-0650.

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

(c) NOTIFICATION. The licensee 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 may not inflict, or tolerate to be inflicted, abuse or punishment, financial exploitation, or neglect of the residents.

(e) 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) ACTIVITIES. The licensee must make available at least six hours of activities per week that are of interest to the residents, not including television and movies. Information regarding activity resources is available from the local licensing authority. Activities must be oriented to individual preferences as indicated in the resident's care plan. (See section (4) of this rule). Documentation of the activities offered to each resident and the resident's participation in those activities must be recorded in the resident's records.

(h) DAY CARE. Before the admission of each day care individual, the licensee must:

(A) Conduct and document a screening as described in section (1) of this rule.

(B) Obtain current medical professional orders as described in section (7) of this rule, if medications are to be administered and the necessary delegations, as applicable.

(C) Develop and maintain a current, written medication administration record (MAR) as described in section (7) of this rule, if medications are to be administered.

(i) DIRECT INVOLVEMENT OF CAREGIVERS. The licensee or caregivers must be directly involved with the residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between the caregivers and residents and among residents, the licensee must demonstrate how regular positive contact occurs.

(j) RESIDENT MONEY. If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee may not under any circumstances commingle, borrow from, or pledge

any of a resident's funds. The licensee 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 and ORS 127.520).

(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 of the residents or the residents' representatives that the residents or the residents' 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.

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

(9) RESIDENT'S RIGHTS.

(a) Resident's Bill of Rights. The licensee, the licensee's family, and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Department must be explained and a copy given to each resident at the time of admission. The Residents' Bill of Rights 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) Be free from abuse.

(G) Complete privacy when receiving treatment or personal care.

(H) Associate and communicate privately with any person of choice and send and receive personal mail unopened.

(I) Have access to, and participate in, activities of social, religious, and community groups.

(J) Have medical and personal information kept confidential.

(K) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(L) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner.

Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not to be used for discipline or convenience.

(M) Manage his or her own financial affairs unless legally restricted.

(N) 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.

(O) 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.

(P) Not be transferred or moved out of the adult foster home without 30 calendar days' written notice and an opportunity for a hearing. A licensee may transfer a resident only for medical reasons, for the welfare of the resident or other residents, or for nonpayment.

(Q) A safe and secure environment.

(R) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

(S) Make suggestions or complaints without fear of retaliation.

(T) Be free of discrimination in regard to the execution of an Advance Directive, Physician's Order for Life-Sustaining Treatment (POLST), or Do Not Resuscitate (DNR) orders.

(b) Providers initially licensed before January 1, 2016 have until September 1, 2018 to fully comply with this rule.

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.
- (H) To privacy in the resident's bedroom.

(10) INDIVIDUALLY-BASED LIMITATIONS. This section and (11) of this rule will become effective on January 1, 2017 and must be in place no later than February 28, 2018.

(a) Individual limitations must be supported by a specific assessed need. A limitation may be implemented only with the informed consent of the resident, or the resident's legal representative. Limitations may only be considered to the rights identified in (9)(a)(L) and (b)(B)-(H) of this rule.

(b) Limitations are not transferable between care settings.

(11) REQUIRED DOCUMENTATION FOR INDIVIDUALLY-BASED LIMITATIONS. Each limitation under consideration must be documented on the Department-approved consent form. Documentation must include:

- (a) The reason the limitation is needed.
- (b) The positive interventions and supports used before any individually-based limitation.
- (c) Less intrusive methods that were tried before and did not work.
- (d) A clear description of how the limitation supports the assessed need of the resident.
- (e) A way to regularly measure if the limitation is working.
- (f) When the limitation will be reviewed or removed.
- (g) Informed consent from the resident or resident's legal representative, including any discrepancy between the wishes of the individual and the consent of the legal representative.
- (h) An assurance that the limitation will not be harmful to the resident.

STATUTORY/OTHER AUTHORITY: ORS 127.520, 410.070, 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 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991, 443.373

