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APD 7-2021
CHAPTER 411
DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

FILING CAPTION: APD: Clarify involuntary move-out notice process in residential care and assisted living facilities

EFFECTIVE DATE: 02/08/2021

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RULES:
411-054-0005, 411-054-0080

AMEND: 411-054-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 11/18/2020

RULE SUMMARY: Adds definitions for “Involuntary move-out” and “Voluntary move-out,” and adds definitions for “Health care facility” and “Qualified facility staff,” as those terms relate to the amended move-out process. Other changes were made to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and improve the accuracy, structure, and clarity of the rule.

RULE TEXT:
For the purpose of these rules, the following definitions apply:
(1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).
(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing and grooming, bathing and personal hygiene, mobility, elimination, and cognition.
(3) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.
(4) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility as described in OAR 411-054-0065.
(5) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.
(6) "Aging and People with Disabilities (APD)" means the program area of Aging and People with Disabilities, within the Department of Human Services.
(7) "Applicant" means the individual, individuals, or entity, required to complete a facility application for license.
(a) Except as set forth in OAR 411-054-0013(1)(b), applicant includes a sole proprietor, each partner in a partnership, and each member with a 10 percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business; or
(B) Operates the residential care or assisted living facility on behalf of the facility business owner.
(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor, each partner in a partnership, and each member with a five percent or more ownership interest in a limited liability company, corporation, or entity that:
(A) Owns the residential care or assisted living facility business; or
(B) Operates the residential care or assisted living facility on behalf of the facility business owner.
(8) "Approved Dementia Training" means a dementia training curriculum approved by an entity selected by the Department to be an approving entity pursuant to a Request for Application (RFA) process.
(9) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to perform specific activities in relation to residential care and assisted living facilities including:
(a) Conducting inspections and investigations regarding protective service, abuse, and neglect.
(b) Monitoring.
(c) Making recommendations to the Department regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.
(10) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.
(11) "Building Codes" are comprised of the set of specialty codes, including the Oregon Structural Specialty Code (OSSC), Oregon Mechanical Specialty Code (OMSC), Oregon Electrical Specialty Code (OESC), Oregon Plumbing Specialty Code (OPSC), and their reference codes and standards.
(12) "Caregiver" means a facility employee who is either direct care staff or a universal worker, who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents.
(13) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.
(14) "Change of Condition - Short-Term" means a change in the resident's health or functioning, that is expected to resolve or be reversed with minimal intervention, or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.
(15) "Change of Condition - Significant" means a major deviation from the most recent evaluation, that may affect multiple areas of functioning or health, that is not expected to be short-term, and imposes significant risk to the resident. Examples of significant change of condition include, but are not limited to:
(a) Broken bones.
(b) Stroke, heart attack, or other acute illness or condition onset.
(c) Unmanaged high blood sugar levels.
(d) Uncontrolled pain.
(e) Fast decline in activities of daily living.
(f) Significant unplanned weight loss.
(g) Pattern of refusing to eat.
(h) Level of consciousness change.
(i) Pressure ulcers (stage 2 or greater).
(16) "Choice" means a resident has viable options that enable the resident to exercise greater control over their life.

Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.
(17) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.
(18) "Competency" means to possess specific knowledge, technical skill, and the ability to perform tasks related to the role and responsibilities of direct care staff.
(19) "Competency Assessment" means an evaluation of knowledge, technical skill and ability to carry out care pursuant to the requirements in OAR 411-054-0070. Evaluation shall include verification and documentation of direct care staff competency through observation, written testing or verbal testing.
(20) "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.
(21) “Consumer Summary” means a summary of services provided by the facility. This statement also includes a summary of services not provided. This summary is one of the documents that must be provided to potential residents before move-in.
(22) "Conversion Facility (CF)" means a nursing facility that has followed the requirements in these rules to become a residential care facility through the conversion facility process.
(23) "Department" means the Department of Human Services (DHS).
(24) "Designated Representative" means:
(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:
(A) Chosen by the individual or, as applicable, the legal representative;
(B) Not a paid provider for the individual; and
(C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.
(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.
(b) An individual or the legal representative of the individual is not required to appoint a designated representative.
(25) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.
(26) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:
(a) Medication administration.
(b) Resident-focused activities.
(c) Assistance with activities of daily living.
(d) Supervision and support of residents.
(e) Serving meals, but not meal preparation.
(27) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.
(28) "Director" means the Director of the Department or that individual's designee.
(29) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made, that renders the licensee unable to operate the facility or makes the facility uninhabitable.
(30) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.
(31) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.
(32) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.
(33) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility. For purposes of HCBS, "facility" can also mean "provider".

