

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the PERMANENT 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
Kimberly Colkitt-Hallman (503) 945-6398
Rules Coordinator Telephone
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Address

To become effective 04/01/2014 Rulemaking Notice was published in the March 2014 Oregon Bulletin.

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, 411-088-0020, 411-088-0070, 411-088-0080, 411-089-0030, 411-085-0005

REPEAL:

411-085-0025(T), 411-085-0210(T), 411-088-0070(T)

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 410.070, 414.065, 441.055, 441.615, 441.637, 441.710, 441.715, 441.990

Other Authority:

42 CFR 483.75(r)(s), 42 CFR 483.12(a)(8), 42 CFR 488.446

Statutes Implemented:

ORS 410.070, 414.065, 441.055, 441.600, 441.615, 441.637, 441.715, 441.990

RULE SUMMARY

The Department of Human Services (Department) is permanently updating the nursing facility rules set forth in OAR chapter 411, divisions 085, 088, and 089 to make permanent temporary rule language that became effective on October 7, 2013 and 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 permanent 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. Administrators who fail to comply with the new closure requirements may be subject to civil monetary penalties and exclusion from Federal health care program participation. Hearing rights apply.

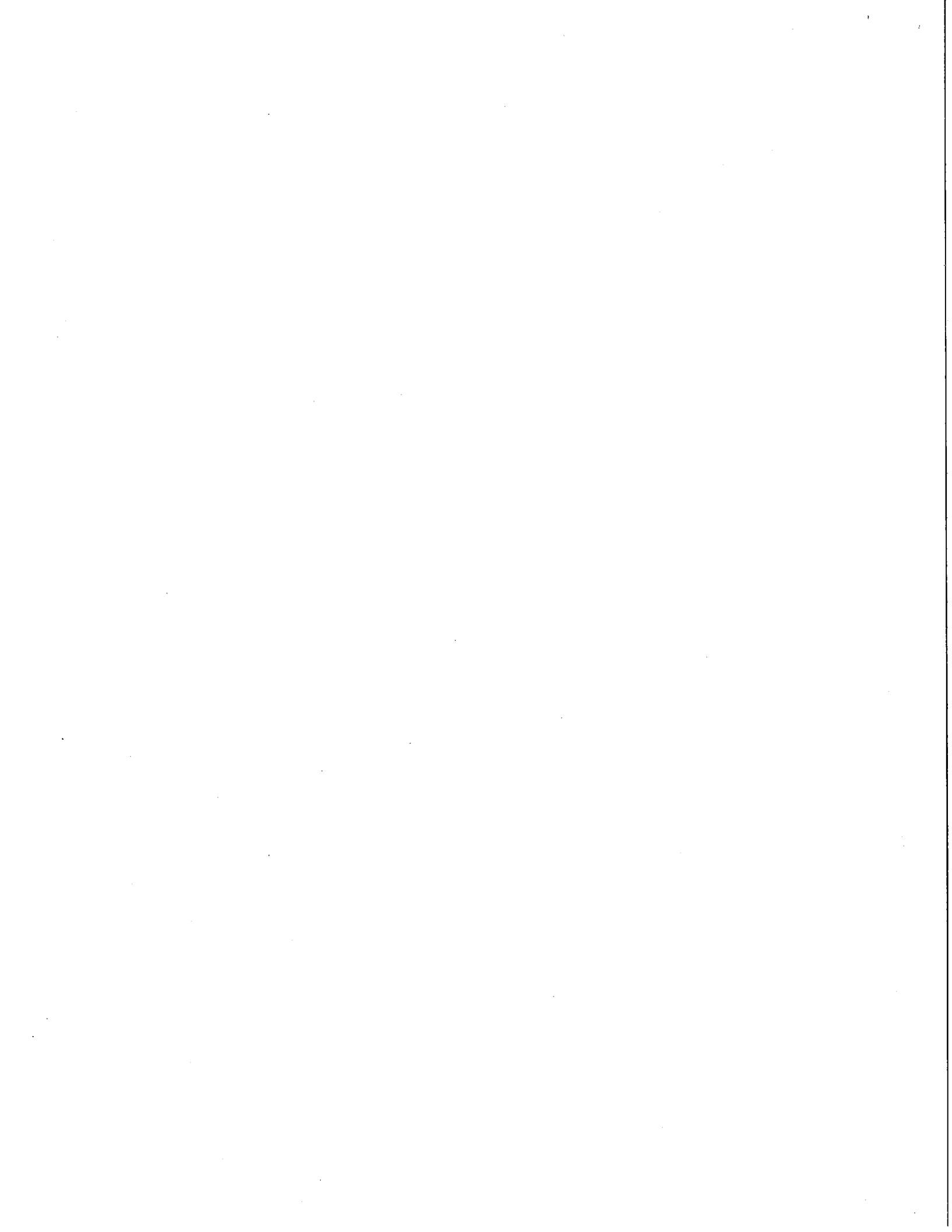
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Department of Human Services, Aging and People with
Disabilities and Developmental Disabilities

411

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411-085-0025, 411-085-0210, 411-088-0020, 411-088-0070, 411-088-0080, 411-089-0030, 411-085-0005

REPEAL: 411-085-0025 (T), 411-085-0210 (T), 411-088-0070 (T)

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 410.070, 414.065, 441.055, 441.615, 441.637, 441.710, 441.715, 441.990

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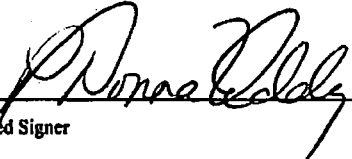
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 *P. DONNA KEDDY* *March 31, 2014*
Authorized Signer Printed Name Date

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.

