

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

**CHAPTER 411
DIVISION 360**

**ADULT FOSTER HOMES FOR PERSONS WITH
DEVELOPMENTAL DISABILITIES**

411-360-0010 Statement of Purpose

(Effective 2/1/2005)

These rules prescribe the standards and procedures for the licensure and provision of care and services to individuals in Department of Human Services adult foster homes for persons with developmental disabilities (AFH-DD) in a homelike environment that is safe and secure. The goal of the AFH-DD is to provide necessary care while emphasizing the individual's independence. This goal is reached through a cooperative relationship between the provider, the individual and their guardian, if applicable and the CDDP in a setting that protects and encourages the individual's independence, dignity, choice and decision making. The individual's needs are to be addressed in a manner that supports and enables the individual to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0020 Definitions

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005; and

(b) Abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0250 through 407-045-0360.

(3) "Activities of Daily Living (ADL)" are those personal functional activities required by an individual for continued well being including eating or nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.

(a) "Independent" means the individual may perform the ADL without help;

(b) "Assistance" means the individual is able to help with an ADL, but cannot do it entirely alone;

(c) "Dependent" means the individual is unable to do any part of an ADL; it must be done entirely by someone else.

(4) "Administrator" means the Assistant Director Department of Human Services and Administrator of Seniors and People with Disabilities, a cluster within the Department, or that person's designee.

(5) "Administration of Medication" means the act by a caregiver, who is responsible for the individual's care, of placing a medication in or on an individual's body.

(6) "Adult Foster Home (AFH)" means any home licensed by the Department in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. For the purpose of these rules, if a family member receives care, he or she shall be included as one of the five allowable individuals. A home or person that advertises to provide room, board, and care and services for adults, including word-of-mouth advertising, is deemed to be an AFH. For the purpose of these rules, an AFH does not include:

(a) Any house, institution, hotel or other similar living situation that supplies room and board only, or room only, or board only, where no individual thereof requires any element of care;

(b) Any specialized living situation for physically handicapped persons where the Department provides payment for personal care services other than to an AFH provider;

(c) Any residential facility, licensed under authority of ORS 443.400, which serves adults who are mentally or emotionally disturbed, developmentally disabled, elderly or physically disabled.

(7) "Adult Foster Home for Individuals with Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Department to provide residential care and support to individuals with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.

(10) "Appeal" is the process by which a licensed provider may petition the suspension, denial, revocation or civil penalty of their license or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(11) "Applicant" means any person who completes an application for a license who is also the owner of the business.

(12) "Authorized Department Representative" (ADR) means an employee of the Department who is qualified to have access to the Law Enforcement Data System (LEDS) information.

(13) "Bill of Rights" means civil, legal or human rights afforded to AFH individuals that are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the AFH Bill of Rights as described in OAR 411-360-0170(9).

(14) "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, ORS 678.010 to 678.445 Chapter 851, Division 047.

(15) "Care" means the provision of room, board, services and assistance with activities of daily living such as assistance with bathing, dressing, grooming, eating, managing money, recreation and medication management. Care also means services that encourage maximum individual independence and enhance quality of life.

(16) "Caregiver" means any person responsible for providing care and services to individuals including the provider; the resident manager; and any temporary, substitute or supplemental staff or other person designated to provide care and service to individuals.

(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or for behavior modification in place of a meaningful behavior or treatment plan.

(18) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(19) "Community Developmental Disability Program or CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(20) "Community Mental Health and Developmental Disability Program or CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the contract with the Department of Human Services.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability

program (CMHDDP) that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under a contract with the Department of Human Services.

(22) "Compensation" means payments by or on behalf of a individual to a provider in exchange for room and board, care and services as indicated in the Individual Support Plan. Compensation does not include the voluntary sharing of expenses between or among roommates.

(23) "Complaint Investigation" means an investigation of any allegation that a provider has taken action that is contrary to law, rule, or policy that does not meet the criteria for an abuse investigation.

(24) "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.

(25) "Contract" means an agreement between a provider and the Department to provide room, board, care and services for compensation to a individual of an AFH-DD.

(26) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(27) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS 427 and imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(28) "Day Care" means care and services in an AFH-DD for a person who does not stay overnight. Day care persons shall be counted in the total allowable five individuals of the capacity of the AFH-DD.

(29) "Denial" is the refusal of the Department of Human Services to issue a license to operate an AFH-DD because the Department has determined that the home is not in compliance with one or more of these administrative rules.

(30) "Department" means the Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(31) "Developmental Disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or may be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society; or

(d) The condition or impairment must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classification must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(32) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance

reviews, authoring health related agency policies and procedures, or providing general training for staff.

(33) "Director" means the Director of the Department of Human Services or that person's designee.

(34) "Domestic Animals" are any of various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(35) "Entry" means admission to a Department funded developmental disability service provider. For the purpose of this rule "entry" means admission to an AFH-DD foster home.

(36) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Department to license, inspect, and collect fees according to the provisions of ORS 443.705 to 443.825.

(37) "Exit" means termination from a Department funded developmental disability services provider.

(38) "Family Member" means a legally responsible relative, including spouses of recipients.

(39) "Founded Reports" means the Department of Human Services, Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(40) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed by the courts who is authorized by the court to make decisions about services for the individual.

(41) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the

ordinary course of business or practice of a profession, and includes a health care facility.

(42) "Home" means the physical structure in which individuals live, synonymous with AFH-DD.

(43) "Homelike" means an environment that promotes the dignity, security and comfort of individuals through the provision of personalized care and services to encourage independence, choice, and decision making.

(44) "House Rules" means those written and posted rules governing house activities in the AFH-DD. These rules may not conflict with the AFH Bill of Rights.

(45) "Incident Report" means a written report of any injury, accident, acts of physical aggression, use of physical restraints, or unusual incident involving an individual.

(46) "Individual" means a person age 18 or older residing in an AFH-DD regardless of source of compensation. The terms "individual" and "client" are synonymous.

(47) "Individual Support Plan or ISP" means a written plan of support and training services for an individual with developmental disabilities covering a 12 month period that addresses the individual's support needs.

(48) "Individual Support Plan Team or ISP Team" means a team composed of the individual, representatives of all current service providers including the AFH-DD provider, Services Coordinator, the individual's legal guardian if any, advocate and others determined appropriate by the individual receiving services. If the individual is unable to or does not express a preference, other appropriate team membership shall be determined by the ISP team members.

(49) "License" means a document granted by the Department to applicants who are in compliance with these rules.

(50) "Licensee" means a person or organization to whom a license is granted.

(51) "Limited License" means a license issued to a person who intends to provide care for compensation to a specific individual who is unrelated to the provider but with whom there is an established relationship.

(52) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team shall have the authority to make decisions for the team. Representatives from service provider(s), families, the CDDP, or advocacy agencies shall be considered as one member of the ISP team for the purpose of reaching majority agreement.

(53) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(54) "Mechanical Restraint" means any mechanical device, material, object or equipment that is attached or adjacent to an individual's body, that the individual cannot easily remove or easily negotiate around, and restricts freedom of movement, or access to the individual's body.

(55) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(56) "Member of Household" means any adult or children living in the home, including any foster providers, substitute caregivers, or volunteers assisting in the care provided to adults placed in the home, and excluding the service recipient placed in the home.

(57) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(58) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(59) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel that is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(60) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. It includes which tasks shall be taught or delegated to the provider and staff.

(61) "Oregon Intervention System or OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and non-aversive behavior intervention. The system uses principles of proactive support and describes approved physical intervention techniques that are used to maintain health and safety keeping individuals from harming themselves or others. The system is based on a pro-active approach that includes methods of effective evasion, deflection and escape from holding.

(62) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(63) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(64) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(65) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(66) "PRN" means the administration of a medication to an individual on an 'as needed' basis.

(67) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(68) "Protective Services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and safeguard an individual's person, property, and funds as soon as possible.

(69) "Provider" means the person licensed to operate an AFH-DD who is responsible for the provision of room, board, and care or services in the daily operation of the AFH-DD. Applicant, provider, licensee, and operator are all synonymous terms.

(70) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person meets the standards of OAR 411-360-0110 and OAR 411-360-0070 except for completing the training and testing requirements.

(71) "Psychotropic Medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anti-anxiety and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(72) "Registered Nurse" means an individual licensed and registered to practice nursing in accordance with ORS Chapter 678 and OAR Chapter 851.

(73) "Resident Manager" means an employee of the provider who lives in the AFH-DD and is directly responsible for the care of individuals on a day-to-day basis.

(74) "Residential Care" means the provision of room, board, care, and services that assist the individual with ADL's. Residential care includes 24 hour supervision; being aware of the individuals' general whereabouts; monitoring the activities of the individual while on the premises of the AFH-

DD to ensure their health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(75) "Respite Care" means short term care services for a period of 14 days or less provided on behalf of an individual due to absence or need for relief of those persons normally providing care for the individual. Respite services may include both day or overnight care. Respite care individuals must be counted in the total allowable five individuals in the home.

(76) "Restraints" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(77) "Revocation" is the action taken to rescind an AFH-DD license after the Department has determined that the provider is not in compliance with one or more of these administrative rules.

(78) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping.

(79) "Self-Administration of Medication" means the individual manages and takes his or her own medications. The individual identifies his or her medication(s), the times and methods of administration, places the medication internally in, or externally on, his or her own body without caregiver assistance upon the written order of a physician, and safely maintains the medication(s) without supervision.

(80) "Services" means those activities that help the individuals develop appropriate skills to increase or maintain their level of functioning. Services available in the community and arranged for by the provider may include mental health services, habilitation services, rehabilitation services, social services, ADL's, medical, dental, and other health care services, educational services, financial management services, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet a individual's needs as defined in the ISP.

(81) "Services Coordinator" means an employee of the Community Developmental Disability Program (CDDP) or other agency that contracts with the County or Department, who is selected to plan, procure,

coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. The term case manager is synonymous with services coordinator.

(82) "Special Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast and include fresh fruit with each meal.

(83) "Substantiated" means an abuse investigation has been completed by the Department of Human Services or its designee and the preponderance of the evidence establishes the abuse occurred.

(84) "Suspension of License" is an immediate withdrawal of the approval to operate an AFH-DD after the Department determines that there is a threat to the health or safety of individuals.

(85) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department.

(86) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(87) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of a individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of a individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(88) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department, upon written application by the provider.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0030 Variance
(Effective 2/1/2005)

(1) A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that such a variance does not jeopardize the health or safety of the individuals. If the variance applies to an individual's services, evidence that the variance is consistent with a currently approved ISP.

