

CHAPTER 23: COUNTY HUMAN SERVICES

§§:

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Editor's Note: Former Chapter 25, Aging and Disability Services combined with Chapter 23, Community and Family Services to become the new Chapter 23, County Human Services, by Ord. 974, 1/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget purposes); Leg.Hist §25.001: (' 90 Code, § 2.30.112, 07/01/1998; Ord. 885, passed, 09/11/1997; Ord. 818, passed, 04/06/1995)

Statutory reference:

Abuse of the elderly and incapacitated, see ORS, Ch. 124
Adult foster homes, see ORS 443.705
Alcohol and drug abuse, see ORS, Ch. 430
Child welfare services, see ORS, Ch. 418
Children and family services, see ORS, Ch. 417
Death, injuries and missing persons, see ORS, Ch. 146
Duties of public welfare board, see ORS, Ch. 411
Mentally ill and sexually dangerous, see ORS, Ch. 426
Mentally retarded; developmentally disabled, see ORS, Ch. 427
Protective proceedings, see ORS, Ch. 125
Senior and disability services, see ORS, Ch. 410
 (Ord. 974, Amended, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget))

GENERAL PROVISIONS**§ 23.001 DEPARTMENT OF COUNTY HUMAN SERVICES.**

The Department of County Human Services is created. The head of the department is the Director of the Department of County Human Service (director). The department is assigned the following functions:

- (A) Disability services;
- (B) Senior services;
- (C) Veterans Services;
- (D) Public Guardian;
- (E) Adult Care Home program,
- (F) Domestic violence program;
- (G) Community, youth and family services; and
- (H) Housing and community development services.

(Ord. 1219, Amended, 06/16/2015; Ord. 1087, Amended, 01/04/2007; Ord. 974, Amended, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 2.30.114, 07/01/1998; Ord. 818, passed, 04/06/1995)

MENTAL HEALTH ADVISORY COMMITTEE

(Ord. 1219, Deleted, 06/16/2015)

PUBLIC GUARDIAN

(Ord. 974, Renum25.100, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget))

§ 23.501 OFFICE OF PUBLIC GUARDIAN AND CONSERVATOR.

(A) The office of public guardian and conservator is established within the department.

(B) The department director appoints the public guardian and conservator (public guardian) who must be bonded as provided by state law.

(C) The public guardian has the powers and duties assigned by state law and retains final responsi-

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bility for all office decisions regarding the care and safety of protected persons.

(D) The public guardian may delegate duties to assistant public guardians and conservators and other staff.

(Ord. 974, Renum&Amd25.101, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget))

ADULT CARE HOMES - PART 1: GENERAL PROVISIONS

(Ord. 974, Renumbered, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget))

§ 23.600- TITLE; AREA OF APPLICATION.

This subchapter shall be known and cited as the Adult Care Home Licensure Law and shall apply to all areas of the county.

(Ord. 974, Renum25.200, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.005, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.601 FINDINGS.

The Board finds that:

(A) Approximately 2,000 dependent adults, including elderly people and people with disabilities, live in adult care homes in the county; as of June 1, 1996, there were approximately 650 licensed adult care homes in the county;

(B) Standards and requirements are necessary to protect the health, welfare, and safety of the residents of adult care homes and to ensure that the homes maintain a homelike atmosphere for the residents;

(C) The county has received an exemption to state licensure and is authorized to operate a countywide licensing program. The state requires that the county program be equal or superior to the requirements of ORS 443.705 to 443.825;

(D) The Board established the adult care home program in May, 1986 to license and inspect adult care homes under the County Code;

(E) Consistent interpretation, application, and enforcement of regulatory standards is necessary and desirable for the protection of residents of adult care homes;

(F) The county's program for licensure of adult care homes has successfully licensed, monitored and inspected homes and investigated complaints; and (Ord. 974, Renum25.201, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.010, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.602 PURPOSE.

(A) The purpose of this subchapter is to set forth the standards and requirements governing adult care homes in the county.

(B) The goal of an adult care home is to provide necessary care to residents while emphasizing the resident's independence. This goal is reached through a cooperative relationship between the care provider and the resident, resident's family, or resident's legal representative in a setting that protects and encourages the residents's dignity, choice, and decision-making. Resident needs will be addressed in a manner that enables the individual to function at their highest level of independence.