DIVISION 085
NURSING FACILITIES/LICENSING — GENERALLY

411-085-0005

Definitions

Unless the context requires otherwise, the following definitions apply to the rules in OAR chapter 411, divisions 70, 85, and 89:

- (1) "AAA" means "Area Agency on Aging" as defined in this rule.
- (2) "Abuse" means:
 - (a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent individual would have been able to prevent, such as hitting, pinching or striking, or injury resulting from rough handling.
 - (b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity.
 - (c) Sexual contact with a resident, including fondling, caused by an employee, agent, or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.
 - (d) Illegal or improper use of a resident's resources for the personal profit or gain of another individual, borrowing resident funds, spending resident funds without the resident's consent or, if the resident is not capable of consenting, spending resident funds for items or services from which the resident cannot benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.
 - (e) Verbal abuse as prohibited by federal law, including the use of oral, written, or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.
 - (f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment, or deprivation, directed toward the resident.
 - (g) Corporal punishment.
 - (h) Involuntary seclusion for convenience or discipline.
- (3) "Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.
- (4) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercises that are designed to maintain or improve physical and mental well-being and social skills.
- (5) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.
- (6) "Applicant" means the individual required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes a sole proprietor, each partner in a partnership, or a corporation that operates a nursing facility on behalf of the nursing facility business owner.
- (7) "Area Agency on Aging (AAA)" means a Type B Area Agency on Aging that is an established public agency within a planning and service area designated under the Older Americans Act, 42 U.S.C. 3025, that has responsibility for local administration of Department programs.
- (8) "Assessment" means a written evaluation of a resident's abilities, condition, and needs based upon resident interview, observation, clinical and social records, and other available sources of information.
- (9) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, and psychosocial functioning, as well as to provide reasonable safety, all consistent with the preferences of the resident.
- (10) "Certified Medication Aide" means "certified medication assistant" as defined in this rule.
- (11) "Certified Medication Assistant" means a certified nursing assistant who has been certified as a medication assistant or medication aide pursuant to ORS chapter 678 and the rules adopted thereunder.
- (12) "Certified Nursing Assistant" means an individual who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.
- (13) "Change of Operator" means "change of ownership" as defined in this rule.
- (14) "Change of Ownership" means a change in the individual or entity that owns the facility business, a change in the individual or entity responsible for the provision of services at the facility, or both. Events that change ownership include but are not limited to:
 - (a) A change in the form of legal organization of the licensee;
 - (b) Transfer of the title to the nursing facility enterprise by the owner to another party;
 - (c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;
 - (d) If the licensee is a partnership, any event that dissolves the partnership;
 - (e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or
 - (f) Any other event that results in a change of the operating entity.

- (15) "Control Interest" means "management" as defined in this rule.
- (16) "Day Care Resident" means an individual who is not bedfast who receives services and care in a nursing facility for not more than 16 hours per day.
- (17) "Department" means the Department of Human Services.
- (18) "Division" means the "Department" as defined in this rule.
- (19) "Drug" has the same meaning set forth in ORS Chapter 689.005.
- (20) "Entity" means "Individual" as defined in this rule.
- (21) "Establish a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.
- (22) "Facility" means an establishment that is licensed and certified by the Department as a nursing facility.
- (23) "Facility Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee under 441.277 to 441.323 or the appointment of a temporary manager under 441.333 for a nursing facility or a residential care facility.
- (24) "Health Care Facility" means a health care facility as defined in ORS 442.015, a residential care facility as defined in 443.400, and an adult foster home as defined in 443.705.
- (25) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.
- (26) "Incident of Ownership" means:
- (a) An ownership interest;
 - (b) An indirect ownership interest; or
 - (c) A combination of direct and indirect ownership interest.
- (27) "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.
- (28) "Individual" means an entity including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit as defined in ORS 442.015 including associations, joint stock companies, insurance companies, the state, or a political subdivision or instrumentality, including a municipal corporation.
- (29) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.
- (30) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department, or a "Type B" Area Agency on Aging and includes but is not limited to a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring, or complaint investigation.
- (31) "Legal Representative" means an attorney at law, the individual holding a general power of attorney or special power of attorney for health care, a guardian, a conservator, any individual appointed by a court to manage the personal or financial affairs of a resident, or an individual or agency legally responsible for the welfare or support of a resident other than the facility.
- (32) "Licensed Nurse" means a registered nurse or a licensed practical nurse.
- (33) "Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.
- (34) "Licensee" means the applicant to whom a nursing facility license has been issued.
- (35) "Local Designee of the Department" means the local unit of the Department or the Area Agency on Aging.
- (36) "Long Term Care Facility" means "nursing facility" as defined in this rule.
- (37) "LPN" means "licensed practical nurse" as defined in this rule.
- (38) "Maintain a Nursing Facility" means "establish a nursing facility" as defined in this rule.
- (39) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.
- (40) "Management" means:
- (a) Possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of, an institution, organization, or agency; or
 - (b) An interest as an officer or director of an institution, organization, or agency organized as a corporation.
- (41) "New Construction" means:
- (a) A new building;
 - (b) An existing building or part of a building that is not currently licensed as a nursing facility;
 - (c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed, such as rooms that are proposed to be licensed as nursing facility resident rooms but are not currently licensed as nursing facility resident rooms;
 - (d) A major alteration to an existing building;
 - (e) An addition to an existing building;
 - (f) A conversion in use; or
 - (g) Renovation or remodeling of an existing building.
- (42) "NFPA" means "National Fire Protection Association".
- (43) "Nurse Aide" means "nursing assistant" as defined in this rule.