(2) No variance will be granted from a regulation or provision of these rules pertaining to the limit of five individuals, inspections of the AFH-DD, civil, legal and human rights, and inspection of the public files. No variance related to fire and life safety will be granted by the Department without prior consultation with the local fire department or its designee.

(3) Variances will be granted in writing and reviewed at each renewal period. A variance granted to one AFH-DD provider does not constitute a precedent for any other AFH-DD provider.

Stat. Auth.: ORS 410.070 & 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0040 License Required
(Temporary Effective 3/18/2010 – 6/30/2010)

(1) Any home that meets the definition of an AFH as defined in OAR 411-360-0020(6) must apply for and obtain a license from the Department or an exempt area county.

(2) A person or entity must not represent themselves as operating an adult foster home or accept placement of an individual without being licensed.

(3) Criminal Records Checks.

(a) No person may be a provider, resident manager, substitute caregiver, or otherwise be in training, or employed by the provider, or reside in or on the property of an adult foster home who:

(A) Has not complied with Department rules for review of criminal records checks in accordance with OAR 407-007-0200 to 407-007-0370; or

(B) Has been disapproved to work based on current Department policy and procedures for criminal records checks in accordance with OAR 407-007-0200 to 407-007-0370.

(b) On or after July 28, 2009, no person may be a provider, resident manager, substitute caregiver, or otherwise be in training, or employed by the provider, or reside in or on the property of an adult foster home who has been convicted:

(A) Of a crime listed in Exhibit 360-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(c) This provision does not apply to individual service recipients of the adult foster home.

(4) Any home that meets the definition of a Limited License AFH-DD as defined in OAR 411-360-0020(50) must have a license from the Department if receiving compensation from the Department. To qualify for this license and for compensation from the Department the applicant or provider must submit a completed application, appropriate licensing fee, physician's statement, obtain a criminal records check, obtain a background check in regards to abuse of children or adults, demonstrate a clear understanding of the individual's care needs, meet minimal fire safety compliance, including the installation of smoke detectors and fire extinguishers, and obtain any training deemed necessary by the Department to provide adequate care for the individual.

(5) Any home that meets the definition of a Limited License AFH-DD, must be licensed by the Department if compensation is received from the Department or is privately paid to the provider. The person requesting a limited license must meet the standards of an adult foster home and acquire any additional training necessary to meet the needs of the individual. The individual receiving care must be named on the license. The license must be limited to the care of the named individual only and may not be transferred to another person.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

411-360-0050 License Application and Fees

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) A written application must be submitted by the provider on forms supplied by the Department. The application is not complete until the required information is submitted to the Department with the required non-refundable fee. Incomplete applications are void after 60 days of the date the application form is received by the Department. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an AFH-DD is to be operated.

(3) An application for a home that has a resident manager must include a completed application for the resident manager on the application form supplied by the Department.

(4) The application must include:

(a) The maximum capacity to be served by the home;

(b) A listing of all persons living in or receiving care in the home. This must include family members needing care, respite care and day care person(s);

(c) A list of any other occupants living in the home or on the property;

- (d) A physician's statement on a form supplied by the Department regarding ability to provide care;
- (e) A completed Financial Information Sheet on a form supplied by the Department;
- (f) A signed Criminal Records Check form and if needed, the Mitigating Information and Fitness Determination form for each person who shall have regular contact with the residents, including the provider, the resident manager, caregivers, and other occupants over the age of 16 (excluding individual service recipients);
- (g) A signed consent form for a background check with regards to abuse of children;
- (h) Founded reports of child abuse or substantiated abuse allegations, with dates, locations, and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors, and volunteers;
- (i) A floor plan for each floor of the house showing the location and size of rooms indicating the rooms that are to be service recipient's bedrooms, caregiver sleeping room(s), rooms of other occupants of home, and the location of windows, fire exit doors, placement of each individual's bed, smoke detectors and fire extinguishers, escape routes and wheelchair ramps;
- (j) If requesting a license to operate more than one AFH-DD, a plan covering administrative responsibilities, staffing and caregiver qualifications and evidence of financial responsibility;
- (k) A \$20.00 per bed non-refundable fee for each individual service recipient (includes all private pay and publicly funded individuals, but does not include day care and family members);
- (l) References from three non-relatives that have current knowledge of the applicant's character and capabilities;
- (m) A written plan on the coverage for resident manager absences from the adult foster home that has been provided to the local CDDP

and the Department; Written information describing the daily operation of the adult foster home, including the use of substitute caregivers and other staff;

(n) A copy of the AFH-DD's house rules.

(5) After receipt of the completed application materials, including the non-refundable fee, the Department or its designee must investigate the information submitted, inspect the home and conduct an orientation with the applicant. Applicants must attend a local orientation offered by the local CDDP prior to being licensed. Upon submission and completion of the application and the process described, the Department shall determine compliance with the rules.

(6) The provider shall be given a copy of the inspection form identifying any areas of noncompliance and specifying a timeframe for correction, but no later than 60 days from date of inspection.

(7) Deficiencies noted during an inspection of the home must be corrected in the timeframe specified by the Department or its designee. Applicants must be in compliance with these Administrative Rules before a license is issued. If cited deficiencies are not corrected within the timeframes specified by the Department or its designee, the application shall be denied. The application fee is non-refundable.

(8) The applicant may withdraw a new or renewal application at any time during the application process by notifying the Department. The application fee is non-refundable.

(9) An applicant whose license has been revoked or voluntarily surrendered during a revocation or non-renewal process, or whose application has been denied may not be permitted to make a new application for one year from the date the revocation, surrender or denial is final. The time period may be for a longer period of time if specified in the order revoking or denying the license.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

411-360-0060 Capacity

(Effective 2/1/2005)

(1) Maximum Capacity. The Adult Foster Home maximum capacity is limited to five adults who require care and are unrelated to the provider by blood or marriage.

(2) Limits to Capacity. The number of individuals permitted to reside in an AFH will be determined by the ability of the caregiver to meet the care needs of the individuals, the fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum capacity must include consideration of total household composition including children, adult relatives and elderly. In determining maximum capacity, consideration will be given to whether children over the age of five have a bedroom separate from their parents.

(3) Respite included. Individuals receiving respite service are included in the licensed capacity of the home.

(4) Day care included. Individuals receiving day care services are included in the licensed capacity of the home.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0070 Classification of Adult Foster Homes for Persons with Developmental Disabilities

(Effective 2/1/2005)

(1) A Provisional, Limited, Level 1, Level 2B, or Level 2M license may be issued by the Department based upon the qualifications of the applicant and the resident manager, if there is one, and compliance with the following requirements.

(2) A Provisional AFH-DD license may be issued by the Department if:

(a) There is an emergency situation where the current licensed provider is no longer overseeing the operation of the Adult Foster Home.

(b) The applicant meets the standards of OAR 411-360-0110, Qualifications of Adult Foster Home Providers, Resident Managers and Other Caregivers and OAR 411-360-0070, Classification of Adult Foster Home for Persons with Developmental Disabilities, except for completing the training and testing requirements.

(c) A provisional license is valid for 60 days from the date of issue and is not renewable.

(3) A Limited AFH-DD license may be issued by the Department if:

(a) The applicant meets the qualifications listed in OAR 411-360-0110(1)(a-i) Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers and the home meets the requirements listed in OAR 411-360-0130 Facility Standards;

(b) The applicant acquires any additional training necessary to meet the needs of the individual; and

(c) The license will be limited to the care of the named person only and the individual receiving care is named on the license.

(4) A Level 1 AFH-DD license may be issued by the Department if the applicant and resident manager, if any:

(a) Meet the qualifications listed in OAR 411-360-0110 Qualifications for Adult Foster Providers, Resident Manager and Other Caregivers and completes the training requirements outlined in OAR 411-360-0120, Training Requirements for Providers, Resident Managers and Substitute Caregivers and

(b) The home and applicant are in compliance with OAR 411-360-0080 Issuance of a license.

(5) A Level 2B AFH-DD license may be issued only by the Department only if the applicant or resident manager has met the criteria for a Level 1 home and in addition, has met the following criteria:

(a) Has completed the training requirements outlined in OAR 411-360-0120 Training Requirements for Provider, Resident Manager and Substitute Caregivers;

(b) Has the equivalent of one year of full-time experience in providing direct care to individuals;

(c) Has received OIS-G certification by a state approved trainer;

(d) Has completed additional hours of advanced behavior intervention training per year, based on the support needs of the person, if available from the Department;

(e) Has been certified in CPR and First Aid by a recognized training agency; and

(f) Intends to provide care and support to more than one individual who exhibit behavior that poses a significant danger to the individual. Examples include but are not limited to:

(A) Acts or history of acts that have caused injury to self or others requiring medical treatment;

(B) Use of fire or items to threaten injury to persons or damage to property;

(C) Acts that cause significant damage to homes, vehicles, or other properties;

(D) Actively searching for opportunities to act out thoughts that involve harm to others.

(6) A Level 2B AFH-DD provider will have a transition plan upon entry and a behavior support plan within 60 days of placement that:

(a) Emphasizes the development of the functional alternative and positive approaches and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning intervention will never be used; and

(d) Is evaluated by the ISP Team through review of specific data at least every six months to assess the effectiveness of the procedures.

(7) If a provider serves or intends to serve more than one individual who exhibits behavior that pose a significant danger to the individual or others, the provider must be licensed as a Level 2B AFH-DD.

(8) A Level 2M AFH-DD license may be issued by the Department only if the applicant or resident manager has met the requirements for a Level 1 AFH-DD and meets the following additional criteria:

(a) Has the equivalent of one year of full-time experience in providing direct care to individuals;

(b) Is a health care professional such as a registered nurse (RN), or licensed practical nurse (LPN); or has the equivalent of two years full-time experience providing care and support to individual(s) who have a medical condition that is serious and could be life-threatening;

(c) Has been certified in CPR and First Aid by a recognized training agency;

(d) Can provide current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver; and

(e) Has fulfilled a minimum six of the ten hours of annual training requirements in specific medical training; and

(f) Intends to provide care and support to more than one individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(A) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(B) Significant risk of choking or aspiration;

(C) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids;

(D) Mental health or alcohol or drug problems that are not responsive to treatment interventions; and

(E) A terminal illness that requires hospice care.

(9) A Level 2M AFH-DD provider will have a transition plan upon entry and develop, with the ISP Team, a medical support plan within 30 days of placement or whenever there is a change in health status for each individual who has a medical condition that is serious and could be life threatening.

(10) A provider in a 2B or 2M licensed AFH-DD will not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for the AFH-DD.