(C) The purposes of the adult care home program are to:

(1) Uphold the vision and standards for quality care in all adult care homes in the county;

(2) Enforce the county licensure law and administrative rules for adult care homes to ensure an appropriate physical environment and at least a minimum standard of care in each home;

(3) Ensure that adult care home residents are given care in a homelike atmosphere which is friendly, safe, and secure, where the atmosphere is more like a home than a medical facility, where the resident's dignity and rights are respected, where positive interaction between members of the home is encouraged, and where the resident's independence and decision-making is protected and encouraged; and

(4) Provide general information to the public about adult care homes in the county and ensure that the public has access to the information necessary to select an appropriate adult care home.

(Ord. 1272, Amended, 06/06/2019; Ord 974, Renum25.202, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.015, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.603 DEFINITIONS.

For the purpose of this subchapter, the following definitions apply unless the context requires a different meaning.

ACTIVITIES OF DAILY LIVING (ADL). Those personal functional activities required by an individual for continued well-being, including eating/nutrition, dressing, personal hygiene, mobility, toileting, and behavior, including medication and money management.

ADULT CARE HOME. Any home or facility that provides residential care for compensation to five or fewer persons who are not related to the operator by blood, adoption, or marriage.

ADULT CARE HOME PROGRAM (ACHP). The regulatory program of the department that oversees the enforcement of ACHP rules in adult care homes in Multnomah County.

BOARD. The operator's provision of meals on a predictable or regular basis.

CARE. The assistance with activities of daily living, such as bathing, dressing, grooming, bowel and bladder control, or behavior management, except that assistance with self-medication is not considered care.

CAREGIVER. Any person responsible for providing, care or services to residents of an adult care home under the jurisdiction of the ACHP.

COMPENSATION. Payments in cash, in kind, or in labor, by or on behalf of a resident to an operator or common fund in exchange for room, board, care or services, including any supervision, care and services specified in the care plan.

COMPENSATION does not generally include the voluntary sharing of expenses between or among roommates.

DIRECTOR. The director of the Department of County Human Services.

DISABILITY. Any physical, psychological, or cognitive impairment that limits the person in one or more of the activities of daily living.

ELDERLY PERSON. Any person age 65 or older who is in need of care.

COUNTY HUMAN SERVICES DEPARTMENT. The department of the county government, which is responsible for the provision of services, including Medicaid services, to elderly persons and some persons with disabilities.

LICENSED ADULT CARE HOME. A facility, which has been inspected and approved by the Adult Care Home Program.

OPERATOR. The person licensed by the adult care home program to operate the adult care home who has overall responsibility for the provision of residential care, who meets the standards outlined in the administrative rules, and who has been approved by the ACHP.

OWNER. Any person with any legal or equitable interest in, and with the right or power of control over, the physical structure of an adult care home.

RESIDENT. Any person who is receiving room, board, care, or services for compensation in an adult care home.

RESIDENT MANAGER. A person employed by the adult care home operator and approved by the ACHP who lives in the home, is responsible for the daily operation of the home and care given to residents, and who must comply with the ACHP rules.

ROOM AND BOARD. The provision of meals and a place to sleep for compensation to persons who do not need ADL care.

(Ord. 974, Renum&Amd25.203, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); '90 Code, § 8.91.020, 07/01/1998; Ord. 860, passed, 07/11/1996)

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§ 23.604 RESIDENTS' BILL OF RIGHTS.

(A) The director shall promote the Residents' Bill of Rights, shall ensure that each operator of an adult care home is provided with a copy, and shall ensure that each operator complies with the provisions in the Residents' Bill of Rights. Each operator shall post the Residents' Bill of Rights in a conspicuous place in the adult care home.

(B) The Residents' Bill of Rights shall read as follows:

The Bill of Rights for residents of adult care homes.

Each resident of an adult care home in the county has a right to:

(a) Be treated as an adult with respect and dignity.

(b) Live in a safe, secure, and homelike environment.

(c) Be informed of all resident rights and house rules.

(d) Be encouraged and assisted to exercise rights as a citizen, including the right to vote and to act on their own behalf.

(e) Be given information about their medical condition.

(f) Consent to or refuse treatment or training.