- (44) "Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.
- (45) "Nursing Assessment" means evaluation of fluids, nutrition, bowel/bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, analysis or evaluation of that data, and utilization of available resource information.
- (46) "Nursing Assistant" means an individual who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes but is not limited to a certified nursing assistant, a certified medication assistant, and individuals who have successfully completed a state approved nurse assistant training course.
- (47) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.
- (48) "Nursing Facility" means an establishment with permanent facilities, including inpatient beds, that provides medical services, including nursing services but excluding surgical procedures, and that provides care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that cannot be delegated to an unlicensed individual. "Nursing Facility" only includes facilities licensed and operated pursuant to ORS 441.020(2).
- (49) "Nursing Facility Administrator" means an individual licensed under ORS Chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing, and controlling the operation of a nursing facility.
- (50) "Nursing Facility Law" means ORS Chapter 441 and the rules for nursing facilities adopted thereunder.
- (51) "Nursing Home" means "nursing facility" as defined in this rule.
- (52) "Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in a facility.
- (53) "Owner" means an individual with an ownership interest.
- (54) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.
- (55) "Pharmacist" has the same meaning as set forth in ORS 689.005.
- (56) "Pharmacy" has the same meaning as set forth in ORS 689.005.
- (57) "Physician" means an individual licensed under ORS Chapter 677 as a physician.
- (58) "Physician's Assistant" means an individual registered under ORS Chapter 677 as a physician's assistant.
- (59) "Podiatrist" means an individual licensed under ORS Chapter 677 to practice podiatry.
- (60) "Prescription" has the same meaning as set forth in ORS 689.005.
- (61) "Public or Private Official" means:
- (a) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;
 - (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;
 - (c) Employee of the Department, Area Agency on Aging, county health department, community mental health program, community developmental disability program, or nursing facility;
 - (d) Individual who contracts to provide services to a nursing facility;
 - (e) Peace officer;
 - (f) Clergy;
 - (g) Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist;
 - (h) Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist;
 - (i) Senior center employee;
 - (j) Information and referral or outreach worker;
 - (k) Any public official who comes in contact with elderly individuals in the performance of the official's official duties;
 - (l) Firefighter or emergency medical technician;
 - (m) Legal counsel for a resident; or
 - (n) Guardian for, or family member of, a resident.
- (62) "Registered Nurse (RN)" means an individual licensed under ORS Chapter 678.
- (63) "Rehabilitative Services" means specialized services provided by a therapist or a therapist's assistant to a resident to attain optimal functioning, including but not limited to physical therapy, occupational therapy, speech and language therapy, and audiology.
- (64) "Relevant Evidence" means factual information that tends to either prove or disprove the following:
- (a) Whether abuse or other rule violation occurred;
 - (b) How abuse or other rule violation occurred; or
 - (c) Who was involved in the abuse or other rule violation.
- (65) "Resident" means an individual who has been admitted but not discharged from a facility.
- (66) "Restorative Aide" means a certified nursing assistant primarily assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities according to the resident's restorative plan of care and pursuant to OAR 411-086-0150.

(67) "Restorative Nursing" means "restorative services" as defined in this rule.

(68) "Restorative Services" mean the measures provided by nursing staff and directed toward re-establishing and maintaining a residents' fullest potential.

(69) "RN" means "registered nurse" as defined in this rule.

(70) "Safety" means the condition of being protected from environmental hazards without compromise to a resident's or legal guardian's choice, or undue sacrifice of a resident's independence.

(71) "Significant Other" means an individual designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation and there is no court-appointed individual, then a significant other means a family member or friend who has demonstrated consistent concern for the resident. No rule using this term is intended to allow release of, or access to, confidential information to individuals who are not otherwise entitled to such information, or to allow such individuals to make decisions that they are not entitled to make on behalf of a resident.

(72) "Suspected Abuse" means reasonable cause to believe that abuse may have occurred.

Stat. Auth.: ORS 410.070, 441.055, 441.615 & 441.637

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637 & 441.650

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.

(a) NOTICE OF INTENT TO CLOSE. The licensee must notify the Department of the intent to close a facility 90 days prior to the anticipated date of closure.

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

(c) RESIDENT RECORDS. The licensee is responsible for the transfer and retention of resident clinical records according to OAR 411-086-0300.

(d) PROPOSED RESIDENT TRANSITION PLAN.

(A) The nursing facility administrator must submit a proposed resident transition plan to the Department for review and approval 75 days prior to the anticipated date of closure. The proposed resident transition plan must:

(i) Include resident-specific transition plans based on current and accurate assessments of each resident's needs, preferences, and best interests;

(ii) In collaboration with the Department, identify potential transition settings that are available and appropriate in terms of quality, services, and location;

(iii) In collaboration with the Department, include a proposed time table for resident assessments, planning conferences, and transitions;

(iv) Include the resources, policies, and procedures that the facility must provide or arrange in order to plan and implement the transitions; and

(v) Include a list of the residents to be transitioned, including each resident's current level of care, a brief description of any special needs or conditions, and the name and address of the resident's guardian (if applicable). The list of residents to be transitioned must include:

(I) Residents that are eligible to return to the facility following hospitalization as described in OAR 411-088-0050; and

(II) Residents that are temporarily absent from the facility and have secured a bedhold as described in OAR 411-070-0110.

(B) Resident transitions must comply with OAR 411-088-0020(1)(f) and OAR 411-088-0070(1)(g), (3)(d), and (4) (Transfers).