(34) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division of the Oregon Health Authority (OHA).
(35) "HCB" means "Home and Community-Based".
(36) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. DHS, Office of Licensing and Regulatory Oversight and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.
(37) “Health Care Facility” means a facility, as defined in ORS 442.015(12)(a), that provides acute care or a higher level of care to a resident according to OAR 411-054-0080.
(38) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.
(39) "Hospice Program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life-threatening disease with a limited medical prognosis. A hospice program is an institution for purposes of ORS 146.100.
(40) "Immediate Jeopardy" means a situation where the failure of a residential care facility to comply with a Department rule has caused, or is likely to cause, a resident:
(a) Serious injury;
(b) Serious harm;
(c) Serious impairment; or
(d) Death.
(41) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.
(42) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.
(43) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.
(44) "Individual" means a person enrolled in or utilizing HCBS.
(45) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 (1)(d) and (2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual, or as applicable the legal representative, as described in OAR 411-004-0040.
(46) "Informed Consent" means options, risks, and benefits have been explained to an individual, and, as applicable, the legal representative of the individual, in a manner that the individual, and, as applicable, the legal representative, comprehends.
(47) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.
(48) "Intensive Intervention Community (IIC)" means an RCF endorsed to house fewer than six socially dependent individuals or individuals with physical disabilities. The purpose of the IIC is to serve individuals with co-occurring mental, emotional, or behavioral disturbances who are more appropriately served in smaller settings.
(49) “Involuntary Move-Out” means a move out of a resident to which the resident or the resident’s legal representative does not agree.
(50) "Licensed Nurse" means an Oregon licensed practical or registered nurse.
(51) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.
(52) "Legal Representative" means a person who has the legal authority to act for an individual.
(a) The legal representative only has authority to act within the scope and limits of his or her authority as designated by

the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.
(b) For an individual 18 years of age and older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.
(53) "Major Alteration":
(a) Means:
(A) Any structural change to the foundation, floor, roof, exterior, or load bearing wall of a building;
(B) The addition of floor area to an existing building; or
(C) The modification of an existing building that results in a change in use where such modification affects resident services or safety.
(b) Does not include, cosmetic upgrades to the interior or exterior of an existing building (for example: changes to wall finishes, floorings, or casework).
(54) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.
(55) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes).
(a) Modified special diets include, but are not limited to:
(A) Small frequent meals;
(B) No added salt;
(C) Reduced or no added sugar; and
(D) Simple textural modifications.
(b) Medically complex diets are not included.
(56) "New Construction" means:
(a) A new building.
(b) An existing building or part of a building that is not currently licensed.
(c) A major alteration to an existing building.
(d) Additions, conversions, renovations, or remodeling of existing buildings.
(57) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851.
(58) "OHA" means the Oregon Health Authority.
(59) "Owner" means an individual with an ownership interest.
(60) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
(61) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030.
(a) FOR INDIVIDUALS RECEIVING MEDICAID. The person-centered service plan coordinator completes the person-centered service plan.
(b) FOR NON-MEDICAID INDIVIDUALS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.
(62) "Person-Centered Service Plan Coordinator" means a:
(a) Resident's AAA or APD case manager assigned to provide case management services or person-centered service planning for and with individuals; or
(b) Person of the individual's choice for individuals who pay privately.
(63) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and

