

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on Upon filing, by the

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities 411
Agency and Division Administrative Rules Chapter Number
Christina Hartman (503) 945-6398
Rules Coordinator Telephone
500 Summer St. NE, E-10, Salem, OR 97301-1074
Address

To become effective 10/07/2013 through 04/04/2014.

RULE CAPTION

Nursing Facility Closure

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

411-085-0025, 411-085-0210, 411-088-0070

SUSPEND:

Statutory Authority:

ORS 410.070, 414.065, 441.055, & 441.615

Other Authority:

42 CFR 483.75(r)(s) & 42 CFR 483.12(a)(8)

Statutes Implemented:

ORS 410.070, 414.065, 441.055, 441.600, & 441.615

RULE SUMMARY

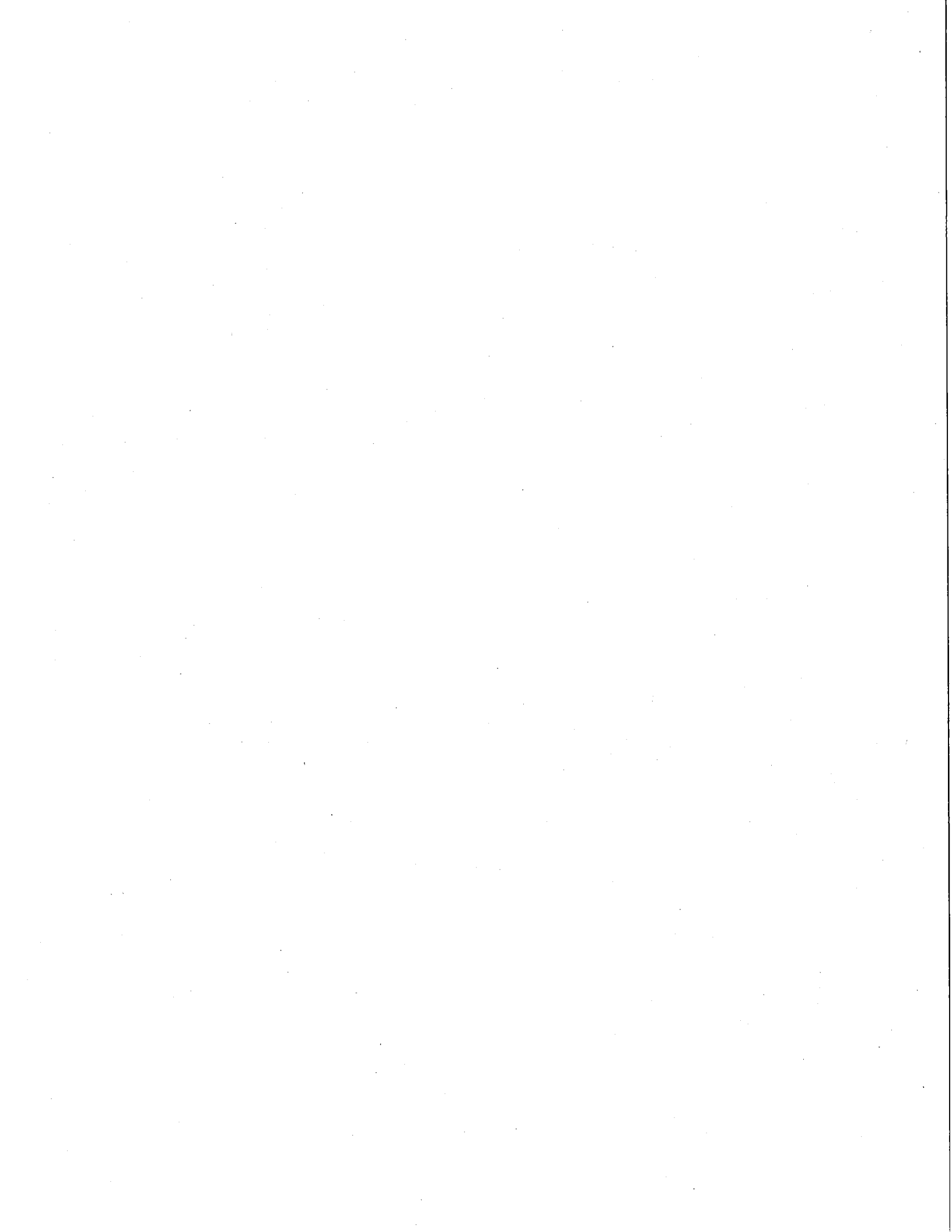
The Department of Human Services (Department) is immediately amending the nursing facility rules set forth in OAR chapter 411, divisions 085 and 088 to align with final rules issued by the Centers for Medicare and Medicaid Services (CMS) that implements Section 6113 of the Patient Protection and Affordable Care Act (PPACA). The proposed rules ensure that, in the case of a facility closure, individuals serving as administrators provide written notification of the impending closure to the residents and other required individuals at least 60 days prior to impending closure and create a plan for the relocation of the residents.

