

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

All residential homes types – Adults and Children

411-318-0010

Individual Rights

- (1) While receiving developmental disabilities services, an individual has the right to:
 - (a) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;
 - (b) Be free from seclusion, unauthorized training or treatment, and personal, chemical, and mechanical restraints, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;
 - (c) Be assured that medication is administered only for the clinical needs of the individual as indicated by a health care provider, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;
 - (d) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;
 - (e) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;
 - (f) Informed, voluntary, written consent prior to participating in any experimental programs;
 - (g) A humane service environment that affords reasonable privacy and the ability to engage in private communications with people chosen by the individual through personal visits, mail, telephone, or electronic means;
 - (h) Visit with legal and designated representatives, family members, friends, advocates, legal and medical professionals, and others chosen by the individual, except where prohibited by court order;
 - (i) Participate regularly in the community and use community resources, including recreation, developmental disabilities services, employment services, school, educational opportunities, and health care resources;
 - (j) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;
 - (k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;
 - (l) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;
 - (m) Keep and use personal property and have a reasonable amount of personal storage space;
 - (n) Food, housing, clothing, medical and health care, supportive services, and training;
 - (o) Seek a meaningful life by choosing from available services and enjoying the benefits of community involvement and community integration in a manner that is most integrated, considering the preferences and age of the individual;
 - (p) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;
 - (q) Ongoing participation in the planning of services, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with an explanation of all service considerations in a manner that ensures meaningful individual participation, and the right to invite others chosen by the individual to participate in the plan for services;
 - (r) Request a change in the plan for services and a reassessment of service needs;
 - (s) A timely decision upon request for a change in the plan for services and a reassessment of service needs;

(t) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services, and exercise of a complaint procedure;

(u) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, notification of available sources of necessary continued services, and a hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(v) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), and the procedures for filing complaints, reviews, hearings, or appeals if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Be encouraged and assisted in exercising all legal, civil, and human rights;

(x) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment;

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment; and

(aa) Be informed that a family member has contacted the Department to determine the location of the individual, and to be informed of the name and contact information of the family member, if known, as provided under ORS 430.212 and OAR 411-320-0090.

(2) The individual rights described in section (1) of this rule apply to all individuals' eligible for or receiving a developmental disabilities service. A parent or guardian may place reasonable limitations on the rights of a child.

(3) In addition to the rights described in section (1) of this rule, individuals receiving home and community-based services in residential and non-residential home and community-based settings have the right to home and community-based settings with the qualities described in OAR 411-004-0020(1).

(4) In addition to the rights described in sections (1) of this rule, individuals receiving home and community-based services in provider owned, controlled, or operated residential settings have the right to provider owned, controlled, or operated residential settings with the qualities described in OAR 411-004-0020(2).

(a) For children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, the qualities described in OAR 411-004-0020(2) apply in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities.

(b) Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, must be addressed through a person-centered service planning process and documented in the ISP for the child.

(c) Limitations that deviate from and are more restrictive than what is typical for children of the same age without disabilities must comply with OAR 411-004-0040.

(5) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents.

(6) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(7) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(8) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual

mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

Statutory/Other Authority: ORS 409.050 & 427.107

Statutes/Other Implemented: ORS 183.411-471, 409.010, 427.107 & 427.109

History:

APD 17-2016, f. 6-28-16, cert. ef. 6-29-16

APD 37-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

APD 40-2014, f. 12-26-14, cert. ef. 12-28-14

APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14

[Please use this link to bookmark or link to this rule.](#)

Mental Health

Residential Treatment Facilities/Residential Treatment Homes - Adults

309-035-0175

Individual Rights

(1) Each individual shall be assured the same civil and human rights accorded to other citizens. These rights shall be assured unless expressly limited by a court in the case of an individual who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to and do not limit all other statutory and constitutional rights that are afforded to all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose property, enter into contracts and execute documents.

(2) A provider shall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider except where expressly allowed under these rules.

(3) The provider shall ensure that individuals receiving mental health services have the rights set forth in ORS 430.210:

(4) An individual also has a right to the following:

(a) Adequate food, shelter, and clothing;

(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible;

(c) Confidential communication including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls;

(d) Express sexuality in a socially appropriate and consensual manner;

(e) Access to community resources including recreation, religious services, agency services, employment, and day programs unless such access is legally restricted;

(f) Be free from seclusion and restraint except as outlined in OAR 309-035-0205.