(e) **PROPOSED FACILITY CLOSURE PLAN.** The nursing facility administrator must submit a proposed facility closure plan to the Department for review and approval 75 days prior to the anticipated date of closure. The proposed facility closure plan must include:

- (A) A description of operations during the closure period;
 - (B) The plan to assure adequate staff, supplies, and services necessary to provide resident care during the closure period;
 - (C) The primary contact responsible for daily facility operations during the closure period;
 - (D) The primary contact responsible for the oversight of those managing the facility during the closure period;
 - (E) The Department-approved estimated date of closure; and
 - (F) The address where the licensee may be reached following facility closure.
- (f) **ADDITIONAL INFORMATION.** Upon request, the administrator must provide the Department with any additional information related to resident transfer or facility operations during the closure period.
- (g) **DEPARTMENT APPROVAL.** The Department shall notify the facility of the Department's approval within 10 days of receipt of the facility's proposed resident transition plan and facility closure plan.
- (A) If the Department disapproves a proposed plan, the Department shall work with the facility to modify the plan.
 - (B) No residents may be transitioned until the Department approves the proposed plan or until a modified plan is agreed upon.
 - (C) If a plan is not approved or agreed upon within 30 days of receipt of the intent to close, the Department may initiate actions for temporary management according to OAR 411-089-0075.
 - (D) The Department may provide or arrange for resident transitions in order to minimize resident trauma and to ensure the orderly transition of residents.
- (h) **NOTICE TO RESIDENTS AND OTHER REQUIRED PARTIES.** The administrator must provide written notice in accordance with OAR 411-088-0070(1)(g), (3)(d), and (4).

(3) ADMISSIONS.

- (a) The administrator must assure that the facility does not admit new residents on or after the date the 60-day notice is issued to the resident and required parties according to OAR 411-088-0020(1)(f) and 411-088-0070(1)(g), (3)(d), and (4).
- (b) A resident who is eligible to return to a facility following hospitalization per OAR 411-088-0050 may return to a facility that is in the process of closing.
- (c) A resident who is eligible to readmit to a facility following discharge per OAR 411-088-0060 may readmit to a facility that is in the process of closing.
- (d) A resident who is temporarily absent from a facility per OAR 411-070-0110 may return to a facility that is in the process of closing.

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

Stats. Implemented: ORS 441.055 and 441.615

411-085-0210

Facility Policies

- (1) 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) The referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident;
 - (j) Activities;
 - (k) Social services;
 - (l) Clinical records;
 - (m) Infection control;
 - (n) Diagnostic services;
 - (o) Oral care and dental services;
 - (p) Accident prevention and reporting of incidents;
 - (q) Housekeeping services and preventive maintenance;
 - (r) Employee orientation and in-service;

- (s) Laundry services;
 - (t) Possession of firearms and ammunition;
 - (u) Consultant services;
 - (v) Resident grievances; and
 - (w) Facility closure. The policy must identify an administrator's responsibility to assure compliance with OAR 411-085-0025, 411-088-0020(1)(f), and 411-088-0070(1)(g), (3)(d), and (4).
- (2) Each policy must be in writing and must specify the date the policy was last reviewed by the Quality Assessment and Assurance Committee.
- Stat. Auth.: ORS 410.070, 441.055, and 441.615
 Stats. Implemented: ORS 441.055 and 441.615

**DIVISION 88
 NURSING FACILITIES/LICENSING — TRANSFERS**

411-088-0020

Basis for Involuntary Transfer

Upon compliance with these transfer rules (OAR 411-088), an involuntary transfer of a resident may be made when one of the reasons specified in this rule exists.

(1) MEDICAL AND WELFARE REASONS.

- (a) A resident may be transferred when the resident's physician states in writing that:
 - (A) The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility; or
 - (B) The facility is unable to meet the resident's needs and the facility has identified another environment available to the resident that may better meet the resident's needs. The Department shall assist the facility in the facility's effort to identify another environment for the resident.
- (b) A resident may be transferred when the Department Administrator or the State Fire Marshal states in writing the safety of the resident (or other people in the facility) is endangered and justifies the transfer;
- (c) A resident may be transferred when the behavior of the resident creates a serious and immediate threat to the resident or to other residents or people in the facility and all reasonable alternatives to transfer (consistent with the attending physician's orders) have been attempted and documented in the resident's medical record. Such alternatives may include but are not limited to chemical or physical restraints and medication;
- (d) A resident may be transferred when the resident has a medical emergency;
- (e) A resident may be transferred when governmental action results in a facility's certification or license being revoked or not renewed;
- (f) A resident may be transferred when a facility intends to terminate operation as a nursing facility. The facility must:
 - (A) Certify in writing to the Department the license is to be irrevocably terminated as described in OAR 411-085-0025; and
 - (B) Establish to the satisfaction of the Department that arrangements to accomplish all necessary transfers are made in a safe manner with adequate resident involvement and follow-up for each resident to minimize negative effects of the transfer;
- (g) A resident receiving post-hospital extended care services or specialized services from a facility under a physician's order may be transferred from the facility when, according to the physician's written opinion, the resident has improved sufficiently and no longer needs the post-hospital extended care services or specialized services provided by the facility.
 - (A) The purpose of the admission, including the projected course of treatment and the expected length of stay, must be agreed to in writing by the resident (or the resident's legal representative who is so authorized to make such an agreement) at or prior to admission.
 - (B) The facility must identify another environment available to the resident that is appropriate to meet the resident's needs.
 - (C) The notice of transfer may be issued at the time of admission or later and must be based upon the projected course of treatment.

(2) NON-PAYMENT REASONS. A resident may be transferred when there is a non-payment of facility charges for the resident and payment for the stay is not available through Medicaid, Medicare, or other third party reimbursement.

- (a) A resident may not be transferred if, prior to actual transfer, delinquent charges are paid.
- (b) A resident may not be transferred for delinquent charges if payment for current charges is available through Medicaid, Medicare, or other third party reimbursement.