previously accumulated resident savings.
(64) "Pre-Service Training" means training that must be completed before direct care staff provide care to residents.
(65) "Primary Care Provider" means the health care provider primarily responsible for the on-going diagnosis and treatment of the resident where they currently reside.
(66) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.
(67) "Provider" means any person or entity providing HCBS.
(68) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.
(69) "Psychotropic Medications" means any drug that affects brain activities associated with mental processes and behavior. These drugs include, but are not limited to, drugs in the following categories:
(a) Anti-psychotic.
(b) Anti-depressant.
(c) Anti-anxiety.
(d) Hypnotic.
(70) “Qualified facility staff,” for purposes of OAR 411-054-0080, means the facility nurse, administrator, or administrator’s designee.
(71) "Quality Measurement Program" means the quality metrics program, as described in OAR 411-054-0320.
(72) "Quality Measurement Council" means a group of individuals appointed by the Governor to develop and oversee the Quality Metric Reporting Program as described in OAR 411-054-0320.
(73) "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR 333-675-0000.
(74) "Renovate" means to restore to good condition or to repair.
(75) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting. This agreement is one of the documents that must be provided to potential residents before move-in.
(76) "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.
(77) "Resident Evaluation" means an evaluation that uses the information obtained when addressing the elements required in OAR 411-054-0034(5).
(78) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.
(79) "Residential Care Facility Administrator (RCFA)" means an administrator of a residential care or assisted living facility, as defined in ORS 678.710 and licensed by the Oregon Health Licensing Office, according to OAR chapter 853. All individuals serving as administrators in residential care or assisted living facilities will be required to hold this license as of January 1, 2022. Until that deadline, as described in OAR 411-054-0065, individuals serving as administrators will meet the requirements for one of three options:
(a) Full administrator license;
(b) Provisional administrator license;
(c) DHS-approved administrator.
(80) "Restraint" means:
(a) Physical restraints are any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the individual’s body that the individual cannot remove easily, which restricts freedom of movement or

normal access of the individual to the individual's body. Any manual method includes physically restraining someone by manually holding someone in place.
(b) Chemical restraints are any substance or drug used for the purpose of discipline or convenience that has the effect of restricting the individual's freedom of movement or behavior and is not used to treat the individual's medical or psychiatric condition.
(81) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).
(82) "Risk Agreement" means a process where a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.
(83) "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.
(84) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident. For IICs, the term "interdisciplinary team" is synonymous with "service planning team."
(85) "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.
(86) "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.
(a) For the purpose of these rules, subject individual includes:
(A) All applicants, licensees, and operators of a residential care or assisted living facility.
(B) All individuals employed or receiving training in an assisted living or residential care facility.
(C) Volunteers, if allowed unsupervised access to residents.
(b) For the purpose of these rules, subject individual does not apply to:
(A) Residents and visitors of residents.
(B) Individuals that provide services to residents who are employed by a private business not regulated by the Department.
(87) "Substantial Compliance" means a level of compliance with state law and rules of the Department such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents of a facility.
(88) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.
(89) "These Rules" mean the rules in OAR chapter 411, division 054.
(90) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:
(a) The general public.
(b) A specific population, for example, residents with dementia or traumatic brain injury.
(91) "Unit" means the personal and sleeping space of an individual receiving services in an RCF or ALF setting, as agreed to in the Residency Agreement.
(92) "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.
(93) "Voluntary Move-Out" means the facility and the resident, or resident's legal representative, have mutually agreed the facility can no longer meet the resident's health, behavior or care needs.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450, 443.738

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.738, 443.991, 678.710

AMEND: 411-054-0080

REPEAL: Temporary 411-054-0080 from APD 35-2020

RULE TITLE: Involuntary Move-out Criteria

NOTICE FILED DATE: 11/18/2020

RULE SUMMARY: Amends rule to require explicit Department review of involuntary move-out notices issued by residential care and assisted living facilities. Clarifies process for facility to follow when issuing a 30-day move-out notice or a less than 30-day move-out notice. Clarifies process for Department to review information related to move-out notices. Clarifies process for residents to request an administrative hearing related to a move-out notice. Other changes were made to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and improve the accuracy, structure, and clarity of the rule.