AMEND: 411-050-0665

RULE TITLE: Abuse Reporting, Complaints, and Notification of Findings

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

- (1) ABUSE REPORTING. Abuse is prohibited. The facility employees and licensee may not permit, aid, or engage in abuse of residents. Abuse and suspected abuse must be reported in accordance with OAR 411-020-0020.
 - (a) STAFF REPORTING. All facility employees must immediately report abuse and suspected abuse to the investigative authority.
 - (b) LICENSEE REPORTING. The licensee must immediately notify the investigative authority of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.
 - (c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances).
- (2) IMMUNITY AND PROHIBITION OF RETALIATION.
 - (a) The licensee may not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner, including, but not limited to:
 - (A) Increasing or threatening to increase charges;
 - (B) Decreasing or threatening to decrease services;
 - (C) Withholding rights or privileges;
 - (D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or
 - (E) Threatening to harass or abuse a resident in any manner.
 - (b) The licensee must ensure any complainant, witness, or employee of a facility is not subjected to retaliation by any caregiver, (including the caregiver's family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint, or being a witness, including, but not limited to, restriction of access to the home or a resident or, if an employee, dismissal or harassment.
 - (c) Anyone who, in good faith, reports abuse or suspected abuse has immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.
- (3) Immunity under this rule does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.
- (4) The local licensing authority must furnish each adult foster home with a Complaint Notice that states the telephone number of the Department, the investigative authority, and the Long-Term Care Ombudsman, and the procedure for making complaints.
- (5) Any person who believes these rules have been violated may file a complaint with the Department, the local licensing authority, or the investigative authority.
- (6) The Department or the investigative authority shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20 or OAR chapter 407, division 45, as applicable.
- (7) Immediate protection shall be provided for the residents by the Department, the local licensing authority, or the

investigative authority, as necessary, regardless of whether the investigative report is completed. The licensee must immediately cease any practice that places a resident at risk of serious harm.

(8) A copy of the entire investigation report shall be sent to the Department upon completion of the investigation report.

(9) NOTIFICATION OF FINDINGS. Upon a determination of substantiated abuse or a rule violation, the Department must provide written notification of its findings to the licensee.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation.

(B) Include the date and time of each occurrence.

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive.

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation.

(E) Include a copy of the complaint investigation report.

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 calendar days to provide additional or different information.

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Department determines there is substantiated abuse, the Department may determine the licensee, an individual, or both the licensee and an individual were responsible for abuse. In determining responsibility, the Department shall consider intent, knowledge, and ability to control, and adherence to professional standards, as applicable.

(A) LICENSEE RESPONSIBLE. Examples of when the Department shall determine the licensee is responsible for the abuse include, but are not limited to the licensee's failure to:

(i) Provide sufficient, qualified staffing in accordance with these rules without reasonable effort to correct.

(ii) Check for or act upon relevant information available from a licensing board.

(iii) Act upon information from any source regarding a possible history of abuse by any staff or prospective staff.

(iv) Adequately train, orient, or provide sufficient oversight to staff.

(v) Provide adequate oversight to residents.

(vi) Allow sufficient time to accomplish assigned tasks.

(vii) Provide adequate services.

(viii) Provide adequate equipment or supplies.

(ix) Follow orders for treatment or medication.

(B) INDIVIDUAL RESPONSIBLE. Examples of when the Department determines an individual is responsible include, but is not limited to:

(i) Intentional acts against a resident, including assault, rape, kidnapping, murder, or sexual, verbal, or mental abuse.

(ii) Acts contradictory to clear instructions from the facility, such as those identified in section (10)(b)(A) of this rule, unless the act is determined by the Department to be the responsibility of the facility.

(iii) Callous disregard for resident rights or safety.

(iv) Intentional acts against a resident's property (e.g., theft or misuse of funds).

(C) An individual may not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(D) NURSING ASSISTANTS. In cases of substantiated abuse by a nursing assistant, the written notice shall explain:

(i) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140.

(ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(c) DISTRIBUTION.

(A) The written notice shall be mailed to:

- (i) The licensee.
- (ii) Any person reported to have committed wrongdoing.
- (iii) The complainant, if known.
- (iv) The Long-term Care Ombudsman.
- (v) The local licensing authority.

(B) A copy of the written notice must be placed in the Department's facility complaint file.

(10) Upon receipt of a notice that substantiates abuse for victims covered by ORS 430.735, the facility must provide written notice of the findings to the individual found to have committed abuse, residents of the facility, and the residents' case manager and representatives.

(11) Licensees who acquire substantiated complaints pertaining to the health, safety, or welfare of residents may be assessed civil penalties, have conditions placed on their licenses, or have their licenses suspended, revoked, or not renewed.

(12) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the local licensing authority. Individuals may purchase a photocopy upon requesting an appointment to do so.

(13) The Department and the local licensing authority may not disclose information that may be used to identify a resident in accordance with OAR 411-020-0030 (Confidentiality) and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0670 and must:

- (a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.
- (b) Treat the names of the witnesses as confidential information.
- (c) Clearly designate the final disposition of the complaint.