Christina Hartman
Rules Coordinator Name

christina.hartman@state.or.us
Email Address

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SECRETARY OF STATE

SPD 38-2013 (Temp)



Secretary of State
STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities
Agency and Division

411

Administrative Rules Chapter Number

Nursing Facility Closure

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The temporary amendment of OAR 411-085-0025, 411-085-0210, and 411-088-0070 relating to Nursing Facilities.

Statutory Authority:

ORS 410.070, 414.065, 441.055, & 441.615

Other Authority:

42 CFR 483.75(r)(s) & 42 CFR 483.12(a)(8)

Statutes Implemented:

ORS 410.070, 414.065, 441.055, 441.600, & 441.615

Need for the Temporary Rule(s):

The rules in OAR chapter 411, divisions 085 and 088 need to be temporarily amended to align with final rules issued by CMS that implements Section 6113 of the PPACA. The temporary rules require individuals serving as administrators to provide written notification of the impending closure to residents and other required individuals at least 60 days prior to impending closure and to create a plan for the relocation of residents.

Documents Relied Upon, and where they are available:

1. 42 CFR 483.75(r)(s) Administration

Available at: [http://www.ecfr.gov/cgi-bin/text-idx?](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d0ef338bab192b780f2991405094126e&rgn=div8&view=text&node=42:5.0.1.1.2.2.7.17&idno=42)

[c=ecfr&SID=d0ef338bab192b780f2991405094126e&rgn=div8&view=text&node=42:5.0.1.1.2.2.7.17&idno=42](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d0ef338bab192b780f2991405094126e&rgn=div8&view=text&node=42:5.0.1.1.2.2.7.17&idno=42)

2. 42 CFR 483.12(a)(8) Admission, transfer and discharge rights

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3. Federal Register, Vol. 78, No. 53, pages 16795-16806

Available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-19/pdf/FR-2013-03-19.pdf>

4. CMS Survey and Certification Memorandum 13-50-NH

Available at: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-50.pdf>

Justification of Temporary Rule(s):

Failure to act promptly and immediately amend the rules in OAR chapter 411, divisions 085 and 088 will result in serious prejudice to the Department, Medicaid or Medicare-certified nursing facilities, and individuals residing in Medicaid or Medicare-certified nursing facilities.

Failure to immediately amend the rules in OAR chapter 411, divisions 085 and 088 delays the Department's promulgation of rules to implement and enforce CMS regulations for Medicaid and Medicare-certified nursing facilities to ensure that in the case of a facility closure, individuals serving as administrators provide written notification of the impending closure to the residents and other required individuals at least 60 days prior to impending closure and create a plan for the relocation of the residents.

The rules in OAR chapter 411, divisions 085 and 088 need to be amended promptly to align the rules in OAR chapter 411, divisions 085 and 088 with final rules issued by CMS that implements Section 6113 of the PPACA.