RULE TEXT:

The Department of Human Services, Aging and People with Disabilities Office encourages facilities to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the community-based care setting due to safety and medical limitations.

(1) Information must be specified in the facility's disclosure information OAR 411-054-0026 (Notice to Potential Residents) that describes the types of health, nursing, behavior, and care services the facility is able and unable to provide. In addition, facilities endorsed under OAR chapter 411, division 057 (Endorsed Memory Care Communities) must provide services to support residents with the progressive symptoms of dementia. Facilities will not be required to permanently provide staffing beyond the staffing services stated in the residency agreement; however, facilities may need to provide additional services to residents on a short-term basis to ensure safety of residents and to facilitate transfer to a more appropriate setting. The minimum required services identified in the following sections and outlined in disclosure documents must be provided before a resident may be asked to move out:

(a) OAR 411-054-0070(1) (Staffing).

(b) OAR 411-054-0030 (Resident Services).

(c) OAR 411-054-0045(1)(f)(F) (Intermittent Direct Nursing Services). Such services may be of a temporary nature as defined in the facility policy, admission agreements and disclosure information. This means the facility is not required to provide services beyond the scope of the facility license or in a manner that does not support the health and safety of the resident or others in the facility.

(2) REASONS FOR INVOLUNTARY 30-DAY MOVE-OUT NOTICE. A resident may be asked to move from a facility if one or more of the following circumstances exists:

(a) The resident's needs exceed the level of ADL services the facility provides as specified in the facility's disclosure information;

(b) The resident engages in behavior or actions that repeatedly and substantially interferes with the rights, health, or safety of residents or others;

(c) The resident has a medical or nursing condition that is complex, unstable or unpredictable, and exceeds the level of health services the facility provides as specified in the facility's disclosure information;

(d) The facility is unable to accomplish resident evacuation in accordance with OAR 411-054-0090 (Fire and Life Safety);

(e) The resident exhibits behavior that poses a danger to self or others;

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

(g) Non-payment of charges.

(3) Prior to issuing a move-out notice, the facility shall communicate with the resident or resident’s legal representative regarding the reasons for the move-out and attempt to resolve the reason for move out. The facility must document efforts to resolve the move out.

(4) PROCESS FOR ISSUING AN INVOLUNTARY 30-DAY MOVE-OUT NOTICE. Except as otherwise provided in these