(11) The AFH-DD will not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and must not be admitted without prior approval of the Department.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0080 Issuance of a License

(Effective 2/1/2005)

(1) The Department will issue a license within 60 days after inspection and investigation, if the home and provider are found to be in compliance with these rules. The license will state the name of the provider, resident manager, address of premises to which license applies, the maximum number of individuals, expiration date and classification level. The licensee will visibly post license in the in the AFH-DD home and the license will available for inspection at all times.

(2) A limited license may be issued to a provider for the care of a specific individual(s). No other admissions will be made by a provider with this limitation. A provider with a limited license must meet the standards of an adult foster home and acquire any additional training necessary to meet the needs of the individual and may be subject to the requirements for OAR 411-360-0140, Standards and Practices for Health Care; 411-360-0160, Behavior Supports; 411-360-0170, Documentation and Record Requirements; 411-360-0150, General Practices; 411-360-0190, Standards for Admission, Transfers, Respite, Crisis Placements, Discharges and Closure.

(3) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738 the Department may issue a 60-day provisional license to a qualified person, if the Department determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home. A person will be considered to be a qualified person if they are 21 years of age and meet the requirements of a substitute caregiver.

(4) The Department may attach conditions to the license that limit, restrict or specify other criteria for operation of the AFH-DD. The conditions must be posted with the license in the AFH-DD and be available for inspection at all times.

(5) A condition may be attached to a license that restricts admissions to the AFH-DD.

(6) An AFH-DD license is not transferable or applicable to any location or persons other than those specified on the license.

(7) When an AFH-DD is to be sold or otherwise transferred, the new provider must apply for, and obtain, a license prior to the transfer of operation of the AFH-DD.

(8) A license is valid for one year unless revoked or suspended.

(9) The Department will not issue a license to operate an additional AFH-DD to a provider who has failed to achieve and maintain substantial compliance with the rules and regulations while operating any existing home or homes.

(10) The Department will not issue an initial license unless:

(a) The applicant and AFH-DD are in compliance with ORS 443.705 to 443.825 and the rules of the Department;

(b) The Department or its designee has completed an inspection of the AFH;

(c) The Department has completed a criminal records check on the applicant and any occupant, other than a resident, 16 years of age or older who will be residing on the property, in the AFH-DD, or employed by the AFH-DD;

(d) The applicant has demonstrated to the Department the financial ability and resources necessary to operate the AFH-DD;

(e) The Department has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and

(f) The Department has conducted a background check of the provider or resident manager with regard to abuse of children or adults.

(11) If a resident manager changes during the period of time the license covers, the provider must notify the Department immediately and identify who will be providing care. The provider must submit a request for a change of resident manager to the Department, a criminal record authorization, a current consent form to conduct a background check for child abuse and payment of a \$10.00 fee. Upon a determination the applicant meets the requirements of a resident manager and the applicant has received the Department's required training and passed the test, a revised license will be issued with the name of the new resident manager.

(12) In seeking an initial license the burden of proof will be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0090 Renewal of a License

(Temporary Effective 3/18/2010 – 6/30/2010)

(1) The provider must submit a renewal application and fee prior to the expiration date that shall keep the license in effect until a new license is issued or a final order of non-renewal is issued by the Department. If the renewal application and fee are not submitted prior to the expiration date, the AFH-DD shall be treated as an unlicensed home subject to administrative sanctions.

(2) The renewal application must include the same information and fee as required for a new application, except that a physician's statement and financial information sheet are not required if the Department or its designee may reasonably assume this information has not changed.

(3) The Department or its designee may investigate any information in the renewal application and shall conduct an inspection of the AFH-DD.

(4) The provider shall be given a copy of the inspection form citing any deficiencies and a time frame for correction, but no longer than 60 days from the date of inspection.

(5) The Department shall require the AFH-DD to correct deficiencies prior to issuing a license renewal. If cited deficiencies are not corrected within the time frame specified by the Department or its designee, the renewal application shall be denied.

(6) The Department may not renew a license unless:

(a) The applicant and the AFH-DD are in compliance with ORS 443.705 to 443.825 and the rules of the Department or its designee;

(b) The Department has completed an inspection of the AFH-DD;

(c) The Department has completed a criminal records check as required by ORS 181.536 through 181.537 and 443.735 on the applicant and any occupant, other than a service recipient, 16 years

of age or older who shall be residing on the property, in the AFH-DD, or employed by the AFH-DD provider.

(7) In seeking a renewal of a license when an AFH-DD has been licensed for less than 24 months, the burden of proof shall be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

(8) In proceedings for renewal of a license when an AFH-DD has been licensed for at least 24 continuous months, the burden of proof shall be upon the Department to establish noncompliance with ORS 443.705 to 443.825 and the rules of the Department.

(9) On or after July 28, 2009, the Department may not renew a license if the applicant or any occupant, other than a service recipient, 16 years of age or older has been convicted:

(A) Of a crime listed in Exhibit 360-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

411-360-0100 Contracts

(Effective 2/1/2005)

(1) Providers who care for public assistance individuals must enter into a contract with the Department and follow Department rules and contract requirements governing reimbursement for services and refunds.

(2) Providers who care for private paying individuals must enter into a signed contract with the individual or person paying for care. This contract

will include, but is not limited to, an ISP; a schedule of rates; conditions under which the rates can be changed; and the AFH-DD's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) Thirty days prior written notification of increases, additions, and other modifications of the rates to be charged will be given by the provider to private individuals or persons paying for care unless the change is due to a medical emergency resulting in a greater level of care, in which case the notice will be given within ten days of the change.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

**411-360-0110 Qualifications for Adult Foster Home Providers,
Resident Managers and Other Caregivers**
(Temporary Effective 3/18/2010 – 6/30/2010)

(1) An AFH-DD provider must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the residence that is to be licensed as the AFH-DD or if the provider does not live in the residence there must be a resident manager who lives in the AFH-DD;

(c) Provide evidence satisfactory to the Department regarding experience, training, knowledge, interest and concern in providing care to persons with a developmental disability. Such evidence may include, but not be limited to:

(A) Certified nurse's aide training;

(B) Nursing home, hospital or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Training approved by the Department;

(E) Experience in caring for persons with a developmental disability and home management skills;

(d) Possess the physical health, mental health, good judgment and good personal character determined necessary by the Department to provide 24 hour care for adults who are developmentally disabled. Applicants must have a statement from a physician, on a form provided by the Department, that they are physically and mentally capable of providing care. Applicants with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition.

(e) Undergo a criminal records check in accordance with OAR chapter 407-007-0020 to 407-007-0370 and under ORS 181.534, and be found suitable for licensure by the Department. The Department shall evaluate and verify information regarding criminal history;

(A) Public funds may not be used to support, in whole or in part, a provider, a resident manager, providers' employees, alternate caregivers, volunteers, or any other subject individual under OAR 407-007-0200 to 407-007-0370, who has been hired on or after July 28, 2009, or is subject to criminal records checks after July 28, 2009 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 360-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(B) A person may not be authorized as a provider or meet qualifications as described in this rule if the person has been

hired on or after July 28, 2009, or is subject to criminal records checks after July 28, 2009 as required by administrative rule, and who has been convicted:

(i) Of a crime listed in Exhibit 360-1;

(ii) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(iii) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(iv) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(f) Have no founded reports of child abuse or a substantiated abuse allegation.

(g) The applicant must have the financial ability and must provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential service and room and board payments. The applicant must provide the Department with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant, all bankruptcy filings by the applicant, and all unpaid taxes due from the applicant. The Department may require or permit the applicant to provide a current credit report to satisfy this financial requirement. The Department may not issue an initial license to an applicant who has been adjudged bankrupt more than once. If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens or unpaid taxes, the Department shall require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims. If the applicant is unable to demonstrate the financial ability and resources required by this subsection, the Department may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(h) Be literate and capable of understanding written and oral orders and communicating with individuals, physician, case manager and

appropriate others, and be able to respond appropriately to emergency situations at all times;

(i) If transporting individuals by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(j) Meet the requirements of the licensing classification of the AFH-DD OAR 411-360-0070, Classification of Adult Foster Home for Persons with Developmental Disabilities.

(k) Document annual review of responsibility for reporting abuse or neglect of an individual on forms provided by the Department.

(2) The resident manager must meet the provider qualifications listed in subsections (1)(a) through (k) of this rule.

(3) Substitute caregivers left in charge of individuals for any period of time must have access to individual records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Have a criminal records check in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a substitute caregiver or meet qualifications as described in this rule if the substitute caregiver has been hired on or after July 28, 2009, or is subject to criminal records checks after July 28, 2009 as required by administrative rule, and the substitute caregiver has been convicted of:

(A) Of a crime listed in Exhibit 360-1;

(B) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(C) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(D) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(c) Be notified annually of the substitute caregiver's responsibility as a mandatory reporter of abuse or neglect and documented on forms provided by the Department;

(d) Be literate and capable of understanding written and oral orders and communicating with individuals, physician, case manager and appropriate others, and be able to respond appropriately to emergency situations at all times;

(e) Know fire safety and emergency procedures;

(f) Have a clear understanding of job responsibilities, have knowledge of ISP's and be able to provide the care specified for each individual's needs;

(g) Be able to meet the requirements of a resident manager when left in charge of an AFH-DD for 30 days or longer;

(h) Not be an individual service recipient of the AFH-DD;

(i) If transporting individuals by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon; and

(j) Possess the physical health, mental health, good judgment and good personal character determined necessary by the Department to provide care for adults who are developmentally disabled. Substitute caregivers with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Department of successful treatment and rehabilitation and references regarding current condition;

(k) Must meet the training requirements of the licensing classification of the AFH-DD in OAR 411-360-0120.

(4) Providers may not hire or continue to employ a resident manager or substitute caregiver that does not meet the standards stated in this rule.

(5) A provider is responsible for the supervision and training of resident managers and substitute caregivers and their general conduct when acting within the scope of their employment or duties.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

411-360-0120 Training Requirements for Providers

(Effective 2/1/2005)

Resident Managers and Substitute Caregivers.

(1) All providers, resident managers, and substitute caregivers must complete the Department's Basic Training Course that includes, but is not limited to, taking and passing an examination on course work and necessary skills. Failure to obtain a passing score on the Basic Training Examination may result in denial or non-renewal of a license pursuant to OAR 411-360-0270.

(2) All provider and resident manager applicants must complete the Department's Basic Training Course and pass the Basic Training Examination prior to becoming a licensed provider or a resident manager. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application will be denied.

(3) All substitute caregivers left in charge of the home in the provider's or resident manager's absence for any length of time will complete the Department's Basic Training Course and pass the Basic Training Examination prior to giving care.