(g) Have all medical and personal information kept confidential.

(h) Receive appropriate care and services from the adult care home and have access to prompt medical care as needed.

(i) Be free from mental or physical abuse, neglect, abandonment, punishment, harm or sexual exploitation.

(j) Be free to make suggestions or complaints without fear of retaliation.

(k) Be free from financial exploitation, including charges for application fees or non-refundable deposits and solicitation of money or property by an operator, resident manager, or caregiver, other than the amount agreed to for services.

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

(m) Be free from any type of illegal discrimination.

(n) Be afforded personal privacy, the opportunity to associate and communicate privately with any person the resident chooses, to send and receive mail unopened, and to use the telephone in private.

(o) Participate in social, religious, and community activities.

(p) Make personal decisions about such things as friends, leisure activities, choice of physician, spending personal money, food, personal schedules, and place of residence.

(q) Be allowed and encouraged to develop talents and learn new skills, relate to other residents in meaningful ways, and the choice to take part in the normal activities and upkeep of the home.

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

(s) Be free to manage financial affairs unless legally restricted.

(t) Receive a written agreement regarding the services the home shall provide and rates charged, and receive at least 30 days written notice before the home's ownership or rates will change.

(u) Receive at least 30 days written notice and an opportunity for a hearing before being involuntarily moved out of the home by the operator, unless there is an emergency situation.

(v) Be involuntarily moved out of the home only for the following:

(1) Medical reasons,

(2) The resident's welfare,

(3) The welfare of other residents,

(4) Nonpayment,

(5) Behavior which poses an immediate threat to self or others,

(6) Behavior which substantially interferes with the orderly operation of the home,

(7) Care needs of the resident which exceed the ability or classification of the operator, or

(8) The home's loss of license.

(w) Receive complete privacy when receiving treatment or personal care.

(x) Receive visitors free from arbitrary and unreasonable restrictions.

(y) Practice the religion of their choice.

(z) Not be forced to work against their will and to be paid for agreed upon work.

(Ord. 1272, Amended, 06/06/2019; Ord. 974, Renum25.204, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); '90 Code, § 8.91.030, 07/01/1998; Ord. 860, passed, 07/11/1996)

**§ 23.605 LICENSE REQUIRED;
APPLICATION.**

(A) It is unlawful, and it shall constitute an offense in violation of this subchapter, for any person to establish, maintain or conduct in the county any adult care home without first having been licensed by the director through the adult care home program.

(B) The adult care home program shall license three types of adult care homes:

(1) Adult foster homes which may serve up to five residents who are unrelated to the operator or resident manager by blood, adoption or marriage and who require care;

(2) Limited license homes which may serve only the individual(s) specifically named on the license; and

(3) Room and board licenses for facilities which provide only room and board to elderly people or people with disabilities.

(C) Every person desiring to establish, maintain, operate or conduct an adult care home in the county shall make application for a license and successfully complete the application process.

Penalty, see § 23.999

(Ord. 974, Renum25.205, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.035, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.606 LICENSE.

After receipt of the completed application packet, and upon payment of the prescribed fee, the director shall cause an evaluation to be made subject to the provisions of § 23.612. The director shall issue a license to the operator if the adult care home and all caregivers are in compliance with the provisions of this subchapter and the rules and standards established by the director. Licenses are effective for one year from the date of issue unless sooner revoked and shall be renewed annually on a date established by the director. The director shall maintain a registry of adult care homes licensed under this subchapter.

(Ord. 974, Renum25.206, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.040, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.607 LICENSE FEE.

There shall be a licensure fee in an amount set by Board resolution, payable to the department. There shall be a fee for approval of each resident manager and a fee for approval of each substitute caregiver, in amounts set by Board resolution.

(Ord. 974, Renum25.207, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.045, 07/01/1998; Ord. 860, passed, 07/11/1996)

**§ 23.608 LICENSE NOT
TRANSFERABLE.**

No license which has been issued for the operation of an adult care home to any persons for a given location shall be valid for use by any other person or at any location other than that for which it is issued.

Penalty, see § 23.999

(Ord. 974, Renum25.208, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.050, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.609 STANDARDS FOR OPERATION.

(A) The director shall ensure that all adult care homes meet or exceed the standards set forth in this subchapter and in the county administrative rules for adult care homes.