rules, the following apply to a 30-day move out:
(a) A facility may not require a resident to engage in an involuntary move out from the facility without first providing 30-day notice to the resident, resident's legal representative, the Office of the Long-Term Care Ombudsman, and the resident's case manager, if the resident has a case manager.
(b) Before the facility issues a 30-day notice to the resident, the resident's legal representative, the Office of the Long-Term Care Ombudsman, or the resident's case manager, the facility must first submit the written notice to the Department for review and receive a written response from the Department stating the notice and other documentation submitted by the facility complies with these rules.
(5) As part of the facility submission of the 30-day notice to the Department as described in (4), the facility must demonstrate that the facility has made all relevant, appropriate efforts to resolve the reason(s) for the requested move-out. At a minimum, the facility must provide to the Department the following written information concerning the proposed move-out:
(a) A copy of the proposed 30-Day Move-out and Administrative Hearing Request (form SDS 0567 and form MSC 0443), which includes a written explanation of the reason(s) for the requested move out.
(b) The two (2) most recent service plans, showing modifications made in attempt to resolve the reason for the requested move out. The only exception to this specific requirement involves any proposed move-out due to resident non-payment issues.
(c) All relevant documentation that supports the facility's reason(s) for the proposed 30-Day Move-out Notice.
(6) After receiving the facility's documentation under (5) of this rule, the Department may request additional documentation from the facility concerning the proposed move-out. Such requested documentation may include, but is not limited to:
(a) Documentation of the facility's attempts to resolve the reason for the proposed move-out such as related progress notes, relevant Medication Administration Record(s), evaluations, clinical assessments, physician notes, and other documentation demonstrating the facility has attempted to staff resident's temporary or intermittent needs.
(b) Documentation that demonstrates the proposed move-out is consistent with the facility's:
(A) Uniform Disclosure Statement, as required by OAR 411-054-0026(1).
(B) Residency Agreement, as required by OAR 411-054-0026(2).
(C) Consumer Summary Statement, as required by OAR 411-054-0026(3).
(c) Names and contact information of additional parties or witnesses, as appropriate, to allow the Department to obtain additional facts regarding the reason for the move.
(7) After receiving all information required under (5) and requested under (6) of this rule, the Department will have two business days to review the 30-day involuntary move out notice and any related documentation and provide the facility with written notice indicating whether or not the Department has determined the facility has provided satisfactory documentation in compliance with these rules. If the Department determines sufficient documentation has not been provided, the Department will deny the move-out notice. A denial does not prohibit a facility from submitting or resubmitting a move-out notice that satisfies the criteria contained in (5) of this rule.
(8) The Department will provide written notice to the facility with a determination regarding the proposed move-out. However, if the Department determines regulatory criteria established in rule were not met, the facility may not issue the move-out notice.
(9) The facility may issue the notice if the Department has determined regulatory criteria were met; the facility must email a copy of the final version of form SDS 0567 to the Department, the resident, the resident's legal representative, the resident's case manager, and the Office of the Long-Term Care Ombudsman.
(a) The 30-Day Move-Out and Hearing Notification form (form SDS 0567) must include notice of both the move-out and the right to request a hearing (form MSC 0443).
(b) If the correct form, containing both notices, is not delivered to all necessary parties, the 30-Day Move-Out and Hearing Notice form is insufficient, and the timeline does not start until both notices are jointly supplied.
(10) Informal conferences and administrative hearings requested under (9) will be conducted according to (19) of this

rule.
(11) LESS THAN 30-DAY MOVE-OUT NOTICE. The resident must be given 30 days advance written notice before being asked to move out or not return to the facility, except in the following unusual circumstances:
(a) A resident has been admitted or treated at a health care facility for a significant medical or psychiatric event. At the time the resident is to return to the facility, qualified facility staff have evaluated the resident's health, medical, behavioral or care needs and have determined the facility is unable to meet the resident's needs pursuant to section (1) of this rule due to the resident's significant and ongoing change of condition related to a medical or psychiatric event, whether that event was the reason for leaving the facility for treatment, or arose while the resident was being treated at the health care facility.
(A) A "significant medical or psychiatric event" is defined as a serious illness, injury, impairment, or physical or mental condition that results in a change of condition such that the facility cannot meet the needs of the resident, and the resident requires inpatient care in a health care facility on a continuing and permanent basis.
(B) For the duration of the resident's time in the health care facility, a facility must stay informed of the status of the resident's health by communicating with the health care facility on a consistent, ongoing basis.
(C) When a resident has been admitted or treated at a health care facility for a significant medical or psychiatric event, once the health care facility has given notice to the facility that the resident is ready to be discharged to return to the facility, qualified facility staff shall evaluate the resident's health, medical, behavioral or care needs within a reasonable time, but no later than 24 hours after the resident has been deemed ready for discharge.
(b) The resident's behavior places the health or safety of the resident or others in jeopardy and undue delay in moving the resident increases the risk of harm.
(12) PROCESS FOR ISSUING AN INVOLUNTARY LESS THAN 30-DAY MOVE-OUT NOTICE. A facility may not issue a move-out notice before first submitting written documentation described in (13) of this rule to the Department and then receiving written response from the Department stating the written documentation submitted by the facility is in compliance with these rules.
(13) Prior to providing notice to the resident or the resident's legal representative, the facility must provide to the Department the following written information concerning the proposed less than 30-day move-out:
(a) A copy of the proposed Less Than 30-Day Move-out and Hearing Notice form (form SDS 0568 and form MSC 0443), which includes a written explanation of the reason(s) for the requested move out.
(b) The two (2) most recent service plans, showing service plan modification, if possible.
(c) Appropriate documentation that demonstrates the efforts taken to address all service needs of the resident, including providing intermittent direct nursing services or obtaining home health, hospice, or a third-party referral, as required by rule.
(d) Documentation demonstrating compliance with 411-054-0070(1) and 411-054-0030(2)(b).
(e) Explanation of whether the facility has the ability to respond to 24-hour care needs and also assist residents to access health care services from outside vendors, as defined by 411-054-0045(1) and (2).
(f) Any and all additional documentation that supports the facility's reasons for proposing a Less Than 30-day Move-out notice.
(14) After receiving the facility's documentation under (13) of this rule, the Department may request additional documentation from the facility concerning the proposed less than 30-day move-out, as deemed necessary by the Department. Such requested documentation may include, but is not limited to:
(a) Documentation of attempts to resolve the reason for the requested move-out such as related progress notes, relevant Medication Administration Record(s), evaluations, clinical assessments, physician notes, and other documentation demonstrating the facility has attempted to staff resident's temporary or intermittent needs, as required by OAR 411-054-0045(1)(f)(F).
(b) Documentation that demonstrates the proposed move-out is consistent with the facility's:
(A) Uniform Disclosure Statement, as required by OAR 411-054-0026(1).
(B) Residency Agreement, as required by OAR 411-054-0026(2).