(4) The provider or resident manager will keep documentation of the completed Department Basic Training Course and annual training of substitute caregivers including the date of the training, subject content, name of the agency or organization providing the training and the number of training hours.

(5) Prior to placement of individuals in the home the provider must complete an AFH-DD orientation that, at a minimum covers the requirements of the Oregon administrative rule governing AFH-DD services as provided by the local CDDP.

(6) All provider and resident manager applicants must have current certification in first aid by a recognized training agency.

(7) Annual Training Requirements:

(a) The Department will require at least ten hours of training annually for the provider, resident manager, and substitute caregivers of an AFH-DD that must be documented in the record;

(b) Based on the support or care needs of an individual or individuals in the home, the individual's ISP team may recommend to the Department a waiver of the requirement that a substitute caregiver receive ten hours of annual training. The CDDP and provider may submit a request for a variance indicating the number of hours of training a substitute caregiver requires per year for an individual and attach to the variance a copy of the relevant portions of the ISP.

(8) If a provider, resident manager or substitute caregiver is not in compliance with these rules, the Department may require additional training in the deficient area, whether or not the 10-hour annual training requirement has already been met.

(9) Providers, resident managers or substitute caregivers who perform tasks of care that are delegated by a registered nurse or taught by a physician must:

(a) Receive appropriate training and monitoring from a registered nurse or physician on performance and implementation of task of care;

(b) Be addressed as part of the ISP.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0130 Facility Standards

(Effective 2/1/2005)

In order to qualify for or maintain a license, an AFH-DD must meet the following provisions.

(1) General Conditions:

(a) Each AFH-DD will maintain up-to-date documentation verifying they meet applicable local business license, zoning, and building and housing codes, and state and local fire and safety regulations for a single family residence. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP;

(b) The building and furnishings must be clean and in good repair and grounds must be maintained. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. There will be no accumulation of garbage, debris, rubbish or offensive odors;

(c) Stairways (interior and exterior) must have handrails and be adequately lighted. A functioning light will be provided in each room, stairway (interior and exterior), and exit way. All light bulbs must be protected with appropriate covers. Yard and exterior steps must be accessible and appropriate to the needs of individuals;

(d) The heating system must be in working order. Areas of the AFH-DD used by individuals will be maintained at no less than 68° during the day (when individuals are home) and 60° during sleeping hours. During times of extreme summer heat, the provider will make reasonable effort to make the individuals comfortable and safe using ventilation, fans or air conditioners;

(e) There must be at least 150 square feet of common space, and sufficient comfortable furniture in the AFH-DD to accommodate the recreational and socialization needs of the occupants at one time. Common space will not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been

legalized under permit. Additional space will be required if wheelchairs are to be accommodated;

(f) Providers must not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the premise without supervision. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access;

(g) Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(2) Sanitation:

(a) A public water supply will be utilized if available. If a non-municipal water source is used, it must be tested for coliform bacteria by a certified agent yearly, and records will be retained for two years; corrective action must be taken to ensure potability;

(b) If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order;

(c) Garbage and refuse will be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal;

(d) Prior to laundering, soiled linens and clothing will be stored in containers in an area separate from food storage, and kitchen and dining areas. Special pre-wash attention will be given to soiled and wet bed linens;

(e) Sanitation for household pets and other domestic animals will be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by a licensed veterinarian must be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to individuals or guests;

(f) There will be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation;

(g) Universal precautions for infection control must be followed in care to individuals. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids; and

(h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(3) Bathrooms:

(a) Must provide for individual privacy and have a finished interior, a mirror, an openable window or other means of ventilation, and a window covering. No person will walk through another person's bedroom to get to a bathroom;

(b) Must be clean and free of objectionable odors;

(c) Must have tubs or showers, toilets and sinks in good repair, and hot and cold water. A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(d) Must have hot and cold water in sufficient supply to meet the needs of individuals for personal hygiene. Hot water temperature sources for bathing areas will not exceed 120 degrees F;

(e) Will have shower enclosures with nonporous surfaces. Glass shower doors must be tempered safety glass. Shower curtains must be clean and in good condition. Non-slip floor surfaces must be provided in tubs and showers;

(f) Must have grab bars for toilets, tubs and showers for individual's safety as required by individual's disabilities;

(g) Must have barrier-free access to toilet and bathing facilities with appropriate fixtures if there are non-ambulatory individuals; alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene;

(h) Must have adequate supplies of toilet paper for each toilet and soap for each sink. Individuals will be provided with individual towels and wash cloths that are laundered in hot water at least weekly or more often if necessary. Individuals will have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, individuals will be provided with individually dispensed paper towels.

(4) Bedrooms:

(a) Bedrooms for all household occupants will:

(A) Have been constructed as a bedroom when the home was built or remodeled under permit;

(B) Be finished, with walls or partitions of standard construction that go from floor to ceiling, and a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(C) Be adequately ventilated, heated and lighted with at least one operable window that meets fire regulations subsection (7)(a) of this rule;

(D) Have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals; and

(E) Have no more than two persons per room;

(b) Providers, resident managers or family members must not sleep in areas designated as common use living areas, nor share bedrooms with service recipients;

(c) There must be an individual bed for each individual consisting of a mattress and box springs at least 36 inches wide. Cots, rollaways, bunks, trundles, couches, futons and folding beds must not be used for individuals. 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. Sheets and pillowcases must be laundered at least weekly, and more often if necessary. Waterproof mattress covers must be used for incontinent individuals. Individual's beds will not be used by day care persons;

(d) Each bedroom must have sufficient separate, private dresser and closet space for each individual's clothing and personal effects, including hygiene and grooming supplies. Individuals must be allowed to keep and use reasonable amounts of personal belongings, and to have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for individuals;

(e) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility;

(f) Individual bedrooms must be in close enough proximity to provider to alert provider to nighttime needs or emergencies, or be equipped with a call bell or intercom.

(g) Bedrooms must have at least one window or exterior door that will readily open from the inside without special tools and that provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress that can be used by individuals. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(h) Smoking is not permitted in any bedroom including that of an individual, provider, resident manager, caregiver, boarder, or family member.

(5) Meals:

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the four basic food groups and fresh fruit and vegetables in season unless otherwise specified in writing by the physician. There must be no more than a 14-hour span between the evening meal and breakfast, unless snacks and liquids are served as supplements. Consideration must be given to cultural and ethnic backgrounds, as well as, food preferences of individuals in food preparation. Special consideration must be given to individuals with chewing difficulties and other eating limitations. Food will not be used as an inducement to control the behavior of an individual;

(b) Menus for the coming week that consider individual preferences will be prepared and posted weekly in a location that is accessible to individuals and families. Menu substitutions in compliance with subsection (4)(a) of this rule are acceptable;

(c) Modified or special diets. For individuals with physician or health care provider ordered modified or special diets the provider must:

(A) Have menus for the current week that provide food and beverages that consider the individual's preferences and are appropriate to the modified or special diet; and

(B) Maintain documentation that identifies how modified texture or special diets are prepared and served to individuals.

(d) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage;

(e) Utensils, dishes, glassware and food supplies must not be stored in bedrooms, bathrooms, or living areas;

(f) Meals must be prepared and served in the AFH-DD where individuals live. Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual;

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

(h) Food storage and preparation areas and equipment must be clean, free of obnoxious odors and in good repair; and

(i) Home-canned foods must be processed according to the current guidelines of the Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(6) Telephone:

(a) A telephone must be provided in the AFH-DD that is available and accessible for individuals' use for incoming and outgoing calls;

(b) Emergency telephone numbers for the local CDDP, Police, Fire, Medical and other emergencies will be posted by the telephone including an emergency number to reach a provider who does not live in the AFH-DD. Telephone numbers for making complaints or a report of alleged abuse to the Department; the local CDDP and the Oregon Advocacy Center must also be posted;

(c) Limitations on the use of the telephone by individuals are to be specified in the written house rules. Individual restrictions must be specified in the ISP. In all cases, a telephone must be accessible to individuals for outgoing calls (emergencies) 24 hours a day;

(d) AFH-DD telephone numbers must be listed in the local telephone directory.

(7) Safety:

(a) Buildings must meet all applicable state building, mechanical, and housing codes for fire and life safety. The AFH-DD will be inspected for fire safety by the local or state fire agencies or an inspector designated by the Department using the recommended standards established by the State Fire Marshal for facilities housing one to five persons. The standards will include Appendix 1-E of the Uniform Fire Code, as in effect, after September 9, 1990 or any successor rules as they may be revised from time to time;

(b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good repair. Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood stoves to prevent residents with ambulation or confusion problems from coming in contact with the stove. Un-vented 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 authority having jurisdiction;

(c) Extension cord wiring must not be used in place of permanent wiring;

(d) Hardware for all exit doors and interior doors must have simple hardware that cannot be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more individuals who have impaired judgment and are known to wander away from their place of residence must have functional and activated alarm system to alert a caregiver of an unsupervised exit by an individual.

(e) Emergency Procedures:

(A) General fire drill requirements. The provider must conduct unannounced evacuation drills when individuals are present, one every 90 days with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening and night with exit routes being varied based on the location of a simulated fire.

(B) Written fire drill documentation required. Written documentation must be made at the time of the fire drill and kept by the provider for at least two years following the drill. Fire drill documentation must include:

- (i) The date and time of the drill or simulated drill;
- (ii) The location of the simulated fire and exit route;
- (iii) The last names of all individuals and provider(s) present on the premises at the time of the drill;
- (iv) The type of evacuation assistance provided by provider(s) to individuals;
- (v) The amount of time required by each individual to evacuate; and
- (vi) The signature of the provider(s) conducting the drill.

(C) The Individual Support Plan must document that, within 24 hours of arrival, each new individual receives an orientation to basic safety and is shown how to respond to a fire alarm, and how to exit from the AFH-DD in an emergency;

(D) The provider must demonstrate the ability to evacuate all individuals from the AFH-DD within three minutes. If there are problems in demonstrating this evacuation time, the licensing authority may apply conditions to the license that include, but are not limited to, reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license;

(E) The provider will provide, keep updated, and post a floor plan on each floor containing room sizes, location of each individual's bed, window, exit doors, resident manager or provider's sleeping room, smoke detectors, fire extinguishers and escape routes and wheelchair ramps. A copy of this drawing must be submitted with the application and updated to reflect any change;

(F) There must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including basement.

(f) Smoke detectors. Battery operated smoke alarms with a 10-year battery life and hush feature must be installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes, at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6" and 12" from the ceiling and not within 12" of a corner. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition;

(g) Portable fire fighting equipment. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements, and must be inspected at least once a year by a qualified worker that 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 and documentation maintained.