(B) The operator, resident manager, and all caregivers in an adult care home must abide by the provisions in this subchapter and in the county Administrative Rules for Adult Care Homes.

(C) In an adult care home, the operator or resident manager must live in the home where the care is provided or must obtain a written exception in order for the adult care home to be licensed.

(D) The operator must ensure that any individual age 16 or older who lives or works in the adult care home, except the resident and residents' family members, has a state and/or multi-state criminal record check approval, as required, before working in or living in the adult care home.

Penalty, see § 23.999

(Ord. 974, Renum25.209, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.055, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.610 INSPECTIONS.

(A) The director or authorized representative of the director, including but not limited to county, city, and state officials, shall have full authority to and may enter, at any time, an adult care home licensed pursuant to this subchapter or any unlicensed adult care home which the director has cause to believe is operating without a license and inspect the entire premises for the purpose of ascertaining the safe, sanitary and habitable condition thereof and the physical and mental condition of the residents. The director shall have full authority to and may privately interview any resident and inspect any records concerning residents maintained by the adult care home.

(B) In the event that the director is denied access to any adult care home for the purpose of making an inspection in the administration of this subchapter, the director or their authorized representative shall not inspect without a search warrant or its equivalent.

(C) The director may proceed ex parte to seek a warrant or its equivalent. Application for a search warrant to inspect the premises shall be made to any magistrate authorized to issue a warrant of arrest. The application must be supported by an affidavit filed with the magistrate stating the purpose and extent of the proposed inspection, whether it is a routine or periodic inspection or an inspection instituted by complaint and other specific or general information concerning the premises.

(D) The director shall report observations or evidence of substandard conditions, poor care, or a potential need for protective services including abuse, neglect, or exploitation of a resident, to the appropriate agency. The director shall ensure that appropriate corrective action is taken as a result of this information.

(Ord. 1272, Amended, 06/06/2019; Ord. 974, Renum25.210, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.060, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.611 COMPLAINTS.

(A) Complaints against licensed or unlicensed adult care homes may be filed with the director by any person, whether or not a resident of the home. The director shall investigate and shall respond promptly and appropriately to each complaint subject to available resources.

(B) The director shall maintain a file of all complaints and the action taken on the complaint, if any, indexed by the name of the operator. The filed complaint forms shall protect the privacy of the complainant, the resident, and any witnesses.

(C) It is the intent of this subchapter that information shall be made available to the public which would assist the public in its selection of an adult care home. To this end, the director shall make available the information in the public files for inspection and copying by the public. The director may, however, in accordance with the provisions of ORS Chapter 124 or according to rules duly promulgated pursuant to §§ 23.650 through 23.670, classify file information as confidential.

(D) No operator of an adult care home shall retaliate against a resident by increasing charges; decreasing services, rights or privileges; or threatening to increase charges or decrease services, rights or privileges; by taking or threatening to take any action to coerce or compel the resident to leave the facility, including bringing or threatening to bring an action for possession; or by abusing or threatening to harass or to abuse a resident in any manner after the resident or any person acting on behalf of the resident has filed a complaint with the director.

(E) No operator of an adult care home shall retaliate against an employee who has filed a complaint with the director.

Penalty, see § 23.999

(Ord. 974, Renum25.211, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.065, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.612 SANCTIONS.

(A) The director shall have the authority to revoke, suspend, not renew, deny or attach conditions to any license for an adult care home under the fol-

lowing circumstances and such other circumstances as may be established by rules adopted under this subchapter:

(1) When the license was issued upon fraudulent or untrue representation;

(2) Where there exists a threat to the life, health, safety, or welfare of any resident;

(3) When there is reliable evidence of abuse, neglect or exploitation of any resident; or

(4) When the owner or operator has failed to comply with the provisions of this subchapter; with city and county codes and ordinances; with the rules and procedures duly promulgated by the adult care home program; or with any other state or federal law or rule applicable or relevant to the health, welfare or safety of a resident.

(B) Denial, suspension, non-renewal, or revocation of a license by the director shall be preceded by a hearing under § 23.614 if requested by the operator, unless the license is denied, suspended or revoked for the reason of an immediate threat to the life, health, safety, or welfare of a resident. If an immediate threat exists, the denial, suspension or revocation shall be effective upon order of the director. In this case, a hearing shall follow the denial, non-renewal, suspension or revocation if requested by the operator.