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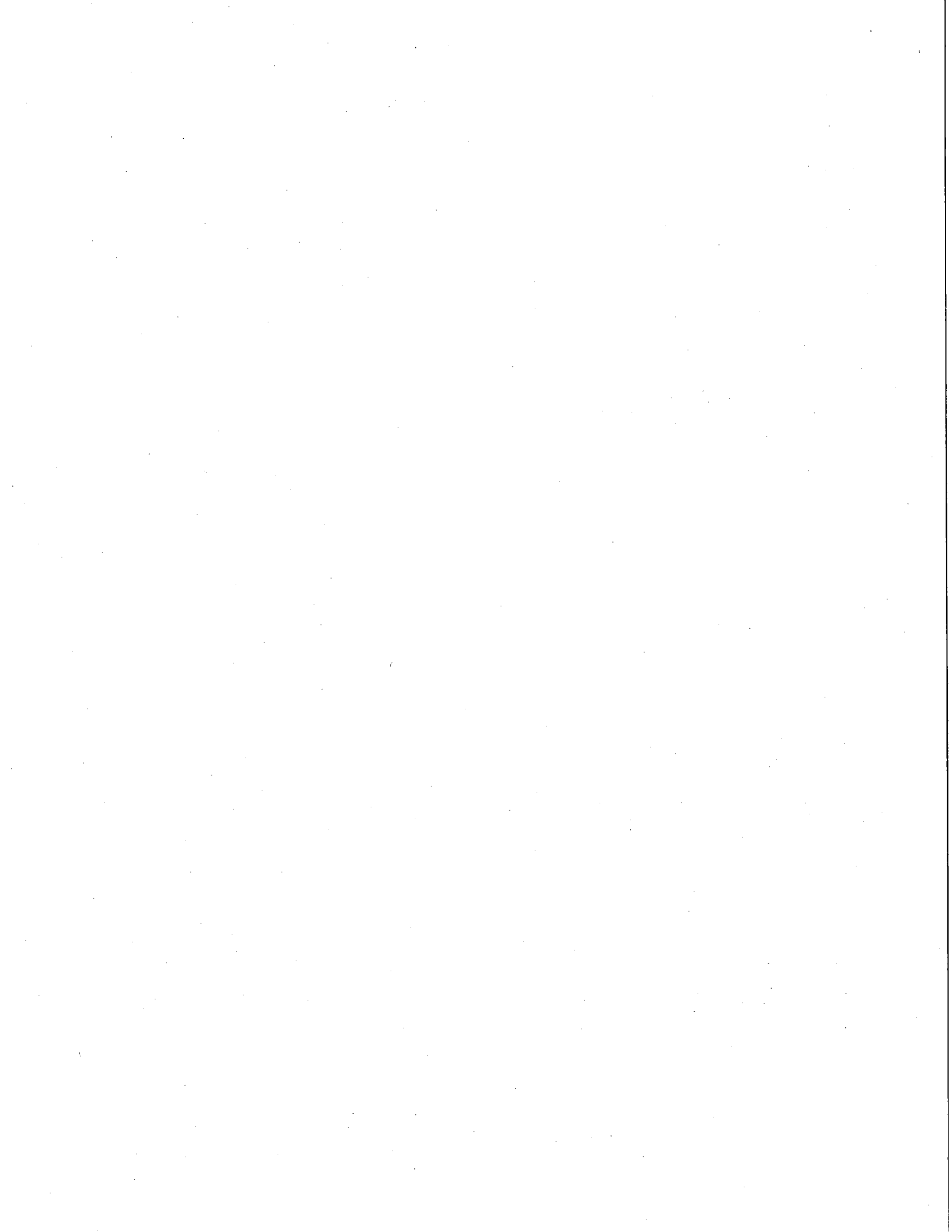
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ARCHIVES DIVISION
SECRETARY OF STATE



Authorization Page

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TEMPORARY ADMINISTRATIVE RULES

Department of Human Services, Aging and People with
Disabilities and Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

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Effective dates

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Nursing Facility Closure

Not more than 15 words

RULEMAKING ACTION

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AMEND: 411-085-0025, 411-085-0210, 411-088-0070

SUSPEND:

Stat. Auth.: ORS 410.070, 414.065, 441.055, & 441.615

Other Auth.: 42 CFR 483.75 (r) (s) & 42 CFR 483.12 (a) (8)

Stats. Implemented: ORS 410.070, 414.065, 441.055, 441.600, & 441.615

RULE SUMMARY

The Department of Human Services (Department) is immediately amending the nursing facility rules set forth in OAR chapter 411, divisions 085 and 088 to align with final rules issued by the Centers for Medicare and Medicaid Services (CMS) that implements Section 6113 of the Patient Protection and Affordable Care Act (PPACA). The proposed rules ensure that, in the case of a facility closure, individuals serving as administrators provide written notification of the impending closure to the residents and other required individuals at least 60 days prior to impending closure and create a plan for the relocation of the residents.