(A) PENDING COMPLAINT REPORTS. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) COMPLAINT REPORTS AND RESPONSES. The investigation reports, including copies of the responses with confidential information deleted, must be available to the public at the local licensing authority office along with other public information regarding the adult foster home.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 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 124.050, 124.060, 124.075, 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991

AMEND: 411-050-0685

RULE TITLE: Civil Penalties

NOTICE FILED DATE: 08/14/2017

RULE SUMMARY: The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 050 to make permanent temporary changes that became effective May 1, 2017. The amendments to the rules eliminate the 10-day review period that allows the licensee and the complainant an opportunity to review a preliminary Adult Protective Service (APS) complaint report and provide additional information. The amendments enable the Department to comply with statutory time limits for completion of reports and corrective action. The proposed changes would also enable adult foster home licensees to utilize a preliminary fitness determination in the background check process as agreed upon during the collective bargaining process with SEIU on behalf of adult foster home providers, and add a mandatory penalty for failure to actively supervise an individual with an approved preliminary fitness determination. The Department is also making minor housekeeping changes to correct references to other rules, codes, and forms that are currently incorrect, improve grammar and punctuation, and to clarify rule text.

RULE TEXT:

- (1) Except as otherwise provided in this rule, civil penalties, not to exceed \$100 per violation to a maximum of \$250, may be assessed for a general violation of these rules.
- (2) Mandatory penalties up to \$500, unless otherwise required by law, shall be assessed for falsifying resident or facility records or causing another to do so.
- (3) A mandatory penalty of \$250 shall be imposed for failure to have either the licensee or other qualified caregiver on duty 24 hours per day in the adult foster home.
- (4) A mandatory penalty of \$250 shall be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.
- (5) A mandatory penalty of \$250 shall be imposed for allowing a caregiver with an approved preliminary fitness determination to work in or on the home's premises without another qualified caregiver present.
- (6) A mandatory civil penalty of \$100 shall be imposed for allowing a caregiver with an approved preliminary fitness determination to work in or on the home's premises without active supervision as described in OAR 411-050-0620.
- (7) The Department shall impose a civil penalty of not less than \$250 and no more than \$500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee and the admission places the resident or other residents at risk of harm.
- (8) Civil penalties up to a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.
- (9) If the Department, or the Department's designee, conducts an investigation and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Department shall impose a civil penalty of not less than \$2,500 for each violation.
 - (a) To impose this civil penalty, the Department must establish:
 - (A) The abuse arose from deliberate or other than accidental action or inaction.
 - (B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident.
 - (C) The person with the finding of abuse had a duty of care toward the resident.
 - (b) For the purposes of this civil penalty, the following definitions apply:
 - (A) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.
 - (B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.
 - (C) "Sexual abuse" means any form of nonconsensual sexual contact including, but not limited to, unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(10) In addition to any other liability or penalty provided by law, the Department may impose a penalty for any of the following:

(a) Operating the home without a license.

(b) The number of residents exceeds the licensed capacity.

(c) The licensee fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance.

(d) The home is unable to provide adequate level of care to the residents.

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home.

(f) The licensee fails to cooperate with the Department or fails to cooperate with the prescribing practitioner or licensed health care professional in carrying out a resident's care plan.

(g) The licensee fails to obtain an approved background check from the Department before employing a caregiver in the home.

(11) A civil penalty may be imposed for violations other than those involving the health, safety, or welfare of a resident if the licensee fails to correct the violation as required when a reasonable time frame for correction was given.

(12) Violations requiring a mandatory civil penalty, which occurred while the licensee was operating the AFH, will be imposed by the Department, even if the licensee subsequently closes the home or voluntarily surrenders the license.

(13) Any civil penalty imposed under this rule becomes due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person or sent by registered or certified mail and must include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved.

(b) A short and plain statement of the matters asserted or charged.

(c) A statement of the amount of the penalty or penalties imposed.

(d) A statement of the right to request a hearing.

(14) The person to whom the notice is addressed shall have 10 calendar days after receipt of the notice to make written application for a hearing. If a written request for a hearing is not timely received, the Department shall issue a final order by default.

(15) All hearings shall be conducted according to the applicable provisions of ORS 183.

(16) When imposing a civil penalty, the Department shall consider the following factors:

(a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation.

(b) Any prior violations of statutes, rules, or orders pertaining to the facility.

(c) The economic and financial conditions of the person incurring the penalty.

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents.

(e) The degree of harm to residents.

(17) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.

(18) Unless the penalty is paid within 10 calendar days after the order becomes final, the order constitutes a judgment and may be recorded by the county clerk, which becomes a lien upon the title to any interest in real property owned by that person. The Department may also initiate a notice of revocation for failure to comply with a final order.

(19) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(20) All penalties recovered under ORS 443.790 to 443.815 are paid to the Quality Care Fund.

STATUTORY/OTHER AUTHORITY: 443.001, 443.004, 443.725, 443.730, 443.735, ORS 410.070, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

STATUTES/OTHER IMPLEMENTED: ORS 443.001 - 443.004, 443.705 - 443.825, 443.875, 443.991