(C) Consumer Summary Statement, as required by OAR 411-054-0026(3).
(c) Names and contact information concerning additional parties or witnesses, as appropriate, to allow the Department to obtain additional statements or evidence regarding the reason for the move.
(15) After receiving all information required under (13) and requested under (14) of this rule, the Department will have two business days to review the involuntary move-out notice and any related documentation and provide the facility with written notice indicating whether or not the Department has determined the facility has provided documentation in compliance with these rules. If the Department determines sufficient documentation has not been provided, the Department will deny the move-out notice. A denial does not prohibit a facility from submitting or resubmitting a move-out notice that satisfies the criteria contained in (13) of this rule.
(16) The Department will provide written notice to the facility with a determination regarding the proposed move-out. If the Department determines regulatory criteria were not met, the facility may not issue the move-out notice.
(17) The facility may issue the notice if the Department has determined regulatory criteria has been met; the facility must submit the final version of form SDS 0568 and form MSC 0443 to the Department, the resident, the resident's legal representative, the resident's case manager, and the Office of the Long-Term Care Ombudsman.
(a) The Less Than 30-Day Move-Out and Hearing Notice (form SDS 0568) must include notice of both the move-out and the rights to request a hearing (form MSC 0443). The completed form must contain both notices and be delivered to all required parties.
(b) The facility must provide as much notice to the resident as possible but must always provide at least 24 hours.
(c) The facility must email a copy of the Less Than 30-Day Move-Out and Hearing Notice form to the Department and to the Office of the Long-Term Care Ombudsman on the same day the notice is delivered to the resident or the resident's legal representative.
(d) The facility is responsible for providing a request for hearing from the resident or the resident's legal representative, to the Department, within 24 hours of receiving it.
(18) Administrative hearings requested under (17) will be conducted according to (19) of this rule.
(19) INFORMAL CONFERENCE AND ADMINISTRATIVE HEARING. Except when a facility has had its license revoked, not renewed, voluntarily surrendered, or terminates its Medicaid contract, a resident who receives an involuntary move-out notice is entitled to an administrative hearing, provided the resident or resident's designee requests an administrative hearing in a timely manner.
(a) A resident who receives a Move-Out and Hearing Notice can request a formal administrative hearing:
(A) Residents have the following deadlines for requesting an administrative hearing after receipt of the notice:
(i) Within ten (10) business days, for a 30-day notice.
(ii) Within five (5) business days, for a less than 30-day notice.
(B) If a resident wants to preserve the right to an administrative hearing, the resident, the resident's legal representative, or the Long Term Care Ombudsman may check the appropriate box on the Move-Out and Hearing Notice (form SDS 0567 and form MSC 0443), and return the notice to the facility. Residents may also exercise their administrative hearing rights by informing the facility, verbally or in writing, of the request for an administrative hearing.
(C) If the resident or resident's legal representative informs the facility of the request for a hearing, the facility must immediately notify the Department.
(D) In cases involving a less than 30-day notice or where the resident is incapacitated and does not have a legal representative, the Office of the Long-Term Care Ombudsman is allowed to provide notice to the Department on behalf of the resident, requesting an administrative hearing.
(E) The resident, resident's legal representative, the Long Term Care Ombudsman, or the facility may request the Department facilitate an informal conference before the administrative hearing, to discuss the move-out.
(F) The Department may extend the time allowed requesting an informal conference or administrative hearing if the Department determines that good cause exists for failure to make a timely request.
(G) The Department shall immediately notify the Office of Administrative Hearings of the request for a formal