(h) Special hazards:

(A) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers, or safety containers, and secured to prevent tampering by individuals and vandals. Firearms on the premises of an AFH-DD must be stored in a locked permanent enclosure. The firearms permanent enclosure must be located in an area of the home that is not readily accessible

to individuals and all ammunition must be stored in a separate, locked location;

(B) Smoking regulations will be adopted to allow smoking only in designated areas. Smoking will be prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design will be provided in areas where smoking is permitted;

(C) Cleaning supplies, medical sharps containers, poisons and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage, dining areas, and medications.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0140 Standards and Practices for Health Care

(Effective 2/1/2005)

(1) Individual health care. The individual must receive care that promotes their health and well being as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary health care provider whom he or she, the parent, guardian or legal representative has chosen from among qualified providers;

(b) The AFH-DD must ensure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by the qualified health care providers;

(c) The AFH-DD must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that could lead to deterioration or harm;

(d) A physician's or qualified health care provider's written, signed order is required prior to the use or implementation of any of the following:

(A) Prescription medications;

(B) Non prescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The AFH-DD provider must implement a physician's or qualified health care provider's order;

(f) Injections may be self-administered by the individual, or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or the provider, resident manager or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047. Documentation regarding the training or delegation must be maintained in the individual's record;

(2) Required documentation. The AFH-DD provider must maintain records on each individual to aid physicians, licensed health professionals and the program in understanding the individual's medical history. Such documentation must include:

(a) A list of known health conditions, medical diagnoses; known allergies and immunizations;

(b) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(c) A record of known hospitalizations and surgeries.

(3) Medication procurement and storage. All medications must be:

- (a) Kept in their original containers;
- (b) Labeled by the dispensing pharmacy, product manufacturer or physician, as specified per the physician's or licensed health care practitioner's written order; and
- (c) Kept in a secured locked container and stored as indicated by the product manufacturer.

(4) Medication administration. All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:

- (a) The name of the individual;
- (b) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency and method of administration;
- (c) For over the counter topical medications without a physician's order, a transcription of the printed instructions from the package;
- (d) Times and dates of administration or self administration of the medication;
- (e) Signature of the person administering the medication or the person monitoring the self administration of the medication;
- (f) Method of administration;
- (g) An explanation of why a PRN (i.e., as needed) medication was administered;
- (h) Documented effectiveness of any PRN (i.e., as needed) medication administration;
- (i) An explanation of any medication administration irregularity; and
- (j) Documentation of any known allergy or adverse drug reaction.

(5) Self-administration of medication. For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(6) Self-administration medications unavailable to other individuals. The AFH-DD must ensure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(7) Use of psychotropic medications.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or health care provider through a written order;

(B) Monitored by the prescribing physician, ISP team and program for desired responses and adverse consequences;
and

(b) PRN (as needed) psychotropic medication orders will not be allowed.

(8) Balancing test for psychotropic medications. When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care provider using the DHS Balancing Test Form or by inserting the required form content into the AFH-DD provider's forms. Providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(a) The AFH-DD provider must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed; and

(b) Documentation requirements. The provider must keep signed copies of these forms in the individual's medical record for seven years.

(9) Adverse medication effects safe guards. Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible all prescription medication, except samples provided by the health care provider, for an individual from a single pharmacy that maintains a medication profile for him or her;

(b) Maintaining information about each medication's desired effects and side effects;

(c) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and

(d) Documentation in the individual's record of reason why all medications should not be provided through a single pharmacy.

(10) Unused, discontinued, outdated, recalled and contaminated medications. All unused, discontinued, outdated, recalled and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage strength and amount being disposed;

(c) Individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) Direct nursing services. When direct nursing services are provided to an individual the provider must:

(a) Coordinate with the nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the individual's health needs; and

(b) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(12) Delegation and Supervision of Tasks of Nursing Care. Tasks of nursing care may be delegated by a registered nurse to providers and other caregivers only in accordance with Oregon State Board of Nursing Administrative Rule 851-047-0000.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0150 Personal Care Services

(Effective 2/1/2005)

Individuals living in the AFH-DD and receiving services from the Department must not receive Personal Care Services funded through the state Title XIX Medicaid State Plan.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0160 Behavior Support

(Effective 2/1/2005)

Physical Intervention. Circumstances allowing the use of physical intervention. The AFH-DD must only employ physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee.

(1) Physical intervention techniques must only be applied:

(a) When the health and safety of the individual and others is at risk, and the ISP team has authorized the procedures as documented by

an ISP team decision, included in the ISP and the procedures are intended to lead to less restrictive intervention strategies; or

(b) As an emergency measure, if absolutely necessary to protect the individual or others from immediate injury; or

(c) As a health related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Training. Provider(s), Resident Manager and substitute caregivers who support individuals who have a history of behavior that may require the application of physical intervention, and when the ISP team has determined that there is probable cause for future application of physical intervention, must be trained by an instructor certified in the Oregon Intervention System (OIS). Documentation verifying such training must be maintained in the personnel file of the provider, resident manager and substitute caregiver.

(3) Modification of OIS physical intervention procedures. The AFH-DD provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS physical intervention technique(s). The request for modification of physical intervention technique(s) must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Physical intervention techniques in emergency situations. Use of physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the AFH-DD provider or resident manager or designee within one hour of application;

(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Require submission of an incident report to the CDDP services coordinator, or other Department designee (if applicable) and

personal agent (if applicable) no later than one working day after the incident has occurred; and

(d) Prompt an ISP team meeting if an emergency intervention is used more than three times in a six-month period.

(5) Incident report. Any use of physical intervention(s) must be documented in an incident report. The report must include:

(a) The name of the individual to whom the physical intervention was applied;

(b) The date, type, and length of time the physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the physical intervention;

(d) Documentation of any injury;

(e) The name and position of the caregiver(s) applying the physical intervention;

(f) The name(s) and position(s) of the caregivers witnessing the physical intervention;

(g) The name and position of the person conducting the review of the incident that includes the follow-up to be taken to prevent a recurrence of the incident.

(6) Copies submitted. A copy of the incident report must be forwarded within five working days of the incident, to the CDDP services coordinator or other Department designee (if applicable) unless the physical intervention results in an injury. The CDDP must be immediately notified of any physical interventions resulting in an injury. The incident must be documented in an incident report and forwarded to the CDDP services coordinator or other Department designee (if applicable), within one working day of the incident. Copies of incident reports not associated with protective service investigations will be provided to the personal agent (if

applicable) and the person's legal guardian (if applicable) within the timeframes specified above.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0170 Documentation and Record Requirements

(Effective 2/1/2005)

(1) Individual Records. A record will be developed, kept current, and available on the premises for each individual admitted to the AFH-DD:

(a) The provider will maintain a summary sheet for each individual in the home. The record must include:

(A) The individual's name, current and previous address, date of entry into AFH-DD, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid prime and private insurance number, where applicable, guardianship status; and

(B) The name, address and telephone number of:

(i) The individual's legal representative, family, advocate or other significant person;

(ii) The individual's preferred primary health provider and designated back up health care provider or clinic;

(iii) The individual's preferred dentist;

(iv) The individual's day program or employer; if any;

(v) The individual's services coordinator; and

(vi) Other agency representatives providing services to the individual.

(b) Individual records must be available to representatives of the Department conducting inspections or investigations, as well as to

individuals to whom the information pertains, their authorized representative or other legally authorized persons;

(c) Individual and financial records. Individual records must be kept for a period of at least three years. If an individual moves or the AFH-DD closes, copies of pertinent information will be transferred to the individual's new place of residence. Financial records must be maintained for at least seven years; and

(d) In all other matters pertaining to confidential records and release of information, providers must comply with ORS 179.505.

(2) Resident Account Record For those individuals not yet capable of managing their own money, as determined by the ISP Team or guardian, the provider(s) must prepare and maintain a separate and accurate written record for each individual of all money received or disbursed on behalf of or by the individual.

(a) The record must include:

(A) The date, amount and source of income received;

(B) The date, amount and purpose of funds disbursed; and

(C) Signature of the provider(s) making each entry.

(b) Purchases of \$10.00 or more made on behalf of a individual must be documented by receipts unless a smaller amount is otherwise specified by the ISP Team.

(c) Personal Incidental Funds (PIF) for individuals are to be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet) and addressed in the ISP;

(d) Each Resident Account Record must include the disposition of the room and board fee that the individual pays to the provider at the beginning of each month. The record must show that part of the fee was used to pay for the individual's share of the upcoming month's rent. The remaining portion of the room and board fee must be used

for the provision of meals, laundry, and housekeeping to the individual (see definition of room and board).

(e) Reimbursement to individual. The provider must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of the provider, resident manager or substitute caregiver of the AFH-DD or for any funds within the custody of the provider(s) that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(3) Individuals' Personal Property Record: The provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or guardian decision. The record must include:

(a) The description and identifying number, if any:

(b) Date of inclusion in the record;

(c) Date and reason for removal from record;

(d) Signature of provider(s) making each entry; and

(e) A signed and dated annual review of the record for accuracy.

(4) Individual Support Plan: A health and safety transition plan must be developed at the time of admission for the first sixty (60) days of service and a complete ISP must be developed by the end of 60 days. It must be updated annually or whenever the individual's support needs change.

(a) A completed ISP must be documented on the Department mandated Foster Care ISP Form that includes the following:

(A) What is most important to the person and what works and doesn't work;

(B) A review of the individual's support needs (as identified on the mandated ISP form);

(C) The type and frequency of supports to be provided; and

(D) The person responsible for carrying out the plan.

(E) A copy of the employment or ATE provider's plan must be integrated or attached to the AFH-DD ISP, for persons also served in an employment or other Department funded day service .

(b) The ISP must include at least six hours of activities each week that are of interest to the individual, not including television or movies made available by the provider. Activities available in the community and made available or offered by the provider or the CDDP may include but are not limited to:

(A) Habilitation services;

(B) Rehabilitation services;

(C) Educational services;

(D) Vocational services;

(E) Recreational and leisure activities; and

(F) Other services required to meet a individual's needs as defined in the ISP.

(5) House Rules: A copy of the written house rules with documentation that the rules have been discussed by the provider with the individual annually. House rules must be in compliance with rules governing the rights of individuals, OAR 411-360-0170(9)(a-t).

(6) Unusual Incidents: A written report of all unusual incidents relating to an individual will be sent to the CDDP within 5 working days of the incident. The report will include how and when the incident occurred, who was involved, what action was taken by the provider or substitute caregiver and the outcome to the individual, and what action is being taken to prevent the reoccurrence of the incident.