(C) Conditions attached to a license shall be effective upon order of the director.

(D) An operator of an adult care home whose license has been revoked, suspended, not renewed, or denied, or who has operated without a license in violation of this subchapter has a duty, when so ordered by the director, to effect orderly and appropriate placement of all residents, and to refund any monies due, within a reasonable period of time from the effective date of the order. The operator shall cooperate with the department, which shall assist the residents and operator in effecting such placement.

(E) Any operator of an adult care home whose license has been revoked, voluntarily surrendered

during a revocation/non-renewal process, or whose application has been denied shall be disqualified from applying for a license for one year from the date the revocation, denial, or surrender is final, or for a longer period if specified in the order revoking or denying the license.

Penalty, see § 23.999

(Ord. 974, Renum25.212, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); '90 Code, § 8.91.070, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.613 INSTITUTION OF LEGAL PROCEEDINGS.

(A) Upon recommendation of the director, the County Attorney, acting in the name of the county, may bring an action or proceedings in a court of competent jurisdiction to compel compliance with or restrain by injunction any violations of this subchapter or the rules adopted under it.

(B) Circumstances in which such an action or proceeding may be brought include but are not limited to the following:

(1) When an adult care home is operated without valid licensure; or

(2) After notice of a denial, suspension, non-renewal, or revocation of a license has been given and a reasonable time for placement of residents by the operator into other facilities has been allowed, but such placement has not been accomplished.

(Ord. 974, Renum25.213, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); '90 Code, § 8.91.080, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.614 APPEALS AND HEARINGS REVIEW.

(A) Any operator who has been denied a license, whose license has been suspended or revoked, not renewed, or upon whose license conditions have been imposed, or who has received sanctions, including fines, from the adult care home program may request a hearing by filing a written request with the director.

(B) A request for a hearing shall be filed within 20 days of the date of the director's written notice of the action. The request for a hearing shall set forth the reasons for the hearing and the issues to be heard. The director may prescribe forms for filing an appeal.

(C) (1) Unless an administrative conference is scheduled with the approval of the operator, upon receipt of a timely request for a hearing, the director shall, within 15 days, notify the hearings officer. The hearings officer shall designate a time and place for a hearing as soon as possible but in no case more than 30 days from the date of the hearings officer's receipt of the request for a hearing.

(2) If an administrative conference is held and the operator is not satisfied with the outcome, a hearing shall be scheduled not more than 30 days after written notice from the operator to the director. The hearings officer shall give the owner or operator at least 10 days written notice of the time and place of the hearing. The operator shall post the notice in a conspicuous place in the adult care home.

(3) If the administrative conference is cancelled, the operator shall have 20 days from cancellation to request a hearing.

(D) Any resident who is not covered by the Residential Landlord and Tenant Act, or any person acting in such a resident's behalf, may request a hearing by filing a request with the director following receipt of a notice of involuntary eviction from an operator. An adult care home owner, operator or employee who receives a request for such a hearing shall immediately notify the director.

(E) Upon receipt of a request of a hearing on an involuntary eviction pursuant to division (C) of this section, the director shall promptly cause an investigation to be made to determine if a resolution can be achieved without a hearing. If a resolution cannot be achieved, the director shall designate and promptly notify the hearings officer, who shall set a time and place for a hearing. The hearing shall not be scheduled more than 30 days from the date the director receives the request for a hearing. The hearings officer shall give the parties written notice of the time and place of hearing. If the director has determined that immediate transfer is justified by an emergency

as specified in rules adopted under this subchapter, then this hearing may occur after such transfer has taken place.

(F) Hearings shall be conducted in accordance with hearing rules adopted by the director. If a procedural issue arises that is not addressed in the Department's hearing rules, the issue shall be resolved in accordance with the Attorney General's Model Rules of Procedure. The director shall adopt rules and standards concerning involuntary evictions involving residents receiving care, including information to be considered, such as the effect of the move on the residents, and standards for decisions in hearings.