administrative hearing and, for a less than 30-day move-out, shall request an expedited hearing be held within 5 business days.
(H) The Department may decide to hold an informal conference to resolve the matter without a formal administrative hearing. The Department shall notify all appropriate parties of the informal conference and shall facilitate the conference.
(I) If the Department decides to hold an informal conference, the conference shall be scheduled to be held:
(i) Within ten (10) business days of the Department receiving the request for hearing, for a 30 day move-out.
(ii) Within four (4) business days of the Department receiving the request for hearing, for a less than 30-day move-out.
(J) No formal administrative hearing shall be held if the resident is satisfied with the outcome of the informal conference.
(b) The resident who has received a Less Than 30-Day Move-Out Notice will be allowed to continue to reside in the facility until the hearing process is completed unless substantial evidence is provided by the facility to the Department documenting that the change of behavior or medical condition of the resident creates a serious and immediate threat to the resident, other residents, or staff and all reasonable alternatives to move-out (consistent with the orders of the attending physician or primary care provider) have been attempted and documented in the resident's medical record.
(A) When a hearing has been requested, the Department shall request the Office of Administrative Hearings hold an expedited administrative hearing within five (5) business days.
(B) When a hearing has been requested, but the resident has been moved out of the facility, the facility must hold the resident's room, without charge for room and board or services, pending resolution of the administrative hearing. The facility may not rent the resident's unit pending resolution of the administrative hearing.
(20) A resident who was admitted January 1, 2006 or later may be moved without advance notice if all of the following are met:
(a) The facility was not notified before admission that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime.
(b) The facility learns the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime.
(c) The resident presents a current risk of harm to another resident, staff, or visitor in the facility, as evidenced by:
(A) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; or
(B) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the individual's Static 99 score or other assessment indicates a probable sexual re-offense risk to others in the facility.
(d) Before the move, the facility must contact the Department's central office in Salem by telephone and review the criteria in sections (11), (12) and (13) of this rule. The Department shall respond within one working day of contact by the facility. The Department of Corrections parole or probation officer must be included in the review, if available. The Department shall advise the facility if rule criteria for immediate move-out are not met. DHS shall assist in locating placement options.
(e) A written move-out notice must be completed on form SDS 0568A. The form must be filled out in its entirety and a copy of the notice delivered in person, to the resident, or the resident's legal representative, if applicable. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out shall be immediately faxed or emailed to the State Long Term Care Ombudsman.
(f) Before the move, the facility shall orally review the notice and right to object with the resident or legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary move-out. The facility shall immediately telephone the Department's central office in Salem when a hearing is requested. The hearing shall be held within five business days of the resident's move. No informal conference shall be held before the hearing.

STATUTORY/OTHER AUTHORITY: ORS 410.070, 443.450

STATUTES/OTHER IMPLEMENTED: ORS 443.400 - 443.455, 443.991