(7) General Information: The provider will maintain any other information or correspondence pertaining to the individual;

(8) Monthly Progress Notes: The provider will maintain monthly progress notes for each individual residing in the home, regarding the success of the ISP, any medical, behavioral or safety issues or any other events that are significant to the individual.

(9) Individuals' Bill of Rights: The Provider will abide by the Individuals' Bill of Rights, post them in a location that is accessible to individuals, their parents, guardians or legal representatives. A copy of the Individual's Bill of Rights along with a description of how to exercise these rights will be given to each individual and parent, guardian, or legal representative by the provider. These rights will be reviewed annually or as changes occur by the provider with the individual and any parent, guardian or legal representative. The Bill of Rights states each individual has the right to:

- (a) Be treated as an adult with respect and dignity;
- (b) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;
- (c) Receive appropriate care and services and prompt medical care as needed;
- (d) Adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service and medical professionals, send and receive personal mail unopened, and engage in telephone conversations as explained in 411-360-0130(6)(a-d);
- (e) Have access to and participate in activities of social, religious, and community groups;
- (f) Be able to keep and use personal clothing and possessions as space permits;
- (g) Be free of discrimination in regard to race, color, national origin, sex, or religion;

- (h) Manage his or her financial affairs unless legally restricted;
- (i) A safe and secure environment;
- (j) Written notices prior to rate increases and evictions;
- (k) A written agreement regarding services to be provided and agreed upon rates;
- (l) Voice grievance without fear of retaliation;
- (m) Freedom from training, treatment, chemical or physical restraints except as agreed to, in writing, in a individual's ISP;
- (n) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to individuals in an age appropriate manner;
- (o) An opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;
- (p) Freedom from punishment. Behavior intervention programs must be approved in writing on the individual's ISP;
- (q) Freedom from abuse and neglect;
- (r) The opportunity to contribute to the maintenance and normal activities of the household; and
- (s) Access and opportunity to interact with persons with or without disabilities.
- (t) The right not to be transferred or moved without advance notice as provided in ORS 443.739(18) and OAR 411-088-0070, and the opportunity for a hearing as provided in ORS 443.738 (11)(b) and OAR 411-088-0080.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0180 General Practices
(Effective 2/1/2005)

General Practices. The provider must:

- (1) Conspicuously post the state license where it can be seen by individuals;
- (2) Explain and document in the individual's file that a copy of the Resident's Bill of Rights is given to each individual at admission, and is posted in a conspicuous place including the name and phone number of the office to call in order to report complaints;
- (3) Develop written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on refunds in case of departure, hospitalization or death. House rules will be discussed with individuals and their families at the time of admission, reviewed annually and be posted in a conspicuous place in the AFH-DD. House rules are subject to review and approval by the Department or designee and may not violate individual's rights as stated in ORS 430.210, 443.739 and 411-360-0170(9)(a-t);
- (4) Cooperate with Department personnel or designee in complaint investigation procedures, abuse investigations and protective services, planning for individual care, application procedures and other necessary activities, and allow access of Department personnel to the AFH-DD, its individuals, and all records;
- (5) Give care and services, as appropriate to the age and condition of the individual(s), and as identified on the ISP. The provider will be responsible for ensuring that physicians' orders and those of other medical professionals are followed, and that the individual's physicians and other medical professionals are informed of changes in health status and if the individual refuses care;
- (6) In provider's absence, have a substitute caregiver on the premises who can provide care or services as required by the age and condition of the

individuals. An AFH-DD service recipient may not be a substitute caregiver. For provider absences beyond 72 hours, the CDDP must be notified of the name of the substitute caregiver;

(7) A provider, resident manager, or substitute caregiver must be present in the home at all times individuals are present, unless specifically stated in the ISP, and granted as a variance by the Department;

(8) Allow individual(s) to exercise all civil and human rights accorded to other citizens;

(9) Not allow or tolerate physical, sexual or emotional abuse or punishment; exploitation; or neglect of individuals;

(10) Provide care and services as agreed to in the ISP;

(11) Keep information related to individual(s) confidential as required under ORS 179.050;

(12) Assure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the CDDP and Department;

(13) Not admit individuals without developmental disabilities without the express permission of the Department or designee. The provider must notify the CDDP prior to admitting an individual not referred for placement by the CDDP;

(14) Notify the Department and CDDP prior to announcing a planned closure to individuals and families. The provider must give individuals, families, and the CDDP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety or well-being of individuals, providers or caregivers. If a provider has more than one AFH-DD, individuals cannot be shifted from one AFH-DD to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members and CDDP's;

(15) Exercise reasonable precautions against any conditions that could threaten the health, safety or welfare of individuals;

(16) Immediately notify the appropriate ISP Team members (in particular the services coordinator and family or guardian) of any unusual incidents that include the following:

- (A) Any significant change in medical status;
- (B) An unexplained or unanticipated absence from the AFH-DD;
- (C) Any alleged or actual abuse of the individual;
- (D) Any major behavioral incident, accident, illness, or hospitalization;
or
- (E) If the individual contacts, or is contacted by, the police; or
- (F) The individual dies.

(18) Write an incident report for any unusual incident and forward copy of the incident report to the CDDP within five working days of the incident unless the incident should be referred immediately for a protective services investigation. Copies of incident reports not involving a protective services investigation will be provided to the guardian or personal agent, when applicable.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0190 Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

(Effective 2/1/2005)

(1) Admission. All individuals considered for admission into the AFH-DD must:

- (a) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law; and

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Be referred by the Community Developmental Disability Program or have prior written approval of the CDDP or Department if the individual's services are paid for by the Department; or

(d) Be placed with the agreement of the Community Developmental Disability Program if the individual is either private pay or not developmentally disabled.

(2) Information required for admission. At the time of the referral the provider will be given:

(a) A copy of the individual's eligibility determination document;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and adjusting water temperature for bathing and washing;

(c) A brief written history of any behavioral challenges including supervision and support needs;

(d) A medical history and information on health care supports that includes, where available:

(A) The results of a physical exam made within 90 days prior to entry;

(B) Results of any dental evaluation;

(C) A record of immunizations;

(D) A record of known communicable diseases and allergies; and

(E) A record of major illnesses and hospitalizations.

(e) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(f) Copies of documents relating to guardianship or conservatorship or any other legal restrictions on the rights of the individual, if applicable;

(g) A copy of the most recent Functional Behavioral Assessment, Behavior Support Plan, Individual Support Plan and Individual Education Plan if applicable.

(3) Admission meeting. An ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-admission information required by OAR 411-360-0190(2)(a)-(g);

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(f) A written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(4) The provider will retain the right to deny admission of any individual if they feel the individual cannot be managed effectively in the AFH-DD, or for any other reason specifically prohibited by this rule.

(5) AFH-DD's will not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the CDDP or the Department.

(6) Transfers:

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the adult foster home without 30 days advance written notice to the individual, the individual's legal representative, guardian or conservator, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the individual's right to a hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080, except for a medical emergency, or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care;

(C) The AFH-DD has had its license revoked, not renewed, or voluntarily surrendered;

(D) The individual's care needs exceed the ability of the provider; or

(E) There is a mutual decision made by the individual and the ISP team that a transfer is in the person's best interest and all team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider will be given the opportunity for hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, the provider, a family member and CDDP staff member.

(7) Respite. Providers will not exceed the licensed capacity of their AFH-DD. However, respite care of no longer than two weeks duration may be provided to one or more persons if the addition of the respite person does not cause the total number of individuals to exceed five. Thus, a provider may exceed the licensed number of individuals by one or more respite individuals, for two weeks or less, if approved by the CDDP or Department, and:

- (a) If the total number of individuals does not exceed five;
- (b) There adequate bedroom and living space available in the AFH-DD; and
- (c) The provider has information sufficient to provide for the health and safety of individuals receiving respite.

(8) Crisis Services. Qualifications for crisis services. All individuals considered for crisis services funded through Adult Foster Care services must:

- (a) Be referred by the Community Developmental Disability Program or Department;
- (b) Be determined to have a developmental disability by the Department or its designee;
- (c) Be determined to be eligible for DD Services as defined in OAR 411-360-0020(31)(a-e) or any subsequent revision thereof; and
- (d) Not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(9) Support Services Plan of Care and Crisis Addendum required. Individuals receiving support services under Chapter 411 Division 340, and receiving crisis services in an AFH-DD must have a Support Services Plan of Care and a Crisis Addendum upon admission to the AFH-DD.

(10) Plan of Care required for persons not enrolled in support services. Individuals, not enrolled in support services, receiving crisis services for less than 90 consecutive days must have a transition plan on admission that addresses any critical information relevant to the individual's health and safety including current physicians' orders.

(11) Admission meeting required. Admission meetings are required for individuals receiving crisis services.

(12) Exit meeting required. Exit meetings are required for individuals receiving crisis services.

(13) Waiver of appeal rights for exit. Individuals receiving crisis services do not have appeal rights regarding exit upon completion of the Crisis Plan.

(14) Exit.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers stated in paragraphs (6)(a)(A) through (E) of this rule. The provider will give at least 30 days written notice to an individual and the Department before termination of residency, except where undue delay might jeopardize the health, safety or well-being of the individual or others;

(b) The provider will promptly notify the CDDP in writing if an individual gives notice or plans to leave the AFH-DD or if an individual abruptly leaves.

(15) Exit meeting. Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent an exit from the AFH-DD unless the individual, or individual's guardian is requesting exit;

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(16) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the AFH-DD under the following conditions:

(a) The individual and his or her guardian or legal representative request an immediate move from the AFH-DD home; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(17) Closing. Providers must notify the Department in writing prior to a voluntary closure of an AFH-DD, and give individuals, families, and the CDDP, 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety or well-being of individuals, providers or caregivers. If a provider has more than one AFH-DD, individuals cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members and the CDDP. A provider must return the license to the AFH-DD to the Department if the home closes prior to the expiration of the license.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0200 Adjustment, Suspension or Termination of Payment
(Effective 2/1/2005)

(1) The CDDP or Department may adjust, suspend, or terminate payment(s) to a provider when any of the following conditions occur:

(a) The provider's AFH-DD license is revoked, suspended, or terminated;

(b) Upon finding that the provider is failing to deliver any service as agreed to in the ISP;

(c) When funding, laws, regulations, or the CDDP or Department priorities change such that funding is no longer available, redirected to other purposes, or reduced;

(d) The individual's service needs change;

(e) The individual is absent without providing notice to the provider for five or more consecutive days;

(f) The individual is determined to be ineligible for services; or

(g) The individual moves, with or without notice, from the AFH-DD; the provider will be paid only through the last day of the individual's occupancy.