(3) CONVICTION OF A SEX CRIME.

- (a) 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 prior to admission that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime;
 - (B) The facility learns that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime; and
 - (C) The resident presents a current risk of harm to another resident, staff, or visitor in the facility as evidenced by:
 - (i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; and

(ii) 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.

(b) Prior to the move, the facility must contact the Department by telephone and review the criteria in subsection (a) of this section. The Department shall respond within one working day of contact by the facility. The Department of Correction's 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. The Department shall assist in locating placement options.

(c) The facility must issue written notice on the Department approved form. 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 resident lacks capacity and there is no legal representative, a copy of the written notice must be immediately faxed to the State Long-Term Care Ombudsman.

(d) Prior to the move, the facility must orally review the notice and right to object with the resident or if applicable, the resident's legal representative and determine if a hearing is requested. A request for hearing does not delay the involuntary transfer. The facility must immediately telephone the Department when a hearing is requested. The hearing must be held within five business days of the resident's move. An informal conference may not be held prior to the hearing.

Stat. Auth.: ORS 441.055, 441.615, and 443.410

Stats. Implemented: ORS 441.055, 441.600, 441.605, 441.615, 443.410, and 181.586

411-088-0070

Notice Requirements

(1) NOTICE LENGTH:

(a) A facility must provide a resident transferred from the facility a minimum of 30 days prior written notice unless otherwise provided under this section.

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

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

(d) A resident 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 resident must be provided with written notice no shorter than the length of the resident's current stay in the nursing facility.

(B) The notice may be issued at the time of the resident's 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 as described in OAR 411-088-0060 prior to the hospital, surgical, or emergency department services.

(e) A facility must provide a resident involuntarily transferred under OAR 411-088-0020(1)(b) or (c) (Governmental Action) a minimum of 14 days prior written notice.

(f) A facility must immediately notify a resident denied the right of return or the right of readmission. The facility must also provide the resident written notice that is 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, 411-088-0060, and 411-088-0080).

(g) A facility must provide written notice to a resident involuntarily transferred under OAR 411-088-0020(1)(f) (Termination of Operations as a Nursing Facility).

(A) In the case of voluntary closure, written notice must be provided 60 days prior to facility closure.

(B) In the case of involuntary closure, written notice must be provided as determined by the Department.

(h) A facility must provide written notice to a resident voluntarily transferring from a facility pursuant to this rule and must maintain the signed consent form in the resident's medical record.

(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 a 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 totals 30 days or less; and

(d) The Long-Term Care Ombudsman if there is no one currently involved and designated by the resident. Written notice must be provided to the Long-Term Care Ombudsman in the case of an involuntary transfer under OAR 411-088-0020(1)(f) (Termination of Nursing Facility Operations).

(4) STANDARD NOTICE REQUIRED. Written notice must be provided using Form # 0509 (Notice of Transfer), Form # 0510 (Denial of Readmission/Return), or Form #0509L (Resident Letter Nursing Facility Closure), as appropriate. Forms may be accessed electronically from the Department's Forms Server (https://aix-xweb1p.state.or.us/es_xweb/FORMS/) or from the Department by request.

(a) The notice provided to a resident and the people 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" (Form #9847).

(b) In the case of involuntary transfer under OAR 411-088-0020(1)(f) (Termination of Nursing Facility Operations), Form #0509L (Resident Letter Nursing Facility Closure) must be distributed with Form #0509 (Notice of Transfer).

(5) NOTICE SERVICE. If the person receiving notice as described in section (3) of this rule is a resident at a facility, the facility must personally serve the written notice to the resident. All other notices required by this rule, including notices to former residents, must be either served personally or delivered by registered or certified mail.

Stat. Auth.: ORS 441.055 and 441.615

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

411-088-0080

Informal Conference and Hearing

(1) A resident who is to be involuntarily transferred or refused the right of return or readmission is entitled to an informal conference and hearing as provided in this rule.

(2) CONFERENCE REQUEST.

(a) Upon receipt of a notice, a resident, any designated agency, or person acting on the resident's or former resident's behalf, may request an informal conference on the form provided on the brochure, "Leaving the Nursing Facility".

(A) The request for informal conference must be mailed to the Department within 10 business days of the service or delivery of the notice. The Department shall immediately notify the licensee of the request.

(B) The Department may extend the time allowed for requesting an informal conference if the Department determines that good cause exists for failure to make a timely request.

(C) Any facility management personnel or employee involved in providing nursing or other direct care who receives any oral or written indication of a desire for an informal conference from a resident must immediately notify the facility administrator. The administrator must immediately thereupon provide notification to the Department.

(b) A resident may not be transferred after having requested an informal conference or after facility staff or the licensee has knowledge of any indication of a resident's desire for an informal conference until:

(A) Disposition of the request has been completed to the satisfaction of all parties; or

(B) Authorization for transfer is provided by a Hearings Officer pursuant to this rule.

(3) INFORMAL CONFERENCE.

(a) The Department shall hold an informal conference as promptly as reasonably possible but in no event later than 10 days after the request is received unless a later date is agreed upon by both the facility and the person or agency requesting the conference. The Department shall give telephone notice (where a telephone number is available) and send written notice of the time and place of the informal conference to the facility and all persons entitled to the notice. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is reached at the informal conference, the resolution shall be reduced to writing and no formal hearing shall be held.

(b) The proceedings shall be conducted at the facility where the resident is located unless an alternate site is agreed upon by both the licensee and the person or agency requesting the informal conference.

(c) If at the end of an informal conference the licensee wishes to proceed with the transfer, the Department shall ask if the resident or any person or agency representing the resident wishes to request a hearing.