STATEMENT OF NEED AND JUSTIFICATION

The temporary amendment of OAR 411-085-0025, 411-085-0210, and 411-088-0070 relating to Nursing Facilities.

In the Matter of

1. 42 CFR 483.75(r)(s) Administration

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at:

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2. 42 CFR 483.12(a)(8) Admission, transfer and discharge rights

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Documents Relied Upon, and where they are available

The rules in OAR chapter 411, divisions 085 and 088 need to be temporarily amended to align with final rules issued by CMS that implements Section 6113 of the PPACA. The temporary rules require individuals serving as administrators to provide written notification of the impending closure to residents and other required individuals at least 60 days prior to impending closure and to create a plan for the relocation of residents.

Need for the Temporary Rule(s)

Failure to act promptly and immediately amend the rules in OAR chapter 411, divisions 085 and 088 will result in serious prejudice to the Department, Medicaid or Medicare-certified nursing facilities, and individuals residing in Medicaid or Medicare-certified nursing facilities.

Failure to immediately amend the rules in OAR chapter 411, divisions 085 and 088 delays the Department's promulgation of rules to implement and enforce CMS regulations for Medicaid and Medicare-certified nursing facilities to ensure that in the case of a facility closure, individuals serving as administrators provide written notification of the impending closure to the residents and other required individuals at least 60 days prior to impending closure and create a plan for the relocation of the residents.

The rules in OAR chapter 411, divisions 085 and 088 need to be amended promptly to align the rules in OAR chapter 411, divisions 085 and 088 with final rules issued by CMS that implements Section 6113 of the PPACA.