(G) **PARTY** means a person who is a party to the proceeding or hearing and, unless such rights are waived, is entitled to participate in the manner or area(s) specified by the hearings officer according to rule duly promulgated pursuant to §§ 23.650 through 23.670. Parties include the following:

(1) The county, through the initiating department;

(2) The person(s) requesting the hearing and named respondents; and

(3) Residents of the involved adult care home where vacation, closure, demolition, or relocation of residents is a reasonably possible outcome of the proceeding or hearing.

(H) Disclosure of ex parte communications shall be made by the hearings officer or the director in accordance with the Attorney General's Rules of Procedure.

(I) The hearings officer shall issue an order as soon as is practicable but in no event later than 45 days after the termination of the hearing and shall mail a copy of the order to the parties. The order shall include an opinion containing findings of fact and conclusions of law explaining the reason and rationale adopted by the hearing officer in arriving at their conclusions.

(J) The hearings officer's order shall be a final order. The hearings officer shall notify the parties of

the right to appeal the final order to the circuit court under ORS 34.010 to 34.100.

(K) Review of the final order shall be taken solely and exclusively by writ of review as set forth in ORS 34.011 to 34.100.

(Ord. 1272, Amended, 06/06/2019; Ord. 974, Renum25.214, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.085, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.615 CIVIL CAUSE OF ACTION.

A violation of any of the rights set forth in § 23.604 or the rules adopted in connection with § 23.604 creates a civil claim by the resident against the owner or operator of the adult care home. The resident may bring an individual action in an appropriate court for injunctive relief and/or recover actual damages or \$1,000, whichever is greater. The court may provide such equitable relief as it deems proper, and may award, in addition to relief provided in this section, reasonable attorney fees, at trial and upon appeal, and costs. If the defendant prevails, the court may award reasonable attorney fees at trial and on appeal, and costs if it finds the action to be frivolous.

(Ord. 974, Renum25.215, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.090, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.616 INTERGOVERNMENTAL AGREEMENTS.

The county may enter into agreements with cities in the county regarding enforcement of this subchapter within those cities. In addition, the county may enter into such agreements with the state as are necessary to permit administration or enforcement of this subchapter within the county.

(Ord. 974, Renum25.216, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.150, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.617 ADMINISTRATION AND ENFORCEMENT.

(A) It is the responsibility of the director to administer and enforce this subchapter and rules adopted under it. The director has authority to initiate all of the activities of the adult care home program, including enforcement proceedings. Nothing in this subchapter creates a cause or right of action

against the county, its agents or employees for the failure to enforce any provision of this subchapter.

(B) The director shall have the authority to promulgate such rules as may be necessary for the administration and enforcement of this subchapter, pursuant to the procedures set forth in §§ 23.650 through 23.670.

(C) The director shall adopt rules and standards governing adult care homes such as are necessary to protect the health, safety, and welfare of the residents, and which shall be consistent with the residential nature of the living accommodations.

(D) The specific requirements of this subchapter or rules adopted under it may be varied by the director upon good and sufficient cause shown that this action is in keeping with the intent and purpose of this subchapter. When a variance is granted, the director shall provide documentation of the reasons for it.

(E) The director shall have the authority to do the following:

- (1) Administer oaths;
- (2) Audit records in order to assure conformance with this subchapter;
- (3) Certify official acts;
- (4) Subpoena and require attendance of witnesses at meetings or hearings to determine compliance with this subchapter;
- (5) Require the production of relevant documents;
- (6) Swear witnesses;
- (7) Take testimony of witnesses in person or by deposition; and
- (8) Perform all other acts necessary to enforce the provision of this subchapter.

(F) The director has the authority to designate to others in the department responsibility to carry out the requirements of any provision of this subchapter.

(Ord. 974, Renum25.217, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.025, 07/01/1998; Ord. 860, passed, 07/11/1996)

ADULT CARE HOMES - PART 2: ADOPTION OF ADMINISTRATIVE RULES

(Ord. 974, Renum25.250, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget))

§ 23.650- INITIATION OF RULE ADOPTION.

The director or any member of the Board may propose adoption, amendment or repeal of a rule under this subchapter.

(Ord. 974, Renum25.650-, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.160, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.651 APPROVAL OF FORM; FILING.

The proposed rule shall be approved as to form by the County Attorney and filed with the director and the clerk of the Board.