(4) HEARING.

(a) A hearing is conducted as a contested case in accordance with the Administrative Procedures Act, ORS Chapter 183, and the rules of the Department adopted there under. Parties to the hearing must be the resident (or former resident) and the licensee. The Hearings Officer is delegated the authority to issue the final order and shall do so.

- (b) If, pursuant to section (3) of this rule, the Department receives (orally or in writing) a request for a hearing, the Department shall set the date, time, and place of the hearing as promptly as possible. Unless a later date is agreed upon by both the licensee and the person requesting the hearing, the hearing must be held no later than 30 days after the informal conference.
- (c) An expedited hearing must be conducted in the case of an involuntary transfer under OAR 411-088-0020(1)(f) (Termination of Nursing Facility Operations).
- (A) To request an expedited hearing, the resident or any agency or person designated to act on the resident's behalf must verbally request or submit a completed and signed Hearing Request form. The request for an expedited hearing must be received by the Department within 10 business days after an informal conference.
- (B) The Department may extend the time allowed for requesting an expedited hearing if the Department determines that good cause exists for failure to make a timely request.
- (C) An expedited hearing shall be conducted within 5 business days of request. The final order shall be issued within 48 hours following the hearing.
- (d) Nothing herein shall be construed to prohibit, at the election of the Department and with the consent of all interested parties, a hearing immediately following an informal conference.
- (e) The Department shall provide all persons and entities listed in OAR 411-088-0070(3) and the licensee with notification of a hearing. The hearing notification shall be served on the parties personally or by registered or certified mail.
- (f) At the hearing, the facility must proceed first by presentation of evidence in support of the transfer of the resident or of refusal to provide right of return or readmission of the former resident. The person requesting the hearing must follow the facility by presentation of evidence in support of their objection to the transfer or of the request of right of return or readmission.
- (A) In a hearing concerning right of readmission, the only questions raised shall be whether the application was timely, whether the former resident is eligible by means of payment, and whether another person was or is entitled to the bed.
- (B) In a hearing concerning right of return, the only questions raised shall be whether full payment is or was available for the period of hospital stay and whether there was authority under OAR 411-088-0050(2) for another person to be given the bed.
- (C) In a hearing concerning involuntary transfer under OAR 411-088-0020(1)(f) as a result of termination of nursing facility operations, the only question raised shall be whether the proposed transition plan meets the requirements described in OAR 411-085-0025(2)(d).
- (g) The licensee has the burden of establishing that the transfer or denial of return or readmission is permitted by law.
- (h) The Hearings Officer shall, in determining the appropriateness and timeliness of an involuntary transfer or a refusal of return or readmission, consider factors including but not limited to the factors listed in OAR 411-088-0030. The Hearings Officer may not approve a transfer:
- (A) For medical or welfare reasons (under OAR 411-088-0020(1)(a) through (d)) if the risks of physical or emotional trauma significantly outweighs the risk to the resident or to other residents if no transfer were to occur; or
- (B) For any other reason if the transfer presents a substantial risk of morbidity or mortality to the resident.
- (i) CONCLUSION OF HEARING. The hearing is concluded by the issuance of findings and an order:
- (A) Affirming the transfer of the refusal to provide right of return or readmission;
- (B) Granting conditional approval of a transfer when necessary or appropriate for the welfare of the resident. Conditions may include without limitation the occurrence of any or all of the following incidents in preparation for a transfer:
- (i) Selecting a location for the resident to be placed consistent with the resident's need for care and as consistent as possible with the resident's ties with friends and family, if any;
- (ii) Soliciting and encouraging participation of the resident's friends and family in preparing the resident for transfer;
- (iii) Visits by the resident to the proposed site of relocation prior to the actual transfer, accompanied by a person with whom the resident is familiar and comfortable, unless the resident is already familiar with the proposed site;
- (iv) Arranging at the proposed site of relocation for continuation (as much as possible) of activities and routines with which the resident has become familiar; and
- (v) Ensuring that the resident is afforded continuity in the arrangement of an access to personal items significant to the resident.
- (C) Ordering the licensee to retain the resident, readmit the former resident if the resident has been transferred, or provide the former resident with the right of return or readmission;
- (D) Ordering the licensee to retain the resident and establishing standards of behavior for family members or other visitors necessary for the welfare of residents; or
- (E) Making such further provisions as are reasonably necessary to give full force and effect to any order that a licensee retain or readmit the resident or provide the resident the right of return or readmission.
- (j) If the Department approves a transfer subject to one or more conditions pursuant to this rule, the transfer may not occur until the licensee has notified the person requesting the hearing and certified to the Department in writing that all of such conditions have been complied with and the Department has acknowledged to the licensee in writing the receipt and sufficiency of such certification. The Department may, upon request, allow verbal certification and give verbal acknowledgement subject to subsequent certification and acknowledgement in writing.

(5) EXCEPTIONS.

(a) A resident who is to be involuntarily transferred or refused the right of return or readmission as a result of governmental action pursuant to OAR 411-088-0020(1)(b) or (e) is not entitled to a hearing prior to transfer.

(b) A resident who is to be involuntarily transferred as a result of termination of nursing facility operations pursuant to OAR 411-088-0020(1)(f) is entitled to an informal conference and hearing regarding the resident's proposed transition plan but not regarding transfer from the facility that is terminating operations.