(2) The CDDP or Department is under no obligation to maintain the AFH-DD at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0210 Inspections

(Temporary Effective 1/1/2010 – 6/30/2010)

(1) The Department or designee shall conduct an inspection of an AFH-DD:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or

(c) Anytime the Department has probable cause to believe that an AFH-DD has violated a regulation or provision of these rules or is operating without a license.

(2) The Department may conduct inspections of an AFH-DD:

(a) Anytime such inspections are authorized by these rules and any other time the CDDP or Department considers it necessary to

determine if an AFH-DD is in compliance with these rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring of the individuals' care.

(3) State or local fire inspectors shall be permitted access to enter and inspect the AFH-DD regarding fire safety upon request of the CDDP or Department.

(4) Department or CDDP staff shall have full access and authority to examine, among other things, facility and individual records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) Department or CDDP staff shall have authority to interview the provider, resident manager, caregiver(s), and individuals. Interviews shall be confidential and conducted in private, and shall be confidential except as considered public record under ORS 430.763.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Department or CDDP staff for the purpose of inspection and investigation.

(7) The Department or CDDP staff has authority to conduct inspections with or without advance notice to the provider, substitute caregivers, or an individual of the AFH-DD. The Department or CDDP may not give advance notice of any inspection if they believe that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) If Department or CDDP staff is not permitted access or inspection a search warrant may be obtained.

(9) The inspector shall respect the private possessions and living area of individuals, providers and caregivers while conducting an inspection.

(10) Completed reports on inspections, except for confidential information, shall be available to the public, upon request of the Department or CDDP,

during business hours. A copy of the inspection report shall be given to the licensee within ten working days of completion of the final report.

(11) For individuals receiving services authorized or funded by a CDDP, the Department or its designee must investigate allegations of abuse as defined in OAR 407-045-0260.

(12) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee, has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Department or its designee. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the accused person or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

- (a) If there is reasonable cause to believe that abuse has occurred;
- (b) If the alleged victim is in danger or in need of immediate protective services;
- (c) If there is reason to believe that a crime has been committed; and
- (d) What, if any, immediate personnel actions shall be taken.

(13) The CDDP shall provide notification to the provider according to OAR 407-045-0290 when an abuse investigation has been initiated.

(14) The Department or its designee shall complete an Abuse Investigation and Protective Services Report according to OAR 407-045-0320. The report shall include the findings based upon the abuse investigation.

(15) The CDDP shall provide notification to the provider according to OAR 407-045-0320 upon completion of the abuse investigation.

(16) When the provider receives notification of a substantiated allegation of abuse, the provider must provide written notification:

(a) Immediately to the individual found to have committed abuse;

(b) At minimum annually to the:

(A) Residents of the foster home;

(B) Residents' services coordinators; and

(C) Residents' guardians.

(17) The provider's written notification must include:

(a) The type of abuse as defined in OAR 407-045-0260;

(b) When the allegation was substantiated; and

(c) How to request a copy of the abuse investigation and protective services report.

(18) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(19) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 407-045-0320, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider in accordance with OAR 407-045-0330. The provider must implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(20) A provider may not retaliate against any person who reports in good faith suspected abuse, or against the individual with respect to the report. An accused person cannot self-report solely for the purpose of claiming retaliation.

(21) Any provider who retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a

private action to that person for actual damages and, in addition, a penalty up to \$1,000, not withstanding any other remedy provided by law.

(22) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes, but is not limited to:

- (a) Discharge or transfer from the AFH-DD, except for clinical reasons;
- (b) Discharge from or termination of employment;
- (c) Demotion or reduction in remuneration for services; or
- (d) Restriction or prohibition of access to the community facility or its individuals.

(23) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

411-360-0220 Complaints

(Effective 2/1/2005)

(1) The Department or CDDP will furnish each AFH-DD with a Complaint Notice that must be posted in a conspicuous place, stating the telephone number of the Department and the CDDP and the procedure for making complaints.

(2) Any person who believes these rules OAR 411-360-0010 through 0310 have been violated may file a complaint with the Department or CDDP.

(3) The Department or CDDP will investigate any complaint regarding the AFH-DD.

(4) A copy of all AFH-DD complaints will be maintained by the Department. All complaints and action taken on the complaint, indexed by the name of the provider, will:

(a) Be placed into the public file at the Department. (Information regarding the investigation of the complaint will not be filed in the public file until the investigation has been completed);

(b) Protect the privacy of the complainant and the individual; and

(c) Treat the names of the witnesses as confidential information.

(5) Providers who receive substantiated complaints pertaining to the health, safety or welfare of individuals may have their licenses suspended, revoked or not renewed, or may have conditions placed on the license.

(6) The AFH-DD provider, resident manager, or caregiver must not retaliate in any way against any individual after a complaint has been filed with the Department. Retaliation may include, but is not limited to:

(a) Increasing charges;

(b) Decreasing services, rights or privileges;

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

(d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH-DD; or

(e) Abusing, harassing, or threatening to harass or abuse an individual in any manner.

(7) A complainant, witness or caregiver of an AFH-DD must not be subject to retaliation by a provider or resident manager for making a report or being interviewed about a complaint or being a witness. Retaliation may include, but is not limited to, caregiver dismissal or harassment, or restriction of access to either the AFH-DD or an individual.

(8) Any person has the right to inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Department upon request subject to the Department's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests subject to Federal and State confidentiality laws.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0230 Procedures for Correction of Violations

(Effective 2/1/2005)

(1) If, as a result of an inspection or investigation, the Department determines that abuse has occurred, the provider must be notified verbally to cease the abusive act immediately. The Department will follow-up with a written confirmation of the warning to cease the abusive act, and will include notification that further sanctions may be imposed.

(2) If an inspection or investigation results in a violation of the rules other than abuse, the Department will notify the provider in writing of violations of these rules.

(3) The notice of violation will state the following:

(a) A description of each conduct or condition that constitutes a violation;

(b) Each regulation that has been violated;

(c) Except in cases of abuse, a specific time frame for correction, but no later than 60 days after receipt of the notice;

(d) Sanctions that may be imposed against the AFH-DD for failure to correct the violations;

(e) Right to contest the violations if an administrative sanction is imposed; and

(f) The right to request a variance as provided in OAR 411-360-0030.

(4) At any time after receipt of a notice of violations or an inspection report, the licensee or the Department may request a conference. The conference will be scheduled within 10 days of a request by either party.

(5) The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the rules.

(6) The request by a licensee or the Department for a conference will not extend any previously established time limit for correction.

(7) The licensee will notify the Department in writing of the correction of violations no later than the date specified in the notice of violation.

(8) The Department or its designee will conduct a re-inspection of the AFH-DD after the date the Department or the CDDP receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(9) For violations that present a serious and immediate threat to the health, safety or welfare of individuals, the notice of violation will order the licensee to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Department will inspect the AFH-DD after the 24 hour period to determine if the violations have been corrected as specified in the notice of violation.

(10) If individuals are in serious and immediate danger, the license may be suspended or revoked immediately and arrangements made to move the individuals.

(11) If, after inspection of the AFH-DD, the violations have not been corrected by the date specified in the notice of violation or if the Department has not received a report of compliance, the Department will institute one or more of the following actions:

(a) Imposition of an administrative sanction;

(b) Filing of a criminal complaint.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0240 Administrative Sanction
(Effective 2/1/2005)

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

- (a) Attachment of conditions to a license;
- (b) Civil penalties;
- (c) Denial, revocation, or non-renewal of license;
- (d) Immediate suspension or revocation of license.

(2) If the Department imposes an administrative sanction, it will serve a notice of administrative sanction upon the licensee personally or by certified or registered mail.

(3) The notice of administrative sanction will state:

- (a) Each sanction imposed;
- (b) A short and plain statement of each condition or act that constitutes a violation;
- (c) Each statute or rule allegedly violated;
- (d) A statement of the licensee's right to a contested case hearing;
- (e) A statement of the authority and jurisdiction under which the hearing is to be held;
- (f) A statement that the Department's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(g) A statement that the Department will issue a final order by default if the licensee fails to request a hearing within the specified time or fails to appear for the contested case hearing.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0250 Conditions

(Effective 2/1/2005)

(1) Circumstances under which conditions may be applied to a license. Conditions may be attached to a license upon a finding that:

- (a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;
- (b) There exists a threat to the health, safety, and welfare of an individual;
- (c) There is reliable evidence of abuse of an adult;
- (d) The AFH-DD is not being operated in compliance with these rules;
or
- (e) The provider is licensed to care for a specific person(s) only and further placements may not be made into that AFH-DD.

(2) Imposing conditions. Conditions that may be imposed on a licensee include, but are not limited to:

- (a) Restricting the total number of individuals;
- (b) Restricting the number and impairment level of individuals allowed based upon the capacity of the caregivers to meet the health and safety needs of all individuals;
- (c) Requiring additional caregiver or caregiver qualifications;
- (d) Requiring additional training of caregivers;

- (e) Requiring additional documentation;
- (f) Restricting a provider from opening an additional AFH-DD; and
- (g) Suspending admissions.

(3) Written notification. The provider will be notified in writing of any conditions imposed, the reason for the conditions, and will be given an opportunity to request a hearing under ORS Chapter 183.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, a provider may request a review by the Department administrator or designee of conditions imposed by the CDDP or Department. The review does not diminish the provider's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the duration of the licensure period (one year) or limited to some other shorter period of time. If the conditions correspond to the licensing period, the reasons for the conditions will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions will be indicated on the attachment to the license.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0260 Civil Penalties

(Effective 2/1/2005)

(1) Civil penalties, not to exceed \$100 per violation to a maximum of \$250, may be assessed for violation of these rules, with the exception of substantiated abuse.

(2) Civil penalties of a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.

(3) In addition to any other liability or penalty, the Department may impose a civil penalty for any of the following:

- (a) Operating the AFH-DD without a license;

- (b) The number of individuals exceeds the licensed capacity;
- (c) The provider fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance;
- (d) The AFH-DD is unable to provide adequate level of care to individuals;
- (e) There is retaliation or discrimination against a individual, family, employee, or any other person for making a complaint against the AFH-DD;
- (f) The provider fails to cooperate with the Department, physician, registered nurse, or other health care professional in carrying out an individual's care plan; or
- (g) Violations are found on two consecutive inspections of an AFH-DD after a reasonable amount of time, prescribed for elimination of the violations, has passed.

(4) Consideration of factors when imposing civil penalties. In imposing a civil penalty pursuant to this rule, the Department will consider the following factors:

- (a) The past history of the provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;
- (b) Any prior violations of statutes or rules pertaining to AFH-DD foster homes;
- (c) The economic and financial conditions of the provider incurring the penalty; and
- (d) The immediacy and extent to which the violation threatens or threatened the health, safety and well being of the individuals.