(g) To review the program's policies and procedures; and

(h) Not participate in research without informed voluntary written consent.

(5) An individual also has the following HCBS rights:

(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule;

(b) Have visitors of the individual's choosing at any time and the freedom to visit with guests within the common areas of the setting and the individual's unit;

- (c) The freedom and support to control the individual's own schedule and activities including but not limited to accessing the community without restriction;
 - (d) Have a lockable door in the individual's unit that may be locked by the individual, and only appropriate program staff have a key to access the unit;
 - (e) A choice of roommates when sharing a unit;
 - (f) Furnish and decorate the individual's unit according to the Residency Agreement;
 - (g) The freedom and support to have access to food at any time;
 - (h) Privacy in the individual's unit; and
 - (i) Section (5) of this rule are effective July 1, 2016, and OAR 309-035-0115(17).
- (6) An SRTF is not required to maintain the qualities or obligations identified in section (5) (b), (c), (d), (e) and (h). The provider is not required to seek an individually-based limitation to comply with these rules.
- (7) A provider is not required to comply with section (5) (a) of this rule when providing an individual with crisis-respite services. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules.
- (8) For the purpose of this section, these terms have the following meanings:
- (a) "Fresh air" means the inflow of air from outside the facility where the individual is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors;
 - (b) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area;
 - (c) If an individual requests access to fresh air and the outdoors or the individual's treating health care provider determines that fresh air or the outdoors would be beneficial to the individual, the program in which the individual is receiving services shall provide daily access to fresh air and the outdoors unless this access would create a significant risk of harm to the individual or others;
 - (d) The determination whether a significant risk of harm to the individual or others exists shall be made by the individual's treating health care provider. The treating health care provider may find that a significant risk of harm to the individual or others exists if:
 - (A) The individual's circumstances and condition indicate an unreasonable risk of harm to the individual or others that cannot be reasonably accommodated within existing programming should the individual be allowed access to fresh air and the outdoors; or
 - (B) The program's existing physical setting or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the individual or others.
 - (e) If a provider determines that its existing physical setting prevents the provision of access to fresh air and the outdoors in a safe manner, the provider shall make a good faith effort at the time of any significant renovation to the physical setting that involves renovation of the unit or relocation of where individuals are treated to include changes to the physical setting or location that allows access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.
- (9) The program shall have and implement written policies and procedures that protect individuals' rights and encourage and assist individuals to understand and exercise their rights. The program shall post a listing of individual rights under these rules in a place readily accessible to all individual s and visitors.

Statutory/Other Authority: ORS 413.042 & 443.450

Statutes/Other Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

History:

MHS 5-2017, f. & cert. ef. 6-8-17

MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17

MHD 4-2005, f. & cert. ef. 4-1-05

MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98

MHD 9-1985, f. & ef. 6-7-85

MHD 9-1984(Temp), f. & ef. 12-10-84

[Please use this link to bookmark or link to this rule.](#)

Mental Health Adult Foster Homes - Adults **309-040-0300**

ADULT FOSTER HOMES

309-040-0300

Purpose and Scope

(1) These rules prescribe care and service standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community-based Adult Foster Homes (AFHs) for adults with mental or emotional disorders. The care and services standards are designed to promote the individual's right to independence, choice, and decision making while providing a safe, secure, homelike environment. The provider shall address the individual's needs in a manner that enables the individual to function at the highest level of independence possible:

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for home and community-based services authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving these services consistent with the standards set out in OAR chapter 411, division 4.

(2) These rules apply to adult foster homes providing services to five or fewer adults with mental or emotional disorders, regardless of whether the provider receives public funds.

Statutory/Other Authority: ORS 413.042, 413.032 & 413.085

Statutes/Other Implemented: ORS 443.705 - 443.825

History:

MHS 9-2017, f. 6-29-17, cert. ef. 7-1-17

MHS 3-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17

MHS 14-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17

MHS 4-2012, f. 5-3-12, cert. ef. 5-4-12

MHS 11-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12

Renumbered from 309-040-0000, MHD 3-2005, f. & cert. ef. 4-1-05

MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99

MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92)

MHD 6-1986, f. & ef. 7-2-86

MHD 19-1985(Temp), f. & ef. 12-27-85

[Please use this link to bookmark or link to this rule.](#)