Stat. Auth.: ORS 410.070 and 441.055

Stats. Implemented: ORS 441.055, 441.600, and 441.615

DIVISION 89

NURSING FACILITIES/LICENSING — COMPLAINTS, INSPECTIONS, AND SANCTIONS

411-089-0030

Civil Penalties

(1) CONSIDERATIONS. In determining the amount of a civil penalty the Department shall consider:

(a) Any prior violations of statute or rule by the facility or licensee that relates to operation of a nursing facility;

(b) The financial benefits, if any, realized by the facility as a result of the violation, such as costs avoided as a result of not having obtained sufficient staffing, equipment, or supplies;

(c) The gravity of the violation, including the actual and potential threat to health, safety, and well-being of residents, the duration of the threat or number or times the threat occurred, and the number of residents threatened;

(d) The severity of the actual or potential harm caused by the violation, including whether the actual or potential harm included loss of life or serious physical or emotional injury;

(e) The facility's history of correcting violations and preventing recurrence of violations; and

(f) Exhibit 89-1, Civil Penalty Chart, which is incorporated by reference and is a part of this rule.

(2) SINGLE VIOLATION CIVIL PENALTIES. Violations of any requirement within any part of the following statutes, rules, or sections of the following rules are a violation that may result in a civil penalty after a single occurrence.

(a) Violations involving direct resident care, feeding, or sanitation involving direct resident care, including any violation of:

(A) OAR 411-085-0060 (Specialty Nursing Facilities);

(B) OAR 411-085-0200(2) (Facility Employees);

(C) OAR 411-085-0210 to 411-085-0220 (Facility Policies, Quality Assurance);

(D) OAR 411-085-0360 (Abuse);

(E) OAR 411-086-0010 to 411-086-0020 (Administrator, Director of Nursing Services);

(F) OAR 411-086-0040 (except section (3)) (Admission of Residents);

(G) OAR 411-086-0050 to 411-086-0060 (Day Care, Assessment, and Care Plan);

(H) OAR 411-086-0110 to 411-086-0150 (Nursing Services);

(I) OAR 411-086-0200 to 411-086-0260 (Physician, Dental, Rehabilitative, Activity, Social, Dietary, and Pharmaceutical Services);

(J) OAR 411-086-0300 (except section (6)) (Clinical Records);

(K) OAR 411-086-0310 to 411-086-0360 (Employee Orientation and Training, Disaster Preparation, Infection Control, Smoking, Furnishings, and Equipment);

(L) OAR 411-087-0100(1)(a) and (c) (Repair and Cleanliness); or

(M) OAR 411-087-0440 (Alarm and Nurse Call Systems).

(b) Violation involving failure to provide staff-to-resident ratio, including any violation of:

(A) OAR 411-086-0030 (except section (1)) (RN Care Manager); or

(B) OAR 411-086-0100 (Nursing Staffing).

(c) Violation of any rule adopted pursuant to ORS 441.610, including:

(A) OAR 411-085-0300 to 411-085-0350 (Resident Rights);

(B) OAR 411-086-0040(3) (Advance Directives);

(C) OAR 411-086-0300(6) (Record Retention); or

(D) OAR chapter 411, division 088 (Rights Regarding Transfers).

(d) Violation of ORS 441.605 (Resident Rights) or any general or final order of the Department.

(3) CIVIL PENALTIES REQUIRING REPEAT VIOLATIONS. Violation of any Department rule not listed in section (2) of this rule is subject to a civil penalty under the following circumstances:

(a) Such violation is determined to exist on two consecutive surveys, inspections, or visits; and

(b) The Department prescribed a reasonable time for elimination of the violation at the time of, or subsequent to, the first citation.

(4) AMOUNT OF CIVIL PENALTY.

(a) Violation of any requirement or order listed in section (2) of this rule is subject to a civil penalty of not more than \$500 for each day the violation occurs, unless otherwise provided by this section;

(b) Violation of any requirement listed in section (3) of this rule is subject to a civil penalty of not more than \$500 per violation, unless otherwise provided by this section;

(c) Violation involving resident abuse that resulted in serious injury or death is subject to a civil penalty of not less than \$500 nor more than \$1,000, or as otherwise required by federal law (ORS 441.995(3) and ORS 441.715(1)(c));

(d) The Department shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed \$15,000 in any 90-day period.

(A) To impose this civil penalty, the Department shall establish that:

(i) The abuse arose from deliberate or other than accidental action or inaction;

(ii) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(iii) The person substantiated for the abuse had a duty of care toward the resident.

(B) For the purposes of this civil penalty, the following definitions apply:

(i) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(ii) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(iii) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(iv) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(5) ADMINISTRATOR SANCTIONS — NURSING FACILITY CLOSURES. Any individual who is or was the administrator of a facility and fails or failed to comply with the requirements at OAR 411-085-0025(2)(d)(e)(f)(h), OAR 411-085-0025(3)(a), or OAR 411-088-0070(1)(g), (3)(d), or (4):

(a) Are subject to a civil monetary penalty as follows:

(A) A minimum of \$500 for the first offense;

(B) A minimum of \$1,500 for the second offense; and

(C) A minimum of \$3,000 for the third and subsequent offenses;

(b) May be subject to exclusion from participation in any Federal health care program as defined in section 1128B(f) of the Patient Protection and Affordable Care Act; and

(c) Are subject to any other penalties that may be prescribed by law.

(6) PAYMENT TO BE CONSIDERED ADMISSION OF VIOLATION. Unless the Department agrees otherwise, for purposes of history of the facility, any payment of a civil penalty is treated by the Department as a violation of the statutes or rules alleged in the civil penalty notice for which the civil penalty was paid for.

(7) All penalties recovered are deposited in the Quality Care Fund.

(8) NOTICE. The Department's notice of its intent to impose a civil penalty shall include the statements set out in OAR 411-089-0040(3)(a)–(f) and shall also include a statement that if the licensee fails to request a hearing within 10 days of the date the notice was mailed, the licensee shall have waived the right to a hearing.