(Ord. 974, Renum25.251, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.165, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.652 CONTENTS OF NOTICE OF INTENT TO ADOPT.

Notice of intent to adopt a proposed rule shall contain the following information:

(A) Description of the proposed action, i.e., adoption, repeal, or amendment;

(B) A summary of the intent, subject and content of the proposed rule;

(C) Complete text of the proposed rule where practicable, or the location, time and contact person for obtaining a copy of the complete text of the proposed rule;

(D) The time limit, location, contact person and format for submitting views and comments on the proposed rule; and

(E) The time limit, location, format and contact person for requesting postponement of the action on the proposed rule.

(Ord. 974, Renum25.252, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.170, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.653 PUBLICATION OF NOTICE.

In addition to such notice as may be required by law, notice of intent to adopt a rule shall be made in the following manner:

(A) Publication in a newspaper of general circulation at least 15 days before the close of the review period; and

(B) Posting in a prominent location in the county courthouse at least 15 days before the close of the review period.

(Ord. 974, Renum25.253, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.175, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.654 REVIEW AND COMMENT PERIOD.

Notice of intent to adopt a proposed rule shall be made after the notice is filed with the clerk of the Board. The review period for submitting comments shall be 15 days and shall commence with publication of notice of intent to adopt a proposed rule.

(Ord. 974, Renum25.254, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.180, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.655 RULE ADOPTION.

If at the close of the review period there have been no requests for a postponement or a public hearing, the director shall, within ten days from the close of the review period, consider the review comments and either adopt or reject the proposed rule or adopt the rule with modifications. If a proposed rule is to be substantially amended as a result of review comments, it must be considered as a newly proposed rule. The adopted rule shall be filed with the director and the clerk of the Board within ten days from the close of the review period.

(Ord. 974, Renum25.255, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.185, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.656 POSTPONEMENT OF ACTION.

If within the review period an interested person requests postponement of the intended action, the director, if the grounds are judged to be sufficient, shall postpone the intended action no less than ten days nor more than 60 days to allow the requesting person an opportunity to submit data, views or arguments. A request for postponement must be made in writing to the director and must include a statement of the identity and interest of the requesting person and of the grounds for requesting postponement.

(Ord. 974, Renum25.256, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.190, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.657 REQUEST FOR PUBLIC HEARING.

If within the review period ten or more persons, or an association with ten or more members or a corporation requests, in writing, a public hearing on the proposed rule, the director shall announce and conduct a public hearing.

(Ord. 974, Renum25.257, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.195, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.658 NOTICE OF PUBLIC HEARING; CONTENTS.

Notice for a public hearing on a proposed rule shall contain the following information:

(A) Description of the proposed action, such as adoption, repeal or amendment;

(B) A summary of the intent, subject and content of the proposed rule;

(C) The date, time, place and presiding officer of the public hearing and the manner in which interested persons may present their views;

(D) Complete text of the proposed rule if practicable or the location, time and contact person for obtaining a copy of the complete text of the proposed rule;

(E) The time limit, location, format and contact person for appealing the decision of the director to the Board.

(Ord. 974, Renum25.258, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.200, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.659 NOTICE OF PUBLIC HEARING; PUBLICATION.

The notice of a public hearing shall be published in a newspaper of general circulation within the county at least ten days before the hearing. Notice of the public hearing shall also be given by mail to all parties who have submitted comments and to the mailing list of the interested parties.

(Ord. 974, Renum25.259, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.205, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.660 PUBLIC HEARING; ACTION ON RULE; FILING.

The director shall conduct the public hearing. At the close of the hearing the director shall adopt, reject or amend the proposed rule. No further notice is required for continuation of a hearing to a certain date. The director shall file notice of the action taken with regard to the proposed adoption, amendment or repeal of a rule with the clerk of the Board within 15 days of the public hearing. Filing of the notice of action with the clerk of the Board initiates a ten-day appeal period. If no appeal is made, the action by the director in regard to the rule shall take effect at the end of the appeal period, unless a later effective date is specified.

(Ord. 974, Renum25.260, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.210, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.661 APPEAL TO THE BOARD.

Any interested person may appeal the action of the director on a rule after a public hearing on the matter. Any member of the Board may also request review of the action. Appeal must be made in writing and filed with the director within ten days of filing of the notice of action with the clerk of the Board. Board commissioners must request review within the same time.