Justification of Temporary Rules

Authorized Signer

P. Ross Kelly

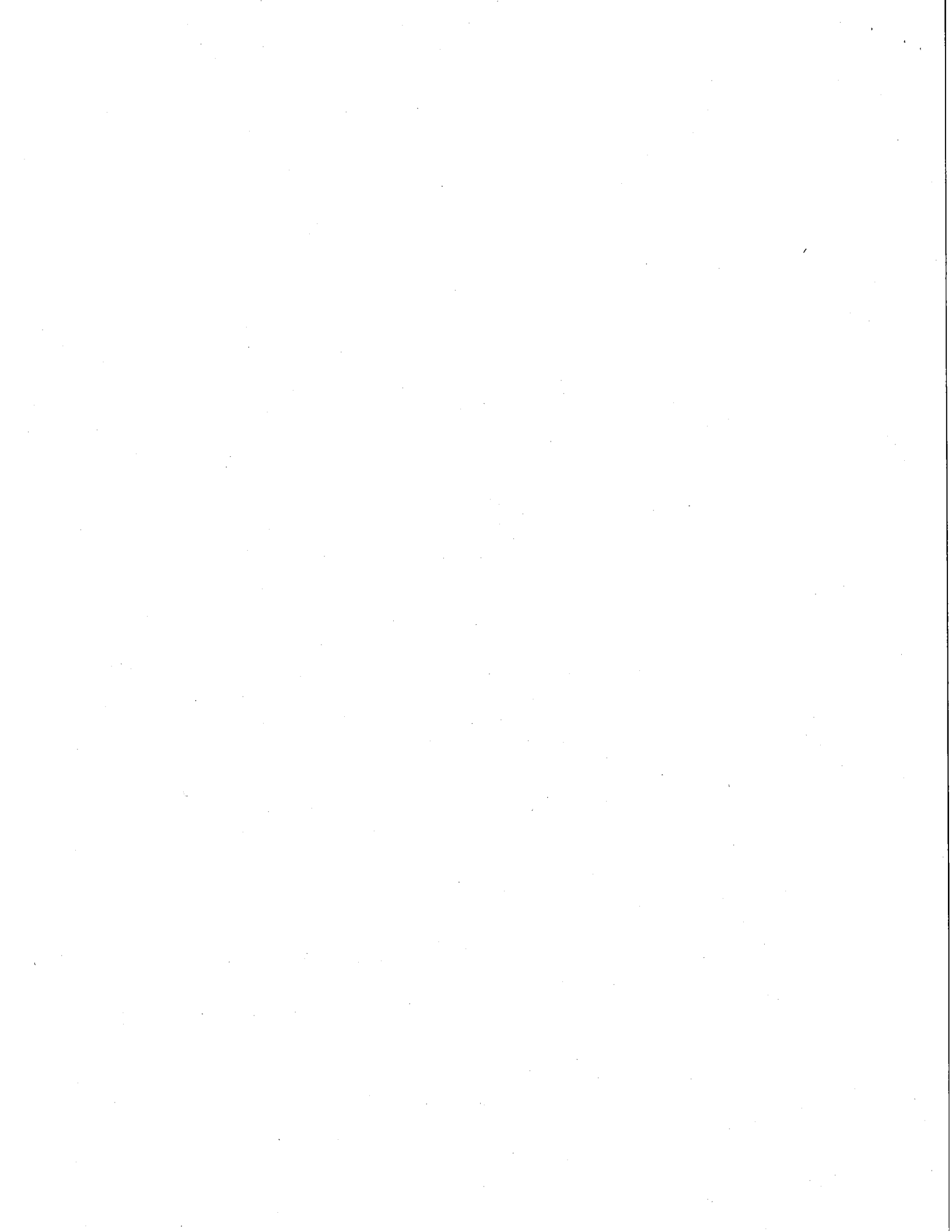
Printed Name

Doreen A. Keeney

Date

10/1/13

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.



**CHAPTER 411
DIVISION 085**

NURSING FACILITIES/LICENSING -- GENERALLY

411-085-0025

Change of Ownership or Operator and Closure

(1) CHANGE OF OWNERSHIP OR OPERATOR.

(a) When a change of ownership or a change of operator is contemplated, a licensee and a prospective licensee must each notify the Department in writing of the contemplated change. The notice of change of ownership or operator must be received by the Department at least 45 days prior to the proposed date of transfer. A shorter timeframe may be allowed at the sole discretion of the Department. The notice of change of ownership or operator must be in writing and must include the following:

(A) Name and signature of the current licensee;

(B) The name of the prospective licensee;

(C) The proposed date of the transfer;

(D) Type of transfer (e.g., sale, lease, rental, etc.); and

(E) A complete, signed nursing facility application from the prospective licensee.

(b) A prospective licensee may not assume possession or control of a facility until after the prospective licensee has been notified by the Department that the prospective licensee's application has been approved.

(c) The current licensee is responsible for the operation of the facility and resident care provided therein until a new license is issued to a new owner or operator or the facility operation is closed.

(2) FACILITY CLOSURE. In accordance with 42 CFR 483.75(r) and (s) and 42 CFR 483.12(a)(8), a nursing facility administrator must assure satisfactory completion of the following:

(a) WRITTEN NOTICE IN ADVANCE OF FACILITY CLOSURE.

(A) **DEPARTMENT NOTICE.** Before a licensee ceases operation of and closes a facility, the licensee must notify the Department of the impending closure in writing at least 90 days prior to the proposed date of closure. The notice of facility closure sent to the Department must include the following:

(i) Department-approved resident transition plan:

(I) Resident-specific transition plans based on current and accurate assessments of each resident's needs, preferences, and best interests and assurances that each resident's transition setting shall be appropriate in terms of quality, services, and location;

(II) Identification of potential transition settings that are available and appropriate; and

(III) Description of the resident transition process addressing the rate that residents shall transfer from the facility, days and times that transfers shall be scheduled, transportation resources available for resident transfers, and a sample communication tool to be used to specify tasks, responsible person, and completion dates for resident transition plans.