(9) HEARING REQUEST.

(a) If the Department issues a notice of intent to impose a civil penalty, the licensee is entitled to a hearing in accordance with ORS chapter 183.

(b) A request for a hearing must be in writing and must be received by the Department within 10 days of the date the notice of intent to impose a civil penalty was mailed to the licensee. The hearing request must include an admission or denial of each factual matter alleged in the notice and must affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Department may extend the time allowed for submission of the admission or denial and affirmative defenses for up to 30 calendar days.

(10) DEFAULT ORDER. If a hearing is not timely requested or if the licensee withdraws a hearing request or fails to appear at a scheduled hearing, the Department may enter a final order by default imposing the civil penalty. In the event of a default, the Department's file on the subject of the civil penalty automatically becomes a part of the record for purposes of proving the Department's prima facie case.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715, and 441.990

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715, and 441.990

EXHIBIT 89-1 Civil Penalty Chart (OAR 411-089-0030)

I. RANGE OF CIVIL PENALTIES.

A. Abuse: ORS 441.715(1)(c) — \$2,500–\$15,000.

B. Abuse: ORS 441.995(3) — \$500–\$1,000.

C. Injury, Serious¹ — \$500–\$1,000.

D. Injury, Moderate² — \$300–\$500.

E. Injury, Minor³ — \$100–\$300.

F. Injury, Potential — \$100–\$300.

G. Other — \$100–\$500.

a. Involuntary seclusion.

b. Corporal punishment.

c. Verbal abuse.

d. Financial abuse (consider amount taken/expended).

e. Emotional abuse.

f. Loss of dignity.

II. MODIFIERS (The history for the 24 months prior to the incident is used to determine whether penalty is assessed at the upper or lower penalty ranges listed above).

A. Citation of “related problem”⁴ through survey, complaint investigation, or letter (increases penalty).

B. Civil penalty issues for “related problem” (increases penalty).

C. Facility history of preventing, correcting other violations. If the Department determines the licensee took significant action to correct “related problem,” the Department may waive part or all of the modifier (IIA & IIB).

D. Facility history relating to current violation. The Department may increase the penalty if the facility fails to correct the situation or eliminate the threat after being made aware of the situation or incident. Decrease or suspend penalty after evaluating facility response to incident and efforts to eliminate recurrence.

E. Extended duration. If the Department determines the licensee or facility staff had opportunity to correct the deficiency after it first occurred but action was delayed, the Department may either increase the civil penalty by up to 100% or issue the civil penalty on a “per day” basis.

F. Facility Financial Benefit. The Department may increase the base civil penalty or the modifier based upon the Department's estimate of the cost savings to the facility.

G. Complaint is self-reported (reduces penalty).

H. Multiple residents: Potential or actual injury (increases penalty).

1 Serious injury means permanent physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

2 Moderate Injury means an injury, which would ordinarily be temporary loss of functioning in a typical person or illness or pain lasting more than 24 hours, even if controlled by medication.

3 Minor injury means an injury resulting in temporary discomfort or pain, treated in-house, including medication or treatment or bed rest for short duration, ordinarily not more than 24-48 hours.

4 Related problem means the same staff or resident involved or the same rule, same harm, or same underlying cause.

EXHIBIT 89-1 Civil Penalty Chart (OAR 411-089-0030)

I. RANGE OF CIVIL PENALTIES

A.	Abuse: ORS 441.715(1)(c)	\$2,500 - \$15,000
B.	Abuse: ORS 441.995(3)	\$500 - \$1,000
C.	Injury, Serious ¹	\$500 - \$1,000
D.	Injury, Moderate ²	\$300 - \$500
E.	Injury, Minor ³	\$100 - \$300
F.	Injury, Potential	\$100 - \$300
G.	Other	\$100 - \$500
	a. Involuntary seclusion	
	b. Corporal punishment	
	c. Verbal abuse	
	d. Financial abuse (consider amount taken/expended)	
	e. Emotional abuse	
	f. Loss of dignity	

II. MODIFIERS (The history for the 24 months prior to the incident is used to determine whether penalty is assessed at the upper or lower penalty ranges listed above)

- A. Citation of "related problem"⁴ through survey, complaint investigation, or letter (increases penalty).
- B. Civil penalty issues for "related problem" (increases penalty).
- C. Facility history of preventing, correcting other violations. If the Department determines the licensee took significant action to correct "related problem," the Department may waive part or all of the modifier (IIA & IIB).
- D. Facility history relating to current violation. The Department may increase the penalty if the facility fails to correct the situation or eliminate the threat after being made aware of the situation or incident. Decrease or suspend penalty after evaluating facility response to incident and efforts to eliminate recurrence.
- E. Extended duration. If the Department determines the licensee or facility staff had opportunity to correct the deficiency after it first occurred but action was delayed, the Department may either increase the civil penalty by up to 100% or issue the civil penalty on a "per day" basis.
- F. Facility Financial Benefit. The Department may increase the base civil penalty or the modifier based upon the Department's estimate of the cost savings to the facility.
- G. Complaint is self-reported (reduces penalty).
- H. Multiple residents: Potential or actual injury (increases penalty).

¹ Serious injury means permanent physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

² Moderate Injury means an injury, which would ordinarily be temporary loss of functioning in a typical person or illness or pain lasting more than 24 hours, even if controlled by medication.

³ Minor injury means an injury resulting in temporary discomfort or pain, treated in-house, including medication or treatment or bed rest for short duration, ordinarily not more than 24-48 hours.

⁴ Related problem means the same staff or resident involved or the same rule, same harm, or same underlying cause.