(5) Any civil penalty imposed under this section will become due and payable when the provider incurring the penalty receives a notice in writing from the Department. The notice will be sent by registered or certified mail and will include:

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

(b) A short and plain statement of the matter asserted or charged;

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

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

(6) Timeline to make written application for a hearing. The provider to whom the notice is addressed, will have 10 days from the date of service of the notice in which to make a written application for a hearing before the Department.

(7) Conduct of hearing. All hearings will be conducted pursuant to the applicable provisions of ORS Chapter 183.

(8) Failure to request a hearing within 10 days. If the provider notified fails to request a hearing within 10 days an order may be entered by the Department assessing a civil penalty.

(9) A hearing must be held and a final order issued within 180 days of the request of the hearing.

(10) Remittance or reduction of a civil penalty. A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Administrator considers proper and consistent with individual health and safety.

(11) Civil penalty payable within 10 days after order is entered. If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, will constitute a judgment and may

be filed in accordance with provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(12) Violation of any general order or final order. A violation of any general order or final order pertaining to a AFH-DD issued by the Department is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(13) Judicial review of civil penalties. Judicial review of civil penalties imposed under ORS 441.710 will be provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(14) Penalties recovered. All penalties recovered under ORS 443.455 and 441.710 to 441.740 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0270 Denial, Revocation, or Non-renewal of License

(Temporary Effective 3/18/2010 – 6/30/2010)

(1) The Department shall deny, revoke, or refuse to renew a license where it finds:

(a) There has been imminent danger to the health or safety of individuals or substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of individuals in an AFH-DD; or

(b) The applicant or provider has a denied criminal records check from the Department.

(c) The applicant or provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(d) The provider fails to implement a plan of correction or comply with a final order of the Department imposing an administrative sanction, including the imposition of a civil penalty.

(e) The provider refuses to allow access and inspections;

(f) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked or refused to be renewed in this or any other state or county within three years preceding the present action if the denial, suspension, revocation or refusal to renew was due in any part to abuse of an adult or child, creating a threat to the individuals or failure to possess physical health, mental health or good personal character;

(g) If the denial, suspension, revocation or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Department by clear and convincing evidence his or her ability and fitness to operate an AFH-DD. If the applicant or provider does not meet this burden, then the Department shall deny, revoke, or refuse to renew the license;

(h) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse of an adult, or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or provider may demonstrate to the Department by clear and convincing evidence that the person does not pose a threat to the individuals;

(A) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the AFH-DD;

(iii) Receives financial backing from the person for the benefit of the AFH-DD;

(iv) Receives managerial assistance from the person for the benefit of the AFH-DD; or

(v) Allows the person to have access to the AFH-DD.

(B) For purposes of this section only, "present action", means the date of the notice of denial, suspension, revocation or refusal to renew.

(2) The Department may deny, revoke, or refuse to renew an AFH-DD license if the applicant or provider:

(a) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or disruption of utility services due to failure to pay bill(s);

(b) Has threatened the health, safety, or welfare of any individual;

(c) Has a substantiated finding of abuse of an adult; or

(d) Has a medical or psychiatric problem that interferes with the ability to provide care.

(3) On or after July 28, 2009, the Department may deny, revoke, or refuse to renew an AFH-DD license if the applicant or provider has been convicted:

(a) Of a crime listed in Exhibit 360-1;

(b) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(c) Of an attempt, conspiracy, or solicitation to commit a crime described in Exhibit 360-1; or

(d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in Exhibit 360-1.

(4) Failure to disclose requested information on the application; provision of incomplete or incorrect information on the application; or failure to renew their license shall constitute grounds for denial or revocation of the license.

(5) Any administrative sanction imposed under this section shall receive a notice in writing from the Department. The notice shall be sent by registered or certified mail and shall include:

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

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the administrative sanction imposed; and

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

(6) Timeline to make written application for a hearing. The provider to whom the notice is addressed, shall have 60 days from the date of service of the notice in which to make a written application for a hearing before the Department when the administrative sanction is a denial of a license. The provider shall have 90 days when the administrative sanction is a non-renewal of a license.

(7) Conduct of hearing. All hearings shall be conducted pursuant to the applicable provisions or ORS chapter 183.

(8) Failure to request a hearing. If the provider notified fails to request a hearing within the time period specified in the notice an order may be entered by the Department assessing a civil penalty.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 443.705 - 443.825

411-360-0275 Immediate Suspension or Revocation

(Effective 2/1/2005)

(1) A license may be immediately suspended or revoked upon a finding by the Department of Human Services for any of the following:

(a) There exists a threat to the health, safety or welfare of any individual.

(b) There is reliable evidence of abuse, neglect or exploitation of any individual.

(c) The AFH-DD is not operated in compliance with ORS 443.705 to 443.825 or the rules adopted thereunder.

(2) If the license is immediately suspended or revoked for the reason of abuse, neglect or exploitation of an individual, the provider may request a review in writing within 10 days after notice of the immediate suspension or revocation. If a request is made, the Director shall review all material relating to the allegation of abuse, neglect or exploitation and to the immediate suspension or revocation within 10 days of the request. The Director shall determine, based on review of the material, whether or not to sustain the decision to immediately suspend or revoke. If the Director determines not to sustain the decision, the license shall be restored immediately. The decision of the Director is subject to judicial review as a contested case under ORS chapter 183.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended or revoked, the Department may withhold service payments until the defective situation is corrected. For protection of individuals, the Department may arrange for them to move.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

411-360-0280 Criminal Penalties

(Effective 2/1/2005)

(1) Operating an AFH-DD without a license is punishable as a Class C misdemeanor.

(2) Refusing to allow Department access to the AFH-DD for inspection, Department access to individuals in order to interview individuals privately or to review records, or state and local fire inspector access to the AFH-DD regarding fire safety, is punishable as a Class B misdemeanor.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0290 Enjoinment of Adult Foster Home (AFH) Operation
(Effective 2/1/2005)

The Department may commence an action to enjoin operation of an AFH pursuant to ORS 443.775(5):

- (1) When an AFH-DD is operated without a valid license; or
- (2) After notice of revocation or suspension has been given, a reasonable time for placement of individuals in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0300 Zoning for Adult Foster Homes
(Effective 2/1/2005)

An AFH-DD is a residential use of property for zoning purposes. An AFH-DD is a permitted use in any residential zone, including a residential zone that allows a single family dwelling, and in any commercial zone that allows a single-family dwelling. No city or county may impose any zoning requirement on the establishment and maintenance of an AFH-DD in these zones that is more restrictive than a single-family dwelling in the same zone.

Stat. Auth.: ORS 410.070, 409.050
Stats. Implemented: ORS 443.705 - 443.825

411-360-0310 Public Information
(Effective 2/1/2005)

- (1) The Department will maintain current information on all licensed AFH-DD's and will make that information available to prospective individuals, their families, and other interested members of the public.

(2) The information will include:

- (a) The location of the AFH-DD;
- (b) A brief description of the physical characteristics of the home;
- (c) The name and mailing address of the provider;
- (d) The license classification of the home and the date the provider was first licensed to operate that home;
- (e) The date of the last inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;
- (f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the Department;
- (g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and
- (h) Whether care is provided primarily by the licensed provider, a resident manager, or other arrangement.

(3) Any list of adult foster homes maintained or distributed by the Department will include notification to the reader of the availability of public records concerning the AFH-DD's.

Stat. Auth.: ORS 410.070, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Exhibit 360-1

ORS 163.095 Aggravated murder
ORS 163.115 Murder
ORS 163.118 Manslaughter I
ORS 163.125 Manslaughter II
ORS 163.145 Criminally negligent homicide
ORS 163.149 Aggravated vehicular homicide
ORS 163.165 Assault III
ORS 163.175 Assault II
ORS 163.185 Assault I
ORS 163.187 Strangulation
ORS 163.200 Criminal mistreatment II
ORS 163.205 Criminal mistreatment I
ORS 163.225 Kidnapping II
ORS 163.235 Kidnapping I
ORS 163.263 Subjecting another person to involuntary servitude II
ORS 163.264 Subjecting another person to involuntary servitude I
ORS 163.266 Trafficking in persons
ORS 163.275 Coercion
ORS 163.355 Rape III
ORS 163.365 Rape II
ORS 163.375 Rape I
ORS 163.385 Sodomy III
ORS 163.395 Sodomy II
ORS 163.405 Sodomy I
ORS 163.408 Unlawful sexual penetration II
ORS 163.411 Unlawful sexual penetration I
ORS 163.415 Sexual Abuse III
ORS 163.425 Sexual Abuse II
ORS 163.427 Sexual Abuse I
ORS 163.432 Online sexual corruption of a child II, if the offender reasonably believed the child to be more than five years younger than the offender
ORS 163.432 Online sexual corruption of a child I, if the offender reasonably believed the child to be more than five years younger than the offender
ORS 163.435 Contributing to the sexual delinquency of a minor
ORS 163.445 Sexual misconduct, if the offender is at least 18 years of age
ORS 163.465 Public Indecency
ORS 163.467 Private Indecency
ORS 163.525 Incest with a child victim
ORS 163.535 Abandonment of a child
ORS 163.537 Buying or selling a person under 18 years of age
ORS 163.670 Using a child in display of sexually explicit conduct
ORS 163.680 Paying for viewing a child's sexually explicit conduct
ORS 163.684 Encouraging child sexual abuse I
ORS 163.686 Encouraging child sexual abuse II
ORS 163.687 Encouraging child sexual abuse III
ORS 163.688 Possession of materials depicting sexually explicit conduct of a child I
ORS 163.689 Possession of materials depicting sexually explicit conduct of a child II
ORS 163.700 Invasion of personal privacy
ORS 164.055 Theft I
ORS 164.057 Aggravated Theft I
ORS 164.098 Organized retail theft
ORS 164.125 Theft of services, if charged as a felony
ORS 164.215 Burglary II
ORS 164.225 Burglary I
ORS 164.325 Arson I
ORS 164.377 Computer crime, if charged with a felony
ORS 164.405 Robbery II
ORS 164.415 Robbery I
ORS 165.022 Criminal possession of a forged instrument I
ORS 165.032 Criminal possession of a forgery device
ORS 165.800 Identity theft
ORS 165.803 Aggravated identity theft
ORS 167.012 Promoting prostitution
ORS 167.017 Compelling prostitution
ORS 167.054 Furnishing sexually explicit material to a child
ORS 167.057 Luring a minor
ORS 181.594 Sex crimes, including:
Transporting child pornography into the state