(ii) Department-approved facility closure plan:

(I) Department-approved letter to residents, residents' representatives, and other required parties;

(II) Department-approved Family Meeting agenda;

(III) Plan for staff communication, retention, and employment support;

(IV) Description of operations assuring service and supply provision during closure period;

(V) Identification of the primary contact responsible for daily facility operations during the closure period;

(VI) Identification of the primary contact responsible for the oversight of those managing the facility during the closure period; and

(VII) Identification of any and all sources of supplemental funding to assure operations.

(iii) Department-approved estimated date of closure.

(B) **NOTICE TO RESIDENTS AND OTHER REQUIRED PARTIES.**

(i) **VOLUNTARY CLOSURE.** A facility administrator must notify the residents, the residents' representatives or other responsible parties, and the Office of the State Long-Term Care Ombudsman of an impending closure in writing, using a Department-approved letter, at least 60 days prior to the proposed date of closure.

(ii) **INVOLUNTARY CLOSURE.** A facility administrator must notify the residents, the residents' representatives or other responsible parties, and the Office of the State Long-Term Care Ombudsman of impending closure on a date determined by the Department when closure or termination of the facility's Medicare and/or Medicaid provider agreement is determined by the Centers for Medicare and Medicaid Services or the Department.

(iii) Notification to the residents, the residents' representatives, and the Office of the Long-Term Care Ombudsman of impending closure must include the following:

(I) Department-approved summary of the resident transition and facility closure plans;

(II) Department-approved estimated date of closure; and

(III) Assurances that resident transition planning shall consider resident needs, choice, and best interests and that each resident's transition setting shall be appropriate in terms of quality, services, and location.

(b) **ADMISSIONS.**

(A) A facility may not admit new residents on or after the date on which the 60-day written notification of facility closure has been issued.

(B) A resident who is eligible to return to a facility following hospitalization per OAR 411-088-0050 may return to the facility that is closing.

(C) A resident who is eligible to readmit to a facility following discharge per OAR 411-088-0060 may readmit to the facility that is closing.

(D) A resident who is temporarily absent from a facility per OAR 411-070-0110 may return to the facility that is closing.

(c) **SERVICES AND OPERATION DURING CLOSURE.** The licensee is responsible for operation of the facility and for the resident care provided therein until all residents are transferred and the facility is closed.

(d) **RESIDENT RECORDS.** Clinical records must be transferred and retained according to OAR 411-086-0300.

(e) **ADMINISTRATOR RESPONSIBILITY.** In accordance with 42 CFR 488.446, civil monetary penalties shall be imposed on the individual administrator that fails to comply with 42 CFR 483.75(r). Stat. Auth.: ORS 410.070, 441.055, & 441.615

Stats. Implemented: ORS 441.055 & 441.615

411-085-0210

Facility Policies

(1) **POLICIES REQUIRED.** A Quality Assessment and Assurance Committee must develop and adopt facility policies. The policies must be followed by the facility staff and evaluated annually by the Quality Assessment and Assurance Committee and rewritten as needed. Policies must be adopted regarding:

(a) Admission, fees, and services;

(b) Transfer and discharge, including discharge planning;

(c) Physician services;

(d) Nursing services;

(e) Dietary services;

(f) Rehabilitative services and restorative services;

(g) Pharmaceutical services, including self administration;

(h) Care of residents in an emergency;

(i) Activities;

(j) Social services;

(k) Clinical records;

(l) Infection control;

- (m) Diagnostic services;
- (n) Oral care and dental services;
- (o) Accident prevention and reporting of incidents;
- (p) Housekeeping services and preventive maintenance;
- (q) Employee orientation and inservice;
- (r) Laundry services;
- (s) Possession of firearms and ammunition;
- (t) Consultant services;
- (u) Resident grievances; and
- (v) Facility closure. The administrator must assure compliance with 42 CFR 483.75(s) and OAR 411-085-0025.

(2) DOCUMENTATION. Each policy must be in writing and must specify the last date at which such policy was reviewed by the Quality Assessment and Assurance Committee.