(Ord. 974, Renum25.261, 01/31/2002, eff. 2/1/2002 and /1/2002)

(for budget); ' 90 Code, § 8.91.215, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.662 APPEAL REQUEST; CONTENTS.

The appeal request shall contain the following:

(A) An identification of the decision or action being appealed, including its date;

(B) A statement of the identity interest of the person making the appeal; and

(C) The specific grounds for the appeal.
(Ord. 974, Renum25.262, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.220, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.663 COMMISSIONER REQUEST FOR REVIEW.

A commissioner may initiate review by requesting that the matter be placed on the agenda for the Board's next regular meeting.

(Ord. 974, Renum25.263, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.225, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.664 HEARING DATE.

Upon receipt of an appeal request in conformance with the requirement of § 23.662, the director shall schedule a hearing by the Board at the Board's next regular meeting for which the agenda has not closed and the date of which permits ten days to publish notice in a newspaper of general circulation.

(Ord. 974, Renum25.264, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.230, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.665 NOTICE OF APPEAL HEARING.

The county shall prepare notice for appeal of hearings. The notice shall contain the information described in § 23.658(D) and (E). Notice shall be published in a newspaper of general circulation in the county at least ten days prior to the hearing. The county shall also notify by mail persons who have submitted comments on the proposed rule and to the mailing list of interested parties.

(Ord. 974, Renum25.265, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.235, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.666 HEARING PROCEDURE.

The appeal hearing shall be conducted as a regular meeting of the Board. The Board's action shall take the form of a Board order.

(Ord. 974, Renum25.266, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.240, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.667 TEMPORARY RULES.

The director may be confronted with a situation where it is necessary to put a rule into immediate effect in order to protect the public or the interests of particular parties. In that case, and where there is not sufficient time to follow the procedure requirements set forth in §§ 23.650 through 23.666, the director is authorized to use temporary rules.

(Ord. 974, Renum25.267, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.245, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.668 REQUIREMENTS FOR TEMPORARY RULES.

The director may proceed without prior notice or hearings that he or she finds practicable, to adopt a rule without the notice otherwise required by this subchapter. In that case, the director shall:

(A) File a certified copy of the rule with the clerk of the Board;

(B) File with the rule the director's finding that failure of the director to act promptly will result in serious prejudice to the public interest or to the interest of the parties concerned. Findings shall be supported by a statement of specific facts and reasons; and

(C) Take appropriate measures to make the temporary rule known to the persons who may be affected by the temporary rule, including publication in a newspaper of general circulation in the county, as promptly after filing the rule as practicable and giving notice of the rule by mail to persons who may be affected by it.

(Ord. 974, Renum25.268, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.250, 07/01/1998; Ord. 860, passed, 07/11/1996)

**§ 23.669 EFFECTIVE DATE OF
TEMPORARY RULE.**

A temporary rule adopted in compliance with § 23.668 and this section becomes effective immediately upon filing with the clerk of the Board or at a later time which may be designated by the rule itself.

(Ord. 974, Renum25.269, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.255, 07/01/1998; Ord. 860, passed, 07/11/1996)

**§ 23.670 DURATION OF TEMPORARY
RULE.**

A temporary rule may be effective for a period of not longer than 120 days. No temporary rule may be renewed after it has been in effect 120 days. The director may, however, adopt an identical rule on notice in accordance with the procedures set forth in this subchapter.

(Ord. 974, Renum25.270, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.260, 07/01/1998; Ord. 860, passed, 07/11/1996)

§ 23.999 PENALTY.

(A) Any person who violates a provision of the adult care homes subchapter, §§ 23.600 through 23.670, or the rules promulgated thereunder may be punished by a fine in an amount to be fixed by the director, not to exceed \$1,000 for each violation. In addition, a continuing violation shall subject to the operator or owner to an action for injunctive relief.

(B) The provisions of this section are in addition to and not in lieu of other procedures and remedies provided by law.

(Ord. 974, Renum25.999, 01/31/2002, eff. 2/1/2002 and 7/1/2002 (for budget); ' 90 Code, § 8.91.075, 07/01/1998; Ord. 860, passed, 07/11/1996)