Stat. Auth.: ORS 410.070, 441.055, & 441.615

Stats. Implemented: ORS 441.055 & 441.615

DIVISION 88 NURSING FACILITIES/LICENSING - TRANSFERS

411-088-0070

Notice Requirements

(1) NOTICE LENGTH:

(a) Any person transferred must be provided a minimum of 30 days prior written notice (Exhibit 1) by the facility unless otherwise provided under this section.

(b) Any person may be transferred under OAR 411-088-0020(1)(b) (Life or Safety Threat) or OAR 411-088-0020(1)(c) (Behavior Problem) with fewer than 30 days prior written notice (Exhibit 1) if the reason for such transfer constitutes an emergency. However, the facility must give as much prior written notice (Exhibit 1) as the emergency permits.

(c) Any resident may be involuntarily transferred under OAR 411-088-0020(1)(d) (Medical Emergency) with no prior notice. However, the facility must give notice (Exhibit 1 or 2) before giving the resident's bed to another person.

(d) Any person involuntarily transferred under OAR 411-088-0020(1)(g) (Post-Hospital Extended Care Services or Specialized Services) and cared for in the facility for less than 30 days may be transferred with fewer than 30 days prior written notice.

(A) In such cases the person must be provided with notice no shorter than the length of current stay in the nursing facility.

(B) The notice must be issued at the time of admission or as soon as the length of time for projected course of treatment is estimated.

(C) Section (1)(d) of this rule does not apply if the resident had a right of readmission to the same facility prior to the hospital, surgical, or emergency department services.

(e) Any resident involuntarily transferred under OAR 411-088-0020(1)(b) or (e) (Governmental Action) must be provided a minimum of 14 days prior written notice (Exhibit 1).

(f) Any person denied the right of return or the right of readmission must be notified by the facility immediately and provided written notice (Exhibit 2), mailed (registered or certified), or delivered in person within five days from the date of request for return or readmission. A denial of right of return or readmission is allowable only if there is good cause to believe the resident lacks such right (see OAR 411-088-0050, OAR 411-088-0060, and OAR 411-088-0080).

(g) Any resident may voluntarily transfer from a facility. However, the facility must provide notice (Exhibit 1) pursuant to this rule and must maintain the signed consent form in the resident's medical record.

(h) In the case of a facility closure, notice must be provided to the resident according to OAR 411-085-0025.

(2) NOTIFICATION LIST. The facility must maintain and keep current in the resident's record the name, address, and telephone number of the resident's legal representative, if any, and of any person designated by the resident or the resident's legal representative to receive notice of the transfer. The facility must also record the name, address, and telephone number of any person who has demonstrated consistent concern for the resident if the resident has no one who is currently involved and who has been designated by the resident.

(3) NOTICE DISTRIBUTION. Notice must be provided to:

(a) The resident or former resident, as appropriate;

(b) All persons required to be listed in the resident's medical record under section (2) of this rule;

(c) The local unit of the Aging and People with Disabilities Division or Type B Area Agency on Aging. The notice does not need to be provided to the local unit of the Aging and People with Disabilities Division or Type B Area Agency on Aging if the resident is private pay and the resident's stay in the facility total 30 days or less; and

(d) The Long-Term Care Ombudsman if there is no one currently involved and designated by the resident.

(4) NOTICE FORMAT. Each notice must be in the same format and must have the same content as that provided in Exhibit 1 (Notice of Transfer) or Exhibit 2 (Denial of Readmission/Return) as appropriate.

(a) Each notice provided to residents, and persons required to be listed in the resident's medical record under section (2) of this rule must be accompanied by a copy of the Aging and People with Disabilities Division's brochure, "Leaving the Nursing Facility".

(b) If the person is a resident at the facility, the notice must be served personally to the resident. All other notices required by this rule, including notices to persons who are no longer residents, must be either served personally or delivered by registered or certified mail.

(c) Both exhibits are incorporated by reference as a part of this rule.

Stat. Auth.: ORS 441.055 & 441.615

Stats. Implemented: ORS 441.055, 441.600, 441.605, & 441.615